CITY OF STONECREST, GEORGIA

CITY COUNCIL MEETING – AGENDA

3120 Stonecrest Blvd., Stonecrest, GA 30038

Monday, July 25, 2022 at 7:00 PM

Mayor Jazzmin Cobble

Council Member Tara Graves - District 1 ***Council Member Rob Turner - District 2***

District 3 - Vacant ***Mayor Pro Tem George Turner - District 4***

Council Member Tammy Grimes - District 5

Citizen Access: Stonecrest YouTube Live Channel

I. CALL TO ORDER: George Turner, Mayor Pro-Tem

II. ROLL CALL: Sonya Isom, City Clerk

III. INVOCATION

IV. PLEDGE OF ALLEGIANCE

V. APPROVAL OF THE AGENDA

VI. REVIEW AND APPROVAL OF MINUTES

a. **Approval** - of the June 29, 2022 Meeting Minutes

b. **Approva**l - of the July 6, 2022 Special Called Meeting Minutes

c. **Approval** - of the July 11, 2022 Special Called Meeting Minutes

VII. PUBLIC COMMENTS

The meeting will be conducted in person. Citizens may also submit public comments via email to cityclerk@stonecrestga.gov by 2 pm on the day of the meeting to be read by the City Clerk.

There is a two (2) minute time limit for each speaker submitting or reading a public comment.

VIII. PUBLIC HEARINGS

Citizens wishing to participate and comment during the public hearing portion of the meeting may comment in person. You may also submit your request including your full name, address,

position on the agenda item you are commenting on (for or against) via email to cityclerk@stonecrestga.gov by 2 pm the day of the Hearing. A zoom link for the meeting will be sent to you.
When it is your turn to speak, please state your name, address and relationship to the case.
As an alternative, you can submit comments and questions to the same email address by the same deadline to be read into the record at the meeting.

There is a ten (10) minute time limit for each item per side during all public hearings. Only the applicant may reserve time for rebuttal.

a. **Public Hearing** - 3935 Cain Mill Drive- Short-term Rental - *Ray White*

b. **For Decision** - 3935 Cain Mill Drive - Short Term Rental - *Ray White*

IX. CONSENT AGENDA

X. APPOINTMENTS

a. Swearing In of District 5 Planning Commissioner Lemuel Hawkins - *Mayor Jazzmin Cobble*

XI. REPORTS & PRESENTATIONS

XII. OLD BUSINESS

a. **For Decision** - Carl Vinson Institute of Government Study - *Hari Karikaran*

b. **For Decision**- Preliminary Plat for Crestwind Township - *Ray White*

XIII. NEW BUSINESS

a. **For Decision** - TMOD-22-001 Definitions and Uses - *Ray White*

b. **For Decision** - Stonecrest Estates Preliminary Plat - *Ray White*

c. **For Decision** - Resolution for Approving The Municipal Court Fee Schedule - *Mallory Minor*

d. **For Decision** - Decriminalization of Marijuana - *Mallory Minor*

e. **For Decision** - Participation in the Community Service Program - *Mallory Minor*

f. **For Decision** - Resolution for 2022 Resurfacing Contract - *Gia Scruggs*

g. **For Decision** - Fiscal Year 2023 Budget Calendar - *Janice Allen Jackson*

h. **For Decision** - Resolution for Service Delivery Strategy - *Janice Allen Jackson*

XIV. CITY MANAGER UPDATE

XV. MAYOR AND COUNCIL COMMENTS

XVI. EXECUTIVE SESSION

(When an executive session is required, one will be called for the following issues: 1) Personnel, 2) Litigation, 3) Real Estate)

XVII. ADJOURNMENT

Americans with Disabilities Act

The City of Stonecrest does not discriminate on the basis of disability in its programs, services, activities and employment practices.

If you need auxiliary aids and services for effective communication (such as a sign language interpreter, an assistive listening device or print material in digital format) or reasonable modification to programs, services or activities contact the ADA Coordinator, Sonya Isom, as soon as possible, preferably 2 days before the activity or event.

CITY OF STONECREST, GEORGIA

CITY COUNCIL MEETING – MINUTES

3120 Stonecrest Blvd., Stonecrest, GA 30038

Wednesday, June 29, 2022 at 6:00 PM

Mayor Jazzmin Cobble

Council Member Tara Graves - District 1 ***Council Member Rob Turner - District 2***

District 3 - Vacant ***Mayor Pro Tem George Turner - District 4***

Council Member Tammy Grimes - District 5

Citizen Access: Stonecrest YouTube Live Channel

I. CALL TO ORDER: George Turner, Mayor Pro-Tem

The meeting began at 6:03 pm

II. ROLL CALL: Sonya Isom, City Clerk

III. INVOCATION

Invocation by Councilmember Rob Turner

IV. PLEDGE OF ALLEGIANCE

V. APPROVAL OF THE AGENDA

Mayor Cobble requested two changes to the agenda.
1. TMOD22-005 be moved to Old Business and stricken from Public Hearing
2. Move Executive Session after the Approval of the Agenda.

Motion - made by Councilmember Rob Turner to approve the agenda with stated two changes. Councilmember Tara Graves seconded.

Motion passed unanimously.

VI. EXECUTIVE SESSION

(When an executive session is required, one will be called for the following issues: 1) Personnel, 2) Litigation, 3) Real Estate)

Motion - made by Councilmember Rob Turner to enter into Executive Session to discuss personnel matters. Councilmember Tara Graves seconded.

Motion passed unanimously.

Motion - made by Councilmember Tammy Grimes to come out of Executive Session and return to the Council Meeting. Mayor Pro Tem George Turner seconded.

Motion passed unanimously.

Motion - made by Councilmember Tammy Grimes to extend the contract for Judge Michael Sheridan-Judicial Services with the City of Stonecrest to be effective January thru December 2022. Councilmember Tara Graves seconded.

Motion passed unanimously.

VII. REVIEW AND APPROVAL OF MINUTES

a. Approval - of the May 23, 2022 Meeting Minutes

Motion - made by Councilmember Rob Turner to approve the May 23, 2022 City Council meeting minutes. Councilmember Tammy Grimes seconded.

Motion passed unanimously.

b. Approval - of the June 6, 2022 Special Called Meeting Minutes

Motion - made by Councilmember Tara Graves to approve the June 6, 2022 Special Called Meeting minutes. Councilmember Tammy Grimes seconded.

Motion passed unanimously.

VIII. PUBLIC COMMENTS

(This meeting will be conducted in person. Public comments received via email by 2 pm on the day of the meeting will be read into the minutes by the City Clerk)

There is a two (2) minute time limit for each speaker during public comment.

Responses to Public Comments from May 23, 2022 City Council Meeting.

1.Terry Fye's past public comment was read regarding the decriminalization of marijuana. Council's response stated that this was not a priority as the City currently does not command Public Safety but it is something to be considered at a later date and in future legislation.

2. Faye Coffield's past public comment was read regarding lighting concerns on Woodrow Rd and I-20 and the recommendation of a consultant doing work in Africa as he could be a benefit to the City of Stonecrest.
Council's response stated that a work order had been completed with Georgia Power and the lighting issues were now corrected. Also, Council will forward all suggestions regarding the consultant in Africa to our Economic Development Department for consideration.

3. Malaika Wells' past public comment was read. She thanked Council for moving Stonecrest forward and asked that council address the redevelopment of the Urban Redevelopment Agency (URA) and provide clarity surrounding it's selection and appointment process. She asked they also review the bylaws. She suggested the city adopt an Ethics Resolution and encouraged everyone to vote.
Council's response stated that membership to the URA was at the direction of the City Council and membership updates may be considered at the annual meeting. The GMA application will be considered at a later date.

Three (3) in person Public Comments were made.

1. Faye Coffield – Mrs. Coffield had lighting concerns on Lithonia Industrial as well as Woodrow Rd. and I-20. She stated the City should now have the money to conduct a forensic audit. She would also like some money the City will receive to go to streets lights as well as looking into Solar energy. Mrs. Coffield asked that Council work with single family home developers instead of apartments.

Mayor Pro Tem George Turner stated that he will personally ride to the locations mentioned and check on the lighting.

2. Malaika Wells - Shared words in regards to recent and upcoming elections. Be Zealous, Be Careful, and Act with urgency. She offered congrats and thanks to Jonathan Bartlett and expressed that he will be missed. Mrs. Wells also stated that she's looking forward to an update regarding the Charter Review Commission and urged Council not to wait until the District 3 election. She asked community members in District 3 to produce a qualified candidate to run in the upcoming November election.

3. Marty Garrison - Concerns about developers being held accountable for the projects they begin. She stated that Circle K has destroyed their community and would like to see developers held responsible.

IX. PUBLIC HEARINGS

Citizens wishing to participate and comment during the public hearing portion of the meeting may comment in person. You may also submit your request including your full name, address, position on the agenda item you are commenting on (for or against) via email to cityclerk@stonecrestga.gov by 2 pm the day of the Hearing. A zoom link for the meeting will be sent to you.

When it is your turn to speak, please state your name, address and relationship to the case.

As an alternative, you can submit comments and questions to the same email address by the same deadline to be read into the record at the meeting.

There is a ten (10) minute time limit for each item per side during all public hearings. Only the applicant may reserve time for rebuttal.

a. TMOD-22-001 - Definitions and Uses Text Amendment - *Keedra Jackson*

Motion - made by Councilmember Rob Turner to go into the Public Hearing. Councilmember Tara Graves seconded.

Motion passed unanimously.

No comments for or against this item.

Motion - made by Councilmember Tammy Grimes to close the Public Hearing. Councilmember Rob Turner seconded.

Motion passed unanimously.

Mayor Cobble asked that additional information be emailed to her and Council regarding the presentation for this item.

City Manager Janice Allen Jackson suggested a Special Work Session to work through pertinent items listed on the agenda so that we do not cause hardship to petitioners.

b. For Decision - TMOD-22-001 Definitions and Uses Text Amendment - *Keedra Jackson*

Motion - made by Councilmember Rob Turner to defer TMOD-22-001 Definitions and Uses Text Amendment until the next City Council meeting for decision only. Mayor Pro Tem George Turner seconded.

Motion passed unanimously.

c. TMOD-22-006 - Distillery Text Amendment - *Keedra Jackson*

Motion - made by Councilmember Tammy Grimes to open the Public Hearing. Councilmember Tara Graves seconded.

Motion passed unanimously.

No written public comments.

Pam Childs/In Person - Has there been any studies done in regard to the environmental impact to the area?

No verbal or written comments in favor or opposition.

Motion - made by Councilmember Tammy Grimes to close the Public Hearing. Councilmember Rob Turner Seconded.

Motion passed Unanimously.

d. For Decision - TMOD-22-006 Distillery Text Amendment - *Keedra Jackson*

Motion - made by Mayor Pro Tem George Turner to approve TMOD 22-006 Distillery Text Amendment. Councilmember Tammy Grimes Seconded.

Motion passed unanimously.

X. ANNOUNCEMENTS

XI. CONSENT AGENDA

XII. REPORTS & PRESENTATIONS

a. ARPA Survey Results, Berry Dunn - *Markes Wilson*

Councilmember Tammy Grimes requested that the presentation be sent to Council.

Mayor Pro Tem suggested this item be brought to a Work Session soon for discussion and clarity.

b. Former Board Appreciation - *Mayor Pro Tem George Turner*

PowerPoint presentation of Former Board and Committee Members presented by Deputy City Clerk Ashley Waters.

XIII. OLD BUSINESS

a. For Decision - Request of the South River Watershed Alliance Regarding Everette Park - *Mayor Pro Tem George Turner*

City Attorney Alicia Thompson provided a brief introduction and explanation of a MOU.

Motion - made by Councilmember Rob Turner to approve the MOU between the City of Stonecrest and the South River Watershed Alliance Regarding Everette Park. Councilmember Tara Graves seconded.

Councilmember Tammy Grimes stated her un-readiness for the question and asked that the City Attorney edit the document for punctuation. She then stated her un-readiness was satisfied.

Motion passed unanimously.

b. For Decision - TMOD-22-005 Towing & Wreckage Text Amendment - *Keedra Jackson*

Motion - made by Councilmember Tara Graves to approve TMOD-22-005 Towing & Wreckage Text Amendment. Councilmember Rob Turner Seconded.

Mayor Cobble stated her un-readiness and asked Keedra Jackson to clarify TMOD 22-005 is a text amendment.

Motion - made by Councilmember Tara Graves to withdraw her motion for approval. Councilmember Tammy Grimes Seconded.

Motion passed unanimously.

XIV. NEW BUSINESS

a. **For Decision -** Rezoning of RZ-22-002 - To provide a decision to defer back to Planning Commission- Rezoning of 2376 2300, 2330, 2368 and 2376 South Stone Mountain Lithonia Rd and 1801 Coffee Road - *Keedra Jackson*

Motion - made by Councilmember Rob Turner to approve the deferral of RZ-22-002 back to the Planning Commission. Councilmember Tammy Grimes seconded.

Motion passed unanimously.

b. **For Decision** - SDP22-000001 - Flat Rock Hills Preliminary Plat - *Keedra Jackson*

Keedra Jackson provided a brief introduction and stated it was discovered that the developer had received approvals from DeKalb County; however, our records did not reflect the process in which Preliminary Plats and Final Plats are to be handled according to Section 14-88 of the Chapter 27 City of Stonecrest Zoning Ordinance. The applicant was instructed to submit a Preliminary Plat application where payment was collected.

Motion - made by Councilmember Rob Turner to approve SDP22-000001 Flat Rock Hills Preliminary Plat. Councilmember Tammy Grimes seconded.

Motion passed unanimously.

c. **For Decision -** SDP22-000002 - Flat Rock Hills Subdivision Final Plat Phase 4A - *Keedra Jackson*

Keedra Jackson provided a brief introduction. She recommended Council approve this item with conditions. The conditions state the developer will provide staff with a performance bond before the sign off on the final plat. City Engineer Hari Karikaran confirmed no codes have been changed or altered and also discussed the performance bond is that staff is requesting.

Motion - made by Councilmember Rob Turner to approve SDP22-000002 Flat Rock Hills Subdivision Final Plat Phase 4A with conditions. Councilmember Tammy Grimes seconded.

Motion passed unanimously.

d. **For Decision -** SDP22-000007 - Preliminary Plat for the Merritt Crest at Stonecrest Subdivision - *Keedra Jackson*

Keedra Jackson provided a brief introduction and stated the applicant is requesting an approval of the Preliminary Plat for The Merritt Crest at Stonecrest Subdivision of 10 residential lots. 3418 Plunkett Road.

Motion - made by Councilmember Tara Graves to approve SDP22-000007 Preliminary Plat for the Merritt Crest at Stonecrest Subdivision. Councilmember Tammy Grimes seconded.

Motion passed unanimously.

e. For Decision - SDP22-000010 - Preliminary Plat for Crestwind Subdivision - *Keedra Jackson*

Keedra Jackson provided a brief introduction and stated the subject property is currently zoned C-1 (Local Commercial District) which does not allow for residential development. The intent of this District is to provide for local shopping and retail. TMOD-22-015 provided the avenue of the Stonecrest Overlay Tier 3 to allow the permitted uses in C-1 and C-2 (General Commercial) District, O-I (Office Institutional) District, O-D (Office Distribution) District, M (Light Industrial) District, and MR-2 (Medium Density Residential) District. This text amendment was approved on January 24, 2022. The City of Stonecrest will need to rezone the property to the MR-2 designation.

The applicant Jim Jacobi stated they are looking to build two story townhomes on this property not three story. He also stated price points are not available yet and it will be at least a year for development.

City Attorney Winston Denmark asked if this property would be owner occupied or be used as rentals. Jim Jacobi answered that was not clear yet.

Motion- made by Mayor Pro Tem George Turner to defer SDP22-000010 Preliminary Plat for Crestwind Subdivision for 30 days. Councilmember Rob Turner seconded.

Motion passed unanimously.

f. For Discussion - Regulation of Build to Rent Subdivisions and Other Rental Housing - *Attorney Winston Denmark*

Mayor Pro Tem George Turner requested that this item be moved to the next Work Session scheduled for July 7, 2022.

g. For Decision - 2022 Street Resurfacing - *Gia Scruggs*

Finance Director Gia Scruggs provided an introduction and explained the Finance Department had previously published a solicitation with only one bid. There was no award with this bid. As a result, the Engineering Department revised the bid package and the bid was broken down into four bid packages.
Stewart Brothers had the lowest bid for Bid Packages #1 and #4.
E.R. Snell had the lowest bid for Bid Packages #2 and #3.
The Finance Department is recommending the City utilize the two vendors and award contracts for the lowest bid packages per vendor. The total cost for all four bid packages is $11,887,047. The funding for these contracts will come from SPLOST – Transportation Infrastructure Improvement. The Finance Department is requesting to utilize $5,037,047.00 from the SPLOST fund balance to cover the difference in the current budgeted amount and total amount.

Motion - made by Councilmember Tammy Grimes to approve the 2022 Street Resurfacing project. Councilmember Rob Turner seconded.

Motion passed unanimously.

Motion - made by Councilmember Rob Turner to access SPLOST funds to reallocate for the 2022 Paving Project. Councilmember Tammy Grimes seconded.

Motion passed unanimously.

h. For Decision - American Facilities Services Contract Amendment - *Gia Scruggs*

Finance Director Gia Scruggs provided an explanation and stated that in order to provide the level of service needed for the exterior of the Parks facilities and requested by the Leisure Services Department for janitorial services, the Procurement Department has increased the deliverables for the current janitorial services. The total monthly increase for these additional services is $9,100 per month. The new annual amount of this contract will be $208,803.96. This contract will be funded from the General Fund – Leisure Services and Facilities/Building for Sam's Club.

Motion - made by Councilmember Rob Turner to approve the American Facilities Services Contract Amendment. Councilmember Tara Graves seconded.

Motion passed unanimously.

i. For Decision - Transportation Committee Resolution Update - *Mayor Pro Tem George Turner*

Mayor Pro Tem George Turner provided an introduction and explained this item was before Council because there was a paragraph left off the initial Resolution that allowed for officers to be appointed in the Transportation Committee. This item allows for that to be corrected.

Motion - made by Councilmember Rob Turner to approve the Transportation Committee Resolution Update. Councilmember Tara Graves Seconded.

Motion passed unanimously.

j. For Decision - Authorized Bank Signers Resolution - *Janice Allen Jackson*

City Manager Janice Allen Jackson provided an introduction and stated this item would add Mayor Jazzmin Cobble as an authorized signer to the City's bank accounts.

Mayor Pro Tem George Turner stated this was routine.

Motion - made by Councilmember Tammy Grimes to approve the Authorized Bank Signers Resolution. Councilmember Rob Turner seconded.

Motion passed unanimously.

k. For Discussion - City Hall Security Discussion - *Mayor Jazzmin Cobble*

Mayor Cobble gave an introduction and stated this item was for decision not discussion. Mayor Cobble stated this is to approve an emergency procurement request due to City Hall Security concerns.

City Manager Janice Allen Jackson stated she is working with staff to provide an official

solution and confirmed that the item should be listed as for decision.

Motion - made by Councilmember Tammy Grimes to approve the emergency procurement to secure City Hall Security Services. Councilmember Tara Graves seconded.

Motion passed unanimously.

XV. CITY MANAGER UPDATE

Covid Statistics Updates - There is a continued increase of Covid cases in DeKalb County. Cases have increased over the last 7 days from 155 positive cases to 239 positive cases.

Meetings: The need to set up one Summit and a Special Called Work Session. The Special Called Work Session to address TMOD 22-0001 and ARPA data review and a Summit on Rental housing.

Mayor Pro Tem George Turner stated he would like the development at Hayden Quarry to be added to either the Special Called Work Session or the regular Work Session for further discussion.

XVI. MAYOR AND COUNCIL COMMENTS

City Attorney Winston Denmark stated it was good to see everyone in Savannah.

District 1 - Councilmember Tara Graves stated it was good to see everyone in Savannah and everyone have a great night.

District 2 - Councilmember Rob Turner referenced the City Managers update and said that the Covid numbers are going up and for everyone to stay safe and take care of themselves. He also had a great time in Savannah.

District 5 - Councilmember Tammy Grimes sent prayers and condolences to the families of the three (3) accident victims on Rock Springs and asked that citizens encourage young people to slow down when driving. CM Grimes also stated GMA and the learning opportunities in Savannah were great and thanked citizens for being engaged with Stonecrest.

District 4 - Mayor Pro Tem George Turner asked if there were any upcoming events happening within the City of Stonecrest? No.

Mayor Jazzmin Cobble stated it was good to be back and thanked the citizens for hanging on with Council. She stated she looks forward to seeing the citizens around in the streets of Stonecrest.

XVII. ADJOURNMENT

Motion - made by Councilmember Tammy Grimes to adjourn the City Council meeting at 10:45pm. Councilmember Rob Turner seconded.

Motion passed unanimously.

Americans with Disabilities Act

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CITY OF STONECREST, GEORGIA

SPECIAL CALLED MEETING – AGENDA

3120 Stonecrest Blvd., Stonecrest, GA 30038

Wednesday, July 06, 2022 at 6:00 PM

Mayor Jazzmin Cobble

Council Member Tara Graves - District 1 ***Council Member Rob Turner - District 2***

District 3 - Vacant ***Mayor Pro Tem George Turner - District 4***

Council Member Tammy Grimes - District 5

Citizen Access: Stonecrest YouTube Live Channel

I. CALL TO ORDER: George Turner, Mayor Pro-Tem @ 6:09pm

II. ROLL CALL: Sonya Isom, City Clerk

All members present.

Introduction of Interim Deputy City Manager, Gerald Sanders.

III. AGENDA ITEMS

a. For Decision - Adoption of 2022 Millage Rate - *Gia Scruggs*

Director of Finance, Gia Scruggs reviewed the 2022 Millage Rate. Director Scruggs presented a PowerPoint presentation explaining the Computation of Millage. This presentation included form PT-32-1-Computation of Millage Rate Rollback, required by the state under the Provisions of the TaxPayer Bill of Rights and used to calculate the Millage Rate Rollback.

The proposed millage amount is 1.257 and the millage amount for 2021 was 1.336. There is a rollback in the millage rate, however there is an increase in revenue due to the reassessment of property value in DeKalb County.

Motion – made by Councilmember Rob Turner to open the Public Hearing for Adoption of the 2022 Millage Rate. Seconded by Councilmember Tammy Grimes.

Motion passed unanimously.

There were no comments in favor of this item.

There were no comments in opposition of this item.

Motion – made by Councilmember Tara Graves to close the Public Hearing for Adoption of the 2022 Millage Rate. Seconded by Councilmember Rob Turner.

Motion passed unanimously.

Motion – made by Councilmember Tammy Grimes to accept the Adoption of the 2022 Millage Rate. Seconded by Councilmember Tara Graves.

Motion passed unanimously.

IV. EXECUTIVE SESSION

(When an executive session is required, one will be called for the following issues: 1) Personnel, 2) Litigation, 3) Real Estate)

V. ADJOURNMENT

Motion – made by Councilmember Rob Turner to adjourn the Special Called Meeting at 6:26pm. Seconded by Councilmember Tammy Grimes.

Motion passed unanimously.

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CITY OF STONECREST, GEORGIA

CITY COUNCIL SPECIAL CALLED MEETING – AGENDA

3120 Stonecrest Blvd., Stonecrest, GA 30038

Monday, July 11, 2022 at 6:45 PM

Mayor Jazzmin Cobble

Council Member Tara Graves - District 1 ***Council Member Rob Turner - District 2***

District 3 - Vacant ***Mayor Pro Tem George Turner - District 4***

Council Member Tammy Grimes - District 5

Citizen Access: Stonecrest YouTube Live Channel

I. CALL TO ORDER: George Turner, Mayor Pro-Tem @ 7:04pm

II. ROLL CALL: Sonya Isom, City Clerk

III. AGENDA ITEMS

a. For Decision - Retention of Special Legal Services - *Attorney Winston Denmark*

Review of agenda item by Attorney Alicia Thompson of Fincher Denmark. The Construction Board of Appeals in the matter against Metro Green, acts as the respondent and the City is the defendant. Fincher will represent the City and proposed legal services, Nancy Rowan would act as Council and represent the Construction Board of Appeals. The two entities must have separate representation.

Motion – made by Councilmember Rob Turner to approve the retention of Special Legal Services. Seconded by Councilmember Tara Graves.

Motion passed unanimously.

IV. EXECUTIVE SESSION

(When an executive session is required, one will be called for the following issues: 1) Personnel, 2) Litigation, 3) Real Estate)

V. ADJOURNMENT

Motion – made by Councilmember Tammy Grimes to adjourn the Special Called Meeting at 7:09pm. Seconded by Councilmember Rob Turner.

Motion passed unanimously.

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CITY COUNCIL AGENDA ITEM

SUBJECT: SLU-22-005 3935 Cain Mill Drive – Short Term Rental

AGENDA SECTION: (*check all that apply*)

☐ **PRESENTATION** ☒ **PUBLIC HEARING** ☐ **CONSENT AGENDA** ☐ **OLD BUSINESS**
☐ **NEW BUSINESS** ☐ **OTHER, PLEASE STATE:** Click or tap here to enter text.

CATEGORY: (*check all that apply*)

☐ **ORDINANCE** ☐ **RESOLUTION** ☐ **CONTRACT** ☐ **POLICY** ☐ **STATUS REPORT**

☒ **OTHER, PLEASE STATE: Special Land Use Permit, zoning matter**

ACTION REQUESTED: ☒ **DECISION** ☐ **DISCUSSION,** ☐ **REVIEW, or** ☐ **UPDATE ONLY**

Previously Heard Date(s): Click or tap here to enter text. & Click or tap to enter a date.

Current Work Session: Click or tap to enter a date.

Current Council Meeting: Monday, July 25, 2022

SUBMITTED BY: Keedra T. Jackson, Senior Planner of Planning & Zoning

PRESENTER: Ray White, Director of Planning & Zoning

PURPOSE: To seek a Special Land Use Permit to operate as a short-term rental.

FACTS: The subject property is located at 3935 Cain Mill Drive and is zoned R-100. The subject property is in the Burlington Subdivision. The property is bounded by residential development on all sides.

OPTIONS: Choose an item. Click or tap here to enter text.

RECOMMENDED ACTION: Approval

ATTACHMENTS:

(1) Attachment 1 - Staff Report
(2) Attachment 2 - Click or tap here to enter text.
(3) Attachment 3 - Click or tap here to enter text.
(4) Attachment 4 - Click or tap here to enter text.
(5) Attachment 5 - Click or tap here to enter text.

PLANNING COMMISSION / MAYOR AND CITY COUNCIL STAFF REPORT

SLUP-22-005

Planning Commission July 5th, 2022 / Mayor and City Council Meeting July 25th, 2022

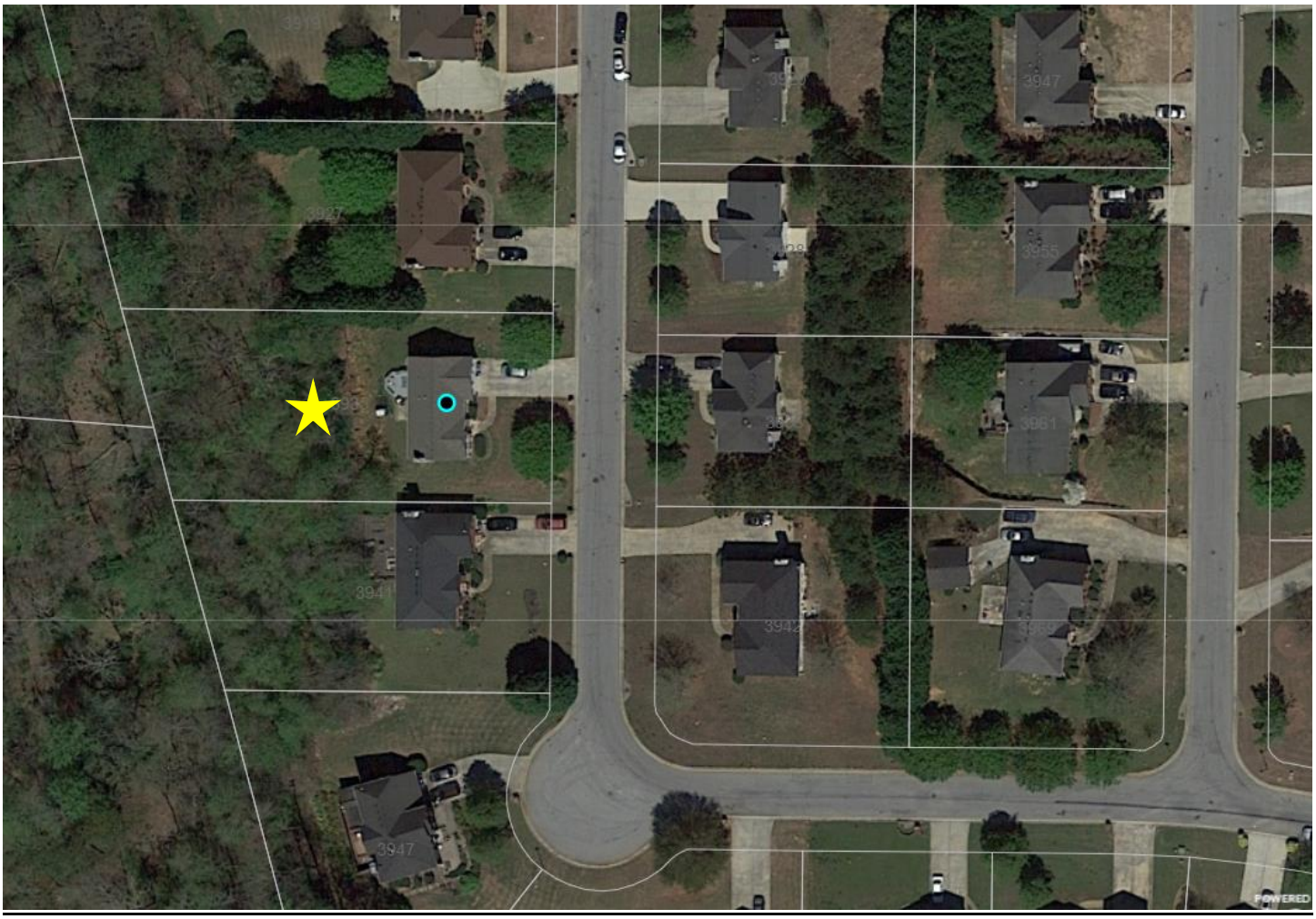
GENERAL INFORMATION

Petition Number:	SLUP-22-005
Applicant:	Robert Peterson, dba Dapetenterprises
Owner:	Robert Peterson
Project Location:	3935 Cain Mill Drive
District:	District 1
Acreage:	0.49 acres
Existing Zoning:	R-100 (Residential Medium Lot) District
Proposed Request:	Special Land Use Permit to operate as a short-term rental.
Comprehensive Plan Community:	Suburban
Area Designation	
Staff Recommendations:	***Approved with Conditions***
Planning Commission:	***Approval***

PLANNING COMMISSION / MAYOR AND CITY COUNCIL STAFF REPORT

SLUP-22-005

Aerial Map



ZONING CASE: SLU-22-005

ADDRESS: 3935 CAIN MILL DRIVE, LITHONIA, GA 30038

PARCEL NUMBER: 16 014 01 075

CURRENT ZONING: R-100 (RESIDENTIAL MEDIUM LOT)

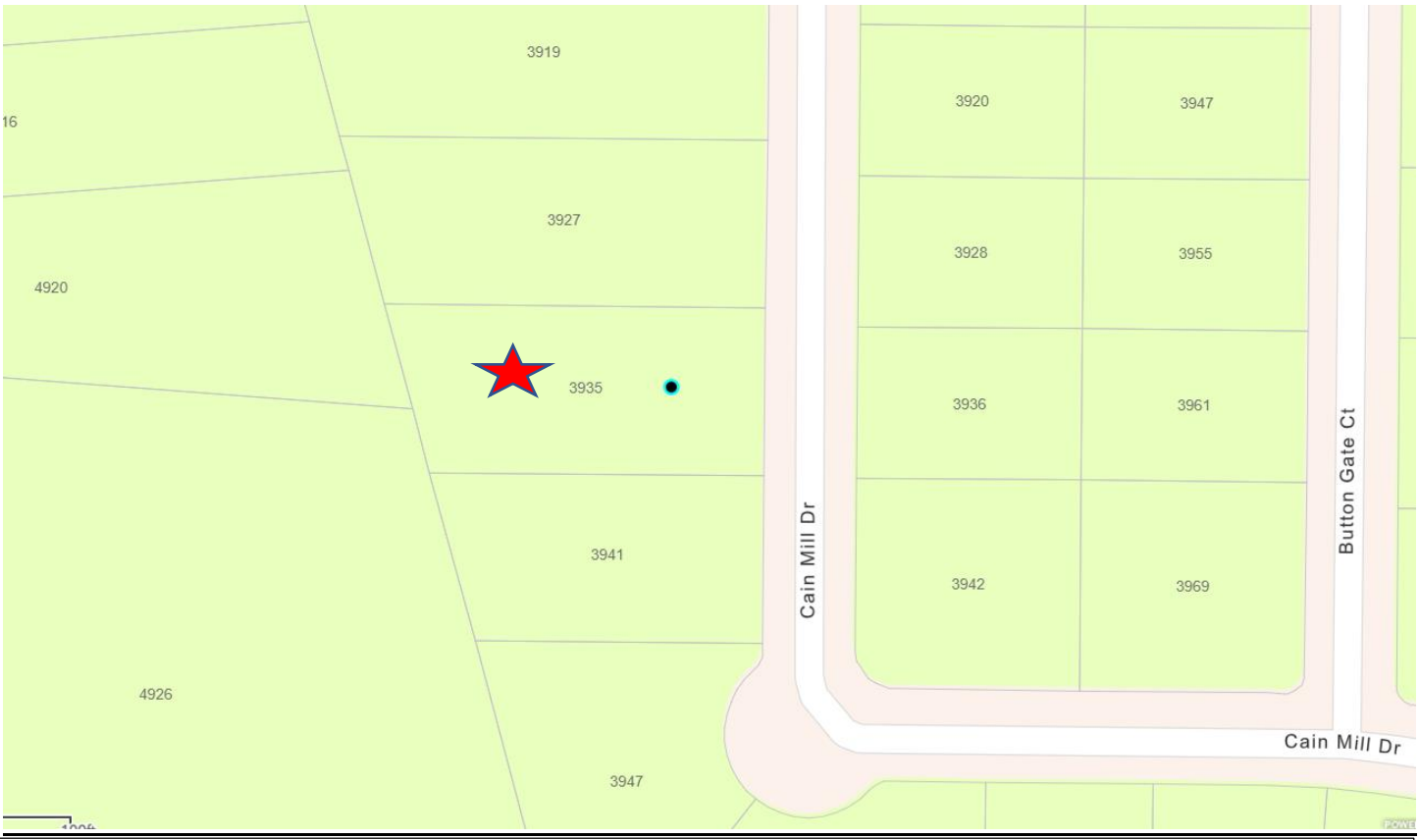
FUTURE LAND USE: SUBURBAN

★ SUBJECT PROPERTY

PLANNING COMMISSION / MAYOR AND CITY COUNCIL STAFF REPORT

SLUP-22-005

Zoning Map



ZONING CASE: SLU-22-005

ADDRESS: 3935 CAIN MILL DRIVE, LITHONIA, GA 30038

PARCEL NUMBER: 16 014 01 075

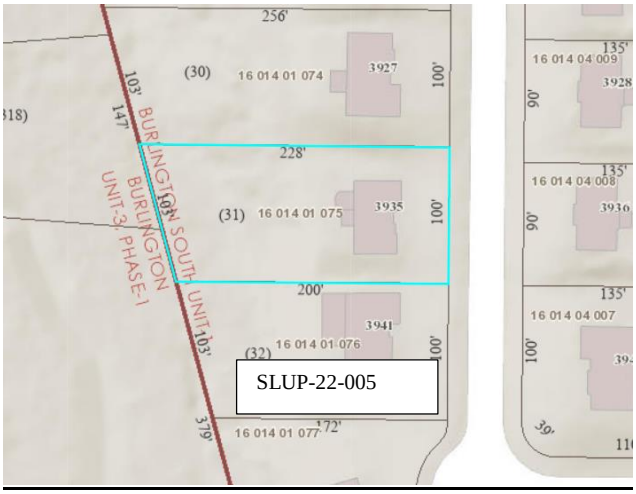
CURRENT ZONING: R-100 (RESIDENTIAL MEDIUM LOT)

FUTURE LAND USE: SUBURBAN

SUBJECT PROPERTY

PLANNING COMMISSION / MAYOR AND CITY COUNCIL STAFF REPORT

SLUP-22-005



PROJECT OVERVIEW

Location

The subject property is located at 3935 Cain Mill Drive. The subject property in the Burlington Subdivision. The property is bounded by residential development on all sides.

Description and Background

The subject property was constructed in 1999. It consists of a two-story, traditional frame house of 2672 square feet in size. It has 3 bedrooms and 2 ½ baths. The house is accessed via an apron concrete driveway fronting a two-car garage.

Currently, the property has kept its original zoning classification of R-100 (Residential Medium Lot) under Stonecrest Zoning Ordinance. The property was developed in part of a plan development for the Burlington Subdivision.

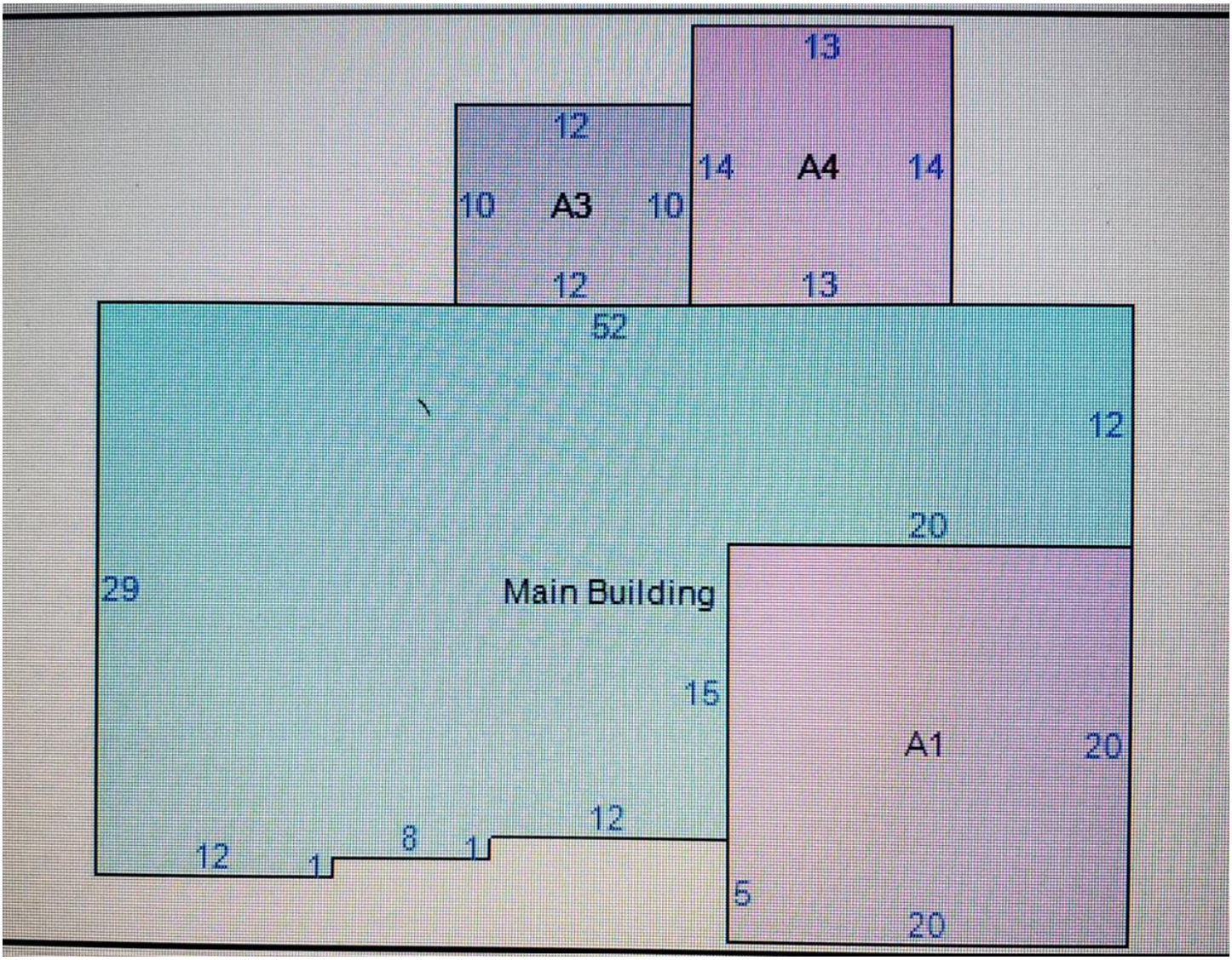
Elevations



THE CITY OF STONECREST GEORGIA

PLANNING COMMISSION / MAYOR AND CITY COUNCIL STAFF REPORT

SLUP-22-005



PLANNING COMMISSION / MAYOR AND CITY COUNCIL STAFF REPORT

SLUP-22-005

Public Participation
Property owners within 1000 feet of subject property were mailed notices of the proposed rezoning in June. The community meeting was held on June 30th, 2022, at 6:00 pm at via zoom.com. No one was in attendance.

CRITERIA OF REVIEW

Section *7.4.6 of the Stonecrest Zoning Ordinance list nineteen factors to be considered in a technical review of a special land use permit completed by the Community Development Department and Planning Commission. Each criterion is listed with staff analysis.*

A. Adequacy of the size of the site for the use contemplated and whether or not the adequate land area is available for the proposed use, including the provision of all required yards, open space, off-street parking, and all other applicable requirements of the zoning district in which the use is proposed to be located.

The 2,672 square foot house on 0.49 acres is adequate for the operation of a short-term rental. The use will meet all other applicable requirements of the zoning district in which the usage is proposed.

B. Compatibility of the proposed use with adjacent properties and land uses and with other properties and land uses in the district.

The proposed use of short-term rental is located in a residential development. The proposed use will be compatible with other properties and land uses in the district.

C. Adequacy of public services, public facilities, and utilities to serve the proposed use.

There are adequate public services, public facilities, and utilities to sever the proposed use.

D. Adequacy of the public street on which the use is proposed to be located and whether or not there is sufficient traffic-carrying capacity for the use proposed so as not to unduly increase traffic and create congestion in the area.

Cain Mill Drive is classified as a local street, the staff does have concern the public road may not have enough traffic capacity for the proposed use and may cause traffic and congestion in the area.

E. Whether existing land uses located along access routes to the site will be adversely affected by the vehicles' character or the volume of traffic generated by the proposed use.

The existing land use located along the access routes to the site would not be adversely affected by the vehicles' character or the volume of traffic generated by the proposed use. Cain Mill Drive is designed to handle a low impact volume of traffic.

F. Adequacy of ingress and egress to the subject property and to all proposed buildings, structures, and uses thereon, with particular reference to pedestrian and automotive safety and convenience, traffic flow and control, and access in the event of a fire or another emergency.

The site's existing residential structure is accessed by vehicles via a concrete apron cut with driveway on Cain Mill Drive. Emergency vehicles can access the site from the existing driveway.

G. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of noise, smoke, odor, dust, or vibration generated by the proposed use.

The proposed use will not create an adverse impact upon any adjoining land use by reason of noise, smoke, odor, dust, or vibration generated by the proposed use. The residential use will not change as the applicant will operating as a short-term rental.

H. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of the hours of operation of the proposed use.

The proposed use is not expected to create an adverse impact upon any adjoining land use because of the hours of operation. The property sits in an existing residential development.

I. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of the manner of operation of the proposed use.

The proposed use will not create an adverse impact upon any adjoining land use because of the manner of operation. The existing use as a residential dwelling will not change, only the occupancy will change monthly.

J. Whether the proposed use is otherwise consistent with the requirements of the zoning district classification in which the use is proposed to be located.

The proposed use is consistent with the zoning district classification requirement in which the use is proposed to be located.

K. Whether the proposed use is consistent with the policies of the comprehensive plan.

The proposed use of short-term rental is a use consistent with the policies of the comprehensive plan. Located in the Suburban character area, the character area policy states residential dwelling as an appropriate land use.

L. Whether the proposed use provides for all required buffer zones and transitional buffer zones where required by the regulations of the zoning district in which the use is proposed to be located.

The proposed use will not require a buffer zone and transitional buffer zone.

M. Whether there is adequate provision of refuse and service areas.

The applicant will provide an adequate refuse and service area.

N. Whether the length of time for which the special land use permit is granted should be limited in duration.

Staff believes there shall be a limit of one year of the special land use duration due to the historical nature of this use in a residential setting.

O. Whether the size, scale, and massing of proposed buildings are appropriate in relation to the size of the subject property and in relation to the size, scale, and massing of adjacent and nearby lots and buildings.

The proposed use will not change any exterior design of the existing building. The current building is the appropriate size for the subject property and in relation to the size, scale, and massing of the nearby houses.

P. Whether the proposed use will adversely affect historic buildings, sites, districts, or archaeological resources.

This use will not adversely affect any historic buildings, sites, districts, or archaeological resources.

Q. Whether the proposed use satisfies the requirements contained within the supplemental regulations for such special land use permits.

The proposed use submitted to Staff has met all the requirements within the supplemental regulation Sec 4.2.58 set forth by the zoning ordinance.

R. Whether the proposed use will create a negative shadow impact on any adjoining lot or building as a result of the proposed building height.

The subject property is existing and does not exceed the height of nearby residential structures. The existing building would be similar to the building height abutting the property located in the immediate area. There will be no negative show impact on any adjoining lot.

S. Whether the proposed use would be consistent with the needs of the neighborhood or the community as a whole, be compatible with the neighborhood, and would not be in conflict with the overall objective of the comprehensive plan.

The proposed use is compatible with the surrounding area and would not conflict with the overall objective of the comprehensive plan.

PLANNING COMMISSION / MAYOR AND CITY COUNCIL STAFF REPORT

SLUP-22-005

STAFF RECOMMENDATION

Base on the findings and conclusions, it appears the applicant does meet all the criteria for approval. Therefore, Staff recommends ***Approval of SLUP-22-005 with the following condition:***

1. The maximum overnight occupancy of a short-term rental shall be limited to two (2) persons for each bedroom, plus three (3) additional persons. The number of bedrooms shall be based upon the DeKalb County Tax Assessor's residential profile of the property, and other documents of record, as needed. In no case shall the maximum total occupancy for any dwelling unit exceed the occupancy limits permitted by the state and local fire and building codes.
2. Between the hours of 10 PM and 7 AM, the occupancy load of the unit may not exceed the maximum allowed number of overnight tenants.
3. Compliance with the Stonecrest Noise Ordinance.
4. All marketing and/or advertising for short-term rental units must contain information concerning the occupancy limit of the short-term rental unit, and the maximum parking available on the property. Advertising for more than the allowable occupancy or allowable parking is prima facie evidence of a violation of the city code. Further, failure to include such occupancy limits and maximum parking availability is prima facie evidence of a violation of the city code.
5. Short-term rental units must be properly maintained and regularly inspected by the owner or agent to ensure continued compliance with applicable property maintenance, zoning, building, health and life safety code provisions.
6. No external signage may be permitted on the property.
7. Parked vehicles:
    - Shall not be parked on the city right-of-way or along any roadways at any time; and
    - Shall be parked outdoors on the property only on designated hard surfaced areas with concrete or asphalt surfacing; and shall not be permitted outside such hard-surfaced areas (i.e., no parking in yards or neighbor's properties).
8. Short-term rentals in a single-family zoning district shall not have long-term leases or leases exceeding 30 days.
9. Capacity shall be subject to the approval of the Fire Marshal's Office

10. If, during the first one year period, a short-term rental unit becomes in violation of any zoning, building, health or life safety code provision, the special land use becomes void at the completion of one year and the owner must demonstrate compliance with the applicable code prior to being eligible to reapply for special land use permit.

CITY COUNCIL AGENDA ITEM

SUBJECT: Swearing In Of District 5 Planning Commissioner Lemuel Hawkins

AGENDA SECTION: (*check all that apply*)

☐ **PRESENTATION** ☐ **PUBLIC HEARING** ☐ **CONSENT AGENDA** ☐ **OLD BUSINESS**
☐ **NEW BUSINESS** ☒ **OTHER, PLEASE STATE: Swearing In**

CATEGORY: (*check all that apply*)

☐ **ORDINANCE** ☐ **RESOLUTION** ☐ **CONTRACT** ☐ **POLICY** ☐ **STATUS REPORT**
☒ **OTHER, PLEASE STATE: Appointment**

ACTION REQUESTED: ☐ **DECISION** ☐ **DISCUSSION,** ☐ **REVIEW, or** ☒ **UPDATE ONLY**

Previously Heard Date(s): Click or tap to enter a date. & Click or tap to enter a date.

Current Work Session: Click or tap to enter a date.

Current Council Meeting: Monday, July 25, 2022

SUBMITTED BY: Mayor Pro Tem, George Turner

PRESENTER: Mayor Jazzmin Cobble

PURPOSE: The swearing in of the District 5 Planning Commissioner Lemuel Hawkins.

FACTS:

OPTIONS: Choose an item. Click or tap here to enter text.

RECOMMENDED ACTION: Click or tap here to enter text.

ATTACHMENTS:

(1) Attachment 1 - Click or tap here to enter text.
(2) Attachment 2 - Click or tap here to enter text.
(3) Attachment 3 - Click or tap here to enter text.
(4) Attachment 4 - Click or tap here to enter text.
(5) Attachment 5 - Click or tap here to enter text.

CITY COUNCIL AGENDA ITEM

SUBJECT: Carl Vinson Institute of Government Study

AGENDA SECTION: (*check all that apply*)

☐ **PRESENTATION** ☐ **PUBLIC HEARING** ☐ **CONSENT AGENDA** ☒ **OLD BUSINESS**
☐ **NEW BUSINESS** ☐ **OTHER, PLEASE STATE:** Click or tap here to enter text.

CATEGORY: (*check all that apply*)

☐ **ORDINANCE** ☐ **RESOLUTION** ☐ **CONTRACT** ☐ **POLICY** ☐ **STATUS REPORT**
☒ **OTHER, PLEASE STATE: Study**

ACTION REQUESTED: ☒ **DECISION** ☐ **DISCUSSION,** ☐ **REVIEW, or** ☐ **UPDATE ONLY**

Previously Heard Date(s): Click or tap to enter a date. & Click or tap to enter a date.

Current Work Session: Monday, July 11, 2022

Current Council Meeting: Monday, July 25, 2022

SUBMITTED BY: Janice Allen Jackson, City Manager

PRESENTER: Hari Karikaran, City Engineer

PURPOSE: Engage Carl Vinson Institute of Government to study the possibility of providing Public Works services to the City.

FACTS: Public Works Services are currently provided by DeKalb County. Tax payers of the City of Stonecrest currently pay for the services provided by DeKalb County.

OPTIONS: Approve, Deny, Defer Click or tap here to enter text.

RECOMMENDED ACTION: Click or tap here to enter text.

ATTACHMENTS:

(1) Attachment 1 - Public Works Services Cost Study
(2) Attachment 2 - Click or tap here to enter text.
(3) Attachment 3 - Click or tap here to enter text.
(4) Attachment 4 - Click or tap here to enter text.

CITY COUNCIL AGENDA ITEM

(5) Attachment 5 - Click or tap here to enter text.

Carl Vinson Institute of Government
UNIVERSITY OF GEORGIA

Proposal for Services

CITY OF STONECREST
PUBLIC WORKS SERVICES COST STUDY

May 5, 2022

A PROPOSAL TO IDENTIFY COST OF PROVIDING PUBLIC WORKS SERVICES IN THE CITY OF STONECREST

The Carl Vinson Institute of Government proposes to provide the City of Stonecrest with an analysis of the costs of providing public works services. Specifically, the City is interested in examining the costs of assuming service responsibility for street and right of way maintenance including permitting and inspection, pavement maintenance, traffic signal and sign operations and maintenance, traffic engineering, and stormwater management. This project will also include estimating revenues that the city could collect to fund these services.

Background

Currently DeKalb County provides public works services to the City of Stonecrest. The residents of the City of Stonecrest currently support part of the cost of these services through a special services district property tax.

Overall Goals

The Institute of Government's goals for this study will be to:

1. Analyze and describe to the degree possible the nature of the current service components, the current level of these service components, and associated costs of providing the services in their current configuration.

2. Provide a rough estimate of the costs of moving to city-based provision of public works services.

3. Estimate the revenues property owners in the city pay to DeKalb County to fund public works services.

The proposed study will not recommend a specific course of action with regard to changing the provision of public works services. Decisions concerning how best to organize public works services will be made by local officials.

With regard to the proposed study, it should be recognized that Institute faculty will be dependent on the cooperation of the current service provider (e.g., DeKalb County Public Works Department) and/or peer cities providing similar services. In this regard, the Institute's ability to produce a timely and actionable study will require time and effort on the part of these organizations. Institute of Government faculty will coordinate with city and county officials to ensure the development of these relationships.

Data Gathering and other Project Activities

Institute faculty, where appropriate, will employ the following data gathering techniques:

1. An examination of DCPD budgets, program descriptions, staffing, and cost accounting documents. These documents should enable an accounting of the capital (land and facilities) and major equipment contributions to the cost of the public works services and programs. It is also expected that these documents will enable the tracking of operational costs of these services. Review of peer city data, where relevant.

2. Interviews with DCPD program managers. Interview of peer city employees, if necessary.

3. Use of GIS systems and data to determine presence of road lane miles in city limits.

Local Government Responsibilities

It is expected that the city will respond to any data and interview requests in a timely manner (e.g., within 3-4 business days) and will facilitate data collection and interview scheduling with city officials should they be necessary.

If response times are not feasible because of higher priorities associated with the day to day operation of the local governments, the timetable for completion of the study may be changed.

Expected Time Frame

Contract Initiation: Once the scope of work has been approved, it typically takes two weeks on the University side to complete a legal and administrative review of the contract and to have the contract offer in the hands of local government officials.

Interviews and other Data Gathering: Completed one month from Contract Initiation.

Analysis and Report Writing: Completed in the third month from Contract Initiation.

Final Report and Presentation: Completed at the end of the third month from Contract Initiation.

These estimated completion times are subject to change based upon response time to project data requests.

Deliverables

The Institute of Government will:

1. Provide an electronic copy (.pdf file) of a final report.

2. Institute of Government faculty will be available to provide consultation on the results of the study to City officials for three months following submission of the final report.

Project Budget

The Institute of Government proposes to complete the project for a flat fee of $16,000 However, the Institute of Government is willing to adjust the scope of work and costs accordingly to meet the client's needs. This price is valid for 120 days from the date of this proposal.

Capabilities and Project Faculty

The mission of the Institute of Government is to improve governance and the lives of people in Georgia. In carrying out this mission, the Institute can call on the wide-ranging knowledge base of the University of Georgia as well as on over 90 years of direct service experience in providing technical assistance, training, research, and policy analysis to local and state governments in Georgia. The Institute of Government is among the most highly-rated university-based organizations designed specifically to span the gap between best practices research and the existing practice of government. The proposed researchers for this project are:

Paula Sanford
706.255.0556
sanfordp@uga.edu

Paula Sanford is a Senior Public Service Associate who specializes in public budgeting and finance but her work spans a variety of local government issues such as public-sector retirement programs, performance measurement, and comprehensive financial and organizational reviews. Her work entails offering applied research and technical assistance for local governments and

national non-profit organizations. In addition, she provides training to local government officials in Georgia. Prior to coming to the Institute of Government, she taught public budgeting and financial management, organizational theory, and local government management at Northern Illinois University. Paula has also served as a senior budget analyst for the State of Nevada Department of Administration and as a policy advisor in the Governor's Office in the areas of natural resources, transportation, and the arts. Some of the subject areas she has published articles include public retirement reform, public budgeting and finance, organizational theory, and municipal annexation. Paula earned her Ph.D. from the University of Georgia, concentrating in public finance. She also has an MPA is from American University and B.A. from California State University, San Luis Obispo.

Lori Brill
404.463.6801
Lori.Brill@uga.edu

Lori Brill provides applied research and technical assistance to local governments in the arenas of local regulations, strategic planning, and organizational and operational reviews. Lori brings a wealth of in-depth local and state government knowledge to the Institute of Government. Lori has more than 20 years of experience providing legal, policy and research services at the local, regional and state levels. Prior to joining the Institute of Government in 2022, Lori served as a DeKalb County Senior Assistant Attorney, an Enforcement Attorney at the Georgia Secretary of State's Office, Deputy Legislative Counsel for the Georgia General Assembly and as a regional director for a telecommunications company. She has taught courses, authored papers and updated legal treatises in her areas of expertise including online media and internet law. She received her B.A. from Emory University and his J.D. from the University of Georgia School of Law.

CITY COUNCIL AGENDA ITEM

SUBJECT: SPD22-0000010 Preliminary Plat for Crestwind Township

AGENDA SECTION: (*check all that apply*)

☐ **PRESENTATION** ☐ **PUBLIC HEARING** ☐ **CONSENT AGENDA** ☒ **OLD BUSINESS**

☐ **NEW BUSINESS** ☐ **OTHER, PLEASE STATE:** Click or tap here to enter text.

CATEGORY: (*check all that apply*)

☐ **ORDINANCE** ☐ **RESOLUTION** ☐ **CONTRACT** ☐ **POLICY** ☐ **STATUS REPORT**

☒ **OTHER, PLEASE STATE: Not a public hearing, but a decision is to be rendered**

ACTION REQUESTED: ☒ **DECISION** ☐ **DISCUSSION,** ☐ **REVIEW, or** ☐ **UPDATE ONLY**

Previously Heard Date(s): 06/29/22 & Click or tap to enter a date.

Current Work Session: Click or tap to enter a date.

Current Council Meeting: Monday, July 25, 2022

SUBMITTED BY: Keedra T. Jackson, Senior Planner of Planning & Zoning

PRESENTER: Ray White, Director of Planning & Zoning

PURPOSE: The applicant proposes to construct a 260-unit townhome development adjacent to a future development of 100 plus single-family homes. The townhomes will be three-story in height with two-car garages and an extra 2 spaces per unit. There will be 67 overflow parking spaces. The public streets will be 55 ft in width boarded by 5 ft sidewalks with 8ft grass strips throughout the development. There will be one ingress/egress to the development off Hayden Quarry Road.

FACTS: The subject property is currently zoned C-1 (Local Commercial District) which does not allow for residential development. The intent of this district is to provide for local shopping and retail. TMOD-22-015 provided the avenue of the Stonecrest Overlay Tier 3 to allow authorize the permitted uses in C-1 and C-2 (General Commercial) District, O-I (Office Institutional) District, O-D (Office Distribution) District, M (Light Industrial) District, and MR-2 (Medium Density Residential) District. This text amendment was approved on January 24, 2022. The City of Stonecrest will need to rezone the property to the MR-2 designation.

OPTIONS: Choose an item. Click or tap here to enter text.

RECOMMENDED ACTION: Approval

CITY COUNCIL AGENDA ITEM

ATTACHMENTS:

(1) Attachment 1 - Staff Report
(2) Attachment 2 - Preliminary Plat
(3) Attachment 3 - Click or tap here to enter text.
(4) Attachment 4 - Click or tap here to enter text.
(5) Attachment 5 - Click or tap here to enter text.

Mayor and City Council

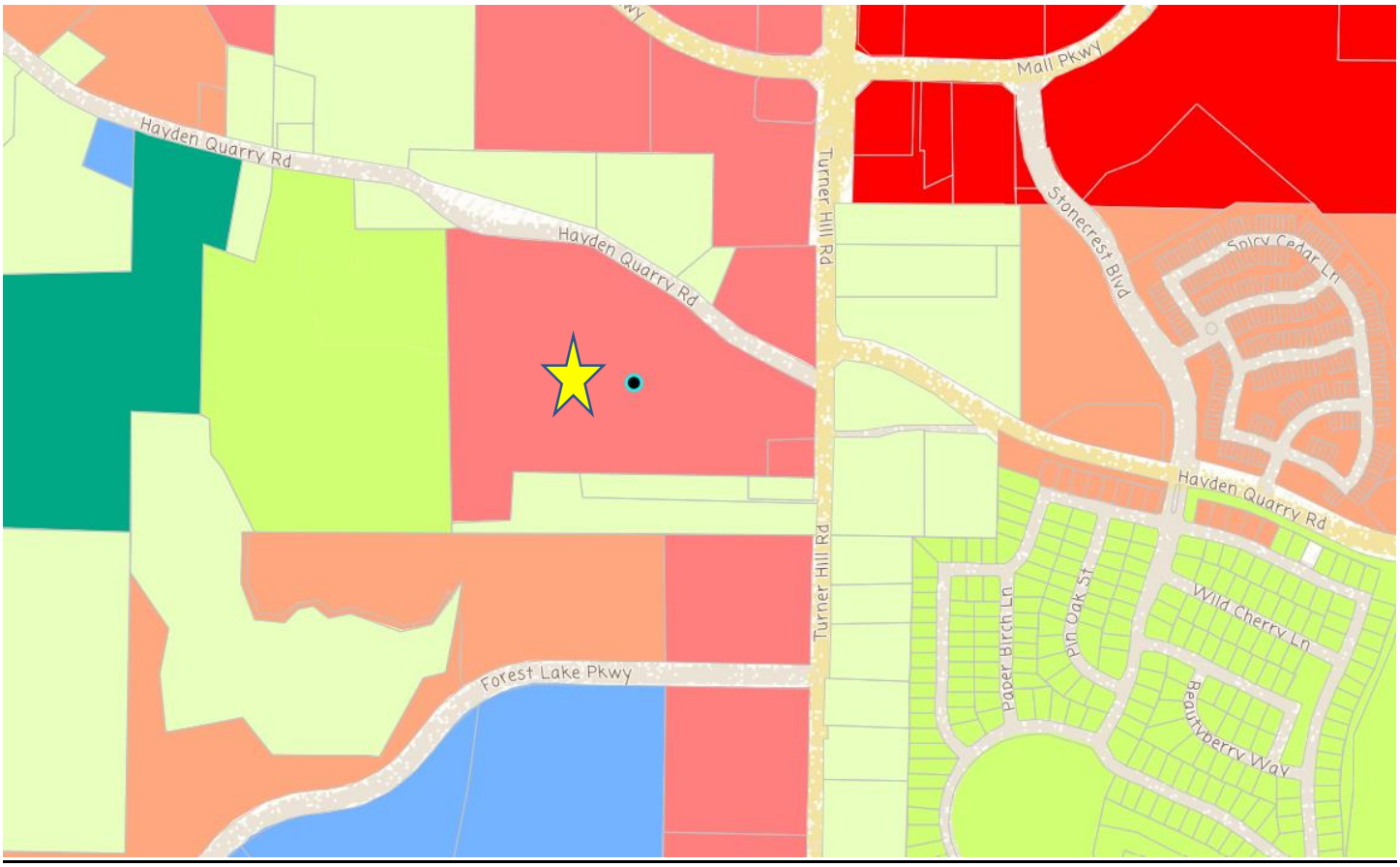
Mayor and City Council Meeting July 25, 2022

Staff Analysis of Preliminary Plat (Section 14-88)

Petition Number:	SPD22-0000010
Applicant:	Jim Jacobi
Owner:	James Jacobi
Project Location:	7259 Hayden Quarry Road
Parcels:	16-171-02-005
Council District:	Council District 1
Acreage:	29.437 +/- acres
Existing Zoning:	C-1 (Local Commercial District) / Stonecrest Tier 3 Overlay
Proposed Zoning:	MR-2 (Medium Density Residential)
Comprehensive Plan Community: Area Designation	Regional Center
Proposed Development/Request:	The applicant is requesting an approval of the Preliminary Plat for a 260-unit Townhome Development
Staff Recommendations:	***Approval***
Planning Commission	***N/A***
City Council:	**Recommended deferral on June 29, 2022**

Mayor and City Council

Zoning Map

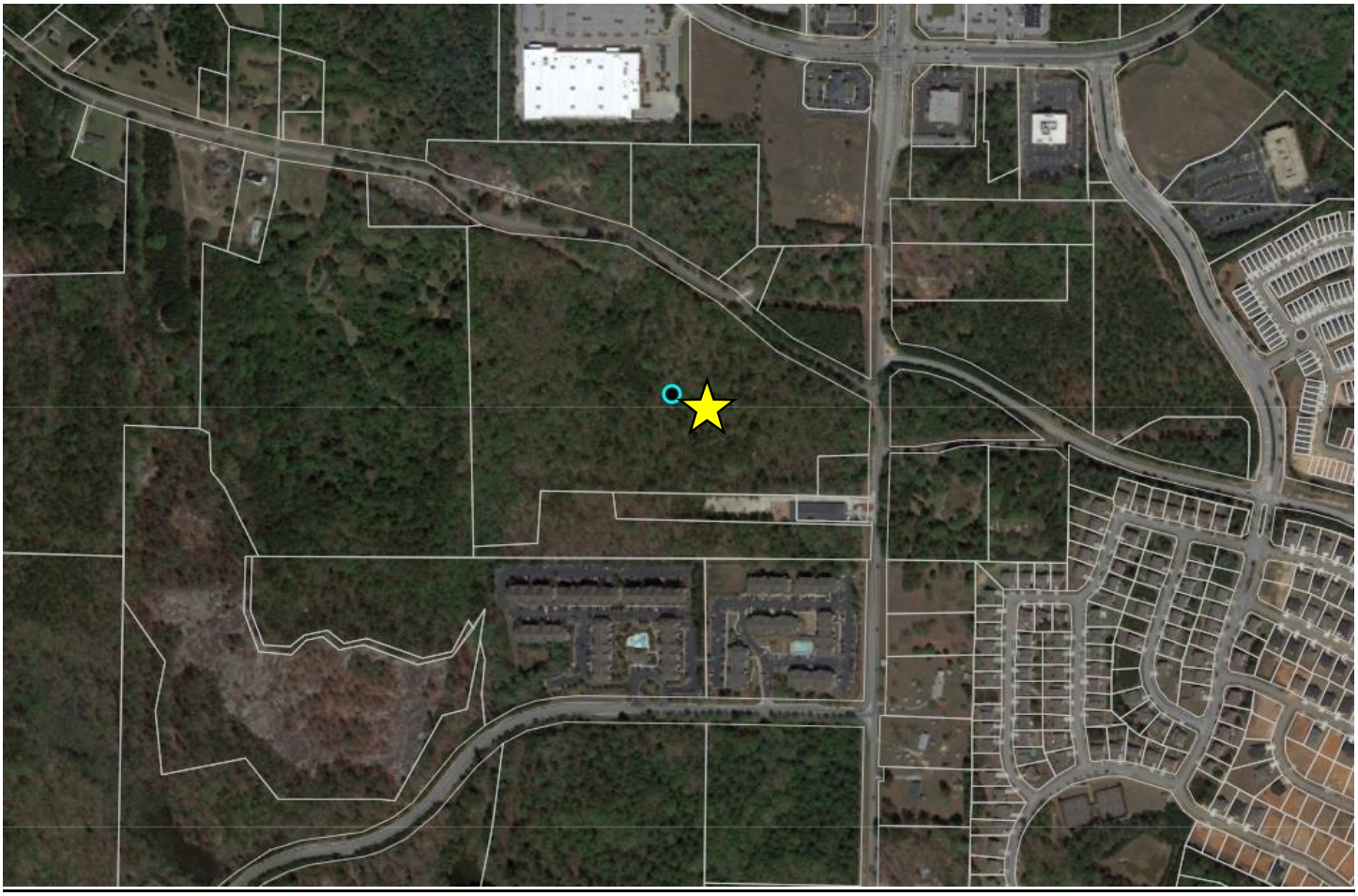


Current Zoning: C-1 (Local Commercial District)

Subject Property

Mayor and City Council

Aerial Map



PROJECT OVERVIEW

Subject Property

SDP22-000010

Mayor and City Council

Location

The subject property is located at 7259 Hayden Quarry Road (Parcel ID: 16-171-02-005). The Subject Property consists of a ±29.437 -acres in Land Lots 171, of the 16th District, of City of Stonecrest, DeKalb County, Georgia ("Subject Property").

The property is bounded by New Black Wall Street to the north, by Wesley Stonecrest Apartments to the south and residential to the east and west.

Background:

The subject property is currently zoned C-1 (Local Commercial District) which does not allow for residential development. The intent of this district is to provide for local shopping and retail. TMOD-22-015 provided the avenue of the Stonecrest Overlay Tier 3 to allow authorize the permitted uses in C-1 and C-2 (General Commercial) District, O-I (Office Institutional) District, O-D (Office Distribution) District, M (Light Industrial) District, and MR-2 (Medium Density Residential) District. This text amendment was approved on January 24, 2022. The City of Stonecrest will need to rezone the property to the MR-2 designation.

Details of the Preliminary Plat:

The subject property is an odd, shaped lot and is heavily wooded in nature. The property is located near the corner of Hayden Quarry and Turner Hill Road. The property is in the Stonecrest Tier 3 Overlay District.

The applicant proposes to construct a 260-unit townhome development adjacent to a future development of 100 plus single-family homes. The townhomes will be three-story in height with two-car garages and an extra 2 spaces per unit. There will be 67 overflow parking spaces. The public streets will be 55 ft in width boarded by 5 ft sidewalks with 8ft grass strips throughout the development. There will be one ingress/egress to the development off Hayden Quarry Road.

STANDARDS OF PRELIMINARY PLAT REVIEW:

Section *14-88 of the Stonecrest Zoning Ordinance list eight factors to be considered in a technical review of a zoning case completed by the Community Development Department and Planning Commission. Each element is listed with staff analysis.*

The owner of the land where the proposed development is to occur, or his authorized agent, shall file a preliminary plat with the Director along with an application for approval. The application shall:

(1)

Be submitted with the plan set for a Land Disturbance Permit;

(2)

Be accompanied by minimum of six copies of the plans, which must be prepared by a registered civil engineer, surveyor, or landscape architect, as described in these regulations and complying in all respects with these regulations and conforming with the zoning of the property;

(3)

Be accompanied by an application fee in the amount set by the mayor and city council;

(4)

Be accompanied by a tree survey;

(5)

Include the name, address and telephone number of an agent who is authorized to receive all notices required by these regulations;

(6)

Be signed by the owner of the property, or if the application is not signed by the owner, a completed indemnification agreement signed by the owner of the property;

(7)

Be accompanied with a consent affidavit from the property owner;

(8)

Be accompanied by a small map of the City of Stonecrest depicted the subdivision location within the City;

(9)

Be accompanied by a vicinity map at a scale of 400 feet to one inch showing the location of the tract with reference to surrounding properties, streets, municipal boundaries, and streams within 500 feet of the tract show zoning districts of adjoining property;

(10)

Include the names of adjoining property owners and the zoning classifications of adjacent properties;

(11)

Include the name, address and phone of developer and engineer;

(12)

Be accompanied by a certification by the applicant that no lots platted are nonconforming or will result in any nonconforming lots;

(13)

The applicant shall obtain the approval of the DeKalb County Health Department and the DeKalb County Department for Watershed Management; and

(14)

Payment of the appropriate development review application fee.

(Ord. No. 2018-06-03, § 14-88, 6-3-2018)

- **Whether the proposed land use change will permit uses that are suitable in consideration of the use and development of adjacent and nearby property or properties.**

  As shown in the table below, the subject property is surrounded by industrial and residential development. * *Please see the map below table*

THE CITY OF STONECREST GEORGIA

Mayor and City Council

STAFF

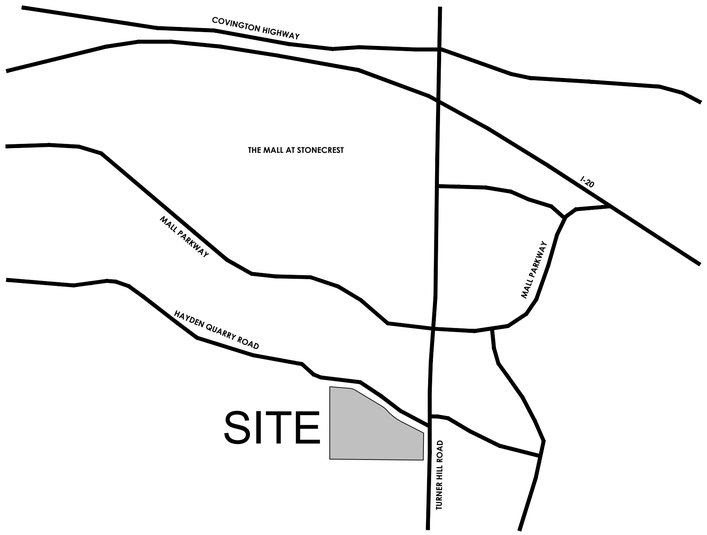
ADJACENT ZONING AND LAND USE		
	Zoning	**Zoning Land Use**
Adjacent: North	C-1(Local Commercial) District	New Black Wall Street
Adjacent: East	R-100 (Residential Medium Lot) District; MU-4 (Mixed-Use High Density) and RSM (Residential Small Lot)	Vacant Lad
Adjacent: South	MR-1 (Medium Residential District	Wesley Stonecrest Apartments
Adjacent: West	R-100 (Med Residential)	Single-family Residential

RECOMMENDATION

The applicant has met all of the Preliminary Plat requirements stated in Section 14-88 of Chapter 14; therefore, staff recommends **APPROVAL of** SDP22-000010**.**

Plot Date: Wednesday, June 15, 2022 8:45:19 AM

LOCATION MAP (N.T.S.)



PRELIMINARY PLAT FOR

CRESTWIND TOWNSHIP

DEKALB LDP AP #3092023

7259 HAYDEN QUARRY ROAD

LITHONIA, GA 30038

PARCEL ID #: 16 171 02 005

REFERENCE:

COMBINATION - AP # 3103007

DEKALB APPROVAL STAMP

DEKALB COUNTY NOTES

PURSUANT TO THE UNIFIED DEVELOPMENT CODE OF DEKALB COUNTY, GEORGIA, AND ALL REQUIREMENTS OF APPROVAL HAVING BEEN FULFILLED, THESE CONSTRUCTION PLANS HAVE BEEN GIVEN APPROVAL BY ALL REVIEWING DEPARTMENTS, WITH FINAL APPROVAL BY THE DIRECTOR, OR A DESIGNEE OF THE PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT, THE ISSUING AUTHORITY FOR DEKALB COUNTY. CONSTRUCTION PLAN APPROVAL DOES NOT CONSTITUTE APPROVAL OF A FINAL PLAT, IF REQUIRED, AND DOES NOT ENTITLE THIS PLAT AND PLANS TO RECORDATION IN THE CLERK'S OFFICE, DEKALB COUNTY SUPERIOR COURT. THE CERTIFICATION OF CONSTRUCTION PLAN APPROVAL SHALL EXPIRE AND BE NULL AND VOID TWENTY FOUR MONTHS FROM THE DATE OF THE PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT APPROVAL STAMP AS FOUND ON THE COVER SHEET OF THESE PLANS.

DEKALB COUNTY SANITATION WILL BE UTILIZED TO HANDLE HOUSEHOLD WASTE, YARD DEBRIS AND RECYCLABLE MATERIAL.

MUNICIPAL NOTES

NO COMBUSTIBLE MATERIALS WILL BE ALLOWED ONSITE AND NO BUILDING PERMITS WILL BE ISSUED FOR THIS DEVELOPMENT UNTIL WATER SERVICE IS PROVIDED VIA A WATER MAIN LOCATED ON HAYDEN QUARRY ROAD, WHICH IS THE RESPONSIBILITY OF THE DEVELOPER OF THIS SUBDIVISION. CONSTRUCTION WASTE AND/OR VEGETATIVE MATERIAL MAY NOT BE BURNED NOR BURIED AND MUST BE TAKEN TO A STATE APPROVED LANDFILL.

NOTIFY DEKALB COUNTY WATER AND SEWER DEPARTMENT 24 HOURS BEFORE THE BEGINNING PHASE OF CONSTRUCTION. (404) 371-2000. NOTIFY CITY OF STONECREST INSPECTOR 24 HOURS BEFORE THE BEGINNING PHASE OF CONSTRUCTION. (770) 224-0200.

DEVELOPER/PRIMARY PERMITEE

PARKLAND COMMUNITIES, INC.
299 SOUTH MAIN STREET, SUITE A
ALPHARETTA, GA 30009
CONTACT: JIM JACOBI
TEL: (404) 456-5562
EMAIL: JIM@PARKLANDCO.COM

24-HR CONTACT RESPONSIBLE FOR EROSION AND SEDIMENT CONTROL
CONTACT: JIM JACOBI
TEL (404) 456-5562
EMAIL:JIM@PARKLANDCO.COM

SITE DATA

EXISTING ZONING:	C-1 (TIER 3 OVERLAY)
SITE AREA:	+/- 30.2 ACRES
TOTAL LOTS:	260 TOWNHOMES
LOT DENSITY:	8.61 HOMES/ACRE
TOWNHOME MIN. LOT WIDTH:	20' MIN.
TOWNHOME MIN. LOT SIZE:	1,000 SF
SFA SETBACKS AND INFO:	
FRONT YARD:	15 FT.
SIDE SETBACK(SF):	0 FT
REAR YARD:	10'
BUILDING HEIGHT:	3 STORY / 45' MAX
MIN. PARKING REQUIRED :	2 SPACES PER UNIT
MIN. PARKING PROVIDED:	2 SPACES PER UNIT (1 GARAGE + 1 DRIVEWAY)
OVERFLOW PARKING PROVIDED:	67 SPACES

NOTE : TOPOGRAPHY IS LIDAR FROM DRONE SURVEY

TYPICAL STREET LAYOUT	
PUBLIC / PRIVATE STREETS :	PUBLIC STREETS
STREET WIDTH :	26' F.C. - F.C.
RIGHT OF WAY WIDTH :	55' TYPICAL
SIDEWALKS / GRASS STRIP:	5' SIDEWALKS, 8' GRASS STRIP

ENGINEER

ALLIANCE ENGINEERING & PLANNING, LLC
299 SOUTH MAIN STREET, SUITE A
ALPHARETTA, GA 30009
CONTACT: TYLER MARCHMAN, PE
TELEPHONE:(770) 225-4730

SURVEYOR

ALLIANCE SURVEYING, LLC.
6095 ATLANTA HIGHWAY, SUITE 100
FLOWERY BRANCH, GA 30542
CONTACT: DAVID ANDERSON, RLS (334)-360-4197

NOTE: VERTICAL ALIGNMENT MEETS AASHTO DESIGN STANDARDS FOR 25MPH DESIGN SPEED

NOTE: HORIZONTAL ALIGNMENT MEETS AASHTO DESIGN STANDARDS FOR 25MPH DESIGN SPEED

I, _____, THE OWNER OF THE LAND SHOWN ON THIS PLAT AND WHOSE NAME IS SUBSCRIBED HERETO, ACKNOWLEDGES THAT THIS PLAT WAS MADE FROM AN ACTUAL SUNVEY, AND FOR VALUE RECEIVED THE SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, DO HEREBY CONVEY ALL STREETS INDICATED AS PUBLIC STREETS AND RIGHTS-OF-WAY, AND FURTHER DEDICATE TO THE USE OF THE PUBLIC FOREVER ALL ALLEYS, PARKS, WATERCOURSES, DRAINS, EASEMENTS AND PUBLIC PLACES HEREON SHOWN FOR THE PURPOSES AND CONSIDERATIONS HEREIN EXPRESSED. IN CONSIDERATION OF THE APPROVAL OF THIS DEVELOPMENT PLAN AND OTHER VALUABLE CONSIDERATIONS, THE OWNER FURTHER RELEASES AND HOLDS HARMLESS CITY OF STONECREST FROM ANY/ALL CLAIMS, DAMAGES OR DEMANDS ARISING ON ACCOUNT OF THE DESIGN, CONSTRUCTION AND MAINTENANCE OF THE PROPERTY SHOWN HEREON; ON ACCOUNT OF THE ROADS, FILLS, EMBANKMENTS, DITCHES, CROSS-DRAINS, CULVERTS, WATER MAINS, SEWER LINES, AND BRIDGES WITHIN THE PROPOSED RIGHTS-OF-WAY AND EASEMENTS SHOWN; AND ON ACCOUNT OF BACKWATER, THE COLLECTION AND DISCHARGE OF SURFACE WATER, OR THE CHANGING OF COURSES OF STREAMS. AND FURTHER THE OWNER WARRANTS THAT HE OWNS FEE SIMPLE TITLE TO THE PROPERTY SHOWN HEREON AND AGREES THAT CITY OF STONECREST SHALL NOT BE LIABLE TO HIM/HER, HIS/HER HEIRS, SUCCESSORS OR ASSIGNS FOR ANY CLAIMS OR DAMAGES RESULTING FROM THE CONSTRUCTION OR MAINTENANCE OF CROSS-DRAIN EXTENSIONS, DRIVES, STRUCTURES, STREETS, CULVERTS, CURBS OR SIDEWALKS, THE CHANGING OF COURSES OF STREAMS AND RIVERS, FLOODING FROM NATURAL CREEKS AND RIVERS, SURFACE WATERS AND ANY OTHER MATTER WHATSOEVER. I FURTHER WARRANT THAT I HAVE THE RIGHT TO SELL AND CONVEY THE LAND ACCORDING TO THIS PLAT AND DO HEREBY BIND MYSELF AND OWNERS SUBSEQUENT IN TITLE TO

VERIFIED CURRENT OWNERS

Tract 1 = PARKLAND COMMUNITIES INC.
1,282,271 SQUARE FEET
29.437 ACRES
PID# 16 171 02 005

Tract 2 = PARKLAND COMMUNITIES INC.
33,351 SQUARE FEET
0.765 ACRES
PID# 16 171 02 012

I, JIM JACOBI, CERTIFY THAT NO LOTS PLATTED ARE NONCONFORMING OR WILL RESULT IN ANY NONCONFORMING LOTS.

THIS PLAT HAS BEEN SUBMITTED TO AND ACCEPTED BY THE PLANNING & ZONING DEPARTMENT FOR THE CITY OF STONECREST, GEORGIA AND HAS BEEN APPROVED AS REQUIRED BY STATE LAW AND CITY CODES AS MEETING ALL CONDITIONS PRECEDENT TO RECORDING IN THE SUPERIOR COURT OF THIS CIRCUIT.

DIRECTOR, DEPARTMENT OF PLANNING & ZONING

DATE

THIS PLAT HAS BEEN SUBMITTED TO AND ACCEPTED BY THE MAYOR AND COUNCIL OF THE CITY OF STONECREST, GEORGIA, AND HAS BEEN APPROVED AS REQUIRED BY STATE LAW AND CITY CODES AS MEETING ALL CONDITIONS PRECEDENT TO RECORDING IN THE SUPERIOR COURT OF THIS CIRCUIT.

MAYOR (AS DESIGNEE OF GOVERNING AUTHORITY)

DATE

ALLIANCE
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LANDSCAPE ARCHITECTURE
CIVIL ENGINEERING • LAND PLANNING • LANDSCAPE ARCHITECTURE • LAND SURVEYING
299 South Main St., Suite A | Alpharetta, GA 30009
770.225.4730 | www.aepatl.com

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Civil Engineering By AEP:
Tyler Marchman, GA PE040989
Cell: 770-855-2430
tylerm@aepatl.com

GEORGIA REGISTERED No. PE040989 PROFESSIONAL ENGINEER TYLER SCOTT MARCHMAN 4-1-22

GASWCC LEVEL II
CERTIFICATION #59016
EXPIRATION DATE: 11/17/2022

SURVEYING BY:
ALLIANCE SURVEYING
PHONE: (334) 360-4197
CONTACT: DAVID ANDERSON

PARKLAND COMMUNITIES
PARKLAND COMMUNITIES, INC.
299 S MAIN STREET, SUITE A
ALPHARETTA, GA 30009
24 HR CONTACT: JIM JACOBI,TEL: (404) 456.5562
EMAIL: JIM@PARKLANDCO.COM

Preliminary Plat for
CRESTWIND TOWNSHIP
7259 HAYDEN QUARRY ROAD
LITHONIA, GA 30038
PARCEL ID #: 16 171 02 005
(AP# 3103007 - LOT COMBINATION)

Orig. Issue	8/31/2021
Designed by	JCB
Checked by	TSM
Project #	21004

COVER

File Location: c:\dropbox (aep)\01-civil projects\03-projects\parkland\21004 - hayden quarry\02-design\dwg\02-civil\21004 - crestwind township - sheets prelim plat

Plot Date: Wednesday, June 15, 2022 8:45:50 AM

File Location: c:\dropbox (asi)\01-civil projects\03-projects\parkland\21004 - hayden quarry\00-design\dwg\00-civil\21004 - crestwind township - sheets prelim plat

NOTES
- THIS SITE DOES NOT REQUIRE THE COMPLETION OF A DRI.
- ENTRANCE MONUMENTATION, HAYDEN QUARRY AND TURNER HILL ROAD FRONTAGE, AND AMENITY AREA AREAS WILL BE IRRIGATED.
- LIGHTING PLAN TO BE DONE BY OTHERS.
- CROSSWALKS WILL BE PROVIDED AT EACH ENTRANCE.

SIGNS USED

- R1-1 STOP — 36"x36" STOP SIGN (R1-1)
- R2-1 — NO PARKING
- R1-2 — YIELD SIGN (R1-2) 36"
- R3-5 — SPEED LIMIT 25 — 25 MPH SIGN (R2-1) 24" x 30"
- R3-7 — MUST TURN RIGHT (R3-7) 24 X 30

SITE SYMBOLS LEGEND

- (VW) PROP. 5' WIDE CONCRETE SIDEWALK
- (CC) CONCRETE CURB & GUTTER
- (HC) PROPOSED HANDICAP RAMP
- (MK) PROPOSED MAILBOX KIOSK
- (SE) SIGNAGE EASEMENT AREA
- (SW) SEWER EASEMENT
- (CR) CONNECTION TO EXISTING CURB/ROAD
- (DE) DRAINAGE EASEMENT

INTERSECTION LEGEND

- INTX 'A': CRESTWIND PASS STA: 1+71.13 ABEL CREST STA: 0+00.00
- INTX 'B': CRESTWIND PASS STA: 3+13.79 AMENITY PARKING STA: 00+00.00
- INTX 'C': ABEL CREST STA: 4+36.08 BYRDHOUSE MEADOW STA: 0+00.00
- INTX 'D': AMENITY PARKING STA: 2+45.00 BYRDHOUSE MEADOW STA: 4+01.09
- INTX 'E': CRESTWIND PASS STA: 12+62.57 STONEVIEW POINT STA: 4+36.25
- INTX 'F': STONEVIEW POINT STA: 1+90.56 MAX TRAIL STA: 0+00.00

19.11'(R)
19.07'(M)
N 74°44'29" E

#3180

#3181

S 85°14'55" E
359.26'

C2

S 58°53'13" E
437.12'

15' SETBACK

HAYDEN QUARRY ROAD
(80' RIGHT-OF-WAY) (DB 4636/PG 459)

MATCHLINE

MAX TRAIL (55' R/W)

CRESTWIND PASS (55' R/W)

STONEVIEW POINT (55' R/W)

86°

#7046 COMMON AREA TO BE OWNED AND MAINTAINED BY HOA

#7062 COMMON AREA TO BE OWNED AND MAINTAINED BY HOA

#7158 COMMON AREA TO BE OWNED AND MAINTAINED BY HOA

#7153 COMMON AREA TO BE OWNED AND MAINTAINED BY HOA

#7196 COMMON AREA TO BE OWNED AND MAINTAINED BY HOA

MATCHLINE

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Preliminary Plat for CRESTWIND TOWNSHIP

7259 HAYDEN QUARRY ROAD
LITHONIA, GA 30058
PARCEL ID #: 16 171 02 005
(AP# 3103007 - LOT COMBINATION)

Orig. Issue	8/31/2021
Designed by	JCB
Checked by	TSM
Project #	21004

NORTH

SCALE: 1"= 30'
0 30

PRELIMINARY PLAT

Plot Date: Wednesday, June 15, 2022 8:47:00 AM

File Location: c:\dropbox (aep)\01-civil projects\03-projects\parkland\21004 - hayden quarry\00-design\dwg\00-civil\21004 - crestwind township - sheets prelim plat

MATCHLINE

LINE TABLE		
LINE ID	LENGTH	DIRECTION
L1	118.62'	S08°07'10"W
L2	50.91'	S29°58'25"W
L3	425.00'	S00°54'41"W
L4	424.72'	S89°05'19"E
L5	907.94'	N00°54'41"E
L6	696.35'	N89°05'19"W
L7	513.42'	N89°05'19"W
L8	355.08'	N03°10'05"W
L9	15.88'	S86°49'55"W
L10	1389.48'	N89°24'27"W
L11	105.13'	S57°12'35"W
L12	597.82'	N89°05'19"W
L13	72.98'	S73°42'39"W
L14	6.69'	S16°17'21"E
L15	59.42'	S09°56'31"W
L16	449.07'	S00°28'17"W
L17	379.14'	S85°14'55"E
L18	316.18'	S58°53'13"E
L19	51.73'	N72°34'59"E
L20	303.43'	N85°14'55"W
L21	357.08'	N58°53'13"W
L22	225.13'	N89°24'27"W
L23	146.92'	S28°10'00"W
L24	65.12'	S50°16'24"E
L25	164.18'	S63°00'00"E
L26	194.52'	S00°28'17"W
L27	245.00'	S00°35'33"W

℄ CURVE TABLE						
CURVE #	LENGTH	RADIUS	BEARING	CHORD	TAN	DELTA
C1	38.14'	100.00'	S19°02'48"W	37.912'	19.31'	21.85
C2	73.55'	145.00'	S15°26'33"W	72.763'	37.58'	29.06
C3	262.43'	175.00'	N46°07'42"W	238.522'	162.96'	85.92
C4	58.26'	100.00'	S73°54'04"W	57.443'	29.98'	33.38
C5	58.82'	100.00'	S74°03'38"W	57.976'	30.29'	33.70
C6	27.02'	90.00'	S82°18'40"W	26.917'	13.61'	17.20
C7	16.53'	100.00'	S5°12'24"W	16.510'	8.28'	9.47
C8	46.01'	100.00'	S72°04'04"E	45.605'	23.42'	26.36
C9	81.02'	100.00'	S82°05'52"E	78.823'	42.88'	46.42
C10	46.01'	100.00'	N72°04'04"W	45.605'	23.42'	26.36
C11	53.27'	100.00'	N74°08'50"W	52.641'	27.28'	30.52
C12	130.74'	120.00'	S59°22'46"W	124.373'	72.71'	62.43
C13	22.21'	100.00'	S56°38'12"E	22.167'	11.15'	12.73
C14	110.78'	100.00'	S31°15'51"E	105.200'	61.85'	63.47

SITE SYMBOLS LEGEND

- (SW) PROP. 5' WIDE CONCRETE SIDEWALK
- (CG) CONCRETE CURB & GUTTER
- (HC) PROPOSED HANDICAP RAMP
- (MK) PROPOSED MAILBOX KIOSK
- (SE) SIGNAGE EASEMENT AREA
- (SS) SEWER EASEMENT
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- (DE) DRAINAGE EASEMENT

INTERSECTION LEGEND

- INTX 'A' — CRESTWIND PASS STA: 1+71.13 ABEL CREST STA: 0+00.00
- INTX 'B' — CRESTWIND PASS STA: 3+13.79 AMENITY PARKING STA: 00+00.00
- INTX 'C' — ABEL CREST STA: 4+36.08 BYRDHOUSE MEADOW STA: 0+00.00
- INTX 'D' — AMENITY PARKING STA: 2+45.00 BYRDHOUSE MEADOW STA: 4+01.09
- INTX 'E' — CRESTWIND PASS STA: 12+62.57 STONEVIEW POINT STA: 4+36.25
- INTX 'F' — STONEVIEW POINT STA: 1+90.56 MAX TRAIL STA: 0+00.00

SIGNS USED

- (R5) NO PARKING
- (R1) STOP — 36"x36" STOP SIGN (R1-1)
- (R2) YIELD SIGN (R1-2) 36"
- (R4) SPEED LIMIT 25 — 25 MPH SIGN (R2-1) 24" x 30"
- (R3) MUST TURN RIGHT (R3-7) 24 X 30

NOTES

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GASWCC LEVEL II
CERTIFICATION #59016
EXPIRATION DATE: 11/17/2022

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Preliminary Plat for CRESTWIND TOWNSHIP

7259 HAYDEN QUARRY ROAD
LITHONIA, GA 30038
PARCEL ID #: 16 171 02 005
(AP# 3103007 - LOT COMBINATION)

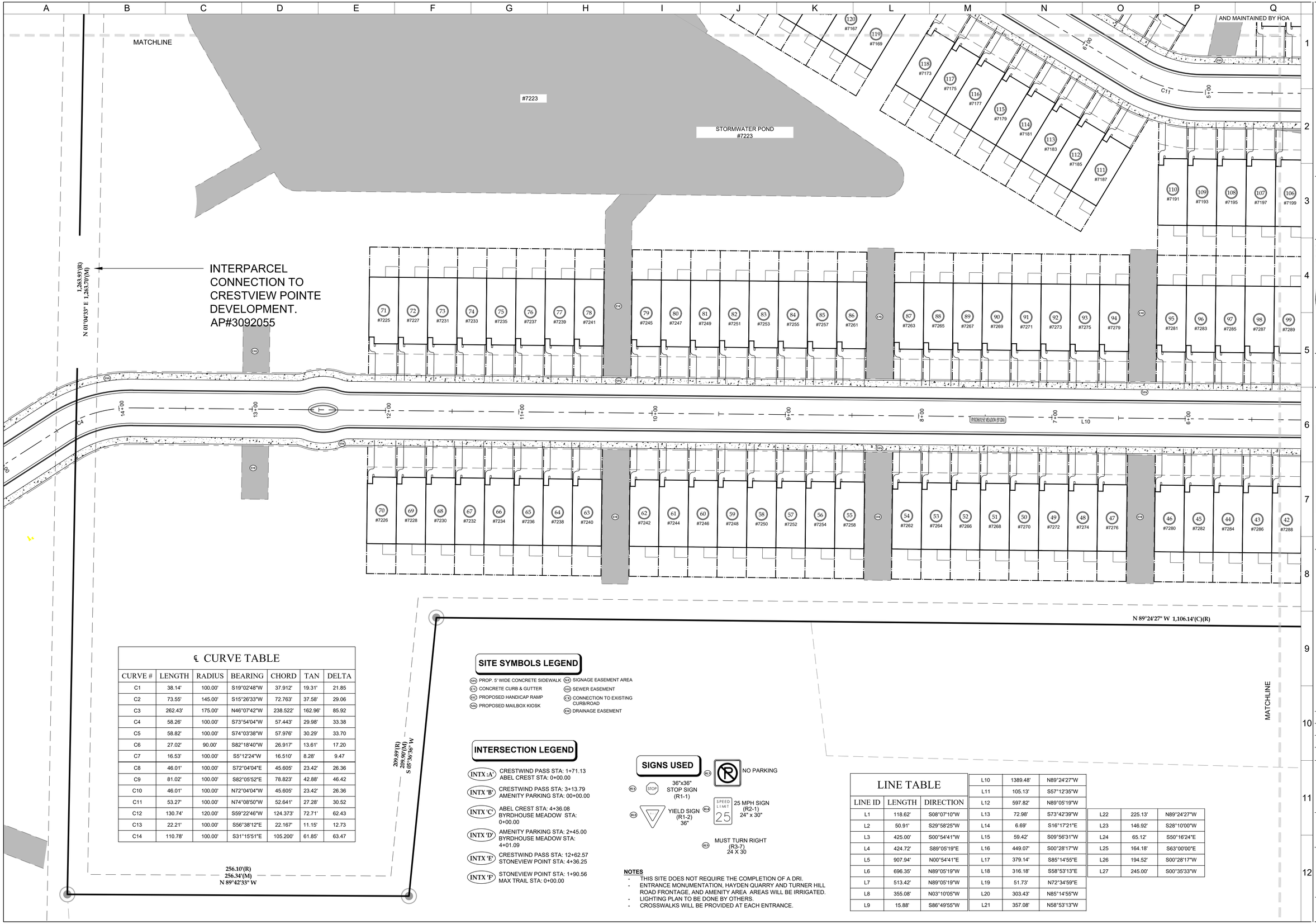
Orig, Issue	8/31/2021
Designed by	JCB
Checked by	TSM
Project #	21004

NORTH

SCALE: 1"= 30'
0 30

PRELIMINARY PLAT

Plot Date: Wednesday, June 15, 2022 8:48:14 AM



℄ CURVE TABLE

CURVE #	LENGTH	RADIUS	BEARING	CHORD	TAN	DELTA
C1	38.14'	100.00'	S19°02'48"W	37.912'	19.31'	21.85
C2	73.55'	145.00'	S15°26'33"W	72.763'	37.58'	29.06
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C14	110.78'	100.00'	S31°15'51"E	105.200'	61.85'	63.47

SITE SYMBOLS LEGEND

- (VA) PROP. 5' WIDE CONCRETE SIDEWALK
- (CX) CONCRETE CURB & GUTTER
- (HX) PROPOSED HANDICAP RAMP
- (MX) PROPOSED MAILBOX KIOSK
- (SE) SIGNAGE EASEMENT AREA
- (SW) SEWER EASEMENT
- (CR) CONNECTION TO EXISTING CURB/ROAD
- (DE) DRAINAGE EASEMENT

INTERSECTION LEGEND

- (INTX :A') CRESTWIND PASS STA: 1+71.13 ABEL CREST STA: 0+00.00
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SIGNS USED

- (R1-1) 36"x36" STOP SIGN
- (R1-2) YIELD SIGN 36"
- (R3-5) NO PARKING
- (R2-1) 25 MPH SIGN 24" x 30"
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NOTES

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- CROSSWALKS WILL BE PROVIDED AT EACH ENTRANCE.

LINE TABLE

LINE ID	LENGTH	DIRECTION
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L24	65.12'	S50°16'24"E
L25	164.18'	S63°00'00"E
L26	194.52'	S00°28'17"W
L27	245.00'	S00°35'33"W

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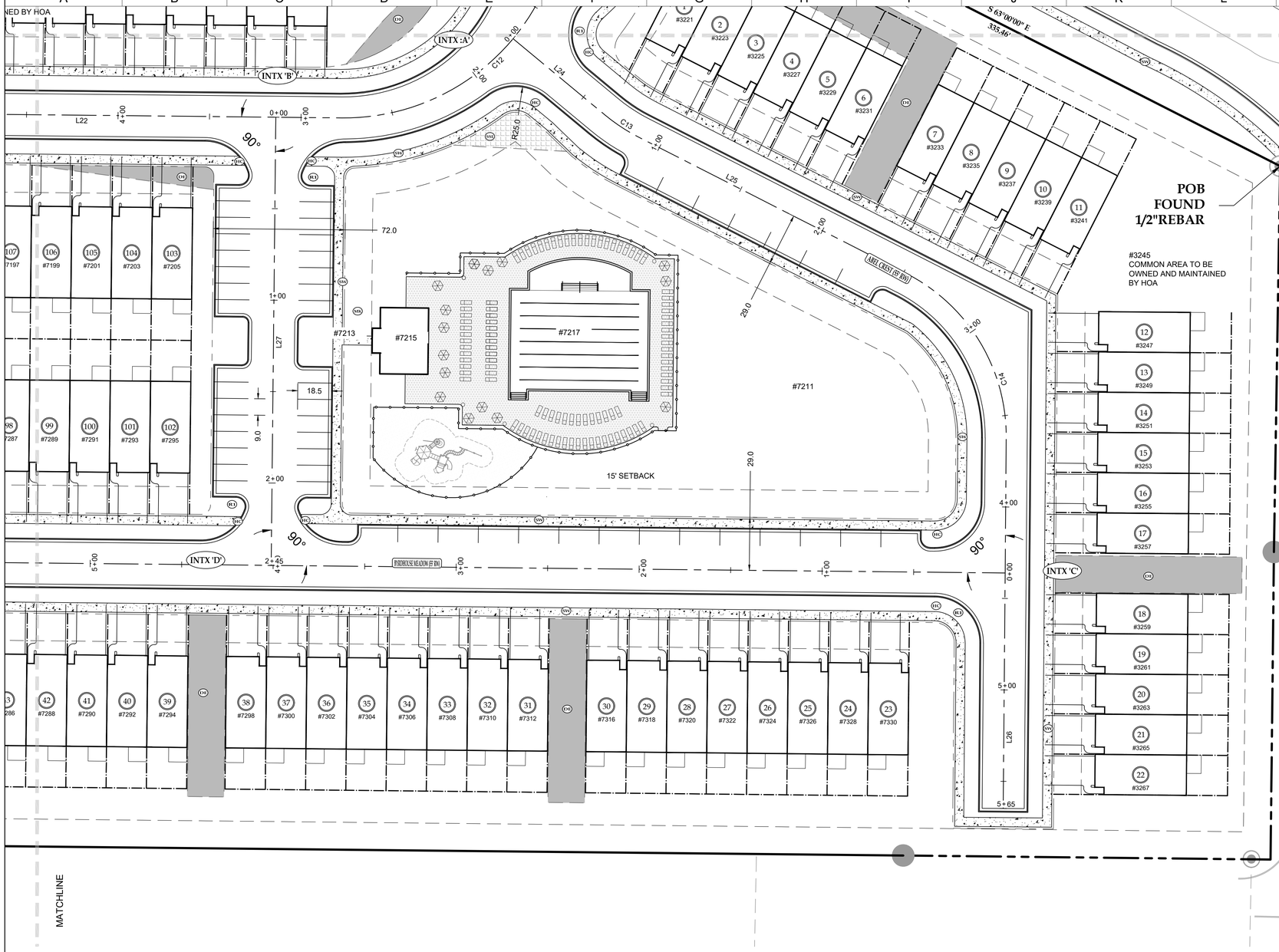
NORTH

SCALE: 1"= 30'
0 30

PRELIMINARY PLAT

File Location: c:\dropbox (aep)\01-civil projects\03-projects\parklands\21004 - hayden quarry\00-design\dwg\02-civil\21004 - crestwind township - sheets prelim plat

Plot Date: Wednesday, June 15, 2022 8:49:21 AM



℄ CURVE TABLE

CURVE #	LENGTH	RADIUS	BEARING	CHORD	TAN	DELTA
C1	38.14'	100.00'	S19°02'48"W	37.912'	19.31'	21.85
C2	73.55'	145.00'	S15°26'33"W	72.763'	37.58'	29.06
C3	262.43'	175.00'	N46°07'42"W	238.522'	162.96'	85.92
C4	58.26'	100.00'	S73°54'04"W	57.443'	29.98'	33.38
C5	58.82'	100.00'	S74°03'38"W	57.976'	30.29'	33.70
C6	27.02'	90.00'	S82°18'40"W	26.917'	13.61'	17.20
C7	16.53'	100.00'	S5°12'24"W	16.510'	8.28'	9.47
C8	46.01'	100.00'	S72°04'04"E	45.605'	23.42'	26.36
C9	81.02'	100.00'	S82°05'52"E	78.823'	42.88'	46.42
C10	46.01'	100.00'	N72°04'04"W	45.605'	23.42'	26.36
C11	53.27'	100.00'	N74°08'50"W	52.641'	27.28'	30.52
C12	130.74'	120.00'	S59°22'46"W	124.373'	72.71'	62.43
C13	22.21'	100.00'	S56°38'12"E	22.167'	11.15'	12.73
C14	110.78'	100.00'	S31°15'51"E	105.200'	61.85'	63.47

LINE TABLE

LINE ID	LENGTH	DIRECTION
L1	118.62'	S08°07'10"W
L2	50.91'	S29°58'25"W
L3	425.00'	S00°54'41"W
L4	424.72'	S89°05'19"E
L5	907.94'	N00°54'41"E
L6	696.35'	N89°05'19"W
L7	513.42'	N89°05'19"W
L8	355.08'	N03°10'05"W
L9	15.88'	S86°49'55"W
L10	1389.48'	N89°24'27"W
L11	105.13'	S57°12'35"W
L12	597.82'	N89°05'19"W
L13	72.98'	S73°42'39"W
L14	6.69'	S16°17'21"E
L15	59.42'	S09°56'31"W
L16	449.07'	S00°28'17"W
L17	379.14'	S85°14'55"E
L18	316.18'	S58°53'13"E
L19	51.73'	N72°34'59"E
L20	303.43'	N85°14'55"W
L21	357.08'	N58°53'13"W
L22	225.13'	N89°24'27"W
L23	146.92'	S28°10'00"W
L24	65.12'	S50°16'24"E
L25	164.18'	S63°00'00"E
L26	194.52'	S00°28'17"W
L27	245.00'	S00°35'33"W

SITE SYMBOLS LEGEND

- (VIN) PROP. 5' WIDE CONCRETE SIDEWALK
- (CK) CONCRETE CURB & GUTTER
- (HC) PROPOSED HANDICAP RAMP
- (MB) PROPOSED MAILBOX KIOSK
- (SAE) SIGNAGE EASEMENT AREA
- (SSE) SEWER EASEMENT
- (CTE) CONNECTION TO EXISTING CURB/ROAD
- (DYE) DRAINAGE EASEMENT

SIGNS USED

- (R1-1) 36"x36" STOP SIGN
- (R1-2) YIELD SIGN 36"
- (R3-1) NO PARKING
- (R3-7) 25 MPH SIGN (R2-1) 24" x 30"
- (R3-7) MUST TURN RIGHT 24 X 30

INTERSECTION LEGEND

- (INTX 'A') CRESTWIND PASS STA: 1+71.13 ABEL CREST STA: 0+00.00
- (INTX 'B') CRESTWIND PASS STA: 3+13.79 AMENITY PARKING STA: 00+00.00
- (INTX 'C') ABEL CREST STA: 4+36.08 BYRDHOUSE MEADOW STA: 0+00.00
- (INTX 'D') AMENITY PARKING STA: 2+45.00 BYRDHOUSE MEADOW STA: 4+01.09
- (INTX 'E') CRESTWIND PASS STA: 12+62.57 STONEVIEW POINT STA: 4+36.25
- (INTX 'F') STONEVIEW POINT STA: 1+90.56 MAX TRAIL STA: 0+00.00

NOTES

- THIS SITE DOES NOT REQUIRE THE COMPLETION OF A DRI.
- ENTRANCE MONUMENTATION, HAYDEN QUARRY AND TURNER HILL ROAD FRONTAGE, AND AMENITY AREA AREAS WILL BE IRRIGATED.
- LIGHTING PLAN TO BE DONE BY OTHERS.
- CROSSWALKS WILL BE PROVIDED AT EACH ENTRANCE.

ALLIANCE
ENGINEERING + PLANNING + LAND SURVEYING
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CIVIL ENGINEERING + LAND PLANNING + LANDSCAPE ARCHITECTURE + LAND SURVEYING
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GEORGIA REGISTERED No. PE040989 PROFESSIONAL ENGINEER TYLER SCOTT MARCHMAN 4-1-22

GASWCC LEVEL II
CERTIFICATION #59016
EXPIRATION DATE: 11/17/2022

SURVEYING BY:
ALLIANCE SURVEYING
PHONE: (334) 360-4197
CONTACT: DAVID ANDERSON

PARKLAND COMMUNITIES
PARKLAND COMMUNITIES, INC.
299 S MAIN STREET, SUITE A
ALPHARETTA, GA 30009
24 HR CONTACT: JIM JACOBI TEL: (404) 456.5562
EMAIL: JIM@PARKLANDCO.COM

Preliminary Plat for CRESTWIND TOWNSHIP

7259 HAYDEN QUARRY ROAD
LITHONIA, GA 30038
PARCEL ID #: 16 171 02 005
(AP# 3103007 - LOT COMBINATION)

Orig. Issue	8/31/2021
Designed by	JCB
Checked by	TSM
Project #	21004

NORTH

SCALE: 1"= 30'
0 30

PRELIMINARY PLAT

File Location: c:\dropbox (aep)\01-civil projects\05-projects\parkland\21004 - hayden quarry\00-design\dwg\00-civil\21004 - crestwind township - sheets prelim plat

CITY COUNCIL AGENDA ITEM

SUBJECT: TMOD-22-001 Defintions and Uses Ordinance

AGENDA SECTION: (*check all that apply*)

☐ **PRESENTATION** ☒ **PUBLIC HEARING** ☐ **CONSENT AGENDA** ☒ **OLD BUSINESS**
☐ **NEW BUSINESS** ☐ **OTHER, PLEASE STATE:** Click or tap here to enter text.

CATEGORY: (*check all that apply*)

☒ **ORDINANCE** ☐ **RESOLUTION** ☐ **CONTRACT** ☐ **POLICY** ☐ **STATUS REPORT**

☐ **OTHER, PLEASE STATE:** Click or tap here to enter text.

ACTION REQUESTED: ☒ **DECISION** ☐ **DISCUSSION,** ☐ **REVIEW, or** ☐ **UPDATE ONLY**

Previously Heard Date(s): 01/24/22 & 06/29/22

Current Work Session: Click or tap to enter a date.

Current Council Meeting: Monday, July 25, 2022

SUBMITTED BY: Keedra T. Jackson, Senior Planner of Planning & Zoning

PRESENTER: Ray White, Director of Planning & Zoning

PURPOSE: Amendment to Stonecrest Zoning Ordinance, Chapter 27, standardizing land use definitions and terms and to clarify and update the uses allowed in each zoning district.

FACTS: Click or tap here to enter text.

OPTIONS: Choose an item. Click or tap here to enter text.

RECOMMENDED ACTION: Approval

ATTACHMENTS:

(1) Attachment 1 - Staff Report
(2) Attachment 2 - Track Changes Summary
(3) Attachment 3 - Chapter 27 Zoning Ordinance
(4) Attachment 4 - Click or tap here to enter text.
(5) Attachment 5 - Click or tap here to enter text.

TMOD-22-001

PLANNING & ZONING STAFF REPORT

MEETING DATE: July 25, 2022

GENERAL INFORMATION

Petition Number: TMOD 22-001

Applicant: Stonecrest Planning and Zoning Department

Project Location: City-Wide

Proposed amendment: Amendment to Stonecrest Zoning Ordinance, Chapter 27, standardizing land use definitions and terms and to clarify and update the uses allowed in each zoning district.

Facts and Issues:

- So many amendments have been made to the Zoning Ordinance since its original adoption in 2017, that questions often arise as to how the ordinance actually reads, let alone how to interpret it. Even Municode, a service that the city uses to codify the code is not up to date as of the writing of this report. Twelve text amendments alone were adopted in 2021 and none are included on the codified version of the Zoning Ordinance found online.
- To address this problem, staff has prepared two versions of the code in Adobe PDF digital format: (1) A version that includes all known adopted text amendments as of January 24, 2022, and (2) a June 14, 2022 draft version of the Zoning Ordinance that includes this text amendment TMOD-22-001 with all changes denoted by strikethrough and underline.
- For the sake of brevity only the June 14, 2022 version the code is included in the Planning Commission packet. The February 28, 2022 version can be found online on the city website.
- Throughout the adopted zoning ordinance numerous terms are used to describe the same land use, this text modification is an attempt to standardize those terms for the sake of consistency and readability.
- Many terms used in the current Zoning Ordinance are not defined, so additional definitions were added to help with document clarity.

- In preparing any updated version of the ordinance, several inconsistency and Scribner's errors were discovered which are corrected in this draft text. In short, this text amendment is primarily a much needed housekeeping exercise that should help citizens, developers and city officials all gain a better understanding of what is included in the City's adopted Zoning Ordinance.

Proposal:

- Staff is recommending that TMOD-22-001 be APPROVED as presented in the track changes version of the entire Zoning Ordinance dated June 14, 2022, and as summarized in Attachment 1, TMOD-22-001 Summary of Changes Table
- All of the proposed changes included in TMOD-22-001 are summarized in a 16-page table included in your packet, Attachment 1.
- Note that the table of contents included in PDF of the zoning ordinance is hyperlinked for ease of navigation.

Staff Recommendation: Approval of TMOD-22-001

Planning Commission Recommendation: Planning Commission heard the case on February 1, 2022, and recommends to City Council **a full cycle Deferal** back to the Planning Commission to allow more time to review the proposal.

Recommended approval on June 6, 2022

City Council recommended deferral at the June 29th regular council meeting

ATTACHMENTS:

1. TMOD-22-001 Summary of Changes

2. June 14, 2022 Draft Zoning Ordinance – with TMOD-22-001 changes shown in strikethrough and underline.

Track Changes Summary of Proposed Amendments to the Zoning Ordinance related to TMOD-21-017 - Standardization of Definitions

Article	Section	Change
2	2.3.2- RE District	Inserted lists of permitted and special uses
2	2.4.2 – RLG District	Inserted lists of permitted and special uses
2	2.5.2 – R-100 District	Inserted lists of permitted and special uses
2	2.6.2 – R-85 District	Inserted lists of permitted and special uses
2	2.7.2 – R-75 District	Inserted lists of permitted and special uses
2	2.8.2 – R-60 District	Inserted lists of permitted and special uses
2	2.9.2 – MHP District	Inserted lists of permitted and special uses
2	2.10.2 – RNC District	Inserted lists of permitted and special uses
2	2.10.7 – RNC Minimum lot width; minimum lot size; building setback; street width; and private drive width requirements	Removed redundancy between subsections – deleted subsections C and D.
2	2.10.11 RND Off Street Parking Requirements	Updated land use terms for Child care institution, group
2	2.12.2 – RSM District	Inserted lists of permitted and special uses
2	2.12.5 – RSM, density bonus example	Deleted outdated graphic of density bonus example
2	2.13.2 – MR-1 District	Inserted lists of permitted and special uses
2	2.14.2 – MR-2 District	Inserted lists of permitted and special uses
2	2.15.2 – HR-1 District	Inserted lists of permitted and special uses
2	2.16.2 – HR-2 District	Inserted lists of permitted and special uses
2	2.17.2 – HR-3 District	Inserted lists of permitted and special uses
2	2.19.3 – MU-1 District	Inserted lists of permitted and special uses
2	2.19.6 – MU-1, density bonus example	Deleted outdated graphic of density bonus example
2	2.20.2 – MU-2 District	Inserted new section that lists permitted and special uses
2	2.21.2 – MU-3 District	Inserted new section that lists permitted and special uses

Article	Section	Change
2	2.22.2 – MU-4 District	Inserted lists of permitted and special uses
2	2.23.2 – MU-5 District	Inserted lists of permitted and special uses
2	2.25.3 – NS District	Inserted lists of permitted and special uses
2	2.26.2 – C-1 District	Inserted lists of permitted and special uses
2	2.27.2 – C-2 District	Inserted lists of permitted and special uses
2	2.28.2 – OD District	Inserted lists of permitted and special uses
2	2.29.2 – OI District	Inserted lists of permitted and special uses
2	2.30.2 – OIT District	Inserted lists of permitted and special uses
2	2.31.2 – M District	Inserted lists of permitted and special uses
2	2.32.2 – M-2 District	Inserted lists of permitted and special uses
2	2.32.5 – M-2 Solid waste facility/landfill provisions	Deleted outdated section. Landfills are a prohibited use, per TMOD-21-010.
3	3.1.6 – Overlay Use Table	Updated table with new land use terms
3	3.33.5 – Principal uses and structures	Removed Utility structure necessary for the transmission or distribution of services. This was replaced Telecommunications text amendment in 2019, TMOD-19-004.
3	3.4.5 – Arabia Mtn Conservation Overlay	Updated land use terms in the list of prohibited uses, and added clarification of the term net lot area and lot coverage (Sections 3.4.7, 3.4.8, and 3.4.9).
3	3.5.15.2 Stonecrest Area Overlay	Updated land use terms.
3	3.33.5 and 3.33.6 - I-20 Overlay	Updated land use terms.
4	4.1.3.D. Prohibited Uses	Clarified language regarding the disposal or storage of hazardous/toxic solid waste approved as part of TMOD-21-010.
Agricultural		
Agriculture and Forestry		
4	Table 4.1 Use Table	Change “Agricultural” to “Agricultural activities”.
4	Table 4.1 Use Table	Remove “Commercial greenhouse or plant nursery” as it is identified in the Commercial Use list.

Article	Section	Change
4	Table 4.1 Use Table	Change “Temporary or Portable Sawmill” to “Sawmill, Temporary or Portable”.
Residential		
Dwellings		
4	Table 4.1 Use Table	Change “Dwelling, multi-family” to “Dwelling, multifamily”.
4	Table 4.1 Use Table	Change “High Rise Apartment” to “Dwelling, Apartment”.
4	Table 4.1 Use Table	Remove “live/work unit” from light industrial and heavy industrial
Housing and Lodging		
4	Table 4.1 Use Table	Change “Bed and Breakfast, home stay” to “Bed and Breakfast Establishment”.
4	Table 4.1 Use Table	Change “Child caring home” to “Child care home”.
4	Table 4.1 Use Table	Change “Child caring facility” to “Child care facility”.
4	Table 4.1 Use Table	Change “Extended stay hotel/motel” to “Hotel/motel, extended stay”.
4	Table 4.1 Use Table	Change “Short term vacation rental” to “Short-term vacation rental”.
Institutional/Public		
Education		
4	Table 4.1 Use Table	Remove “club, order or lodge, fraternal, non-commercial” from light industrial
4	Table 4.1 Use Table	Remove “colleges, universities, research and training facilities” from light industrial
4	Table 4.1 Use Table	Remove “places of worship” from light industrial and heavy industrial
4	Table 4.1 Use Table	Change “Private educational services, home occupation” to “Educational use, private”
4	Table 4.1 Use Table	Add “School, public kindergarten, elementary, middle or high schools” under Office Institutional and OIT

Article	Section	Change
4	Table 4.1 Use Table	Change “Specialized School” to “School, Specialty” to match the definition.
4	Table 4.1 Use Table	Change “Vocational School” to “School, Vocational”.
Commercial		
Automobile, boat and trailer sales and service		
4	Table 4.1 Use Table	Change “Auto recovery, storage” to “Automobile recovery and storage”.
4	Table 4.1 Use Table	Remove “Automobile recovery and storage” from heavy industrial
4	Table 4.1 Use Table	Change “Boat sales” to “Recreational vehicle, boat and trailer sales and service”.
4	Table 4.1 Use Table	Change “Automobile repair or maintenance, minor” to “Automobile repair, minor”
4	Table 4.1 Use Table	Remove “Automobile repair, minor” from heavy industrial
4	Table 4.1 Use Table	Remove “Automobile sales or trucks sales” from heavy industrial
4	Table 4.1 Use Table	Remove “Automobile service stations” from heavy industrial
4	Table 4.1 Use Table	Remove “Retail automobile parts or tire store” as it will be included under “Retail, 5,000 sf or less” or “Retail, over 5,000 sf.”
4	Table 4.1 Use Table	Remove “Trailer or RV salesroom and lots”.
Office		
4	Table 4.1 Use Table	Remove “Accounting office” from list as it will be included under “Office, professional”
4	Table 4.1 Use Table	Add “Automobile Brokerage” to Office Institutional” and “Office Institutional Transitional”
4	Table 4.1 Use Table	Separate “Building, landscape, heavy construction contractor office” into “Contractor, Landscape business” and “Contractor office, heavy construction”. Remove from light and

Article	Section	Change
		heavy industrial as office only. It will be included as “office, professional”. May be a permitted use if incidental business/building
4	Table 4.1 Use Table	Remove “Engineering or architecture office” as it will be included under “Office, professional”.
4	Table 4.1 Use Table	Remove “Finance office or banking” as it will be included under “Office, professional”.
4	Table 4.1 Use Table	Change “General business office” to “Office, professional”.
4	Table 4.1 Use Table	Remove “Insurance office” as it will be included under “Office, professional”.
4	Table 4.1 Use Table	Remove “Legal office” as it will be included under “Office, professional”.
4	Table 4.1 Use Table	Change “Medical office” to “Office, medical”.
4	Table 4.1 Use Table	Remove “Real estate office” as it will be included under “Office, professional”.
Recreation and Entertainment		
4	Table 4.1 Use Table	Change “Indoor recreation” to “Recreation, indoor”. Remove from Light and Heavy Industrial
4	Table 4.1 Use Table	Change “Outdoor recreation” to “Recreation, outdoor”. Remove from Light and Heavy Industrial
4	Table 4.1 Use Table	Remove “Fairground Amusement Park” from Heavy Industrial
4	Table 4.1 Use Table	Remove “Night Club” or “Late Night Establishments” from Light and Heavy Industrial
Retail		
4	Table 4.1 Use Table	Remove “Apparel or accessories store” as it will be included under “Retail, 5,000 sf or less” or “Retail, over 5,000 sf.”
4	Table 4.1 Use Table	Remove “Book, greeting card or stationary story” as it will be included under “Retail, 5,000 sf or less” or “Retail, over 5,000 sf.”
4	Table 4.1 Use Table	Remove “Camera or photography” as it will be

Article	Section	Change
		included under “Retail, 5,000 sf or less” or “Retail, over 5,000 sf.”
4	Table 4.1 Use Table	Remove “Computer or computer software store” as it will be included under “Retail, 5,000 sf or less” or “Retail, over 5,000 sf.”
4	Table 4.1 Use Table	Remove “Convenience store (see alcohol outlet or fuel pumps accessory) as it will be included under “Retail, 5,000 sf or less”.
4	Table 4.1 Use Table	Remove “Drive-thru facilities” and “Farmer’s Market” Permanent from Light and Heavy Industrial.
4	Table 4.1 Use Table	Remove “Farm or garden supply store” as it will be included under “Retail, 5,000 sf or less” or “Retail, over 5,000 sf.”
4	Table 4.1 Use Table	Remove “Florist” as it will be included under “Retail, 5,000 sf or less” or “Retail, over 5,000 sf.”
4	Table 4.1 Use Table	Remove “Specialty food stores” as it will be included under “Retail, 5,000 sf or less” or “Retail, over 5,000 sf.”
4	Table 4.1 Use Table	Remove “Gift, novelty or souvenir store” as it will be included under “Retail, 5,000 sf or less” or “Retail, over 5,000 sf.”
4	Table 4.1 Use Table	Remove “Gold buying” as it will be included under “Retail, 5,000 sf or less” or “Retail, over 5,000 sf.”
4	Table 4.1 Use Table	Remove “Grocery store” as it will be included under “Retail, 5,000 sf or less” or “Retail, over 5,000 sf.”
4	Table 4.1 Use Table	Remove “Hardware store or other building materials store” as it will be included under “Retail, 5,000 sf or less” or “Retail, over 5,000 sf.”
4	Table 4.1 Use Table	Remove “Hobby, toy or game store” as it will be included under “Retail, 5,000 sf or less” or “Retail, over 5,000 sf.”
4	Table 4.1 Use Table	Remove “Jewelry store” as it will be included

Article	Section	Change
		under “Retail, 5,000 sf or less” or “Retail, over 5,000 sf.”
4	Table 4.1 Use Table	Remove “Music or music equipment store” as it will be included under “Retail, 5,000 sf or less” or “Retail, over 5,000 sf.”
4	Table 4.1 Use Table	Remove “News dealer or news store” as it will be included under “Retail, 5,000 sf or less” or “Retail, over 5,000 sf.”
4	Table 4.1 Use Table	Remove “Office supplies and equipment store” as it will be included under “Retail, 5,000 sf or less” or “Retail, over 5,000 sf.”
4	Table 4.1 Use Table	Remove “Pet supply store” as it will be included under “Retail, 5,000 sf or less” or “Retail, over 5,000 sf.”
4	Table 4.1 Use Table	Remove “Pharmacy or drug store (see alcohol outlet)” as it will be included under “Retail, 5,000 sf or less” or “Retail, over 5,000 sf.”
4	Table 4.1 Use Table	Remove “Radio, television or computer electronics store” as it will be included under “Retail, 5,000 sf or less” or “Retail, over 5,000 sf.”
4	Table 4.1 Use Table	Remove “Specialty store” as it will be included under “Retail, 5,000 sf or less” or “Retail, over 5,000 sf.”
4	Table 4.1 Use Table	Remove “Sporting goods store” as it will be included under “Retail, 5,000 sf or less” or “Retail, over 5,000 sf.”
4	Table 4.1 Use Table	Remove “Thrift, secondhand, antique store” as it will be included under “Retail, 5,000 sf or less” or “Retail, over 5,000 sf.”
4	Table 4.1 Use Table	Remove “Variety store” as it will be included under “Retail, 5,000 sf or less” or “Retail, over 5,000 sf.”
Temporary Commercial Uses		
4	Table 4.1 Use Table	Change “Temporary outdoor events” to “Temporary outdoor sales or event, seasonal”.

Article	Section	Change
Services		
4	Table 4.1 Use Table	Change “Adult day care center” to “Adult Day Center”.
~~4~~	~~Table 4.1 Use Table~~	~~Change “Adult day care facility” to “Adult daycare facility”.~~
4	Table 4.1 Use Table	Change “Kennel, breeding or boarding” to “Kennel, breeding”
4	Table 4.1 Use Table	Remove “Photoengraving, typesetting and electrotyping” as it will be included under “Retail, 5,000 sf or less” or “Retail, over 5,000 sf.”
4	Table 4.1 Use Table	Remove “Photographic studios” as it will be included under “Retail, 5,000 sf or less” or “Retail, over 5,000 sf.”
4	Table 4.1 Use Table	Remove “Plumbing, HV/AC equipment establishments with no outdoor storage” as it will be included under a new use and definition of “Trade shops”.
4	Table 4.1 Use Table	Change “Publishing or printing establishments” to “Printing or publishing establishments”.
4	Table 4.1 Use Table	Remove “Quick copy printing store” as it will be included under “Retail, 5,000 sf or less” or “Retail, over 5,000 sf.”
Services, Medical and Health		
4	Table 4.1 Use Table	Change “Health services clinic” to “Clinic, health services”.
4	Table 4.1 Use Table	Remove “Home healthcare service” as it will be included under a new use and definition of “Personal services establishment”.
4	Table 4.1 Use Table	Change “Medical or dental laboratory” to “Laboratory, medical or dental”.
Services, Repair		
4	Table 4.1 Use Table	Remove “Furniture upholstery or repair, home appliance repair or service” as it will be included

Article	Section	Change
		under a new use and definition of “Personal services establishment”.
4	Table 4.1 Use Table	Remove “Personal service, repair” as it will be included under “Personal services establishment”.
Industrial		
4	Table 4.1 Use Table	Remove “Adult Day Care” was approved to be removed at 5/23/2022 City Council
4	Table 4.1 Use Table	Remove “Alcohol or alcoholic beverage manufacturing” as it will be included under “Industrial, light”.
4	Table 4.1 Use Table	Remove “Alcohol outlet package stores” as it will be included under “Commercial as 5,000 sf of retail or less”
4	Table 4.1 Use Table	Remove “Automobile Brokerage” as it will be included under “Office Institutional” and “Office Institutional Transitional”
4	Table 4.1 Use Table	Remove “Automobile/truck manufacturing” as it will be included under “Industrial, heavy”.
4	Table 4.1 Use Table	Add “Brewpub/Beer Growler, Accessory” as it will be included under “Industrial, light”.
4	Table 4.1 Use Table	Remove “Automobile Brokerage” as it will be included under “Office Institutional” and “Office Institutional Transitional”
4	Table 4.1 Use Table	Add “Brewery Craft” as it will be included under “Industrial, light”.
4	Table 4.1 Use Table	Add “Brewery Large Scale” as it will be included under “Industrial, heavy”.
4	Table 4.1 Use Table	Remove “Brick, clay, tile or concrete products terracotta manufacturing” as it will be included under “Industrial, heavy”.
4	Table 4.1 Use Table	Remove “Cement, lime, gypsum, or plaster of Paris manufacturing” as it will be included under “Industrial, heavy”.

Article	Section	Change
4	Table 4.1 Use Table	Remove “Compressed gas fuel station” as it will be included under “Industrial, heavy” or “Industrial, light”.
4	Table 4.1 Use Table	Remove “Chemical manufacture, organic or inorganic” as it will be included under “Industrial, heavy”.
4	Table 4.1 Use Table	Add “Distillery Craft” as it will be included under “Industrial, light”.
4	Table 4.1 Use Table	Add “Distillery Large Scale” as it will be included under “Industrial, heavy”
4	Table 4.1 Use Table	Remove “Distillation of bones or glue manufacture” as this use is prohibited.
4	Table 4.1 Use Table	Remove “Dye works” as this use is prohibited.
4	Table 4.1 Use Table	Remove “Explosives manufacture” as this use is prohibited.
4	Table 4.1 Use Table	Remove “Fabricated metal manufacture” as it will be included under “Industrial, heavy”.
4	Table 4.1 Use Table	Remove “Fuel dealers, manufactures, or wholesalers” as manufacture is prohibited. “Fuel dealers or wholesalers” will be included under “Industrial, heavy” or “Industrial, light”.
4	Table 4.1 Use Table	Remove “Ice manufacturing plant” as it will be included under “Industrial, heavy”.
4	Table 4.1 Use Table	Remove “Incineration of garbage or refuse when conducted within an enclosed plant” as this use is prohibited.
4	Table 4.1 Use Table	Remove “Leather manufacturing or processing” as it will be included under “Industrial, heavy”.
4	Table 4.1 Use Table	Remove “Light malt beverage manufacturer” as it will be included under “Industrial, heavy” or “Industrial, light”.
4	Table 4.1 Use Table	Change “Light manufacturing” to “Manufacturing, light”.
4	Table 4.1 Use Table	Remove “Paper or pulp manufacture” as this use is prohibited.

Article	Section	Change
4	Table 4.1 Use Table	Remove “Petroleum or inflammable liquids production, refining” as this use is prohibited.
4	Table 4.1 Use Table	Remove “Radioactive materials, utilization, manufacture, processing or emission” as this use is prohibited.
4	Table 4.1 Use Table	Remove “Repair/manufacture of clocks, watches, toys, electrical appliances, electronics” as it will be included under “Industrial, light”.
4	Table 4.1 Use Table	Change “Research, experimental or testing laboratories” to “Research and training facilities”
4	Table 4.1 Use Table	Remove “Rubber or plastics manufacture” as this use is prohibited.
4	Table 4.1 Use Table	Remove “Smelting: copper, iron, zing or ore” as this use is prohibited.
4	Table 4.1 Use Table	Change “Storage yard for damaged or confiscated vehicles” to “Storage yard for vehicles”.
4	Table 4.1 Use Table	Remove “Sugar refineries” as this use is prohibited.
4	Table 4.1 Use Table	Remove “Tire retreading and recapping” as this use is prohibited.
4	Table 4.1 Use Table	Remove “Transportation equipment manufacture” as it will be included under “Industrial, heavy”.
4	Table 4.1 Use Table	Change “Truck stop or terminal” to two uses “Truck stop” and “Truck terminal” as they mean different things.
Communication - Utility		
4	Table 4.1 Use Table	Change “Electric transformer station, gas regulator station or telephone exchange” to “Essential services”.
Article	**Section**	**Change**
4	4.2.29 Heavy	Remove outdated reference to landfills.

	Industrial Uses	
4	4.2.49 Solid waste facility regulations	Deleted section, which included outdated reference to landfills which are now prohibited.
4	4.3.5 Temporary outdoor sales or events	Updated terms
6	Table 6.2 Off-street Parking Ratios	Updated terms
7	7.4.7.D. Biomedical waste facility	Removed outdated subsection dealing with prohibited use.
Agricultural		
Animal Oriented Agriculture		
9	9.1.3 Defined Terms	Add the following definition: "Livestock sales pavilion - any place or establishment conducted or operated for compensation or profit consisting of pens, or other enclosures, in which house horses, cattle, mules, burros, swine, sheep, goats and poultry are temporarily received, held, assembled and/or slaughtered for either public or private sale."
9	9.1.3 Defined Terms	Rename "Riding Stable" to "Riding academies or stables" and change existing definition to "Riding Academies or Stables - a building where horses and ponies are sheltered, fed, or kept and where riding lessons may be provided."
Residential		
Dwellings		
9	9.1.3 Defined Terms	Rename "Cottage Homes" to "Dwelling, cottage home".
9	9.1.3 Defined Terms	Rename "Live-work unit" to "Live/work unit".
Housing and Lodging		
9	9.1.3 Defined Terms	Delete "Home stay bed and breakfast" as it will be considered "Bed and Breakfast Establishment".
Institutional/Public		
Community Facilities		

9	9.1.3 Defined Terms	Add the following definition: "Government facilities - Buildings or office space utilized for the provision of services by the City of Stonecrest, DeKalb County, the State of Georgia, or the Federal Government including outdoor activities and parking. Such uses include, but are not limited to, the municipal building, fire stations, police stations, government offices, public parks and recreation related facilities and other similar uses."
9	9.1.3 Defined Terms	Add the following definition: "Swimming pools, commercial – any indoor or outdoor structure, chamber, or tank containing a body of water for swimming, diving, or bathing that is intended to be used for such purposes and is operated for profit through a membership or daily fee."
Commercial		
Automobile, boat and trailer sales and service		
9	9.1.3 Defined Terms	Change "Automobile repair and maintenance, major" to "Automobile repair, major".
9	9.1.3 Defined Terms	Change "Automobile repair and maintenance, minor" to "Automobile repair, minor".
Recreation and entertainment		
9	9.1.3 Defined Terms	Add the following definition: "Commercial entertainment means places of amusement or assembly including but not limited to motion picture theaters or cinemas, live theater, comedy clubs, bowling alleys, dance halls, skating rinks, etc. This definition does not include night clubs, party houses or brewpubs."
Office		
9	9.1.3 Defined Terms	Add the following definition: "Office, building or construction – a temporary structure used as an office or storage for construction operations and is located at the construction site."
9	9.1.3 Defined Terms	Change the definition of "General business See Office, professional."
Retail		

9	9.1.3 Defined Terms	Add the following definition: “Trade shops - a building designed and equipped for carrying on the trades of metal working, woodworking, welding, plumbing, HVAC, machine work, electrical work, roofing or siding and glasswork and includes contracting in these trades.”
Temporary Commercial Uses		
9	9.1.3 Defined Terms	Add the following definition “Temporary trailer – a enclosed or unenclosed structure, on wheels, that is used for temporary storage purposes.”
Transportation and Storage		
9	9.1.3 Defined Terms	Add the following definition: “Bus or rail station or terminal – a designated place where a bus or train temporarily stops to embark or disembark passengers. A terminal is the location where the bus or train starts or ends its scheduled route.”
9	9.1.3 Defined Terms	Change “Commercial Parking Lot” to “Parking lot, commercial” and add the following definition: “Parking lot, commercial - means any area designed for temporary storage of motor vehicles by the motoring public in normal operating condition, for profit.
9	9.1.3 Defined Terms	Change “Commercial parking garage” to “Parking garage, commercial”.
Services		
9	9.1.3 Defined Terms	Add the following definition: “Bank, credit unions or other similar financial institutions – any building, property or activity of which the principal use or purpose is for federally insured depository purposes and including the provision of financial services such as loans and automated teller machines, but does not include cash advance, check cashing establishments, short-term loan, and pay day lending.”
9	9.1.3 Defined Terms	Change “Check cashing facility to “Check cashing establishment’.

9	9.1.3 Defined Terms	Add the following definition: “Coin Laundry - an establishment with coin-operated clothing washing machines and dryers for public use.”
9	9.1.3 Defined Terms	Add the following definition: “Outdoor storage, commercial - the keeping, in an unenclosed area, of any goods, materials, or merchandise associated for a daily, monthly or annual fee. This term does not include the parking of any vehicles or outdoor display of merchandise.”
Industrial		
9	9.1.3 Defined Terms	Add the following definition: “Heavy equipment repair, service or trade – a building or lot used for the repair, servicing, lease or sale of heavy equipment.”
9	9.1.3 Defined Terms	Add the following definition: “Railroad car classification yard or team truck yard – An area used to separate rail cars onto one of several tracks or reconfigure team trucks into different configurations.”
9	9.1.3 Defined Terms	Modify the definition of “Tow service” to “Towing or wreckage service – a business engaged in the transport or conveyance of vehicles from one point to another, for a fee, by use of a flatbed truck, tow truck or wrecker truck but does not include disposal, permanent disassembly, salvage, or accessory storage of inoperable vehicles.”
9	9.1.3 Defined Terms	Revise the definition of Truck Terminal – “Truck terminal means a building, structure or place at an industrial facility where trucks load and unload cargo and freight and where the cargo and freight may be broken down or aggregated into smaller or larger loads for transfer to other trucks or modes of transportation. This is not intended for long term warehousing or storage of inventory or for retail sales, but to serve solely as a transfer facility. ”
9	9.1.3 Defined Terms	Add the following definition: “Warehousing or storage means a business establishment primarily engaged in the indoor or enclosed storage of merchandise, goods, and materials,

		not including “mini-warehouses”, “self-storage facilities,” or “truck terminals.”
Communication - Utility		
9	9.1.3 Defined Terms	Add the following definition: “Essential services - the erection, construction, alteration, or maintenance by public utilities or City departments of overhead, surface or underground gas, electrical steam, or water, distribution or transmission systems, collection, communication, supply or disposal systems, including mains, drains, sewers, pipes, conduits, tunnels, wires, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, poles, electrical substation, gas regulator stations and other similar equipment and accessories in connection therewith, reasonably necessary for the furnishing of adequate service by such utility or City department or for the public health, safety, or general welfare, shall be exempt from the regulations of this code. The installation shall conform to Federal Communications Commission and Federal Aviation Agency rules and regulations, and those of other authorities having jurisdiction.”
9	9.1.3 Defined Terms	Add the following definition: “Radio or television broadcasting studio - An establishment primarily engaged in the provision of broadcasting and other information relay services accomplished through the use of electronic, fiber optic, satellite, and telephonic mechanisms, including film and sound recording, a radio station, television studio or a telegraphic service office.”
9	9.1.3 Defined Terms	Add the following definition: “Radio or television broadcasting transmission facility - is an installation or facility used for transmitting terrestrial radio frequency and video signals for radio, television, wireless communication, broadcasting, microwave link, mobile telephone or other similar purposes.”
Wireless Telecommunication		

9	9.1.3 Defined Terms	Add the following definition: "Wireless Telecommunication Facilities – See Sub-section 4.2.57.B. – Supplemental Uses, Wireless telecommunications for the meaning of terms used in that section, including the following: 1. Accessory-equipment (or Equipment) 2. Administrative approval 3. Administrative review 4. Alternative Telecommunication Support Structure 5. Antenna 6. Applicant 7. Application 8. Attached wireless telecommunications facility 9. Carrier on wheels or cell on wheels (COW) 10. Collocate or collocation 11. Commission 12. Distributed antenna systems (DAS) 13. Equipment compound 14. FAA 15. FCC 16. Geographic search area (GSA) 17. Grantee 18. Guyed Structure 19. Height 20. Modification 21. Ordinary maintenance 22. Provider 23. Public Right(s)-of-Way 24. Public Street 25. Small Cell or Small-Cell Installation 26. Substantial increase in size 27. Telecommunications Facility 28. Telecommunications Service(s) 29. Telecommunications Support Structure 30. Utility 31. Visual Quality

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Chapter 27 ZONING ORDINANCE

ARTICLE 1. GENERAL REQUIREMENTS

DIVISION 1. GENERAL PROVISIONS

Sec. 1.1.1. Short title.

This chapter shall be known and shall be cited as the "Zoning Ordinance of Stonecrest, Georgia," and may be referred to herein as "zoning ordinance" or "this chapter."

(Ord. of 8-2-2017, § 1(1.1.1))

Sec. 1.1.2. Effective date.

This zoning ordinance was adopted on August 7, 2017, and became effective on August 7, 2017 (the "effective date"). As of the effective date, any pre-existing zoning ordinance shall be repealed.

(Ord. of 8-2-2017, § 1(1.1.2))

Sec. 1.1.3. Purpose and intent of code.

This chapter is enacted by the City of Stonecrest to promote the public health, safety, morals and general welfare of the residents of the City of Stonecrest, Georgia, and to implement the Comprehensive Plan. To these ends, this chapter is intended to achieve the following purposes:

A. To guide and regulate the orderly growth, development, redevelopment and preservation of the City of Stonecrest in accordance with a well-considered comprehensive plan and with long-term objectives, principles and standards deemed beneficial to the interest and welfare of the people;

B. To protect the established character of both private and public property;

C. To promote, in the public interest, the wise utilization of land;

D. To provide for adequate light, air, convenience of access, and safety from fire, flood and other dangers;

E. To reduce or prevent congestion in the public streets;

F. To facilitate the creation of a convenient, attractive and harmonious community;

G. To encourage an aesthetically attractive environment, both built and natural, and to provide for regulations that protect and enhance these aesthetic considerations;

H. To expedite the provision of adequate police and fire protection, safety from crime, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports and other public requirements;

I. To protect against destruction of, or encroachment upon, historic areas;

J. To protect against overcrowding of land, overcrowding of population in relation to the community facilities existing or available, obstruction of light and air, danger and congestion in travel and transportation, and loss of life or health or property from fire, flood, or other danger;

K. To encourage economic development activities that provide desirable employment and enlarge the tax base;

L. To promote the preservation of the unique natural and physical resources of the City including forested areas, riverbeds, stream beds, and archaeological sites;

M. To achieve compliance with all applicable state and federal regulations;

N. To protect the public welfare by protecting approach slopes and other safety areas of licensed airports;

O. To provide for and promote housing for all income groups and all citizens within the city;

P. To implement the authority, powers and duties of the planning commission and the zoning board of appeals pursuant to state and local law, including, but not limited to, Ga. Const. art. IX, section II, ¶ IV;

Q. To reduce or eliminate the secondary effects of sexually oriented businesses and other establishments that create such secondary effects while protecting legitimate constitutional rights of said establishments; and

R. To provide for protection of the constitutional rights and obligations of all citizens within the city.

(Ord. of 8-2-2017, § 1(1.1.3))

Sec. 1.1.4. Minimum requirements.

In their interpretation and application, the provisions of this chapter shall be considered minimum requirements for the promotion of the public health, safety, morals and general welfare, as set forth in section 1.1.3 hereof establishing the intent and purpose of this chapter. Within each zoning district, the regulations set forth shall be minimum requirements and shall apply uniformly to each class or kind of building, structure or land, except as may be altered through conditions of zoning applied to specific properties or variances or waivers, as provided for in article 7 of this chapter.

(Ord. of 8-2-2017, § 1(1.1.4))

Sec. 1.1.5. Authority.

This chapter is enacted pursuant to the City of Stonecrest's authority to adopt plans and exercise the power of zoning granted by the Ga. Const. art. IX, section II, ¶ IV; City of Stonecrest's authority to enact regulations and exercise powers granted by the Ga. Const. art. IX, section II, ¶¶ I and III; authority granted by the State of Georgia, the City of Stonecrest's Charter, and the Official Code of Georgia Annotated (O.C.G.A.); the city's general police powers; and other powers and authority provided by federal, state and local laws applicable hereto.

(Ord. of 8-2-2017, § 1(1.1.5))

Sec. 1.1.6. General applicability.

All buildings and structures erected hereafter, all uses of land, water, buildings or structures established hereafter, all structural alterations or relocations of existing buildings occurring hereafter, and all enlargements of, additions to, changes in and relocations of existing uses occurring hereafter shall be subject to all regulations of this chapter which are applicable to the zoning district or districts in which such buildings, structures, uses or land are located. Existing buildings, structures and uses which comply with the regulations of this chapter shall be subject to all regulations of this chapter. Existing buildings, structures and uses which do not comply with the regulations of this chapter shall be authorized to continue subject to the provisions of article 8 of this chapter relating to nonconformities.

(Ord. of 8-2-2017, § 1(1.1.6))

Sec. 1.1.7. Applicability to all property.

The regulations in this chapter shall apply to all buildings, structures, land and uses within the incorporated area of Stonecrest, Georgia.

(Ord. of 8-2-2017, § 1(1.1.7))

Sec. 1.1.8. General prohibition.

No building or structure, and no use of any building, structure, land, or property, and no lot of record, now or hereafter existing, shall hereafter be established, constructed, expanded, altered, moved, diminished, divided, eliminated or maintained in any manner except in conformity with the provisions of this chapter. No use of any land, building, structure or property shall be permitted unless expressly and specifically authorized in the district or districts within which said use is located or by the supplemental regulations contained in article 4 of this chapter. When a use is not directly mentioned, the director of planning may determine that the proposed use is functionally similar to an allowed land use, as listed in Table 4.1, Use Regulations. The city council subsequently amend the applicable definitions in article 9 of this chapter, pursuant to the amendment procedures in article 7 of this chapter.

(Ord. of 8-2-2017, § 1(1.1.8))

Sec. 1.1.9. Interpretation and authority to administer.

The director of planning is designated to administer, interpret and enforce the provisions of this chapter for all proposed zoning, variances, comprehensive planning, and applications requiring zoning compliance, including, but not limited to, subdivisions, site plans, permits and zoning compliance certifications for licenses and occupational taxes. Unless otherwise specified, where this zoning ordinance refers to "the director" or "the planning director," it shall mean the director of planning or his designee.

(Ord. of 8-2-2017, § 1(1.1.9))

Sec. 1.1.10. Components of zoning ordinance.

This chapter and the official zoning map and official overlay district maps of the city on file and maintained by the planning department shall together constitute the zoning ordinance.

(Ord. of 8-2-2017, § 1(1.1.10))

Sec. 1.1.11. Transitional provisions.

A. *New development.* Upon the effective date of this zoning ordinance or any subsequent amendment thereafter, any new building, structure or lot legally established shall be used, constructed or developed only in accordance with all applicable provisions of this zoning ordinance.

B. *Existing development.* Any existing use, lot, building or other structure legally established prior to the effective date of this zoning ordinance that does not comply with all of the provisions of this zoning ordinance shall be subject to the provisions of article 8 of this chapter, nonconformities.

C. *Transition to new zoning districts.* The zoning district names in effect under DeKalb County's prior version of its zoning ordinance are converted as shown in Table 1.1. To the extent other sections of the Code of the City of Stonecrest refer to such previous district names, unless and until such other sections are amended to

reflect a new intent, any reference to such previous district names shall be deemed to refer to both the previous district name and the new district name to which it is converted in this zoning ordinance.

D. *Pre-existing violations.* Any violation of the pre-existing zoning ordinance for which a citation has been issued as of the effective date of this zoning ordinance shall continue to be prosecuted subject to the penalties existing at the time of the issuance of the citation. If a violation of the pre-existing zoning ordinance existed as of the effective date of this zoning ordinance without a citation having been issued, and if the underlying activity that would have constituted a violation under the pre-existing zoning ordinance would not constitute a violation under this zoning ordinance, the violation shall be deemed to have been cured and no citation shall be issued.

E. *Completed applications prior to effective date of this zoning ordinance.*

1. Any proper and complete application (as defined in article 9 of this chapter) for a permit, license, rezoning, variance, or other approval that was submitted to and accepted by the DeKalb County planning department prior to the effective date of this zoning ordinance shall be evaluated by the City of Stonecrest based on the applicable law, rules, regulations and development standards in place at the time the application was submitted.

2. Applicants who submitted an application prior to the effective date of this zoning ordinance but who wish to proceed under the standards of this zoning ordinance may withdraw their application and submit a new application in accordance with the standards in this zoning ordinance and pay any fee required under this zoning ordinance.

F. *Prior approvals.*

1. *Zoning conditions.*

a. Any project that was approved prior to the effective date of the ordinance from which this chapter is derived by DeKalb County may be developed according to the provisions of the previously approved development, program, or plan. Where conditions were attached to such prior approval and such conditions conflict with a standard or requirement of this zoning ordinance, the previously approved zoning condition shall apply. If a previously approved development, program, plan or condition does not address a particular development standard or requirement of this zoning ordinance, the new standard or requirement of this zoning ordinance shall apply.

b. If an owner or applicant desires to have the standards and requirements of this chapter to apply instead of standards and requirements established by previously approved zoning conditions, the owner or applicant must apply for a zoning condition amendment, as provided in article 7 of this chapter.

c. Notwithstanding subsections A. and B. of this section, when no land disturbance or building permit has been issued on property located in an overlay district and on which a zoning condition was previously approved, and if the previously approved zoning condition is in conflict with the overlay district regulations, the overlay district regulations shall supersede the previously approved zoning condition.

2. *Development applications.* Projects with valid approvals or permits issued prior to the effective date of this zoning ordinance may be developed in accordance with the applicable law, rules, regulations and development standards in effect at the time of the approval or permit issuance, provided the permit or approval is valid and has not lapsed. Any reapplication for an expired approval or permit shall meet the standards of this zoning ordinance.

3. *Special land use permits.* Properties subject to a special land use permit that was approved prior to the effective date of this zoning ordinance shall continue to be subject to the terms of the special land use permit and previous zoning regulations even if the zoning district classification is amended to a new zoning district as part of the adoption of this zoning ordinance.

Table 1.1. Prior Zoning District Conversion to Established New Districts

Old District	New District by Type	District Name
Residential Single-Family Districts		
R-200	Residential Estate	RE
R-150		
R-30,000	Residential Large Lot	RLG
R-20,000		
R-100	Residential Medium Lot	R-100
R-85	Residential Medium Lot	R-85
R-75	Residential Medium Lot	R-75
R-60	Residential Small Lot	R-60
R-50		
MHP	Mobile Home Park	MHP
R-NVD	Neighborhood Conservation	RNC
Medium and High Density Residential Districts		
R-A5	Small Lot Residential Mix	RSM
R-A8		
R-CH		
R-CD		
R-DT		
TND		
RM-150		
RM-100	Medium Density Residential-1	MR-1
RM-85	Medium Density Residential-2	MR-2
RM-75		
New	High Density Residential-1	HR-1
RM-HD	High Density Residential-2	HR-2
New	High Density Residential-3	HR-3
Mixed Use Districts		
PC-1	Mixed Use Low Density	MU-1
New	Mixed Use Low-Medium Density	MU-2
New	Mixed Use Medium Density	MU-3
OCR	Mixed Use High Density	MU-4
PC-2, PC-3	Mixed Use Very High Density	MU-5
Nonresidential Districts		
NS	Neighborhood Shopping	NS
C-1	Local Commercial	C-1
C-2	General Commercial	C-2
O-I-T	Office-Institutional-Transitional	OIT
O-I	Office-Institutional	OI
O-D	Office-Distribution	OD
M	Light Industrial	M
M-2	Heavy Industrial	M-2

(Ord. of 8-2-2017, § 1(1.1.11))

Sec. 1.1.12. Relation to and conflict with other provisions.

The provisions of this chapter shall be interpreted and applied so as to constitute the minimum requirements for the promotion of the public health, safety, morals, and general welfare. Whenever any provision of this chapter imposes a greater requirement or a higher standard than is required by any federal or state law or other city ordinance, resolution or regulation, the provision of this chapter shall govern unless preempted by said federal or state law. Whenever any provision of any federal or state law or other city ordinance, resolution or regulation imposes a greater requirement or a higher standard than is required by this chapter, the provision of such state or federal statute or other city ordinance or regulation shall apply. Whenever any conflict arises between this chapter and chapter 14 of the Code of the City of Stonecrest, the provisions of this zoning ordinance shall prevail, with the exception of chapter 14, article II, environmental control. Compliance with the provisions of this chapter shall not be interpreted to obviate the requirements for compliance with any and all other provisions of federal or state law, or the Code, including, but not limited to, the requirements for licenses or permits of any kind.

(Ord. of 8-2-2017, § 1(1.1.12))

Sec. 1.1.13. Relation to private agreements.

This chapter is not intended to abrogate, annul or otherwise interfere with any easement, covenant or other private agreement or legal relationship, provided that when the regulations of this chapter are more restrictive or impose higher standards or requirements than such easements, covenants, or other private agreements or legal relationships, the regulations of this chapter shall govern. Private restrictive covenants to which the city is not a party shall not be regulated or enforced by the city under this chapter.

(Ord. of 8-2-2017, § 1(1.1.13))

Sec. 1.1.14. Zoning maps.

The city shall be divided into the zoning districts identified in articles 2 and 3 of this chapter, as depicted on the official zoning maps entitled "Official Zoning Map, Stonecrest, Georgia" (the "official zoning maps"). The official zoning maps, to be adopted contemporaneously with this chapter, together with all explanatory information contained or referenced thereon, is hereby adopted by reference and declared to be a part of this chapter.

The official zoning maps shall be adopted contemporaneously with this chapter in digital format and contained on a compact disk to be maintained in its original, unedited and unaltered form by the clerk to the city council. A printed copy of the compact disk's contents depicting the official zoning maps on the date of its initial adoption shall also be maintained in its original, unedited and unaltered form by the clerk to the city council.

Any subsequent amendments made by the city council to the official zoning maps after the initial date of adoption with this chapter shall be indicated on the digital version of the official zoning maps by the director of planning. The director of the planning shall continuously maintain the digital version of the official zoning maps so that they accurately show all amendments made thereto by the city council since the initial date of adoption, indicating the dates of said amendments. A copy of the updated and current version of the official zoning maps in digital format, showing all amendments thereto since the date of initial adoption, shall be held in the custody of the director of planning.

Any conditions of zoning related to any property, either existing at the time of initial adoption imposed by DeKalb County or subsequently imposed by the city council shall be on the official zoning maps, with reference to the applicable zoning case number. The clerk to the city council shall maintain custody of the minutes applicable to the referenced zoning case numbers adopted by the City of Stonecrest, which state the zoning conditions. The director of planning shall maintain the minutes applicable to zoning conditions adopted by DeKalb County prior to the incorporation of the City of Stonecrest. All conditions referenced in the minutes of DeKalb County on parcels previously imposed by DeKalb County are hereby adopted and incorporated as if they were adopted by the City of

Stonecrest. If there is a conflict between the conditions on the official zoning map, or the condition is not depicted on the official zoning map, the conditions imposed in the text of the minutes incorporating the conditions shall apply. Uncertified copies of the official zoning maps may be provided to the public for informational purposes only.

Verifications of the current zoning status of property shall be the responsibility of the director of planning. To verify the current zoning status of a particular parcel, an individual may obtain a certified copy of the official zoning maps, or a portion thereof, from the director of planning. Certified copies of the official zoning maps, or portions thereof, shall be certified by the director of planning with his signature and the date on which the portions were certified. The director of planning shall be the final authority as to the current zoning status of all land, buildings and structures located in the city, except for:

(1) Amendments enacted by the city council but not yet depicted on the official zoning maps; and

(2) Uncertainties to be clarified by the city council as described in section 1.1.15.

Any inaccuracy on the official zoning maps that is reasonably determined to be a scrivener's error may be corrected by the planning director.

(Ord. of 8-2-2017, § 1(1.1.14))

Sec. 1.1.15. Interpretation of zoning maps.

Where uncertainty exists as to the boundaries of zoning districts as shown on the official zoning maps, the following rules shall apply:

A. Boundaries indicated as approximately following the centerlines of streets, highways, or alleys shall be construed to follow centerlines of rights-of-way or prescriptive easements. In case of closure of a street or alley, or vacation of any easement, the boundary shall be construed as remaining at its prior location unless ownership of the closure or vacated area is divided other than at the center, in which case the boundary shall be construed as moving to correspond with the ownership, but not beyond any previous right-of-way or easement line.

B. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.

C. Boundaries indicated as approximately following city limit lines shall be construed as following such city limits.

D. Boundaries indicated as approximately following railroad lines shall be construed to be midway in the right-of-way.

E. Boundaries indicated as approximately following shorelines of bodies of water shall be construed to follow such shorelines. Boundaries indicated as approximately following the centerlines of creeks, streams, rivers, or other predominantly linear bodies of water shall be construed to follow such centerlines.

F. Boundaries indicated as parallel to or concentric with, or extensions of features indicated in sections A. through E. of this section, shall be so construed. Distances and dimensions not specifically indicated on the official zoning map shall be determined from the official zoning map by the director of planning.

G. Where areas appear to be unclassified on the official zoning map, and classification cannot be established by the above rules, such areas shall be considered to be classified Residential Estate (RE) until action is taken by the city council to amend the official zoning map.

H. Where territory is added to the jurisdictional area, it shall be considered to be classified Residential Estate (RE) until action is taken by the city council to amend the official zoning map.

I. Where uncertainties continue to exist or further interpretation is required beyond that provided for in the above sections, the question shall be presented by the director of planning to the city council to

enact a clarifying resolution and said action shall be recorded on the official zoning map as is provided herein.

(Ord. of 8-2-2017, § 1(1.1.15))

Sec. 1.1.16. Rules applicable to parcels split into two or more zoning districts.

Where a parcel of land is split into two or more zoning districts, each such portion of said parcel may only be used for the purposes allowed within the zoning district to which each respective portion is classified. No principal or accessory use of land, buildings or structures, and no use or building or structure authorized by special administrative permit, special land use permit, or special exception, shall be authorized unless said use or building or structure is authorized or permitted within the applicable zoning district.

(Ord. of 8-2-2017, § 1(1.1.16))

Sec. 1.1.17. Reserved.

Sec. 1.1.18. Transition period.

In the event that chapter 27 references a code, section, plan, or ordinance of DeKalb County that has not been adopted, amended or developed by the City of Stonecrest, DeKalb County's current version of the code, section, plan or ordinance shall apply. In the event that chapter 27 refers to a department or official not yet created in the City of Stonecrest, the reference shall refer to the planning director or his designee.

(Ord. of 8-2-2017, § 1(1.1.18))

Sec. 1.1.19. Annexation.

When the city is a qualified municipality pursuant to O.C.G.A. § 36-66-4(e), all annexed property shall be zoned without further action for the same use for which that property was zoned immediately prior to annexation.

(Ord. of 8-2-2017, § 1(1.1.19))

DIVISION 2. RELATIONSHIP TO COMPREHENSIVE PLAN

Sec. 1.2.1. Relationship to comprehensive plan.

A. Role of the comprehensive plan. The city comprehensive plan, consisting of its future development map and related policies, as may be amended from time to time, is hereby established as the official policy of the city concerning designated future land uses, and as a guide to decisions regarding the appropriate manner in which property may be zoned in the incorporated areas of the city. A copy of the city comprehensive plan, as may be amended from time to time, shall be maintained at the Planning & Zoning Department and be available for inspection by the public.

B. Relationship between the comprehensive plan and zoning. The city comprehensive plan does not change the existing zoning districts in the city, and does not itself permit or prohibit any existing or future land uses. Instead, the comprehensive plan establishes broad planning policy for current and future land uses and will be consulted as a guideline for making decisions about applications to amend the official city zoning map and text of the zoning ordinance.

C. Consistency with comprehensive plan character areas. Any applicant seeking to rezone property to a classification that is inconsistent with the adopted comprehensive plan must first obtain approval of an amendment to the comprehensive plan from the City Council, following the procedures in this Zoning Ordinance.

D. Amendments to the comprehensive plan. The comprehensive plan shall be reviewed and updated or amended (as appropriate) according to a schedule approved by the City Council, and as required by the DCA in compliance with the Rules of DCA, Chapter 110-12-1, Minimum Standards and Procedures for Local Comprehensive Planning. However, exceptions may be granted by the City Council in between the regular review and update cycle in cases of demonstrated hardship, or in cases of large-scale developments that may provide special economic benefits to the community. Requests for amendment exceptions shall be subject to same approval process as any regular scheduled comprehensive plan update, being subject to approval by City Council after receiving recommendations from the Planning Commission and following all the required elements of public involvement process, including public hearings.

[TMOD-21-001]

ARTICLE 2. DISTRICT REGULATIONS

DIVISION 1. ESTABLISHMENT OF DISTRICTS

Sec. 2.1.1. Districts established.

City of Stonecrest establishes the following zoning districts listed in Table 2.1, which apply to property as illustrated on the official zoning map. See article 3 of this chapter for overlay districts.

Table 2.1. Zoning Districts Established

District Name	District Type
Residential Single-Family Districts	
RE	Residential Estate
RLG	Residential Large Lot
R-100	Residential Medium Lot-100
R-85	Residential Medium Lot-85
R-75	Residential Medium Lot-75
R-60	Residential Small Lot
MHP	Mobile Home Park
RNC	Neighborhood Conservation
Medium and High Density Residential Districts	
RSM	Small Lot Residential Mix
MR-1	Medium Density Residential-1
MR-2	Medium Density Residential-2
HR-1	High Density Residential-1
HR-2	High Density Residential-2
HR-3	High Density Residential-3
Mixed Use Districts	
MU-1	Mixed-Use Low Density
MU-2	Mixed-Use Low-Medium Density
MU-3	Mixed-Use Medium Density
MU-4	Mixed-Use High Density
MU-5	Mixed-Use Very High Density
Nonresidential Districts	
NS	Neighborhood Shopping
C-1	Local Commercial
C-2	General Commercial
OD	Office-Distribution
OI	Office-Institutional
OIT	Office-Institutional-Transitional
M	Light Industrial
M-2	Heavy Industrial

(Ord. of 8-2-2017, § 1(2.1.1))

Sec. 2.1.2. Prior district classifications and conversion.

The zoning district classifications established prior to the effective date of this zoning ordinance in DeKalb County that are no longer active shall be treated as classifications as shown in article 1 of this chapter, Table 1.1.

(Ord. of 8-2-2017, § 1(2.1.2))

Sec. 2.1.3. Additional regulations.

Additional regulations for a variety of development and building types can be found in article 4 of this chapter (use regulations), article 5 of this chapter (site development regulations), and article 6 of this chapter (parking). Street type classifications for front setback requirements are set forth in chapter 14.

(Ord. of 8-2-2017, § 1(2.1.3))

Sec. 2.1.4. Reserved.

(Ord. of 8-2-2017, § 1(2.1.4))

[TMOD-21-001]

Sec. 2.1.5. Permitted uses.

Permitted principal and accessory uses by zoning district, and whether a use is allowed by right or only with special approval, are set forth in Table 4.1. Table 4.1 also provides additional notation where supplemental regulations, also found in article 4 of this chapter, may apply.

DIVISION 2. RESIDENTIAL ZONING DISTRICTS: DIMENSIONAL REQUIREMENTS

Sec. 2.2.1. Dimensional requirements.

Dimensional requirements, such as overall site requirements, individual lot dimensions, and setbacks for residential zoning districts are established in Table 2.2, Residential Zoning Districts Dimensional Requirements. Residential infill development may also be subject to compatibility regulations as specified in sections 5.2.3 and 5.2.4.

Table 2.2. Residential Zoning Districts Dimensional Requirements

Residential Single-Family Zoning Districts								
KEY: Housing Types: SF: Single-Family, TF: Two-Family, TRF: Three-Family, MF: Multifamily								
Element	*RE*	*RLG*	*R-100*	*R-85*	*R-75*	*R-60*	*MHP*	*RNC*[*]
Lot Dimensions (minimum)								
Lot area (square feet)	43,560 (1 acre)	20,000	15,000	12,000	10,000	6,000/3,500 cottage	Parks: 20 acres Lots: 4,000	*
Lot width, street	150	65	100	85	75	60	Parks: 400 Lots: 50	*

frontage (feet)								
Lot width at building line (feet)	150	65	100	85	75	60	N/A	*
Lot width fronting cul-de-sac (feet)	35	35	35	35	35	35	N/A	*
Lot coverage (maximum percent)	25	30	35	35	35	35	N/A	*
Building Setbacks (minimum) Subject to article 5 of this chapter, Averaging Requirements								
Front thoroughfares (feet)	60	70	50	50	45	30	Parks: 250 Lots: 10	*
Front arterials (feet)	50	60	40	40	35	20	150	*
Front collector and all other streets (feet)	45	55	35	35	30	If RC/TC/NC: 15 If SUB: 20	100	*
Front with alley access (feet)	N/A	25	25	25	25	10	Parks: N/A Lots: 10	*
Side - interior building setback (feet)	20	10	10	8.5	7.5	7.5	Parks: 50 Lots: 7.5	*
Side - corner lot on public street (feet)**	Same as district indicates front setback, following street type along the corner side property line							
Rear (feet)	40	40	40	40	40	30	Parks: 40**** Lots: 7.5****	*
Unit Size, heated living area (minimum)								
Unit size (square feet)	2,000	2,000	2,000	1,800	1,600	1,200 If cottage: 800—1,200	N/A	*
Height (maximum)								
Main building (feet) (Residential infill overlay = 28 feet)	35	35	35	35	35	35	35	*
Accessory building (feet)	24	24	24	24	24	24	N/A	*
Open Space (minimum percent)								
Open space	20 percent***	20 percent***	20 percent***	20 percent***	20 percent***	20 percent***	20 percent***	*

* See division 10 of this article.

** See article 5 of this chapter, corner lots section for reduction eligibility.

*** Open space requirement shall apply to new subdivisions if project is >five acres or >36 units (chapter 14).

**** 100 feet if adjacent to property zoned or used for residential purposes.

(Ord. of 8-2-2017, § 1(2.1.5))

[TMOD-21-001]

DIVISION 3. RE (RESIDENTIAL ESTATE) DISTRICT

Sec. 2.3.1. Statement of purpose and intent.

The purpose and intent of the City Council in establishing the RE (Residential Estate) District is as follows:

A. To preserve rural and estate residential character and to provide for very low density rural residential uses.

B. To provide for the protection of neighborhoods within the city where lots have a minimum area of one acre;

C. To provide protections for existing development as new subdivisions are created;

D. To ensure that the uses and structures authorized in the RE (Residential Estate) District are those uses and structures designed to serve the housing, recreational, educational, religious, and social needs of the neighborhood;

E. To provide for appropriately sized accessible and useable open space in new developments for the health, recreational and social opportunities for city citizens;

F. To provide areas for agricultural uses as appropriate;

G. To implement the future development map of the city's comprehensive plan.

(Ord. of 8-2-2017, § 1(2.3.1))

Sec. 2.3.2. Permitted and special land uses.

Permitted uses and uses requiring special land use permits shall be as provided below. In cases where a use is permitted but there are supplemental use regulations for that use specified in article 4 of this chapter, such regulations shall also apply.

(Ord. of 8-2-2017, § 1(2.3.2)) [TMOD-22-001]

A. Permitted Uses

The following uses are permitted as of right under this code:

1. Agricultural Activities

a. Dairy; see section 4.2

b. Keeping of livestock; see section 4.2

c. Keeping of poultry/pigeons; see section 4.2

d. Livestock sales pavilion; see section 4.2

e. Riding academies or stables; see section 4.2

f. Sawmill, temporary or portable; see section 4.2

g. Urban Community Garden, up to 5 acres; see section 4.2

2. Residential

a. Dwelling, single-family (detached)

3. Institutional/Public

a. Golf course or clubhouse, public or private; see section 4.2

b. Government facilities

c. Neighborhood or subdivision clubhouse or amenities; see section 4.2

d. School, public kindergarten, elementary, middle or high schools

4. Commercial

a. Kennel, noncommercial

5. Communications – Utility

a. Essential services

b. Satellite television antenna; see section 4.2

6. Wireless Telecommunications

a. Carrier on Wheels (declared emergency); see section 4.2

B. Special Administrative Uses

The following uses are permitted only with administrative approval:

1. Agricultural

a. Urban, community garden, over 5 acres

2. Residential

a. Home occupation, no customer contact; see section 4.2

b. Party house

3. Commercial

a. Farmer's market, temporary/seasonal; see section 4.2

b. Temporary outdoor retail sales; see section 4.2

c. Temporary outdoor sales or events, seasonal; see section 4.2

d. Temporary produce stand; see section 4.2

e. Temporary trailer, as home sales office or construction trailer; see section 4.2

4. Wireless Telecommunications

a. Attached wireless telecommunication facility used for non-residential purposes (prohibited if used as residential)

b. Carrier on wheels (non-emergency or event, no more than 120 days); see section 4.2

c. Small cell installations (new support structures or collocation) on private property or ROW; see section 4.2

C. Special Land Use Permit

The following uses are permitted only with a special land use permit:

1. Residential

a. Bed and breakfast establishment; see section 4.2

b. Home occupation, with customer contact; see section 4.2

c. Child care home, 5 or less; see section 4.2

d. Convents or monasteries; see section 4.2

e. Personal care home, 6 or less; see section 4.2

f. Senior housing; see section 4.2

g. Short-term vacation rental

2. Institutional/Public

a. Cemetery, columbarium, mausoleum; see section 4.2

b. Places of worship; see section 4.2

c. Recreation club; see section 4.2

d. School, private kindergarten, elementary, middle or high schools; see section 4.2

e. Special events facility

f. Swimming pools, commercial; see section 4.2

3. Commercial

a. Adult daycare facility, up to 6; see section 4.2

b. Animal shelter/rescue center; see section 4.2

c. Child day care facility, up to 6; see section 4.2

d. Kennel, breeding; see section 4.2

e. Kennel, commercial

4. Communication – Utility

a. Amateur radio service or antenna; see section 4.2

5. Wireless Telecommunication

a. New support structure from 51 feet to 150 feet; see section 4.2

D. Permitted Accessory

The following uses are permitted as accessory only to a principal use:

1. Residential
   a. Accessory uses and structures
   b. Dwelling, single-family , accessory (guesthouse, in-law suite); see section 4.2
2. Institutional/Public
   a. Educational use, private; see section 4.2
   b. Tennis courts, swimming pools, play or recreation areas, community; see section 4.2
3. Commercial
   a. Fitness center

[TMOD-22-001]

Sec. 2.3.3. Dimensional requirements.

Dimensional requirements for the RE (Residential Estate) District shall be as provided in Table 2.2, Residential Zoning Districts Dimensional Requirements.

(Ord. of 8-2-2017, § 1(2.3.3))

Sec. 2.3.4. Site and building design standards.

Design standards and regulations to be applied in this zoning district shall be as provided in article 5 of this chapter, site design and building form standards.

(Ord. of 8-2-2017, § 1(2.3.4))

DIVISION 4. RLG (RESIDENTIAL LARGE LOT) DISTRICT

Sec. 2.4.1. Statement of purpose and intent.

The purpose and intent of the City Council in establishing the RLG (Residential Large Lot) District is as follows:

A. To provide for the protection of neighborhoods within City of Stonecrest where lots have a minimum area of 20,000 square feet, but may have narrow lot widths;

B. To provide for compatible infill development in neighborhoods;

C. To provide protections for existing development as new subdivisions are created;

D. To respond to existing site development conditions and patterns;

E. To ensure that the uses and structures authorized in the RLG (Residential Large Lot) District are those uses and structures designed to serve the housing, recreational, educational, religious, and social needs of the neighborhood;

F. To provide for appropriately sized accessible and useable open space in new developments for health, recreational and social opportunities for city residents;

G. To implement the future development map of the city's comprehensive plan.

(Ord. of 8-2-2017, § 1(2.4.1))

Sec. 2.4.2. Permitted and special land uses.

Permitted uses and uses requiring special land use permits shall be as provided below. In cases where a use is permitted but there are supplemental use regulations for that use specified in article 4 of this chapter, such regulations shall also apply.

(Ord. of 8-2-2017, § 1(2.4.2)) [TMOD-22-001]

A. Permitted Uses

The following uses are permitted as of right under this code:

1. Agricultural Activities
   a. Keeping of livestock; see section 4.2
   b. Keeping of poultry/pigeons; see section 4.2
   c. Riding academies or stables; see section 4.2
   d. Urban Community Garden, up to 5 acres; see section 4.2
2. Residential
   a. Dwelling, single-family (detached)
3. Institutional/Public
   a. Golf course or clubhouse, public or private; see section 4.2
   b. Government facilities
   c. Neighborhood or subdivision clubhouse or amenities; see section 4.2
   d. School, public kindergarten, elementary, middle or high schools
4. Communications – Utility
   a. Essential services
   b. Satellite television antenna; see section 4.2
5. Wireless Telecommunications
   a. Carrier on Wheels (declared emergency); see section 4.2

B. Special Administrative Uses

The following uses are permitted only with administrative approval:

1. Agricultural
   a. Urban, community garden, over 5 acres
2. Residential
   a. Home occupation, no customer contact; see section 4.2
   b. Party house
3. Commercial
   a. Farmer's market, temporary/seasonal; see section 4.2
   b. Temporary outdoor retail sales; see section 4.2
   c. Temporary outdoor sales or events, seasonal; see section 4.2
   d. Temporary produce stand; see section 4.2
   e. Temporary trailer, as home sales office or construction trailer; see section 4.2
4. Wireless Telecommunications
   a. Attached wireless telecommunication facility used for non-residential purposes (prohibited if used as residential)
   b. Carrier on wheels (non-emergency or event, no more than 120 days); see section 4.2
   c. Small cell installations (new support structures or collocation) on private property or ROW; see section 4.2

C. Special Land Use Permit

The following uses are permitted only with a special land use permit:

1. Residential
   a. Bed and breakfast establishment; see section 4.2
   b. Home occupation, with customer contact; see section 4.2
   c. Child care home, 5 or less; see section 4.2
   d. Convents or monasteries; see section 4.2
   e. Personal care home, 6 or less; see section 4.2
   f. Senior housing; see section 4.2
   g. Short-term vacation rental
2. Institutional/Public
   a. Cemetery, columbarium, mausoleum; see section 4.2
   b. Places of worship; see section 4.2
   c. Recreation club; see section 4.2
   d. School, private kindergarten, elementary, middle or high schools; see section 4.2
   e. Swimming pools, commercial; see section 4.2
3. Commercial
   a. Adult daycare facility, up to 6; see section 4.2
   b. Child day care facility, up to 6; see section 4.2
   c. Kennel, noncommercial
4. Communication – Utility
   a. Amateur radio service or antenna; see section 4.2
5. Wireless Telecommunication
   a. New support structure from 51 feet to 150 feet; see section 4.2

D. Permitted Accessory

The following uses are permitted as accessory only to a principal use:

1. Residential
   a. Accessory uses and structures
   b. Dwelling, single-family , accessory (guesthouse, in-law suite); see section 4.2
2. Institutional/Public
   a. Educational use, private; see section 4.2
   b. Tennis courts, swimming pools, play or recreation areas, community; see section 4.2
3. Commercial
   a. Fitness center

[TMOD-22-001]

Sec. 2.4.3. Dimensional requirements.

Dimensional requirements for the R-LG District shall be as provided in Table 2.2, Residential Zoning Districts Dimensional Requirements.

(Ord. of 8-2-2017, § 1(2.4.3))

Sec. 2.4.4. Site and building design standards.

Design standards and regulations to be applied in this zoning district shall be as provided in article 5 of this chapter, site design and building form standards.

(Ord. of 8-2-2017, § 1(2.4.4))

DIVISION 5. R-100 (RESIDENTIAL MEDIUM LOT-100) DISTRICT

Sec. 2.5.1. Statement of purpose and intent.

The purpose and intent of the City Council in establishing the R-100 (Residential Medium Lot-100) District is as follows:

A. To provide for the protection of neighborhoods within the city where lots have a minimum area of 15,000 square feet;

B. To provide for compatible infill development in neighborhoods;

C. To provide protections for existing development as new subdivisions are created;

D. To provide flexibility in design on the interior of new development while protecting surrounding development;

E. To ensure that the uses and structures authorized in the R-100 (Residential Medium Lot-100) District are those uses and structures designed to serve the housing, recreational, educational, religious, and social needs of the neighborhood;

F. To provide for appropriately sized accessible and useable open space in new developments for health, recreational and social opportunities for city residents; and

G. To implement the future development map of the city's comprehensive plan.

(Ord. of 8-2-2017, § 1(2.5.1))

Sec. 2.5.2. Permitted and special land uses.

Permitted uses and uses requiring special land use permits shall be as provided below. In cases where a use is permitted but there are supplemental use regulations for that use specified in article 4 of this chapter, such regulations shall also apply.

(Ord. of 8-2-2017, § 1(2.5.2)) [TMOD-22-001]

A. Permitted Uses

The following uses are permitted as of right under this code:

1. Agricultural Activities
   a. Keeping of livestock; see section 4.2
   b. Keeping of poultry/pigeons; see section 4.2
   c. Riding academies or stables; see section 4.2
   d. Urban Community Garden, up to 5 acres; see section 4.2

2. Residential
   a. Dwelling, single-family (detached)

3. Institutional/Public
   a. Golf course or clubhouse, public or private; see section 4.2
   b. Government facilities
   c. Neighborhood or subdivision clubhouse or amenities; see section 4.2

d. School, public kindergarten, elementary, middle or high schools

4. Communications – Utility
   a. Essential services
   b. Satellite television antenna; see section 4.2

5. Wireless Telecommunications
   a. Carrier on Wheels (declared emergency); see section 4.2

B. Special Administrative Uses

The following uses are permitted only with administrative approval:

1. Agricultural
   a. Urban, community garden, over 5 acres

2. Residential
   a. Home occupation, no customer contact; see section 4.2

3. Commercial
   a. Farmer's market, temporary/seasonal; see section 4.2
   b. Temporary outdoor retail sales; see section 4.2
   c. Temporary outdoor sales or events, seasonal; see section 4.2
   d. Temporary produce stand; see section 4.2
   e. Temporary trailer, as home sales office or construction trailer; see section 4.2

4. Wireless Telecommunications
   a. Attached wireless telecommunication facility used for non-residential purposes (prohibited if used as residential)
   b. Carrier on wheels (non-emergency or event, no more than 120 days); see section 4.2
   c. Small cell installations (new support structures or collocation) on private property or ROW; see section 4.2

C. Special Land Use Permit

The following uses are permitted only with a special land use permit:

1. Residential
   a. Bed and breakfast establishment; see section 4.2
   b. Home occupation, with customer contact; see section 4.2
   c. Child care home, 5 or less; see section 4.2
   d. Convents or monasteries; see section 4.2
   e. Personal care home, 6 or less; see section 4.2
   f. Senior housing; see section 4.2
   g. Short-term vacation rental
2. Institutional/Public
   a. Cemetery, columbarium, mausoleum; see section 4.2
   b. Places of worship; see section 4.2
   c. Recreation club; see section 4.2
   d. School, private kindergarten, elementary, middle or high schools; see section 4.2
   e. Swimming pools, commercial; see section 4.2

3. Commercial
   a. Adult daycare facility, up to 6; see section 4.2
   b. Child day care facility, up to 6; see section 4.2

c. Kennel, noncommercial

4. Communication – Utility
   a. Amateur radio service or antenna; see section 4.2

5. Wireless Telecommunication
   a. New support structure from 51 feet to 150 feet; see section 4.2

D. Permitted Accessory

The following uses are permitted as accessory only to a principal use:

1. Residential
   a. Accessory uses or structures
   b. Dwelling, single-family, accessory (guesthouse, in-law suite); see section 4.2

2. Institutional/Public
   a. Educational use, private; see section 4.2
   b. Tennis courts, swimming pools, play or recreation areas, community; see section 4.2

3. Commercial
   a. Fitness center

[TMOD-22-001]

Sec. 2.5.3. Dimensional requirements.

Dimensional requirements for the R-100 (Residential Medium Lot-100) District shall be as provided in Table 2.2, Residential Zoning Districts Dimensional Requirements.

(Ord. of 8-2-2017, § 1(2.5.3))

Sec. 2.5.4. Site and building design standards.

Design standards and regulations to be applied in this zoning district shall be as provided in article 5 of this chapter, site design and building form standards.

(Ord. of 8-2-2017, § 1(2.5.4))

DIVISION 6. R-85 (RESIDENTIAL MEDIUM LOT-85) DISTRICT

Sec. 2.6.1. Statement of purpose and intent.

The purpose and intent of the City Council in establishing the R-85 (Residential Medium Lot-85) District is as follows:

A. To provide for the protection of neighborhoods within the city where lots have a minimum area of 12,000 square feet;

B. To provide for compatible infill development in neighborhoods;

C. To provide protections for existing development as new subdivisions are created;

D. To provide flexibility in design on the interior of new development while protecting surrounding development;

E. To ensure that the uses and structures authorized in the R-85 (Residential Medium Lot-85) District are those uses and structures designed to serve the housing, recreational, educational, religious, and social needs of the neighborhood;

F. To provide for appropriately sized accessible and useable open space in new developments for health, recreational and social opportunities for city residents;

G. To implement the future development map of the city's comprehensive plan.

(Ord. of 8-2-2017, § 1(2.6.1))

Sec. 2.6.2. Permitted and special land uses.

Permitted uses and uses requiring special land use permits shall be as provided below. In cases where a use is permitted but there are supplemental use regulations for that use specified in article 4 of this chapter, such regulations shall also apply.

(Ord. of 8-2-2017, § 1(2.6.2)) [TMOD-22-001]

A. Permitted Uses

The following uses are permitted as of right under this code:

1. Agricultural Activities
   a. Keeping of livestock; see section 4.2
   b. Keeping of poultry/pigeons; see section 4.2
   c. Riding academies or stables; see section 4.2
   d. Urban Community Garden, up to 5 acres; see section 4.2

2. Residential
   a. Dwelling, single-family (detached)

3. Institutional/Public
   a. Golf course or clubhouse, public or private; see section 4.2
   b. Government facilities
   c. Neighborhood or subdivision clubhouse or amenities; see section 4.2
   d. School, public kindergarten, elementary, middle or high schools

4. Communications – Utility

a. Essential services
b. Satellite television antenna; see section 4.2

5. Wireless Telecommunications
a. Carrier on Wheels (declared emergency); see section 4.2

B. Special Administrative Uses
The following uses are permitted only with administrative approval:
1. Agricultural
a. Urban, community garden, over 5 acres

2. Residential
a. Home occupation, no customer contact; see section 4.2

3. Commercial
f. Farmer's market, temporary/seasonal; see section 4.2
g. Temporary outdoor retail sales; see section 4.2
h. Temporary outdoor sales or events, seasonal; see section 4.2
i. Temporary produce stand; see section 4.2
j. Temporary trailer, as home sales office or construction trailer; see section 4.2

4. Wireless Telecommunications
a. Attached wireless telecommunication facility used for non-residential purposes (prohibited if used as residential)
b. Carrier on wheels (non-emergency or event, no more than 120 days); see section 4.2
c. Small cell installations (new support structures or collocation) on private property or ROW; see section 4.2

C. Special Land Use Permit
The following uses are permitted only with a special land use permit:
1. Residential
a. Home occupation, with customer contact; see section 4.2
b. Child care home, 5 or less; see section 4.2
c. Convents or monasteries; see section 4.2
d. Personal care home, 6 or less; see section 4.2
e. Senior housing; see section 4.2

2. Institutional/Public
a. Cemetery, columbarium, mausoleum; see section 4.2
b. Places of worship; see section 4.2
c. Recreation club; see section 4.2
d. School, private kindergarten, elementary, middle or high schools; see section 4.2
e. Swimming pools, commercial; see section 4.2

3. Commercial
a. Adult daycare facility, up to 6; see section 4.2
b. Child day care facility, up to 6; see section 4.2
c. Kennel, noncommercial

4. Communication – Utility
b. Amateur radio service or antenna; see section 4.2

5. Wireless Telecommunication
   a. New support structure from 51 feet to 150 feet; see section 4.2

D. Permitted Accessory
The following uses are permitted as accessory only to a principal use:
1. Residential
   a. Accessory uses or structures
   b. Dwelling, single-family , accessory (guesthouse, in-law suite); see section 4.2

2. Institutional/Public
   a. Educational use, private; see section 4.2
   b. Tennis courts, swimming pools, play or recreation areas, community; see section 4.2

3. Commercial
   a. Fitness center

[TMOD-22-001]

Sec. 2.6.3. Dimensional requirements.

Dimensional requirements for the R-85 (Residential Medium Lot-85) District shall be as provided in Table 2.2, Residential Zoning Districts Dimensional Requirements.

(Ord. of 8-2-2017, § 1(2.6.3))

Sec. 2.6.4. Site and building design standards.

Design standards and regulations to be applied in this zoning district shall be as provided in article 5 of this chapter, site design and building form standards.

(Ord. of 8-2-2017, § 1(2.6.4))

DIVISION 7. R-75 (RESIDENTIAL MEDIUM LOT-75) DISTRICT

Sec. 2.7.1. Statement of purpose and intent.

The purpose and intent of the City Council in establishing the R-75 (Residential Medium Lot-75) District is as follows:

A. To provide for the protection of neighborhoods within the city where lots have a minimum area of 10,000 square feet;

B. To provide for compatible infill development in neighborhoods;

C. To provide protections for existing development as new subdivisions are created;

D. To provide flexibility in design on the interior of new development while protecting surrounding development;

E. To ensure that the uses and structures authorized in the R-75 (Residential Medium Lot-75) District are those uses and structures designed to serve the housing, recreational, educational, religious, and social needs of the neighborhood;

F. To provide for appropriately sized accessible and useable open space in new developments for health, recreational and social opportunities for city residents;

G. To implement the future development map of the city's comprehensive plan.

(Ord. of 8-2-2017, § 1(2.7.1))

Sec. 2.7.2. Permitted and special land uses.

Permitted uses and uses requiring special land use permits shall be as provided below. In cases where a use is permitted but there are supplemental use regulations for that use specified in article 4 of this chapter, such regulations shall also apply.

(Ord. of 8-2-2017, § 1(2.7.2)) [TMOD-22-001]

A. Permitted Uses
The following uses are permitted as of right under this code:
1. Agricultural Activities
   a. Keeping of livestock; see section 4.2
   b. Keeping of poultry/pigeons; see section 4.2
   c. Riding academies or stables; see section 4.2
   d. Urban Community Garden, up to 5 acres; see section 4.2

2. Residential
   a. Dwelling, single-family (detached)

3. Institutional/Public
   a. Golf course or clubhouse, public or private; see section 4.2
   b. Government facilities
   c. Neighborhood or subdivision clubhouse or amenities; see section 4.2
   d. School, public kindergarten, elementary, middle or high schools

4. Communications – Utility
   a. Essential services
   b. Satellite television antenna; see section 4.2

5. Wireless Telecommunications
   b. Carrier on Wheels (declared emergency); see section 4.2

B. Special Administrative Uses
The following uses are permitted only with administrative approval:
1. Agricultural
   a. Urban, community garden, over 5 acres

2. Residential
   a. Home occupation, no customer contact; see section 4.2

3. Commercial
   a. Farmer's market, temporary/seasonal; see section 4.2
   b. Temporary outdoor retail sales; see section 4.2
   c. Temporary outdoor sales or events, seasonal; see section 4.2
   d. Temporary produce stand; see section 4.2
   e. Temporary trailer, as home sales office or construction trailer; see section 4.2

4. Wireless Telecommunications
   a. Attached wireless telecommunication facility used for non-residential purposes (prohibited if used as residential)
   b. Carrier on wheels (non-emergency or event, no more than 120 days); see section 4.2
   c. Small cell installations (new support structures or collocation) on private property or ROW; see section 4.2

C. Special Land Use Permit

The following uses are permitted only with a special land use permit:

1. Residential
   a. Home occupation, with customer contact; see section 4.2
   b. Child care home, 5 or less; see section 4.2
   c. Convents or monasteries; see section 4.2
   d. Personal care home, 6 or less; see section 4.2
   e. Senior housing; see section 4.2

2. Institutional/Public
   a. Cemetery, columbarium, mausoleum; see section 4.2
   b. Places of worship; see section 4.2
   c. Recreation club; see section 4.2
   d. School, private kindergarten, elementary, middle or high schools; see section 4.2
   e. Swimming pools, commercial; see section 4.2

3. Commercial
   a. Adult daycare facility, up to 6; see section 4.2
   b. Child day care facility, up to 6; see section 4.2
   c. Kennel, noncommercial

4. Communication – Utility
   a. Amateur radio service or antenna; see section 4.2

5. Wireless Telecommunication
   a. New support structure from 51 feet to 150 feet; see section 4.2

D. Permitted Accessory

The following uses are permitted as accessory only to a principal use:

1. Residential
   a. Accessory uses or structures
   b. Dwelling, single-family, accessory (guesthouse, in-law suite); see section 4.2

2. Institutional/Public
   a. Educational use, private; see section 4.2
   b. Tennis courts, swimming pools, play or recreation areas, community; see section 4.2

3. Commercial
   a. Fitness center

[TMOD-22-001]

Sec. 2.7.3. Dimensional requirements.

Dimensional requirements for the R-75 (Residential Medium Lot-75) District shall be as provided in Table 2.2, Residential Zoning Districts Dimensional Requirements.

(Ord. of 8-2-2017, § 1(2.7.3))

Sec. 2.7.4. Site and building design standards.

Design standards and regulations to be applied in this zoning district shall be as provided in article 5 of this chapter, site design and building form standards.

(Ord. of 8-2-2017, § 1(2.7.4))

DIVISION 8. R-60 (RESIDENTIAL SMALL LOT-60) DISTRICT

Sec. 2.8.1. Statement of purpose and intent.

The purpose and intent of the City Council in establishing the R-60 (Residential Small Lot-60) District is as follows:

A. To provide for the protection of neighborhoods within the city where lots have a minimum area of 6,000 square feet or 3,500 square feet if developed for cottage houses;

B. To provide for compatible infill development in neighborhoods;

C. To provide protections for existing development as new subdivisions are created;

D. To provide flexibility in design within new development while protecting surrounding development;

E. To ensure that the uses and structures authorized in the R-60 (Residential Small Lot-60) District are designed to serve the housing, recreational, educational, religious, and social needs of the neighborhood;

F. To provide for appropriately sized accessible and useable open space in new developments for the health, recreational and social opportunities for city residents;

G. To implement the future development map of the city's comprehensive plan.

(Ord. of 8-2-2017, § 1(2.8.1))

Sec. 2.8.2. Permitted and special land uses.

Permitted uses and uses requiring special land use permits shall be as provided below. In cases where a use is permitted but there are supplemental use regulations for that use specified in article 4 of this chapter, such regulations shall also apply.

(Ord. of 8-2-2017, § 1(2.8.2)) [TMOD-22-001]

A. Permitted Uses

The following uses are permitted as of right under this code:

1. Agricultural Activities
   a. Keeping of livestock; see section 4.2
   b. Keeping of poultry/pigeons; see section 4.2
   c. Riding academies or stables; see section 4.2
   d. Urban Community Garden, up to 5 acres; see section 4.2

2. Residential
   a. Dwelling, cottage home
   b. Dwelling, single-family (detached)

3. Institutional/Public
   a. Golf course or clubhouse, public or private; see section 4.2
   b. Government facilities
   c. Neighborhood or subdivision clubhouse or amenities; see section 4.2
   d. School, public kindergarten, elementary, middle or high schools

4. Communications – Utility
   a. Essential services
   b. Satellite television antenna; see section 4.2

5. Wireless Telecommunications
   a. Carrier on Wheels (declared emergency); see section 4.2

B. Special Administrative Uses

The following uses are permitted only with administrative approval:

1. Agricultural
   a. Urban, community garden, over 5 acres

2. Residential
   a. Home occupation, no customer contact; see section 4.2

3. Commercial
   a. Farmer's market, temporary/seasonal; see section 4.2
   b. Temporary outdoor retail sales; see section 4.2
   c. Temporary outdoor sales or events, seasonal; see section 4.2
   d. Temporary produce stand; see section 4.2
   e. Temporary trailer, as home sales office or construction trailer; see section 4.2

4. Wireless Telecommunications
   a. Attached wireless telecommunication facility used for non-residential purposes (prohibited if used as residential)

b. Carrier on wheels (non-emergency or event, no more than 120 days); see section 4.2
c. Small cell installations (new support structures or collocation) on private property or ROW; see section 4.2

C. Special Land Use Permit

The following uses are permitted only with a special land use permit:

1. Residential
   a. Home occupation, with customer contact; see section 4.2
   b. Child care home, 5 or less; see section 4.2
   c. Convents or monasteries; see section 4.2
   d. Personal care home, 6 or less; see section 4.2
   e. Senior housing; see section 4.2

2. Institutional/Public
   a. Cemetery, columbarium, mausoleum; see section 4.2
   b. Places of worship; see section 4.2
   c. Recreation club; see section 4.2
   d. School, private kindergarten, elementary, middle or high schools; see section 4.2
   e. Swimming pools, commercial; see section 4.2

3. Commercial
   a. Adult daycare facility, up to 6; see section 4.2
   b. Child day care facility, up to 6; see section 4.2

4. Communication – Utility
   a. Amateur radio service or antenna; see section 4.2

5. Wireless Telecommunication
   a. New support structure from 51 feet to 150 feet; see section 4.2

D. Permitted Accessory

The following uses are permitted as accessory only to a principal use:

1. Residential
   a. Accessory uses or structures
   b. Dwelling, single-family , accessory (guesthouse, in-law suite); see section 4.2

2. Institutional/Public
   a. Educational use, private; see section 4.2
   b. Tennis courts, swimming pools, play or recreation areas, community; see section 4.2

3. Commercial
   a. Fitness center

[TMOD-22-001]

Sec. 2.8.3. Dimensional requirements.

Dimensional requirements for the R-60 (Residential Small Lot-60) District shall be as provided in Table 2.2, Residential Zoning Districts Dimensional Requirements.

(Ord. of 8-2-2017, § 1(2.8.3))

Sec. 2.8.4. Site and building design standards.

Design standards and regulations to be applied in this zoning district shall be as provided in article 5 of this chapter, site design and building form standards.

(Ord. of 8-2-2017, § 1(2.8.4))

DIVISION 9. MHP (MOBILE HOME PARK) DISTRICT

Sec. 2.9.1. Statement of purpose and intent.

The purpose and intent of the City Council in establishing the MHP (Mobile Home Park) District is as follows:

A. To provide locations within the city for the location of mobile home parks.

B. To provide for the development of accessory uses that are necessary in order to provide appropriate recreational and educational opportunities to residents.

(Ord. of 8-2-2017, § 1(2.9.1))

Sec. 2.9.2. Permitted and special land uses.

Permitted uses and uses requiring special land use permits shall be as provided below. In cases where a use is permitted but there are supplemental use regulations for that use specified in article 4 of this chapter, such regulations shall also apply.

(Ord. of 8-2-2017, § 1(2.9.2)) [TMOD-22-001]

A. Permitted Uses

The following uses are permitted as of right under this code:

1. Agricultural Activities
   a. Keeping of livestock; see section 4.2
   b. Keeping of poultry/pigeons; see section 4.2
   c. Riding academies or stables; see section 4.2
   d. Urban Community Garden, up to 5 acres; see section 4.2

2. Residential
   a. Dwelling, mobile home; see section 4.2
   b. Dwelling, single-family (detached)
   c. Mobile home park

3. Institutional/Public
   a. Golf course or clubhouse, public or private; see section 4.2
   b. Government facilities
   c. Neighborhood or subdivision clubhouse or amenities; see section 4.2
   d. School, public kindergarten, elementary, middle or high schools

4. Commercial
   a. Adult daycare center, 7 or more; see section 4.2
   b. Child day care center (kindergarten), 7 or more

5. Communications – Utility
   a. Essential services
   b. Satellite television antenna; see section 4.2

6. Wireless Telecommunications
   a. Carrier on Wheels (declared emergency); see section 4.2

B. Special Administrative Uses

The following uses are permitted only with administrative approval:

1. Agricultural
   a. Urban, community garden, over 5 acres

2. Residential
   a. Home occupation, no customer contact; see section 4.2

3. Commercial
   a. Farmer's market, temporary/seasonal; see section 4.2
   b. Temporary outdoor retail sales; see section 4.2
   c. Temporary produce stand; see section 4.2
   d. Temporary trailer, as home sales office or construction trailer; see section 4.2

4. Wireless Telecommunications
   a. Carrier on wheels (non-emergency or event, no more than 120 days); see section 4.2
   b. Small cell installations (new support structures or collocation) on private property or ROW; see section 4.2

C. Special Land Use Permit

The following uses are permitted only with a special land use permit:

1. Residential
   a. Home occupation, with customer contact; see section 4.2
   b. Senior housing; see section 4.2

2. Institutional/Public
   a. School, private kindergarten, elementary, middle or high schools; see section 4.2
   b. Swimming pools, commercial; see section 4.2

3. Communication – Utility
   b. Amateur radio service or antenna; see section 4.2

D. Permitted Accessory

The following uses are permitted as accessory only to a principal use:

1. Residential
   a. Accessory uses or structures

2. Institutional/Public
   a. Tennis courts, swimming pools, play or recreation areas, community; see section 4.2

3. Commercial
   a. Fitness center

[TMOD-22-001]

Sec. 2.9.3. Dimensional requirements.

Dimensional requirements for the MHP (Mobile Home Park) District shall be as provided in Table 2.2, Residential Zoning Districts Dimensional Requirements.

(Ord. of 8-2-2017, § 1(2.9.3))

Sec. 2.9.4. Site and building design standards.

Design standards and regulations to be applied in this zoning district shall be as provided in article 5 of this chapter, site design and building form standards.

(Ord. of 8-2-2017, § 1(2.9.4))

Sec. 2.9.5. Transitional buffer zone requirement.

Where a lot in the MHP (Mobile Home Park) District is used for attached single-family dwellings and adjoins the boundary of any property in a Residential Single-Family District, except property on which is located a single-family attached development, a transitional buffer zone not less than 50 feet in width shall be provided and maintained in a natural state. In addition, a screening fence not less than six feet in height shall be erected and maintained either along the property line or within the transitional buffer zone separating the use from the adjoining single-family residential property.

(Ord. of 8-2-2017, § 1(2.9.5))

DIVISION 10. RNC (RESIDENTIAL NEIGHBORHOOD CONSERVATION) DISTRICT

Sec. 2.10.1. Scope of provisions.

The provisions contained within this division are the regulations of the RNC (Residential Neighborhood Conservation) District. This division establishes the procedures and the criteria that the City Council shall utilize in making a decision on any application to amend the official zoning map so as to change any parcel of land to the RNC (Residential Neighborhood Conservation) District.

(Ord. of 8-2-2017, § 1(2.10.1))

Sec. 2.10.2. Statement of purpose and intent.

The purpose and intent of the City Council in the RNC (Residential Neighborhood Conservation) District is as follows:

A. To encourage creative residential planning and development within the city that will preserve unique environmental features and be consistent with the comprehensive land use plan and preserves existing natural trees and vegetation;

B. To conserve significant areas of useable greenspace within single-family neighborhoods in the Rural and Suburban character areas of the comprehensive plan;

C. To provide a residential development that permits flexibility of design in order to promote environmentally sensitive and efficient use of land in compliance with the Code;

D. To promote construction of accessible landscaped walking trails and bike paths both within subdivisions and, where possible, connected to neighboring communities, businesses, and facilities to reduce reliance on automobiles;

E. To preserve natural features, specimen trees, historic buildings, archaeological sites and establish a sense of community;

F. To improve water quality and reduce runoff and soil erosion by reducing the total amount of clearing, grading, and paving, within the total area of a development;

G. To encourage efficient community design that reduces infrastructure maintenance and public service costs borne by the city; and

H. To implement the future development map of the city's comprehensive plan.

(Ord. of 8-2-2017, § 1(2.10.2))

Sec. 2.10.3. Permitted and special land uses.

Permitted uses and uses requiring special land use permits shall be as provided below. In cases where a use is permitted but there are supplemental use regulations for that use specified in article 4 of this chapter, such regulations shall also apply.

(Ord. of 8-2-2017, § 1(2.10.3)) [TMOD-22-001]

A. Permitted Uses

The following uses are permitted as of right under this code:

1. Agricultural Activities
   a. Keeping of livestock; see section 4.2
   b. Keeping of poultry/pigeons; see section 4.2
   c. Riding academies or stables; see section 4.2
   d. Urban Community Garden, up to 5 acres; see section 4.2

2. Residential
   a. Dwelling, cottage home
   b. Dwelling, single-family (detached)
   c. Dwelling; three family; see section 4.2
   d. Dwelling, townhouse; see section 4.2
   e. Dwelling, two-family; see section 4.2

3. Institutional/Public
   a. Golf course or clubhouse, public or private; see section 4.2
   b. Government facilities
   c. Neighborhood or subdivision clubhouse or amenities; see section 4.2
   d. School, public kindergarten, elementary, middle or high schools

4. Communications – Utility
   a. Essential services

b. Satellite television antenna; see section 4.2

5. Wireless Telecommunications
   a. Attached wireless telecommunication facility; see section 4.2
   b. Carrier on Wheels (declared emergency); see section 4.2

B. Special Administrative Uses

The following uses are permitted only with administrative approval:

1. Agricultural
   a. Urban, community garden, over 5 acres

2. Residential
   a. Home occupation, no customer contact; see section 4.2

3. Commercial
   a. Farmer's market, temporary/seasonal; see section 4.2
   b. Temporary outdoor retail sales; see section 4.2
   c. Temporary outdoor sales or events, seasonal; see section 4.2
   d. Temporary produce stand; see section 4.2
   e. Temporary trailer, as home sales office or construction trailer; see section 4.2

4. Wireless Telecommunications
   a. Attached wireless telecommunication facility used for non-residential purposes (prohibited if used as residential)
   b. Carrier on wheels (non-emergency or event, no more than 120 days); see section 4.2
   c. Small cell installations (new support structures or collocation) on private property or ROW; see section 4.2

C. Special Land Use Permit

The following uses are permitted only with a special land use permit:

1. Residential
   a. Home occupation, with customer contact; see section 4.2
   b. Child care home, 5 or less; see section 4.2
   c. Convents or monasteries; see section 4.2
   d. Personal care home, 6 or less; see section 4.2
   e. Senior housing; see section 4.2

2. Institutional/Public
   a. Places of worship; see section 4.2
   b. Recreation club; see section 4.2
   c. School, private kindergarten, elementary, middle or high schools; see section 4.2
   d. Swimming pools, commercial; see section 4.2

3. Commercial
   a. Adult daycare facility, up to 6; see section 4.2
   b. Child day care facility, up to 6; see section 4.2

D. Permitted Accessory

The following uses are permitted as accessory only to a principal use:

1. Residential
   a. Accessory uses or structures

b. Dwelling, single-family, accessory (guesthouse, in-law suite); see section 4.2

2. Institutional/Public
   a. Educational use, private; see section 4.2
   b. Tennis courts, swimming pools, play or recreation areas, community; see section 4.2

3. Commercial
   a. Fitness center

[TMOD-22-001]

Sec. 2.10.4. Scaled site plan.

In addition to the information and materials required as part of any application to amend the official zoning map pursuant to this chapter, each applicant for RNC (Residential Neighborhood Conservation) District classification shall submit a scaled and dimensioned site plan, which, where applicable, shall contain the following information:

A. Size of each lot proposed to be developed within the district;

B. Housing types (e.g., single-family detached, single-family detached condominium);

C. Amount of land in greenspace areas to be held in joint ownership, common ownership, or control in perpetuity;

D. Connections between greenspaces within the project and to greenspace areas on adjacent properties where possible;

E. Building envelopes for fee simple lots;

F. Building and driveway footprint for each single-family detached condominium;

G. Maximum lot coverage;

H. All streams and water bodies, including state and city stream buffer limits;

I. Vehicular and pedestrian circulation and connections within the project and to amenities and features on adjacent property;

J. Any aboveground detention areas serving as an amenity feature;

K. Underground detention facilities;

L. Flood hazard areas, wetlands, springheads, and all environmentally sensitive areas, if any;

M. Access to public sewer;

N. All easements;

O. Right-of-way intended to be dedicated;

P. Amount of land area and non-buildable areas as identified in subsection B. of this section; and

Q. Tree survey in compliance with chapter 14 of this Code.

(Ord. of 8-2-2017, § 1(2.10.4))

Sec. 2.10.5. Calculation and design of greenspace.

The following standards shall govern the calculation and design of greenspace in the RNC (Residential Neighborhood Conservation) District:

A. The allotted greenspace shall comprise at least 30 percent of the total land area excluding the undevelopable areas as identified in subsection B of this section. No part of any single-family detached residential lot, private street, private drive, or street right-of-way, front yard setback, nor any area utilized for side-to-side building separation except when used for a path or sidewalk connection to greenspace, shall count towards greenspace.

B. Land containing any of the following features shall not be included for the purposes of calculating whether a site plan and any subsequent development meets the greenspace requirement:

1. Streams and stream buffers;
2. Wetlands;
3. Rock outcroppings;
4. Slopes steeper than 1:2 slope;
5. Sites of archaeological significance;
6. Floodplains; or
7. Areas intended to be dedicated for right-of-way as shown on the scaled site plan submitted in compliance with section 2.10.4.

C. For properties ten acres or less, at least 50 percent of the allotted greenspace shall be in an area or areas that each measure a minimum 200 square feet. For properties greater than ten acres, at least 50 percent of the allotted greenspace shall be contiguous and shall be a minimum width of 50 feet. Paths, bike paths and trails do not have to comply with the minimum width requirements set forth in this subsection.

D. Greenspace may consist of and be designed for the following uses only:

1. Natural undisturbed areas;
2. Active recreation areas;
3. Community gathering places;
4. Trails and greenways;
5. Bikeways and paths;
6. Asphalt or concrete bikeways and paths with a maximum width of eight feet;
7. Landscaped stormwater management facilities, which are constructed as part of an on-site stormwater mitigation site design feature and which are graded such that no safety fencing is required;
8. Mature wooded areas; or
9. Specimen trees, as defined in chapter 14 of this Code.

E. No impervious surface, except:

(1) Areas used for active recreation;

(2) Historic buildings or historic sites; and

(3) Asphalt or concrete bike paths and paths with a maximum width of eight feet, may be considered in the greenspace calculation.

Paths that require grading must not damage critical root zones of specimen trees.

F. Preserved historic buildings or sites may be included in greenspace if intended to be for the common use and benefit of all residents of the subdivision.

G. All dwelling units shall be provided with safe, convenient access to all greenspaces throughout the development in the form of a pedestrian circulation system consisting of structurally improved pedestrian paths and/or sidewalks, which shall be a minimum width of five feet and shall be connected so that there are no breaks in the walkable surface of the pedestrian circulation system, except where the path or sidewalk connects to a greenspace. All greenspaces shall have a minimum of two points of pedestrian access.

H. Greenspace shall connect with other greenspace areas and trails on adjacent property where possible.

I. Active recreation areas may be included in greenspace and shall be required in any RNC (Residential Neighborhood Conservation) District that contains 100 or more units. A conservation subdivision located in an RNC (Residential Neighborhood Conservation) District that contains between 100 and 200 units, inclusive, shall include an active recreation area of at least one acre in size. A conservation subdivision located in an RNC (Residential Neighborhood Conservation) District that contains more than 200 units, shall include a minimum of either a single active recreation area of at least two acres in size or two active recreation areas that are each at least one acre in size. No active recreation area may be located within any wetland, stream buffer, or rock outcropping.

(Ord. of 8-2-2017, § 1(2.10.5))

Sec. 2.10.6. Development standards and permitted uses.

A. Property within an RNC (Residential Neighborhood Conservation) District shall have a minimum of seven acres.

B. Specimen trees located outside of the buildable area of a lot shall be preserved subject to the review of the city arborist.

C. Active recreation areas, greenspace, stormwater management facilities, trails, bikeways, and paths, as approved, shall be installed prior to the recording of the conservation subdivision final plat.

D. There shall be no impervious surfaces within the 75-foot stream buffer, except as provided for above in sections 2.10.5.D.4 through 6. Such encroachments into the stream buffer shall only be permissible in accordance with variances as allowed by chapter 14 of this Code.

(Ord. of 8-2-2017, § 1(2.10.6))

Sec. 2.10.7. Minimum lot width; minimum lot size; building setback; street width; and private drive width requirements.

A. The following standards shall apply to all single-family detached dwellings, other than condominiums and fee simple condominiums, located in RNC (Residential Neighborhood Conservation) District:

1. Maximum density: Eight dwelling units per acre of total land area, excluding undevelopable areas as identified in section 2.10.5.B.

2. Minimum lot width: At least 60 feet as measured at the required front building setback line; except for a lot on a cul-de-sac, which lot shall have a minimum width of 35 feet.

3. Minimum lot area: 6,000 square feet, except that each lot on the periphery of a development within property zoned RNC (Residential Neighborhood Conservation) District that abuts adjacent property zoned and used for single-family residential purposes shall contain a lot area that is at least 80 percent of the minimum lot area required by the adjoining residential zoning.
4. Minimum building setback adjacent to public or private streets:
    a. From thoroughfares: 30 feet.
    b. From arterials: 30 feet.
    c. From collector streets: 30 feet.
    d. From local streets: 20 feet.
5. Minimum interior lot side building setback: 7½ (7.5) feet.
6. Minimum periphery lot side building setback: Lots on the periphery of any RNC (Residential Neighborhood Conservation) District development shall maintain a minimum 20-foot side yard setback from any adjacent parcel located outside of the boundary of such development.
7. Minimum rear building setback: 20 feet.

B. The following standards shall apply to single-family detached condominiums and fee simple condominiums located in RNC (Residential Neighborhood Conservation) District:

1. Maximum density: Eight dwelling units per acre on total land area, excluding undevelopable areas as identified in section 2.10.5.B.
2. Minimum building setback from all peripheral property lines: 20 feet, except that when a peripheral property line adjoins a public or private street, the building setback shall be as required in section 2.10.7.A.4.
3. Minimum distance between building structures: 15 feet.
4. Minimum building setback from a private drive or private street: Ten feet, except that where a garage door or carport entrance faces the street, in which case the minimum setback shall be 20 feet. The building setback shall be measured from back of curb, or, where a sidewalk is provided, from back of sidewalk.
5. Minimum travel lane width, private drive or private streets internal to the development: 24 feet. Where on-street parking is provided, it shall be provided in the form of a parking lane located between the travel lane and the curb, which lane shall be no less than ten feet wide, measured from the edge of the travel lane to front of curb.
6. Sidewalks shall be provided on both sides of private drives or private streets that are internal to the development, as provided for in chapter 14 of this Code.
7. Street tree species shall cause minimal interference with underground utilities, subject to approval by the city arborist.
8. Driveways shall be a minimum of 20 feet long, measured from back of curb or, where sidewalks are provided, from the back of sidewalk, in order to prevent vehicular encroachment on areas intended for vehicular or pedestrian circulation.
9. A public access and utility easement for electric, gas, telephone, and cable television utilities, in the form of a joint utility trench, shall be located on each side of the internal private streets or internal private drives, and shall be a minimum width of six feet, five inches.

(Ord. of 8-2-2017, § 1(2.10.7)) [TMOD-22-001]

Sec. 2.10.8. Maximum height of buildings.

No building in the RNC (Residential Neighborhood Conservation) District shall exceed a height of 35 feet.

(Ord. of 8-2-2017, § 1(2.10.8))

Sec. 2.10.9. Maximum lot coverage.

The lot coverage of each lot used for a single-family detached dwelling shall not exceed 50 percent.

(Ord. of 8-2-2017, § 1(2.10.9))

Sec. 2.10.10. Ownership, control, and maintenance of required greenspace.

A. *Unified control of parcel.* Any applicant for rezoning or for issuance of a land disturbance permit for property within an RNC (Residential Neighborhood Conservation) District shall be required to provide evidence of a legal mechanism for unified control of the entire parcel to be developed for review and approval by the city attorney prior to the issuance of any land disturbance or building permit. During the development process, more than one builder may participate in the development of the approved plan so long as each parcel of land remains subject to:

1. Any zoning conditions imposed on the property; and
2. Terms and conditions associated with any special land use permit or any special administrative permit.

B. *Maintenance and protection of land held in common.* Prior to the issuance of any land disturbance permit, every applicant for development within an RNC (Residential Neighborhood Conservation) District must provide evidence of a legal mechanism under which all land to be held in common and used for greenspace purposes within the development shall be protected in perpetuity. Such legal mechanism may include deed restrictions, a homeowner association, common areas held in common ownership or control, or conservation easements held by a land trust meeting the requirements of state law, which assure in perpetuity each of the following mandatory requirements:

1. That all land held in open space will remain undivided and shall not be subdivided or removed from joint access or benefit in perpetuity;
2. That all subsequent property owners in the development will be placed on notice of this development restriction through the deed records filed with the Superior Court of DeKalb County;
3. That all land held as greenspace will be properly maintained and that no liability or maintenance responsibilities for the land held as greenspace shall accrue to the city;
4. That a legal entity exists for notice of deficiencies in maintenance of the land held as greenspace, correction of these deficiencies, and assessment of liens against the properties for the cost of the correction of these deficiencies by a third-party or the city;
5. That the legal mechanism will become effective and enforceable prior to or at the time of recording the final plat and the sale of any individual properties within the conservation district;
6. That all requirements of the legal mechanism used to comply with the regulations of this section will be specified on the final plat to be recorded with the Clerk of Superior Court of DeKalb County.

C. *Homeowner associations.* When a homeowner association is used as the legal mechanism to comply with the requirements of this section, the applicant for any land disturbance permit, in addition to meeting all of said requirements, shall provide for all of the following:

1. Equal access and right of use to all greenspace by all homeowners;
2. Mandatory and automatic membership in the homeowner association for all homeowners and their successors;
3. A fair and uniform method of assessment and collection/payment for dues, maintenance and related costs;
4. Homeowner association lien authority to ensure the collection of dues from all members;
5. Perpetual and continued maintenance and liability by the homeowner association of land held as greenspace; and
6. Filing of all required covenants, declarations, and restrictions with the Clerk of the Superior Court of DeKalb County.

(Ord. of 8-2-2017, § 1(2.10.10))

Sec. 2.10.11. Off-street parking requirements.

Minimum off-street parking requirements for uses and structures authorized and permitted in the RNC (Residential Neighborhood Conservation) District are as follows:

A. Detached single-family dwelling: Three spaces.

B. Reserved.

C. Personal care home, group: Four spaces.

D. Child care institution, group: Four spaces.

E. Reserved.

F. Child daycare facility: Three spaces.

G. Convent or monastery: One space for each 200 square feet of floor area within the principal structure.

H. Neighborhood recreation club: One space for each five club members but in no case less than ten spaces.

I. Place of worship: Where fixed seats are used, one space for each three seats in the largest assembly room used for public worship, or, where fixed seats are not utilized, one space for each 25 square feet of floor space in the largest assembly room used for public worship.

J. Private elementary, middle and high school:

1. Elementary and middle school: Two spaces for each classroom.
2. High school: Five spaces for each classroom.

K. Other uses: One space for each 200 square feet of floor area within the principal structure.

(Ord. of 8-2-2017, § 1(2.10.11))

Sec. 2.10.12. Relation of RNC (Residential Neighborhood Conservation) District regulations to subdivision or other regulations.

Where there are conflicts between these RNC (Residential Neighborhood Conservation) District regulations and land subdivision requirements contained in chapter 14 or other regulations within the Code, these RNC (Residential Neighborhood Conservation) District regulations shall apply.

(Ord. of 8-2-2017, § 1(2.10.12))

DIVISION 11. MEDIUM AND HIGH DENSITY RESIDENTIAL ZONING DISTRICTS: DIMENSIONAL REQUIREMENTS

Sec. 2.11.1. Medium and high density ranges.

The medium and high density residential zoning districts that allow cottage housing, attached, multifamily and mixed residential developments are permitted at the densities illustrated in Table 2.3, below:

Table 2.3. Summary of Density Ranges for Medium and High Density Residential Zoning Districts

Zoning District Name		Density (units/acre)
Small Lot Residential Mix	RSM	4—8
Medium Density Residential-1	MR-1	8—12
Medium Density Residential-2	MR-2	12—24
High Density Residential-1	HR-1	24—40
High Density Residential-2	HR-2	40—60
High Density Residential-3	HR-3	60—120

(Ord. of 8-2-2017, § 1(2.11.1))

Sec. 2.11.2. Dimensional requirements.

Dimensional requirements, including overall site requirements, individual lot dimensions, setbacks, and heights for Medium and High Density Residential Zoning Districts, are provided in Table 2.4, Medium and High Density Residential Zoning Districts Dimensional Requirements. In addition, compatibility and transitional buffers, as defined and required in article 5 of this chapter may apply.

Table 2.4. Medium and High Density Residential Zoning Districts Dimensional Requirements

Medium and High Density Residential KEY: Housing Types: SFD: Single-Family Detached, SFA: Single-Family Attached, TTF: Two- or Three-Family, MF: Multifamily, MU: Mixed-Use, U-SF: Urban Single-Family, CA: Character Areas as identified in the Comprehensive Plan

Elements	*RSM*	*MR-1*	*MR-2*	*HR-1*	*HR-2 and HR-3*
Overall Site Requirements (minimum, unless otherwise specified)					
Dwelling units per acre (maximum base density and maximum possible with bonuses)	4—8	8—12	12—24	24—40	HR-2: 40—60 HR-3: 60—120
Open space required (minimum percent)*	20 percent	20 percent	15 percent	15 percent	15 percent
Transitional buffers (feet)	See article 5 of this chapter				
Lot Requirements (minimum, unless otherwise specified)					
*Single-Family Detached Conventional (SFD)***					

Lot area (square feet)	5,000/2,000 cottage	5,000/2,000 cottage	5,000/2,000 cottage	Not permitted	Not permitted
Lot width, street frontage (feet)	50/20 cottage and detached townhome	45/20 cottage and detached townhome	40/20 cottage and detached townhome	Not permitted	Not permitted
Lot coverage (maximum percent per lot or total parcel acreage)	50	60	65	Not permitted	Not permitted
Single-Family Attached (SFA)					
Lot area (square feet)	1,000	1,000	1,000	1,000	1,000
Lot width (feet)	25	25	20	20	20
Lot coverage (maximum percent per lot or total parcel acreage)	70	80	85	85	85
Urban Single-Family (detached)					
Lot area (square feet)	1,350	1,350	1,000	1,000	1,000
Lot width (feet)	25	25	20	20	20
Lot coverage (maximum percent per lot or total parcel acreage)	70	80	85	85	85
Two- or Three-Family (TTF)					
Lot area (square feet)	4,000	4,000	4,000	Not permitted	Not permitted
Lot width (feet)	60	55	50	Not permitted	Not permitted
Lot coverage (maximum percent per lot or total parcel acreage)	50 percent	55 percent	55 percent	Not permitted	Not permitted
Multifamily (MF) and Mixed-Use (MU)					
Lot width, street frontage (feet)	Not permitted	100	100	100	100
Lot coverage (maximum percent of total parcel acreage)	Not permitted	65 percent	75 percent	85 percent	85 percent
Building Setbacks: SF and SFA for Individual Internal Lots; MF, SFA, MU for Overall Site[****]					
From thoroughfares and arterials (min. and max. feet)	All: min. 20, max. 30	SFD: min. 15, max. 25 Other: 10—20	All: min. 10, max. 20	All: min. 10, max. 20	All: min. 10, max. 20
Front - all other streets by character area (min. feet)	RC/NC/TC: 15 SUB: 20	0 - Determined only by utility placement, ROW, and streetscape (article 5 of this chapter)			
Front with alley access (min. feet)	10	SFD and TTF: 10 SFA and MF: 5	SFD and TTF: 10 SFA and MF: 5	5	5
Side - interior lot (feet)[****]	SFD and TTF: 3 ft. with minimum 10 ft. separation between buildings; SFA; N/A; MF and MU; N/A; U-SF; 0 ft. side setback with minimum 3 ft. separation between building				

Side - corner lot on public street (feet)	Same as front setback (see also article 5 of this chapter, corner lot)				
Rear without alley (feet)	SFD: 20; SFA: 15; TTF: 15; All others: 20	SFD: 20; SFA: 15; MF and MU: 20; MF: 20; CM/OF/MU: 15 (see also transitional buffers, article 5 of this chapter)			
Rear with alley (feet)	10	10	10	10	10
Unit Size, heated living area (square feet, minimum)					
Single-Family Detached (SFD)-Conventional	1,200	1,200	1,000	Not permitted	Not permitted
Single-Family Detached (SFD)-Cottage	800	800	800	Not permitted	Not permitted
Single-Family Attached (SFA)***	1,200	1,200	1,000	1,000	Not permitted
Urban Single-Family (U-SF) Detached	1,100	1,100	1,100	1,100	Not permitted
Two- or Three-Family (TTF)	1,000	1,000	1,000	1,000	Not permitted
Multifamily (MF)***	Not permitted for new developments	650	650	650	650
Height (maximum and whichever is less when indicated as stories or feet)					
Single-Family Detached (SFD)	35 feet	35 feet	35 feet	Not permitted	Not permitted
Except Res Infill Overlays = 28 feet					
Single-Family Attached (SFA) and Urban Single-Family (U-SF)	3 stories or 45 feet	3 stories or 45 feet	3 stories or 45 feet	Not permitted	Tables 2.13 and 2.15
Two- or Three-Family (TTF)	35 feet	35 feet	3 stories or 45 feet	Not permitted	Not permitted
Multifamily (MF)***	N/A	4 stories or 60 feet	Table 2.9	Tables 2.13 and 2.15	Tables 2.13 and 2.15
Mixed-Use (MU)	N/A	4 stories or 60 feet	Table 2.9	Table 2.11	Tables 2.13 and 2.15

* Open space requirement shall apply to new subdivisions if project is > five acres or > 36 units (see chapter 14). See article 5 of this chapter for enhanced open space requirements.

** Where two numbers are indicated, the first number is the standard and the second number applies only to housing type that is indicated, e.g., cottage or townhome.

*** See article 5 of this chapter for building separation and minimum multifamily unit size details; Urban-SF with zero-foot side setback must meet fire walls, sprinklers and any other fire code applicable to attached townhouse dwellings.

(Ord. of 8-2-2017, § 1(2.11.2))

DIVISION 12. RSM (SMALL LOT RESIDENTIAL MIX) DISTRICT

Sec. 2.12.1. Statement of purpose and intent.

The purpose and intent of the City Council in establishing the RSM (Small Lot Residential Mix) District is as follows:

A. To provide for the creation of residential neighborhoods that allow a mix of single-family attached and detached housing options;

B. To provide flexibility in design and product on the interior of new development while protecting surrounding neighborhoods;

C. To implement the future development map of the city's comprehensive plan.

(Ord. of 8-2-2017, § 1(2.12.1))

Sec. 2.12.2. Permitted and special land uses.

Permitted uses and uses requiring special land use permits shall be as provided below. In cases where a use is permitted but there are supplemental use regulations for that use specified in article 4 of this chapter, such regulations shall also apply.

(Ord. of 8-2-2017, § 1(2.12.2)) [TMOD-22-001]

A. Permitted Uses

The following uses are permitted as of right under this code:

1. Agricultural Activities
   a. Urban Community Garden, up to 5 acres; see section 4.2

2. Residential
   a. Dwelling, cottage home; see section 4.2
   b. Dwelling, single-family (attached)
   c. Dwelling, single-family (detached)
   d. Dwelling, three-family
   e. Dwelling, townhouse; see section 4.2
   f. Dwelling, two family
   g. Dwelling, urban single-family; see section 4.2

3. Institutional/Public
   a. Golf course or clubhouse, public or private; see section 4.2
   b. Government facilities
   c. Neighborhood or subdivision clubhouse or amenities; see section 4.2
   d. School, public kindergarten, elementary, middle or high schools

4. Communications – Utility
   a. Essential services
   b. Satellite television antenna; see section 4.2

5. Wireless Telecommunications
   a. Carrier on Wheels (declared emergency); see section 4.2

B. Special Administrative Uses

The following uses are permitted only with administrative approval:

1. Agricultural
   a. Urban, community garden, over 5 acres

2. Residential
   a. Home occupation, no customer contact; see section 4.2

3. Commercial
   a. Farmer's market, temporary/seasonal; see section 4.2
   b. Temporary outdoor retail sales; see section 4.2
   c. Temporary outdoor sales or events, seasonal; see section 4.2
   d. Temporary produce stand; see section 4.2
   e. Temporary trailer, as home sales office or construction trailer; see section 4.2

4. Wireless Telecommunications
   a. Attached wireless telecommunication facility used for non-residential purposes (prohibited if used as residential)
   b. Carrier on wheels (non-emergency or event, no more than 120 days); see section 4.2
   c. Small cell installations (new support structures or collocation) on private property or ROW; see section 4.2

C. Special Land Use Permit

The following uses are permitted only with a special land use permit:

1. Residential
   a. Bed and breakfast establishment; see section 4.2
   b. Home occupation, with customer contact; see section 4.2
   c. Child care home, 5 or less; see section 4.2
   d. Convents or monasteries; see section 4.2
   e. Personal care home, 6 or less; see section 4.2
   f. Personal care home, 7 or more; see section 4.2
   g. Senior housing; see section 4.2

2. Institutional/Public
   a. Cemetery, columbarium, mausoleum; see section 4.2
   b. Places of worship; see section 4.2
   c. Recreation club; see section 4.2
   d. School, private kindergarten, elementary, middle or high schools; see section 4.2
   e. Swimming pools, commercial; see section 4.2

3. Commercial
   a. Adult daycare facility, up to 6; see section 4.2
   b. Child day care facility, up to 6; see section 4.2

4. Communication – Utility
   a. Amateur radio service or antenna; see section 4.2

5. Wireless Telecommunication
   a. New support structure from 51 feet to 150 feet; see section 4.2

D. Permitted Accessory

The following uses are permitted as accessory only to a principal use:

1. Residential
   a. Accessory uses or structures
   b. Dwelling, single-family , accessory (guesthouse, in-law suite); see section 4.2

2. Institutional/Public
   a. Educational use, private; see section 4.2
   b. Tennis courts, swimming pools, play or recreation areas, community; see section 4.2

3. Commercial
   a. Fitness center

[TMOD-22-001]

Sec. 2.12.3. Dimensional requirements.

Dimensional requirements for the RSM (Small Lot Residential Mix) District shall be as provided in Table 2.4, Medium and High Density Residential Zoning Districts Dimensional Requirements.

(Ord. of 8-2-2017, § 1(2.12.3))

Sec. 2.12.4. Site and building design standards.

Site and building design standards and regulations to be applied in this zoning district shall be as provided in article 5 of this chapter, site design and building form standards.

(Ord. of 8-2-2017, § 1(2.12.4))

Sec. 2.12.5. Density and location criteria.

A. The maximum allowed dwelling unit density in the RSM District before application of any bonus is 4 dwelling units per acre, and after application of any bonuses is 8 dwelling units per acre.B. Density determination of each RSM (Small Lot Residential Mix) property:

   1. Existing RSM properties: For existing properties converted to RSM (Small Lot Residential Mix) District classification at the effective date of the ordinance from which this chapter is derived:

      a. Where conditions of zoning regulating density have been attached to the property, maximum density shall remain as established in such conditions.

      b. Where no conditions of zoning regulating density have been attached to the property, maximum density shall be the Base Max described in Table 2.5 unless administratively reviewed and approved for bonus increases, according to the criteria set forth in subsection C. of this section.

   2. New RSM properties: For property rezoned to the RSM (Small Lot Residential Mix) District classification after the effective date of the ordinance from which this chapter is derived, density shall be established by the City Council at the time of approval, based upon the criteria set forth in subsection C. of this section.

C. Density bonus eligibility and calculations. Density bonuses are allowed only for subdivisions, as defined in this chapter, and are expressly not allowed for individual infill lots. The maximum allowed density on RSM (Small Lot Residential Mix) District zoned property may be increased above the Base Max by application of density bonuses as indicated by Table 2.6, and may be accumulated if eligible. An example of how allowable

density bonuses are calculated is shown in the example at the end of Table 2.6. In no case shall density exceed the bonus maximum established by Table 2.5.

Table 2.6. Residential Density Bonus Eligibility and Percent, with Example Calculation

Density bonus percent increase by amenity, location, or other provision	
20 percent greater than base	
Public Improvements	Applicant provides any of the following improvements: Transit facilities (bus shelter, ride-share), public art, structured parking, trail with public access, sidewalks and/or road improvements beyond project.
Transit Proximity	Existing park-n-ride or ride-share facility is located within one-quarter mile of the property boundary.
Amenity Proximity	Existing amenities, such as healthcare facilities, senior and/or civic centers, public schools, public libraries, recreational facilities, personal service establishments, grocery stores, or shopping centers. (See section 2.12.7.)
50 percent greater than base	
Sustainability Elements	Certification that proposed buildings, if built as designed, would be accredited by LEED and reg, EarthCraft, or other similar national accreditation organization, for energy- and water-efficient site and building design.
Mixed Income or Mixed Age	30-year enforceable commitment approved by the city attorney and recorded on the deed records that total number of units will be reserved to be occupied as follows: 10 percent by very low income households, or 20 percent by low income households, or 25 percent for senior citizens. Household income level shall be as established by the Atlanta Regional Commission.
Additional Enhanced Open Space	Additional enhanced open space (with standards established by article 5 of this chapter) comprise 20 percent of the overall development site.
100 percent greater than base	
Additional Enhanced Open Space	Enhanced open space comprises 35 percent or more of the overall development site.
MARTA Rapid Transit Station	Existing MARTA rapid transit station is located within one-quarter mile of the property boundary.
Reinvestment Areas	Property is located within an Enterprise Zone or Opportunity Zone.

(Ord. of 8-2-2017, § 1(2.12.5))

Sec. 2.12.6. Amenity proximity requirements.

For proposed development within one-quarter mile of an existing public school, park, library, trail or greenway network, a pedestrian facility linking to the amenity shall be provided, or a stub-out for linking to a future amenity shall be provided. Measurement of distance to a qualifying amenity shall be taken from center

point of the proposed drive of the principal entrance and follow the shortest street route to the center point of the closest existing drive to access the existing amenity.

(Ord. of 8-2-2017, § 1(2.12.6))

Sec. 2.12.7. Bonus density qualifying standards.

The following standards shall be applied when considering whether bonus density may be allowed:

A. *Qualifying public improvements.*

1. *Bus shelter.* To qualify as eligible for bonus density, proposed bus shelter facilities shall include at a minimum a shelter structure, bench and paved access and be designed according to MARTA or GRTA standards, based upon ridership thresholds and as documented as acceptable by either agency.

2. *Park-n-ride and/or ride-share.* To qualify as eligible for bonus density, proposed ride-share facilities shall provide for a minimum of 100 parking spaces, and park-n-ride amenities shall provide a minimum of 300 parking spaces, unless the station warrants fewer, as documented by MARTA or other transit service provider.

3. *Public art.* To qualify for bonus density, a proposed work of art shall be subject to approval by the planning commission, be located on the development site or in a public place off-site, and have a value of at least one-half of one percent of the total construction valuation of the building permit. The maximum required value shall not exceed $250,000.00.

   a. Options for providing public art are: Purchase an existing piece of art work or have a specific piece of art work commissioned.

   b. For commissioned work, a deposit with the planning department of 115 percent of the value of the public art is required prior to the issuance of a building permit.

   c. Public art or public works of art is defined as the creative application of skill and taste by artists to production of permanent tangible objects according to the aesthetic principles, including, but not limited to, the following:

      - Paintings;
      - Sculptures;
      - Site specific installations;
      - Engravings;
      - Carvings;
      - Frescos;
      - Mobiles;
      - Murals;
      - Collages;
      - Mosaics;
      - Statutes; and
      - Bas-reliefs.

   d. Public art or public works of art shall also include the creative application of skill and taste by artists according to the aesthetic principals to the architectural embellishment of a

building or structure. Architects and landscape architects are not considered artists under this definition.

e. The following shall not be considered public art or public works of art:

- Reproductions or unlimited copies of original art work;
- Art objects which are mass produced;
- Works that are decorative, ornamental or functional elements of the architecture or landscape design, except when commissioned from an artist as an integral aspect of a structure or site; and
- Architectural rehabilitation or historical preservation.

4. *Structured parking.* Developments that provide vertical, structured parking shall be eligible for the residential density bonus, provided:

a. Parking decks not integrated into other buildings shall be located internal to the site.

b. Structures are either:

(i) At least two stories above ground or greater; and/or

(ii) Alternatively, at least one story is underground.

c. Parking decks visible from a public right-of-way shall incorporate similar architectural materials as the primary buildings.

5. *Trail with public access.* Minimum length of new trail or multi-use path shall be one-quarter mile and shall connect to a greenway/trail or sidewalk network external to the site.

B. *Qualifying amenity clarifications.*

1. Health or medical services: include clinics and offices for health, dental and/or medical services, as defined in article 9 of this chapter, including pharmacies with diagnostic services.

2. Recreational facilities: include private or public exercise gymnasiums, fitness centers, sports fields, parks, and swim centers.

(Ord. of 8-2-2017, § 1(2.12.7))

DIVISION 13. MR-1 (MEDIUM DENSITY RESIDENTIAL-1) DISTRICT

Sec. 2.13.1. Statement of purpose and intent.

The purpose and intent of the City Council in establishing the MR-1 (Medium Density Residential-1) District is as follows:

A. To encourage primarily residential, planned developments that allow accessory retail, office, institutional, and civic uses;

B. To provide for residential neighborhoods with a mix of single-family and multifamily housing types that maintain harmony of scale, intensity, and design with surrounding development;

C. To provide for connectivity of streets and communities and reduce the dependence on automobile use by increasing the ease of and opportunity for alternative modes of travel;

D. To implement the future development map of the city's comprehensive plan.

(Ord. of 8-2-2017, § 1(2.13.1))

Sec. 2.13.2. Permitted and special land uses.

Permitted uses and uses requiring special land use permits shall be as provided below. In cases where a use is permitted but there are supplemental use regulations for that use specified in article 4 of this chapter, such regulations shall also apply.

(Ord. of 8-2-2017, § 1(2.13.2)) [TMOD-22-001]

A. Permitted Uses

The following uses are permitted as of right under this code:

1. Agricultural Activities
   a. Urban Community Garden, up to 5 acres; see section 4.2

2. Residential
   a. Dwelling, cottage home; see section 4.2
   b. Dwelling, multifamily
   c. Dwelling, single-family (attached)
   d. Dwelling, single-family (detached)
   e. Dwelling, three-family
   f. Dwelling, townhouse; see section 4.2
   g. Dwelling, two family
   h. Dwelling, urban single-family; see section 4.2
   i. Live/work unit; see section 4.2
   j. Nursing care facility or hospice

3. Institutional/Public
   a. Government facilities
   b. Library or museum
   c. Neighborhood or subdivision clubhouse or amenities; see section 4.2
   d. School, public kindergarten, elementary, middle or high schools

4. Commercial
   a. Adult daycare center, 7 or more; see section 4.2
   b. Child day care center, up to 6; see section 4.2
   c. Child day care facility, 7 or more; see section 4.2

5. Communications – Utility
   a. Essential services
   b. Satellite television antenna; see section 4.2

6. Wireless Telecommunications
   a. Attached wireless telecommunication facility; see section 4.2
   b. Carrier on Wheels (declared emergency); see section 4.2

B. Special Administrative Uses

The following uses are permitted only with administrative approval:

1. Agricultural
   a. Urban, community garden, over 5 acres

2. Residential
   a. Home occupation, no customer contact; see section 4.2

3. Commercial
   a. Farmer's market, temporary/seasonal; see section 4.2
   b. Temporary outdoor retail sales; see section 4.2
   c. Temporary produce stand; see section 4.2
   d. Temporary trailer, as home sales office or construction trailer; see section 4.2

4. Wireless Telecommunications
   a. Carrier on wheels (non-emergency or event, no more than 120 days); see section 4.2
   b. Small cell installations (new support structures or collocation) on private property or ROW; see section 4.2

C. Special Land Use Permit

The following uses are permitted only with a special land use permit:

1. Residential
   a. Bed and breakfast establishment; see section 4.2
   b. Boarding/rooming house
   c. Fraternity house or sorority house
   d. Home occupation, with customer contact; see section 4.2
   e. Convents or monasteries; see section 4.2
   f. Personal care home, 6 or less; see section 4.2
   g. Personal care home, 7 or more; see section 4.2
   h. Senior housing; see section 4.2
   i. Shelter for homeless persons for no more than 6 persons; see section 4.2
   j. Short term vacation rental
   k. Traditional housing facilities, 7-20; see section 4.2

2. Institutional/Public
   a. Cemetery, columbarium, mausoleum; see section 4.2
   b. Cultural facilities
   c. Places of worship; see section 4.2
   d. Recreation club; see section 4.2
   e. School, private kindergarten, elementary, middle or high schools; see section 4.2
   f. School, vocational; see section 4.2
   g. Swimming pools, commercial; see section 4.2

3. Commercial
   a. Adult daycare facility, up to 6; see section 4.2
   b. Dog day care; see section 4.2

D. Permitted Accessory

The following uses are permitted as accessory only to a principal use:

1. Residential
   a. Accessory uses or structures
   b. Dwelling, single-family , accessory (guesthouse, in-law suite); see section 4.2

2. Institutional/Public
   a. Educational use, private; see section 4.2
   b. Tennis courts, swimming pools, play or recreation areas, community; see section 4.2

3. Commercial
   a. Art gallery
   b. Banks, credit unions or other similar financial institutions
   c. Barber shop/beauty salon or similar establishments
   d. Building or construction office
   e. Coin laundry
   f. Dog grooming; see section 4.2
   g. Dry cleaning agencies, pressing establishments, or laundry pick-up stations
   h. Fitness center
   i. Office, medical
   j. Office, professional
   k. Personal services establishment
   l. Restaurants (non drive-thru)
   m. Retail, 5,000 sf or less (with the exception of small box discount stores)

[TMOD-22-001]

Sec. 2.13.3. Dimensional requirements.

Dimensional requirements for the MR-1 (Medium Density Residential-1) District shall be as provided in Table 2.4, Medium and High Density Residential Zoning Districts Dimensional Requirements.

(Ord. of 8-2-2017, § 1(2.13.3))

Sec. 2.13.4. Site and building design standards.

Site and building design standards and regulations to be applied in this zoning district shall be as provided in article 5 of this chapter, site design and building form standards.

(Ord. of 8-2-2017, § 1(2.13.4))

Sec. 2.13.5. Density and location criteria.

A. The maximum allowed dwelling unit density in the MR-1 District before application of any bonus is 8 dwelling units per acre, and after application of any bonuses is 12 dwelling units per acre.

B. Density determination of each MR-1 (Medium Density Residential-1) property:

   1. Existing MR-1 properties: For existing properties converted to MR-1 (Medium Density Residential-1) District classification at the effective date of the ordinance from which this chapter is derived:

      a. Where conditions of zoning regulating density have been attached to the property, maximum density shall remain as established.

      b. Where no conditions of zoning regulating density have been attached to the property, maximum density shall be the Base Max described in Table 2.7, unless administratively reviewed and approved for bonus increases, according to the criteria set forth in subsection C. of this section.

2. New MR-1 properties: For property rezoned to the MR-1 (Medium Density Residential-1) District classification after the effective date of the ordinance from which this chapter is derived, density shall be established by the City Council at the time of approval, based upon the criteria set forth in subsection C. of this section.

C. Density bonus eligibility and calculations. Density bonuses are intended for subdivisions, as defined in this chapter, not for individual infill lots. The maximum allowed density on MR-1 (Medium Density Residential-1) District zoned property may be increased above the base max by application of density bonuses as indicated by Table 2.6, and may be accumulated if eligible. An example of how allowable density bonuses are calculated is shown in the example at the end of Table 2.6. In no case shall density exceed the bonus maximum established by Table 2.7.

(Ord. of 8-2-2017, § 1(2.13.5))

DIVISION 14. MR-2 (MEDIUM DENSITY RESIDENTIAL-2) DISTRICT

Sec. 2.14.1. Statement of purpose and intent.

The purpose and intent of the City Council in establishing the MR-2 (Medium Density Residential-2) District is as follows:

A. To encourage primarily residential, planned developments that allow accessory retail, office, institutional, and civic uses;

B. To provide for residential neighborhoods with a mix of single-family and multifamily housing types that maintain harmony of scale, intensity, and design with surrounding development;

C. To provide for connectivity of streets and communities and reduce the dependence on automobile uses by increasing the ease of movement and opportunities for alternative modes of travel;

D. To implement the future development map of the city's comprehensive plan;

E. To provide districts that allow appropriate development transitions.

(Ord. of 8-2-2017, § 1(2.14.1))

Sec. 2.14.2. Permitted and special land uses.

Permitted uses and uses requiring special land use permits shall be as provided below. In cases where a use is permitted but there exist supplemental use regulations for that use specified in article 4 of this chapter, such regulations shall also apply.

(Ord. of 8-2-2017, § 1(2.14.2)) [TMOD-22-001]

A. Permitted Uses

The following uses are permitted as of right under this code:

1. Agricultural Activities
   a. Urban Community Garden, up to 5 acres; see section 4.2

2. Residential
   a. Boarding/rooming house
   b. Dwelling, cottage home; see section 4.2
   c. Dwelling, multifamily
   d. Dwelling, single-family (attached)
   e. Dwelling, single-family (detached)

f. Dwelling, three-family
g. Dwelling, townhouse; see section 4.2
h. Dwelling, two family
i. Dwelling, urban single-family; see section 4.2
j. Fraternity house or sorority house
k. Live/work unit; see section 4.2
l. Nursing care facility or hospice

3. Institutional/Public
   a. Government facilities
   b. Library or museum
   c. Neighborhood or subdivision clubhouse or amenities; see section 4.2
   d. School, public kindergarten, elementary, middle or high schools

4. Commercial
   a. Adult daycare center, 7 or more; see section 4.2
   b. Child day care center, up to 6; see section 4.2
   c. Child day care facility, 7 or more; see section 4.2

5. Communications – Utility
   a. Essential services
   b. Satellite television antenna; see section 4.2

6. Wireless Telecommunications
   a. Attached wireless telecommunication facility; see section 4.2
   b. Carrier on Wheels (declared emergency); see section 4.2

B. Special Administrative Uses

The following uses are permitted only with administrative approval:

1. Agricultural
   a. Urban, community garden, over 5 acres

2. Residential
   a. Home occupation, no customer contact; see section 4.2

3. Commercial
   a. Farmer's market, temporary/seasonal; see section 4.2
   b. Temporary outdoor retail sales; see section 4.2
   c. Temporary produce stand; see section 4.2
   d. Temporary trailer, as home sales office or construction trailer; see section 4.2

4. Wireless Telecommunications
   a. Carrier on wheels (non-emergency or event, no more than 120 days); see section 4.2
   b. Small cell installations (new support structures or collocation) on private property or ROW; see section 4.2

C. Special Land Use Permit

The following uses are permitted only with a special land use permit:

1. Residential
   a. Bed and breakfast establishment; see section 4.2
   b. Home occupation, with customer contact; see section 4.2

c. Convents or monasteries; see section 4.2
d. Personal care home, 6 or less; see section 4.2
e. Personal care home, 7 or more; see section 4.2
f. Senior housing; see section 4.2
g. Shelter for homeless persons for no more than 6 persons; see section 4.2
h. Shelter for homeless persons 7-20; see section 4.2
i. Traditional housing facilities, 7-20; see section 4.2

2. Institutional/Public
a. Cemetery, columbarium, mausoleum; see section 4.2
b. Cultural facilities
c. Places of worship; see section 4.2
d. Recreation club; see section 4.2
e. School, private kindergarten, elementary, middle or high schools; see section 4.2
f. School, vocational; see section 4.2
g. Swimming pools, commercial; see section 4.2

3. Commercial
a. Adult daycare facility, up to 6; see section 4.2
b. Dog day care; see section 4.2

D. Permitted Accessory
The following uses are permitted as accessory only to a principal use:
1. Residential
a. Accessory uses or structures
b. Dwelling, single-family , accessory (guesthouse, in-law suite); see section 4.2

2. Institutional/Public
a. Educational use, private; see section 4.2
b. Tennis courts, swimming pools, play or recreation areas, community; see section 4.2

3. Commercial
a. Art gallery
b. Banks, credit unions or other similar financial institutions
c. Barber shop/beauty salon or similar establishments
d. Building or construction office
e. Coin laundry
f. Dog grooming; see section 4.2
g. Dry cleaning agencies, pressing establishments, or laundry pick-up stations
h. Fitness center
i. Office, medical
j. Office, professional
k. Personal services establishment
l. Restaurants (non drive-thru)
m. Retail, 5,000 sf or less (with the exception of small box discount stores)
[TMOD-22-001]

Sec. 2.14.3. Dimensional requirements.

Dimensional requirements for the MR-2 (Medium Density Residential-2) District shall be as provided in Table 2.4, Medium and High Density Residential Zoning Districts Dimensional Requirements.

(Ord. of 8-2-2017, § 1(2.14.3))

Sec. 2.14.4. Site and building design standards.

Site and building design standards and regulations to be applied in this zoning district shall be as provided in article 5 of this chapter, site design and building form standards.

(Ord. of 8-2-2017, § 1(2.14.4))

Sec. 2.14.5. Density and location criteria.

A. The maximum allowed dwelling unit density in the MR-2 District before application of any bonus is 12 dwelling units per acre, and after application of any bonuses is 24 dwelling units per acre

B. Density determination of each MR-2 (Medium Density Residential-2) property:

   1. Existing MR-2 properties: For existing properties converted to MR-2 (Medium Density Residential-2) District classification at the effective date of the ordinance from which this chapter is derived:

      a. Where conditions of zoning regulating density have been attached to the property, maximum density shall remain as established.

      b. Where no conditions of zoning regulating density have been attached to the property, maximum density shall be the Base Max described in Table 2.8, unless administratively reviewed and approved for bonus increases according to the criteria set forth in subsection C. of this section.

   2. New MR-2 properties: For property rezoned to the MR-2 (Medium Density Residential-2) District classification after the effective date of the ordinance from which this chapter is derived density shall be established by the City Council at the time of approval, based upon the criteria set forth in subsection C. of this section.

C. Density bonus eligibility and calculations. Density bonuses are intended for subdivisions, as defined in this chapter, not for individual infill lots. The maximum allowed density on MR-2 (Medium Density Residential-2) District zoned property may be increased above the Base Max by application of density bonuses, as indicated by Table 2.6, and may be accumulated if eligible. An example of how allowable density bonuses are calculated is shown in the example at the end of Table 2.6. In no case shall density of MR-2 (Medium Density Residential-2) zoned property exceed the bonus maximum established by Table 2.8.

(Ord. of 8-2-2017, § 1(2.14.5))

Sec. 2.14.6. Building heights.

Maximum building heights shall meet character area intent by compliance with the transitional height and buffer standards of article 5 of this chapter as well as proportional relationship of density to height as established in Table 2.9.

Table 2.9. MR-2 Building Height

Density above 18 and up to 24 dwelling units per gross acre		
Building Use	Base Max Height	Height if Density Achieved by Bonus
Single-Family Attached	3 stories or 45 feet*	3 stories or 45 feet*
Multifamily	3 stories or 45 feet*	4 stories or 60 feet*
With Accessory Non-Res	4 stories or 60 feet*	5 stories or 70 feet*
Density up to 18 dwelling units per gross acre		
Building Use	Base Max Height	Height if Density Achieved by Bonus
Single-Family Attached	3 stories or 45 feet*	3 stories or 45 feet*
Multifamily	2 stories or 35 feet*	3 stories or 45 feet*
With Accessory Non-Res	3 stories or 45 feet*	4 stories or 60 feet*
* Whichever is less		

DIVISION 15. HR-1 (HIGH DENSITY RESIDENTIAL-1) DISTRICT

Sec. 2.15.1. Statement of purpose and intent.

The purpose and intent of the City Council in establishing the HR-1 (High Density Residential-1) District regulations is as follows:

A. To encourage primarily residential, urban-scaled developments that allow accessory retail, office, institutional, and civic uses;

B. To provide for high density, low-rise residential neighborhoods with a mix of single-family and multifamily housing types that maintain harmony of scale, intensity, and design with surrounding development;

C. To provide for connectivity of streets and communities and reduce the dependence on automobile use by increasing the ease of movement and opportunities for alternative modes of travel;

D. To implement the future development map of the city's comprehensive plan.

(Ord. of 8-2-2017, § 1(2.15.1))

Sec. 2.15.2. Permitted and special land uses.

Permitted uses and uses requiring special land use permits shall be as provided below. In cases where a use is permitted but there are supplemental use regulations for that use specified in article 4 of this chapter, such regulations shall also apply.

(Ord. of 8-2-2017, § 1(2.15.2)) [TMOD-22-001]

A. Permitted Uses

The following uses are permitted as of right under this code:

1. Agricultural Activities
   a. Urban Community Garden, up to 5 acres; see section 4.2

2. Residential
   a. Boarding/rooming house
   b. Dwelling, apartment
   c. Dwelling, cottage home; see section 4.2
   d. Dwelling, multifamily
   e. Dwelling, single-family (attached)
   f. Dwelling, single-family (detached)
   g. Dwelling, three-family
   h. Dwelling, townhouse; see section 4.2
   i. Dwelling, two family
   j. Dwelling, urban single-family; see section 4.2
   k. Fraternity house or sorority house
   l. Live/work unit; see section 4.2

3. Institutional/Public
   a. Government facilities
   b. Library or museum
   c. Neighborhood or subdivision clubhouse or amenities; see section 4.2
   d. School, public kindergarten, elementary, middle or high schools

4. Commercial
   a. Adult daycare center, 7 or more; see section 4.2
   b. Child day care center, up to 6; see section 4.2
   c. Child day care facility, 7 or more; see section 4.2
   d. Personal services establishment

5. Communications – Utility
   a. Essential services
   b. Satellite television antenna; see section 4.2

6. Wireless Telecommunications
   a. Attached wireless telecommunication facility; see section 4.2
   b. Carrier on Wheels (declared emergency); see section 4.2

B. Special Administrative Uses

The following uses are permitted only with administrative approval:

1. Agricultural
   a. Urban, community garden, over 5 acres

2. Residential
   a. Home occupation, no customer contact; see section 4.2

3. Commercial
   a. Farmer's market, temporary/seasonal; see section 4.2
   b. Temporary outdoor retail sales; see section 4.2
   c. Temporary produce stand; see section 4.2
   d. Temporary trailer, as home sales office or construction trailer; see section 4.2

4. Wireless Telecommunications
   a. Carrier on wheels (non-emergency or event, no more than 120 days); see section 4.2
   b. Small cell installations (new support structures or collocation) on private property or ROW; see section 4.2

C. Special Land Use Permit

The following uses are permitted only with a special land use permit:

1. Residential
   a. Bed and breakfast establishment; see section 4.2
   b. Home occupation, with customer contact; see section 4.2
   c. Personal care home, 6 or less; see section 4.2
   d. Personal care home, 7 or more; see section 4.2
   e. Senior housing; see section 4.2
   f. Shelter for homeless persons for no more than 6 persons; see section 4.2
   g. Shelter for homeless persons 7-20; see section 4.2
   h. Traditional housing facilities, 7-20; see section 4.2

2. Institutional/Public
   a. Cemetery, columbarium, mausoleum; see section 4.2
   b. Cultural facilities
   c. Places of worship; see section 4.2
   d. Recreation club; see section 4.2

e. School, private kindergarten, elementary, middle or high schools; see section 4.2
f. School, vocational; see section 4.2
g. Swimming pools, commercial; see section 4.2

3. Commercial
a. Adult daycare facility, up to 6; see section 4.2
b. Dog day care; see section 4.2

D. Permitted Accessory
The following uses are permitted as accessory only to a principal use:
1. Residential
a. Accessory uses or structures

2. Institutional/Public
a. Educational use, private; see section 4.2
b. Tennis courts, swimming pools, play or recreation areas, community; see section 4.2

3. Commercial
a. Art gallery
b. Banks, credit unions or other similar financial institutions
c. Barber shop/beauty salon or similar establishments
d. Building or construction office
e. Coin laundry
f. Dog grooming; see section 4.2
g. Dry cleaning agencies, pressing establishments, or laundry pick-up stations
h. Fitness center
i. Office, medical
j. Office, professional
k. Restaurants (non drive-thru)
l. Retail, 5.000 sf or less (with the exception of small box discount stores)
[TMDO-21-017]

Sec. 2.15.3. Dimensional requirements.

Dimensional requirements for the HR-1 (High Density Residential-1) District shall be as provided in Table 2.4, Medium and High Density Residential Zoning Districts Dimensional Requirements.

(Ord. of 8-2-2017, § 1(2.15.3))

Sec. 2.15.4. Site and building design standards.

Site and building design standards and regulations to be applied in this zoning district shall be as provided in article 5 of this chapter, site design and building form standards.

(Ord. of 8-2-2017, § 1(2.15.4))

Sec. 2.15.5. Density and location criteria.

A. The maximum allowed dwelling unit density in the HR-1 District before application of any bonus is 24 dwelling units per acre, and after application of any bonuses is 40 dwelling units per acre.

B. Density determination of each HR-1 (High Density Residential-1) property:

1. Existing HR-1 properties: For existing properties converted to the HR-1 (High Density Residential-1) District classification at the effective date of the ordinance from which this chapter is derived:

   a. Where conditions of zoning regulating density have been attached to the property, maximum density shall remain as established.

   b. Where no conditions of zoning regulating density have been attached to the property, maximum density shall be the base max described in Table 2.10, unless administratively reviewed and approved for bonus increases according to the criteria set forth in subsection C. of this section.

2. New HR-1 properties: For property rezoned to the HR-1 (High Density Residential-1) District classification after the effective date of the ordinance from which this chapter is derived, density shall be established by the City Council at the time of approval, based upon the criteria set forth in subsection C. of this section.

C. Density bonus eligibility and calculations. Density bonuses are intended for subdivisions, as defined in this chapter, not for individual infill lots. The maximum allowed density on HR-1 (High Density Residential-1) District zoned property may be increased above the base max by application of density bonuses, as indicated by Table 2.6, and may be accumulated if eligible. An example of how allowable density bonuses are calculated is shown in the example at the end of Table 2.6. In no case shall density exceed the bonus maximum established by Table 2.10.

(Ord. of 8-2-2017, § 1(2.15.5))

Sec. 2.15.6. Building heights.

Maximum building heights shall meet character area intent by compliance with the transitional height and buffer standards of article 5 of this chapter as well as proportional relationship of density to height as regulated by Table 2.11.

Table 2.11. HR-1 Building Height

Density above 24 and up to 40 dwelling units per gross acre		
Building Use	Base Max Height	Height if Density Achieved by Bonus
Single-Family Attached	3 stories or 45 feet*	3 stories or 45 feet*
Multifamily	4 stories or 60 feet*	6 stories or 75 feet*
With Accessory Non-Res	6 stories or 75 feet*	8 stories or 100 feet*
Density up to 24 dwelling units per gross acre		
Building Use	*Base Max Height*	*Height if Density Achieved by Bonus*
Single-Family Attached	3 stories or 45 feet*	3 stories or 45 feet*
Multifamily	3 stories or 45 feet*	4 stories or 60 feet*

With Accessory Non-Res	4 stories or 60 feet*	5 stories or 70 feet*
* Whichever is less.		

DIVISION 16. HR-2 (HIGH DENSITY RESIDENTIAL-2) DISTRICT

Sec. 2.16.1. Statement of purpose and intent.

The purpose and intent of the City Council in establishing the HR-2 (High Density Residential-2) District regulations is as follows:

A. To encourage primarily residential, urban-scaled developments that allow accessory retail, office, institutional, and civic uses;

B. To provide for high density, mid-rise residential neighborhoods with a mix of single-family and multifamily housing types that maintain harmony of scale, intensity, and design with surrounding development;

C. To provide for connectivity of streets and communities and reduce the dependence on automobile use by increasing the ease of movement and opportunities for alternative modes of travel;

D. To implement the future development map of the city's most current comprehensive plan.

(Ord. of 8-2-2017, § 1(2.16.1))

Sec. 2.16.2. Permitted and special land uses.

Permitted uses and uses requiring special land use permits shall be as provided below. In cases where a use is permitted but there are supplemental use regulations for that use specified in article 4 of this chapter, such regulations shall also apply.

(Ord. of 8-2-2017, § 1(2.16.2)) [TMOD-22-001]

A. Permitted Uses

The following uses are permitted as of right under this code:

1. Agricultural Activities
   a. Urban Community Garden, up to 5 acres; see section 4.2

2. Residential
   a. Boarding/rooming house
   b. Dwelling, apartment
   c. Dwelling, cottage home; see section 4.2
   d. Dwelling, multifamily
   e. Dwelling, single-family (attached)
   f. Dwelling, single-family (detached)
   g. Dwelling, three-family
   h. Dwelling, townhouse; see section 4.2
   i. Dwelling, two family
   j. Dwelling, urban single-family; see section 4.2
   k. Fraternity house or sorority house
   l. Live/work unit; see section 4.2

3. Institutional/Public

a. Government facilities
b. Library or museum
c. Neighborhood or subdivision clubhouse or amenities; see section 4.2
d. School, public kindergarten, elementary, middle or high schools

4. Commercial
a. Adult daycare center, 7 or more; see section 4.2
b. Child day care center, up to 6; see section 4.2
c. Child day care facility, 7 or more; see section 4.2
d. Personal services establishment

5. Communications – Utility
a. Essential services
b. Satellite television antenna; see section 4.2

6. Wireless Telecommunications
a. Attached wireless telecommunication facility; see section 4.2
b. Carrier on Wheels (declared emergency); see section 4.2

B. Special Administrative Uses

The following uses are permitted only with administrative approval:

1. Agricultural
a. Urban, community garden, over 5 acres

2. Residential
a. Home occupation, no customer contact; see section 4.2

3. Commercial
a. Farmer's market, temporary/seasonal; see section 4.2
b. Temporary outdoor retail sales; see section 4.2
c. Temporary produce stand; see section 4.2
d. Temporary trailer, as home sales office or construction trailer; see section 4.2

4. Wireless Telecommunications
a. Carrier on wheels (non-emergency or event, no more than 120 days); see section 4.2
b. Small cell installations (new support structures or collocation) on private property or ROW; see section 4.2

C. Special Land Use Permit

The following uses are permitted only with a special land use permit:

1. Residential
a. Bed and breakfast establishment; see section 4.2
b. Home occupation, with customer contact; see section 4.2
c. Personal care home, 6 or less; see section 4.2
d. Personal care home, 7 or more; see section 4.2
e. Senior housing; see section 4.2
f. Shelter for homeless persons for no more than 6 persons; see section 4.2
g. Shelter for homeless persons 7-20; see section 4.2
h. Traditional housing facilities, 7-20; see section 4.2

2. Institutional/Public
a. Cemetery, columbarium, mausoleum; see section 4.2

b. Cultural facilities
c. Places of worship; see section 4.2
d. Recreation club; see section 4.2
e. School, private kindergarten, elementary, middle or high schools; see section 4.2
f. School, vocational; see section 4.2
g. Swimming pools, commercial; see section 4.2

3. Commercial
a. Adult daycare facility, up to 6; see section 4.2
b. Dog day care; see section 4.2

D. Permitted Accessory
The following uses are permitted as accessory only to a principal use:
1. Residential
a. Accessory uses or structures

2. Institutional/Public
a. Educational use, private; see section 4.2
b. Tennis courts, swimming pools, play or recreation areas, community; see section 4.2

3. Commercial
a. Art gallery
b. Banks, credit unions or other similar financial institutions
c. Barber shop/beauty salon or similar establishments
d. Building or construction office
e. Coin laundry
f. Dog grooming; see section 4.2
g. Dry cleaning agencies, pressing establishments, or laundry pick-up stations
h. Fitness center
i. Office, medical
j. Office, professional
k. Restaurants (non drive-thru)
l. Retail, 5.000 sf or less (with the exception of small box discount stores)

[TMOD-22-001]

Sec. 2.16.3. Dimensional requirements.

Dimensional requirements for the HR-2 (High Density Residential-2) District shall be as provided in Table 2.4, Medium and High Density Residential Zoning Districts Dimensional Requirements.

(Ord. of 8-2-2017, § 1(2.16.3))

Sec. 2.16.4. Site and building design standards.

Site and building design standards and regulations to be applied in this zoning district shall be as provided in article 5 of this chapter, site design and building form standards.

(Ord. of 8-2-2017, § 1(2.16.4))

Sec. 2.16.5. Density and location criteria.

A. The maximum allowed dwelling unit density in the HR-2 District before application of any bonus is 40 dwelling units per acre, and after application of any bonuses is 60 dwelling units per acre.

B. Density determination of each HR-2 (High Density Residential-2) property:

1. Existing HR-2 properties: For properties converted to the HR-2 (High Density Residential-2) District classification at the effective date of the ordinance from which this chapter is derived:

   a. Where conditions of zoning regulating density have been attached to the property, maximum density shall remain as established.

   b. Where no conditions of zoning regulating density have been attached to the property, maximum density shall be the base max described in Table 2.12, unless administratively reviewed and approved for bonus increases according to the criteria set forth in subsection C. of this section.

2. New HR-2 properties: For property rezoned to the HR-2 (High Density Residential-2) District classification after the effective date of the ordinance from which this chapter is derived, density shall be established by the City Council at the time of approval, based upon the criteria set forth in subsection C. of this section.

C. Density bonus eligibility and calculations. Density bonuses are intended for subdivisions, as defined in this chapter, not for individual infill lots. The maximum allowed density on HR-2 (High Density Residential-2) District zoned property may be increased above the base max by application of density bonuses as indicated by Table 2.6, and may be accumulated if eligible. An example of how allowable density bonuses are calculated is shown in the example at the end of Table 2.6. In no case shall density exceed the bonus maximum established by Table 2.12.

(Ord. of 8-2-2017, § 1(2.16.5))

Sec. 2.16.6. Building heights.

Maximum building heights shall meet character area intent by compliance with the transitional height and buffer standards of article 5 of this chapter as well as proportional relationship of density to height as established by Table 2.13.

Table 2.13. HR-2 Building Height

Density above 40 and up to 60 dwelling units per gross acre		
Building Use	Base Max Height	Height if Density Achieved by Bonus
Multifamily	6 stories or 75 feet*	8 stories or 100 feet*
With Accessory Non-Res	8 stories or 100 feet*	10 stories
Density up to 40 dwelling units per gross acre		
Building Use	*Base Max Height*	*Height if Density Achieved by Bonus*
Multifamily	4 stories or 60 feet*	6 stories or 75 feet*
With Accessory Non-Res	6 stories or 75 feet*	8 stories or 100 feet*
* Whichever is less		

DIVISION 17. HR-3 (HIGH DENSITY RESIDENTIAL-3) DISTRICT

Sec. 2.17.1. Statement of purpose and intent.

The purpose and intent of the City Council in establishing the HR-3 (High Density Residential-3) District regulations is as follows:

A. To encourage primarily residential, urban-scaled developments that allow accessory retail, office, institutional, and civic uses;

B. To provide for high density, high-rise residential neighborhoods with a mix of single-family and multifamily housing types that maintain harmony of scale, intensity, and design with surrounding development;

C. To provide for connectivity of streets and communities and reduce the dependence on automobile use by increasing the ease of movement and opportunities for alternative modes of travel;

D. To implement the future development map of the city's most current comprehensive plan.

(Ord. of 8-2-2017, § 1(2.17.1))

Sec. 2.17.2. Permitted and special land uses.

Permitted uses and uses requiring special land use permits shall be as provided below. In cases where a use is permitted but there exist supplemental use regulations for that use specified in article 4 of this chapter, such regulations shall also apply.

(Ord. of 8-2-2017, § 1(2.17.2)) [TMOD-22-001]

A. Permitted Uses

The following uses are permitted as of right under this code:

1. Agricultural Activities
   a. Urban Community Garden, up to 5 acres; see section 4.2

2. Residential
   a. Boarding/rooming house
   b. Dwelling, apartment
   c. Dwelling, cottage home; see section 4.2
   d. Dwelling, multifamily
   e. Dwelling, single-family (attached)
   f. Dwelling, single-family (detached)
   g. Dwelling, three-family
   h. Dwelling, townhouse; see section 4.2
   i. Dwelling, two family
   j. Dwelling, urban single-family; see section 4.2
   k. Fraternity house or sorority house
   l. Live/work unit; see section 4.2

3. Institutional/Public
   a. Government facilities
   b. Library or museum
   c. Neighborhood or subdivision clubhouse or amenities; see section 4.2

d. School, public kindergarten, elementary, middle or high schools

4. Commercial
   a. Adult daycare center, 7 or more; see section 4.2
   b. Child day care center, up to 6; see section 4.2
   c. Child day care facility, 7 or more; see section 4.2
   d. Personal services establishment

5. Communications – Utility
   a. Essential services
   b. Satellite television antenna; see section 4.2

6. Wireless Telecommunications
   a. Attached wireless telecommunication facility; see section 4.2
   b. Carrier on Wheels (declared emergency); see section 4.2

B. Special Administrative Uses

The following uses are permitted only with administrative approval:

1. Agricultural
   a. Urban, community garden, over 5 acres

2. Residential
   a. Home occupation, no customer contact; see section 4.2

3. Commercial
   a. Farmer's market, temporary/seasonal; see section 4.2
   b. Temporary outdoor retail sales; see section 4.2
   c. Temporary produce stand; see section 4.2
   d. Temporary trailer, as home sales office or construction trailer; see section 4.2

4. Wireless Telecommunications
   a. Carrier on wheels (non-emergency or event, no more than 120 days); see section 4.2
   b. Small cell installations (new support structures or collocation) on private property or ROW; see section 4.2

C. Special Land Use Permit

The following uses are permitted only with a special land use permit:

1. Residential
   a. Bed and breakfast establishment; see section 4.2
   b. Home occupation, with customer contact; see section 4.2
   c. Personal care home, 6 or less; see section 4.2
   d. Personal care home, 7 or more; see section 4.2
   e. Senior housing; see section 4.2
   f. Shelter for homeless persons for no more than 6 persons; see section 4.2
   g. Shelter for homeless persons 7-20; see section 4.2
   h. Traditional housing facilities, 7-20; see section 4.2
2. Institutional/Public
   a. Cemetery, columbarium, mausoleum; see section 4.2
   b. Cultural facilities
   c. Places of worship; see section 4.2
   d. Recreation club; see section 4.2

e. School, private kindergarten, elementary, middle or high schools; see section 4.2
f. School, vocational; see section 4.2
g. Swimming pools, commercial; see section 4.2

3. Commercial
a. Adult daycare facility, up to 6; see section 4.2
b. Dog day care; see section 4.2

D. Permitted Accessory
The following uses are permitted as accessory only to a principal use:
1. Residential
a. Accessory uses or structures

2. Institutional/Public
a. Educational use, private; see section 4.2
b. Tennis courts, swimming pools, play or recreation areas, community; see section 4.2

3. Commercial
a. Art gallery
b. Banks, credit unions or other similar financial institutions
c. Barber shop/beauty salon or similar establishments
d. Building or construction office
e. Coin laundry
f. Dog grooming; see section 4.2
g. Dry cleaning agencies, pressing establishments, or laundry pick-up stations
h. Fitness center
i. Office, medical
j. Office, professional
k. Restaurants (non drive-thru)
l. Retail, 5.000 sf or less (with the exception of small box discount stores)
[TMOD-22-001]

Sec. 2.17.3. Dimensional requirements.

Dimensional requirements for the HR-3 (High Density Residential-3) District shall be as provided in Table 2.4, Medium and High Density Residential Zoning Districts Dimensional Requirements.

(Ord. of 8-2-2017, § 1(2.17.3))

Sec. 2.17.4. Site and building design standards.

Site and building design standards and regulations to be applied in this zoning district shall be as provided in article 5 of this chapter, site design and building form standards.

(Ord. of 8-2-2017, § 1(2.17.4))

Sec. 2.17.5. Density and location criteria.

A. The maximum allowed dwelling unit density in the HR-2 District before application of any bonus is 60 dwelling units per acre, and after application of any bonuses is 120 dwelling units per acre.

B. Density determination of each HR-3 (High Density Residential-3) property:

1. Existing HR-3 properties: For existing properties converted to HR-3 (High Density Residential-3) District classification at the effective date of the ordinance from which this chapter is derived:

   a. Where conditions of zoning regulating density have been attached to the property, maximum density shall remain as established.

   b. Where no conditions of zoning regulating density have been attached to the property, maximum density shall be the Base Max described in Table 2.14, unless administratively reviewed and approved for bonus increases according to the criteria set forth in subsection C. of this section.

2. New HR-3 properties: For property rezoned to the HR-3 (High Density Residential-3) District classification after the effective date of the ordinance from which this chapter is derived, density shall be established by the City Council at the time of approval, based upon the criteria set forth in subsection C. of this section.

C. Density bonus eligibility and calculations. Density bonuses are intended for subdivisions, as defined in this chapter, not for individual infill lots. The maximum allowed density on HR-3 (High Density Residential-3) District zoned property may be increased above the base max by application of density bonuses as indicated by Table 2.6, and may be accumulated if eligible. An example of how allowable density bonuses are calculated is shown in the example at the end of Table 2.6. In no case shall density exceed the bonus maximum established by Table 2.14.

(Ord. of 8-2-2017, § 1(2.17.5))

Sec. 2.17.6. Building heights.

Maximum building heights shall meet character area intent by compliance with the transitional height and buffer standards of article 5 of this chapter as well as proportional relationship of density to height as regulated by Table 2.15.

Table 2.15. HR-3 Building Height for Density

Density above 60 and up to 120 dwelling units per gross acre		
Building Use	Base Max Height	Height if Density Achieved by Bonus
Multifamily	8 stories or 100 feet	No limit
With Accessory Non-Res	10 stories	No limit
Density up to 60 dwelling units per gross acre		
Building Use	*Base Max Height*	*Height if Density Achieved*
Multifamily	6 stories or 75 feet*	8 stories or 100 feet*
With Accessory Non-Res	8 stories or 100 feet*	10 stories
* Whichever is less		

DIVISION 18. MIXED-USE ZONING DISTRICTS

Sec. 2.18.1. Statement of purpose and intent.

A. The purpose and intent of the City Council in establishing all districts designated as Mixed-Use (MU-1, MU-2, MU-3, MU-4 and MU-5) Zoning Districts are as follows:

1. To encourage the development of master or comprehensively planned, mixed-use developments;
2. To permit flexible and compatible arrangements of residential, commercial, office, institutional, and civic uses;
3. To offer a variety of housing options, including multifamily residential and single-family attached housing of various densities, upper-floor residential units over nonresidential space, or active adult and/or senior housing;
4. To implement the future development map of the city's most current comprehensive plan;
5. To maintain harmony of scale, intensity, and design of character areas with varying housing options;
6. To accommodate and promote mixed-use buildings with amenities and services provided by a variety of nonresidential uses, as appropriate in the activity centers established by the comprehensive plan;
7. To promote the health and well-being of residents through the development of living environments that accommodate pedestrians and bicyclists;
8. To encourage a sense of community through design that promotes social interaction; and
9. To reduce automobile traffic and congestion and promote the use of transit by encouraging appropriate development densities.

(Ord. of 8-2-2017, § 1(2.18.1))

Sec. 2.18.2. Mixed-use district densities.

A. Table 2.16, which summarizes the allowed densities and eligible character areas for mixed-use zoning districts, is provided for the aid of the reader. Any conflict between Table 2.16 and any other provision of this chapter shall be resolved in favor of the other provision of this chapter.

Table 2.16. Summary of Mixed-Use Zoning District Densities

Zoning District Name		Density (units/acre)
Mixed-Use Low Density	MU-1	4—8
Mixed-Use Low-Medium Density	MU-2	8—12
Mixed-Use Medium Density	MU-3	12—24
Mixed-Use High Density	MU-4	24—40
Mixed-Use Very High Density	MU-5	40—60

B. Individual buildings in any mixed use district may exclusively consist of only residential uses, provided that they are part of a larger mixed-use development that meets the overall percentage mix of nonresidential to residential floor area established by Table 2.17.

(Ord. of 8-2-2017, § 1(2.18.2))

Sec. 2.18.3. Mixed-use dimensional requirements.

Dimensional requirements including overall site requirements, individual lot dimensions, setbacks, and heights for Mixed-Use Districts are provided in Table 2.17, Mixed-Use Zoning Districts Dimensional Requirements. Compatibility rules and transitional buffers, as defined and required in article 5 of this chapter may apply.

Table 2.17. Mixed-Use Zoning Districts Dimensional Requirements

Mixed-Use Districts				
KEY: Development Types: SFD: Single-Family Detached, SFA: Single-Family Attached, TTF: Two- or Three-Family, MF: Multifamily, U-SF: Urban Single-Family, MU: Mixed-Use, CM: Commercial, OF: Office				
Element	*MU-1*	*MU-2*	*MU-3*	*MU-4 and MU-5*
Overall Site Requirements (minimum, unless otherwise specified)				
Dwelling units per acre (with bonus)	4—8	8—12	12—24	MU-4=24—40; MU-5=40—60
Minimum street frontage for site (feet)	75	75	50	50
Minimum site size	0	0	0	0
Overall site setback rear (feet)	20	20	20	10
Overall site setback side (feet)	15	15	15	N/A (Art. V buffers apply)
Open space required (minimum percent)*	10 percent of total parcel acreage	10 percent of total parcel acreage	10 percent of total parcel acreage	10 percent of total parcel acreage
Transitional buffers (feet)	See article 5 of this chapter			
Required minimum mix of uses				
Nonresidential (percentage square footage of building)	10 percent	15 percent	20 percent	20 percent
Residential (percentage square footage of building)	15 percent	10 percent	0	0
Individual Lot Dimensions by Residential Type (minimum, unless specified)				
*Single-Family Detached (SFD)***				
Lot area (square feet)	3,500	3,500/2,000 cottage	3,500	Not permitted
Lot width (feet)	35	35/20	35	Not permitted
Lot coverage (maximum percentage)	55	55	55	Not permitted
Single-Family Attached (SFA) and Urban Single-Family				
Lot area (square feet)	1,000	1,000	1,000	1,000
Lot width (feet)	20	16	16	20

Lot coverage (maximum percent per lot or total parcel acreage)	50 percent	75 percent	80 percent	90 percent
Two- or Three-Family (TTF)				
Lot area (square feet)	4,000	4,000	4,000	4,000
Lot width (feet)	55	55	55	55
Lot coverage (maximum percent per lot or total parcel acreage)	55	55	75	75
Multifamily (MF) - See Building Type Standards in article 5 of this chapter				
Lot area (square feet)	12,500	12,500	12,500	12,500
Lot width (feet)	1 bldg.: 50 2 or more bldgs.: 100	1 bldg.: 50 2 or more bldgs.: 100	1 bldg.: 50 2 or more bldgs.: 100	1 bldg.: 50 2 or more bldgs.: 100
Lot coverage (maximum percentage)	N/A	N/A	N/A	N/A
Building Setbacks (minimum, unless specified)				
Single-Family Detached and Two-Family				
Front (feet)	Min. 10/Max. 25	Min. 5/Max. 20	Min. 5/Max. 20	Not permitted
Side - interior lot (feet)	7.5	7.5	7.5	Not permitted
Side - corner lot on public street (feet)	15	15	15	Not permitted
Rear (feet)	10	10	10	Not permitted
Rear - w/alley (feet)	15	10	10	Not permitted
Single-Family Attached and Urban Single-Family				
Front (feet)	Min. 10/Max. 20, Min. 5/Max. 10 with alley garage	Min. 10/Max. 20, Min. 5 with alley garage	No Min./Max	No Min./Max.
Side - interior lot (feet)	N/A	N/A	No Min./Max.	No Min./Max.
Side - corner lot on public street (feet)	Min. 10/Max. 20	Min. 10/Max. 20	10	5
Rear (feet)	20	15	10	10
Rear - w/alley (feet)	15	10	5	5
*Mixed-Use/Commercial/Multifamily****				
Front (feet)	Min. 10/Max. 50	Min. 10/Max. 50	No Min./Max.	No Min./Max.
Side - interior lot (feet)	Min. 10./Max. 20	Min. 10./Max. 20	No Min./Max.	No Min./Max.
Side - corner lot on public street (feet)	20	15	No Min./Max.	No Min./Max.
Rear (feet)	15, 0 if parking deck, liner building or party wall present	10, 0 if parking deck, liner building or party wall present	10, 0 if parking deck, liner building or party wall present	10, 0 if parking deck, liner building or party wall present

Rear - w/alley (feet)	10	10	5	5
Unit Size, heated living area (minimum, unless specified)				
Single-Family Detached (square feet)	1,200	1,200/800 cottage	1,200/800 cottage	Not permitted
Single-Family Detached, Urban (square feet)	1,000	1,000	1,000	1,000
Two- and Three-Family (square feet)	1,000	1,000	1,000	Not permitted
Single-Family Attached (square feet)	850	850	850	850
Multifamily - one bedroom (square feet)	550	500	500	500
Multifamily - two bedroom (square feet)	700	650	650	650
Multifamily - three bedroom (square feet)	850	800	800	800
Accessory Unit (square feet)	650	650	Not permitted	Not permitted
Live/Work (residential portion square feet)	400	400	400	400

[*] See article 5 of this chapter for enhanced open space requirements.

[**] SFD Cottage type exempt; see article 5 of this chapter for standards.

[***] See article 5 of this chapter for building separation and minimum multifamily unit size details.

(Ord. of 8-2-2017, § 1(2.18.3))

DIVISION 19. MU-1 (MIXED-USE LOW DENSITY) DISTRICT

Sec. 2.19.1. Dimensional requirements.

Dimensional requirements for the MU-1 (Mixed-Use Low Density) District shall be as provided in Table 2.17, Mixed-Use Zoning Districts Dimensional Requirements. Dimensions are established in Table 2.17 for the overall development site (development parcel) and for individual lots intended for single-family detached or single-family attached housing types, when such lots include yards. A mixed-use development may be subject to both the overall development site dimensions and the individual lot dimensions, depending on the mixture of housing types that are proposed for the overall development.

(Ord. of 8-2-2017, § 1(2.19.1))

Sec. 2.19.2. Site and building design standards.

Site and building design standards and regulations shall be as provided in Table 2.17 and article 5 of this chapter, site and building design standards.

(Ord. of 8-2-2017, § 1(2.19.2))

Sec. 2.19.3. Permitted and special land uses.

Permitted uses and uses requiring special land use permits shall be as provided below. In cases where a use is permitted but there exist supplemental use regulations for that use specified in article 4 of this chapter, such regulations shall also apply.

A. Permitted Uses

The following uses are permitted as of right under this code:

1. Agricultural Activities
   a. Urban Community Garden, up to 5 acres; see section 4.2

2. Residential
   a. Child day care center
   b. Dwelling, multifamily
   c. Dwelling, single-family (attached)
   d. Dwelling, single-family (detached)
   e. Dwelling, three-family
   f. Dwelling, townhouse; see section 4.2
   g. Dwelling, two family
   h. Dwelling, urban single-family; see section 4.2
   i. Live/work unit; see section 4.2
   j. Nursing care facility or hospice

3. Institutional/Public
   a. Club, order or lodge, fraternal, non-commercial
   b. Colleges, universities, research and training facilities
   c. Funeral home, mortuary
   d. Government facilities
   e. Library or museum
   f. Neighborhood or subdivision clubhouse or amenities; see section 4.2
   g. Places of worship; see section 4.2
   h. School, public kindergarten, elementary, middle or high schools
   i. School, specialty; see section 4.2
   j. School, vocational; see section 4.2

4. Commercial
   a. Adult daycare facility, up to 6; see section 4.2
   b. Animal hospitals, veterinary clinic; see section 4.2
   c. Art gallery
   d. Banks, credit unions or other similar financial institutions
   e. Barber shop/beauty salon or similar establishments
   f. Brewpub/beer growler
   g. Catering establishment
   h. Check cashing establishment, accessory; see section 4.2
   i. Child day care center (kindergarten), 7 or more

j. Child day care facility, 7 or more; see section 4.2
k. Clinic, health services
l. Commercial greenhouse or plant nursery; see section 4.2
m. Dog day care
n. Dog grooming
o. Dry cleaning agencies, pressing establishments or laundry pick-up stations
p. Farmer's market, permanent; see section 4.2
q. Fitness center
r. Kidney dialysis center
s. Office, medical
t. Office, professional
u. Parking, commercial lot; see section 4.2
v. Parking, commercial garage
w. Personal services establishment
x. Recreation, indoor
y. Restaurants (non drive-thru)
z. Retail, 5,000 sf or less (with the exception of small box discount stores)
aa. Retail, over 5,000 sf (with the exception of small box discount stores, see also shopping center)
bb. Retail warehouses/wholesalers providing sales of merchandise with no outdoor storage
cc. Shopping center
dd. Special events facility
ee. Taxi stand

5. Communications – Utility
   a. Essential services
   b. Radio or television broadcasting studio
   c. Satellite television antenna; see section 4.2

6. Wireless Telecommunications
   a. Attached wireless telecommunication facility; see section 4.2
   b. Carrier on Wheels (declared emergency); see section 4.2

B. Special Administrative Uses

The following uses are permitted only with administrative approval:

1. Agricultural
   a. Urban, community garden, over 5 acres

2. Residential
   a. Home occupation, no customer contact; see section 4.2

3. Commercial
   a. Farmer's market, temporary/seasonal; see section 4.2
   b. Temporary outdoor retail sales; see section 4.2
   c. Temporary outdoor sales; seasonal; see section 4.2
   d. Temporary outdoor sales or events, seasonal; see section 4.2
   e. Temporary produce stand; see section 4.2
   f. Temporary trailer, as home sales office or construction trailer; see section 4.2

4. Wireless Telecommunications
   a. Carrier on wheels (non-emergency or event, no more than 120 days); see section 4.2

b. Small cell installations (new support structures or collocation) on private property or ROW; see section 4.2

C. Special Land Use Permit

The following uses are permitted only with a special land use permit:

1. Residential
   a. Child care home, 5 or less; see section 4.2
   b. Child care facility, 6 or more; see section 4.2
   c. Home occupation, with customer contact; see section 4.2
   d. Personal care home, 7 or more; see section 4.2
   e. Senior housing; see section 4.2
   f. Short Term vacation rental

2. Institutional/Public
   a. Cultural facilities

3. Commercial
   a. Alcohol outlet-package store, primary; see section 4.2
   b. Alcohol outlet -beer and/or wine store, beer growler, primary; see section 4.2
   c. Bus or rail stations or terminals for passengers
   d. Drive-through facilities; see section 4.2
   e. Nightclub or late-night establishment; see section 4.2

D. Permitted Accessory

The following uses are permitted as accessory only to a principal use:

1. Residential
   a. Accessory uses or structures
   b. Dormitory
   c. Dwelling, single-family, accessory (guesthouse, in-law suite); see section 4.2

2. Institutional/Public
   a. Educational use, private; see section 4.2

[TMOD-22-001]

Sec. 2.19.4. MU-1 (Mixed-Use Low Density) District rezoning submittal requirements.

The following standards only apply to rezoning applications initiated by the owners of the subject property or the authorized agent of the owners. In the interest of economic development and to spur redevelopment, applications initiated by the city are not required to comply with the standards in this section.

Prior to the submittal of an application for a land disturbance permit or building permit, an applicant for development of a city-initiated MU-zoned property, shall comply with the following standards. The application will be reviewed administratively by the director.

A. *Pre-application meeting.* Before submitting an application for rezoning to the MU-1 (Mixed-Use Low Density) District, the applicant shall confer with the director of planning to discuss the feasibility of the proposed plan and its relationship to the comprehensive plan and city ordinances.

B. *Submittal of master development plan.* The submittal package for rezoning to the MU-1 (Mixed-Use Low Density) District shall include all items indicated by the application and instruction form established by the planning department. The master development plan shall include:

1. *Pre-application meeting minutes.* Applicants shall provide documentation showing that the required pre-application meeting occurred.
2. *Master development plan.* A master development plan shall illustrate the project showing the location of proposed uses identified by type, site functions, and internal vehicular and pedestrian circulation, along with proposed access points (note: prefer multi-modal access plan as specified in the overlays).
3. *Master development standards.* An applicant for rezoning to the MU-1 (Mixed-Use Low Density) District shall submit the following with the rezoning application:
    a. A set of tables, matrices, and/or diagrams shall document the proposed standards that will regulate the permitted use, density, lot dimensions, setbacks, site and building form for each area identified in the master concept plan, and indicate all instances where proposed standards vary from this division.
    b. Documentation regarding eligibility for density bonuses sought by the applicant (see section 2.19.6).
    c. A summary of the anticipated maintenance and ownership of streets and open spaces.
    d. Proposed gross and net nonresidential floor area, maximum number of residential dwelling units by type and minimum lot size, and amount of enhanced open space.
4. *Master development plan architectural standards.* An applicant for rezoning to the MU-1 (Mixed-Use Low Density) District shall include with the master development plan a set of binding and enforceable architectural standards that will be utilized by the developer to ensure aesthetic continuity throughout the life of the project.
    a. At a minimum, the architectural standards shall address lighting, signage, fences, landscaping, building materials, and other architectural features proposed to be included by the applicant.
    b. A master sign plan may be proposed for approval at the time of rezoning with dimensions that vary from the sign ordinance, provided that the proposed plan demonstrates pedestrian-oriented scale.

(Ord. of 8-2-2017, § 1(2.19.4))

Sec. 2.19.5. Mixed-use building restrictions.

The following restrictions shall also apply to mixed-use buildings:

A. All uses allowed in the MU-1 (Mixed-Use Low Density) District, as provided in Table 4.1, may occupy the ground level of a mixed-use building; however, any residential uses shall not occupy more than 50 percent of the floor area of the ground level. All levels above ground level shall only be occupied by residential, professional office or service uses.

(Ord. of 8-2-2017, § 1(2.19.5))

Sec. 2.19.6. Density and location criteria (MU-1 District)

A. The maximum allowed dwelling unit density before application of any bonus is 4 dwelling units per acre, and after application of any bonuses is 8 dwelling units per acre.

B. Density determination of each MU-1 (Mixed-Use Low Density) property:

1. Existing MU-1 properties: For properties converted to the MU-1 (Mixed-Use Low Density) District classification at the effective date of the ordinance from which this chapter is derived:

a. Where conditions of zoning regulate density on the property, the maximum density shall remain as established in any conditions of zoning attached to the property.

b. Where no conditions of zoning regulating density have been attached to the property, the maximum density shall be the Base Max described in Table 2.18 unless administratively reviewed and approved for bonus increases, according to the criteria set forth in subsection C. of this section.

2. New MU-1 districts: For property rezoned to the MU-1 (Mixed-Use Low Density) District classification after the effective date of the ordinance from which this chapter is derived, density shall be established by the City Council at the time of approval of the MU-1 District, based upon the criteria set forth in subsection C. of this section.

C. Density bonus eligibility and calculations. Density bonuses are intended for subdivisions, as defined in this chapter, not for individual infill lots. The maximum allowed density on MU-1 (Mixed-Use Low Density) zoned property may be increased above the base max by application of density bonuses as indicated by Table 2.19, and may be accumulated if eligible. An example of how allowable density bonuses are calculated is shown in the example at the end of Table 2.19. In no case shall density exceed the bonus maximum established by Table 2.18.

Table 2.19. Residential Density Bonus Eligibility and Percent, with Example Calculation

Density bonus percent increase by amenity, location, or other provision	
20 percent greater than base	
Public Improvements	Applicant provides any of the following improvements: Transit facilities (bus shelter, ride-share), public art, structured parking, trail with public access, sidewalks and/or road improvements beyond project.
Transit Proximity	Existing park-n-ride or ride-share facility is located within one-quarter mile of property boundary.
Nonresidential and Residential Mix of Uses	Total gross square footage of all buildings occupied by nonresidential uses is between 10 and 25 percent.
Amenity Proximity	Existing amenities such as health care facilities, senior and/or civic centers, public schools, public libraries, recreational facilities, personal service establishments, grocery stores, or shopping centers.
50 percent greater than base	
Sustainability Elements	Certification that proposed buildings, if built as designed, would be accredited by LEED®, EarthCraft, or other similar national accreditation organization, for energy- and water-efficient site and building design.
Mixed Income or Mixed Age	30-year enforceable commitment approved by the city attorney and recorded on the deed records that total number of units will be reserved to be occupied as follows: 10 percent by very low income households, or 20 percent by low-income households, or 25 percent by senior citizens. Household income level shall be as established by the Atlanta Regional Commission.
Nonresidential and Residential Mix of Uses	Nonresidential uses occupy more than 25 percent of total gross square footage of all buildings.
Additional Enhanced Open Space	Additional enhanced open space (with standards established by article 5 of this chapter) comprise 20 percent of the overall development site.
100 percent greater than base	

Additional Enhanced Open Space	Additional enhanced open space comprises 35 percent or more of the overall site development.
MARTA Rapid Transit Station	Existing MARTA rapid transit station is located within one-quarter mile of property boundary.
Reinvestment Areas	Property is located within an Enterprise Zone or Opportunity Zone.

(Ord. of 8-2-2017, § 1(2.19.6)) [TMOD-22-001]

Sec. 2.19.7. Reserved.

(Ord. of 8-2-2017, § 1(2.19.7))

Sec. 2.19.8. MU-1 retail size restrictions.

Standalone retail or other uses shall not exceed 40,000 square feet total floor area without a special land use permit, which may be issued based on the criteria provided in section 7.4.6.

(Ord. of 8-2-2017, § 1(2.19.8))

DIVISION 20. MU-2 (MIXED-USE LOW-MEDIUM DENSITY) DISTRICT

Sec. 2.20.1. District requirements, standards and criteria.

With the exception of the use list below, all provisions found in the MU-1 (Mixed Use Low Density) District shall apply to the MU-2 (Mixed-Use Low-Medium Density) District, except that the maximum allowed dwelling unit density before application of any bonus is 6 dwelling units per acre, and after application of any bonuses is 12 dwelling units per acre.

(Ord. of 8-2-2017, § 1(2.20.1)) [TMOD-22-001]

Sec. 2.20.2. Permitted and special land uses.

Permitted uses and uses requiring special land use permits shall be as provided in Table 4.1. In cases where a use is permitted but there exist supplemental use regulations for that use specified in article 4 of this chapter, such regulations shall also apply.

A. Permitted Uses

The following uses are permitted as of right under this code:

1. Agricultural Activities
   a. Urban Community Garden, up to 5 acres; see section 4.2

2. Residential
   a. Bed and breakfast establishment; see section 4.2
   b. Child day care center
   c. Convents or monasteries; see section 4.2
   d. Dwelling, multifamily
   e. Dwelling, single-family (attached)
   f. Dwelling, single-family (detached)
   g. Dwelling, three-family
   h. Dwelling, townhouse; see section 4.2
   i. Dwelling, two family
   j. Dwelling, urban single-family; see section 4.2
   k. Fraternity house or sorority house
   l. Live/work unit; see section 4.2
   m. Nursing care facility or hospice

3. Institutional/Public
   a. Club, order or lodge, fraternal, non-commercial
   b. Colleges, universities, research and training facilities
   c. Funeral home, mortuary
   d. Government facilities
   e. Library or museum
   f. Neighborhood or subdivision clubhouse or amenities; see section 4.2
   g. Places of worship; see section 4.2
   h. School, public kindergarten, elementary, middle or high schools
   i. School, specialty; see section 4.2
   j. School, vocational; see section 4.2

4. Commercial
   a. Adult daycare center, 7 or more; see section 4.2
   b. Adult daycare facility, up to 6; see section 4.2

c. Animal hospitals, veterinary clinic; see section 4.2
d. Art gallery
e. Automobile or truck rental or leasing facilities; see section 4.2
f. Banks, credit unions or other similar financial institutions
g. Barber shop/beauty salon or similar establishments
h. Brewpub/beer growler
i. Catering establishment
j. Check cashing establishment, accessory; see section 4.2
k. Child day care facility, up to 6; see section 4.2
l. Child day care center (kindergarten), 7 or more
m. Child day care facility, 7 or more; see section 4.2
n. Clinic, health services
o. Coin laundry
p. Dog day care
q. Dog grooming
r. Dry cleaning agencies, pressing establishments or laundry pick-up stations
s. Farmer's market, permanent; see section 4.2
t. Fitness center
u. Kidney dialysis center
v. Office, medical
w. Office, professional
x. Parking, commercial lot; see section 4.2
y. Parking, commercial garage
z. Personal services establishment
aa. Recreation, indoor
bb. Restaurants (accessory to hotel/motel)
cc. Restaurants (non drive-thru)
dd. Retail, 5,000 sf or less (with the exception of small box discount stores)
ee. Retail, over 5,000 sf (with the exception of small box discount stores, see also shopping center)
ff. Retail warehouses/wholesalers providing sales of merchandise with no outdoor storage
gg. Shopping center
hh. Special events facility
ii. Taxi stand

5. Industrial
   a. Contractor, general (see also building or construction office)

6. Communications – Utility
   a. Essential services
   b. Radio or television broadcasting studio
   c. Satellite television antenna; see section 4.2

7. Wireless Telecommunications
   a. Attached wireless telecommunication facility; see section 4.2
   b. Carrier on Wheels (declared emergency); see section 4.2

B. Special Administrative Uses

The following uses are permitted only with administrative approval:

1. Agricultural
   a. Urban, community garden, over 5 acres

2. Residential
   a. Home occupation, no customer contact; see section 4.2
   b. Hotel/motel

3. Commercial
   a. Farmer's market, temporary/seasonal; see section 4.2
   b. Temporary outdoor retail sales; see section 4.2
   c. Temporary outdoor sales; seasonal; see section 4.2
   d. Temporary outdoor sales or events, seasonal; see section 4.2
   e. Temporary produce stand; see section 4.2
   f. Temporary trailer, as home sales office or construction trailer; see section 4.2

4. Wireless Telecommunications
   a. Carrier on wheels (non-emergency or event, no more than 120 days); see section 4.2
   b. Small cell installations (new support structures or collocation) on private property or ROW; see section 4.2

C. Special Land Use Permit

The following uses are permitted only with a special land use permit:

1. Residential
   a. Child care home, 5 or less; see section 4.2
   b. Child care facility, 6 or more; see section 4.2
   c. Home occupation, with customer contact; see section 4.2
   d. Personal care home, 7 or more; see section 4.2
   e. Senior housing; see section 4.2
   f. Short Term vacation rental

2. Institutional/Public
   a. Cultural facilities
   b. School, private kindergarten, elementary, middle or high schools; see section 4.2

3. Commercial
   a. Alcohol outlet-package store, primary; see section 4.2
   b. Alcohol outlet -beer and/or wine store, beer growler, primary; see section 4.2
   c. Bus or rail stations or terminals for passengers
   d. Drive-through facilities; see section 4.2
   e. Nightclub or late night establishment; see section 4.2

D. Permitted Accessory

The following uses are permitted as accessory only to a principal use:

1. Residential
   a. Accessory uses or structures
   b. Dormitory
   c. Dwelling, single-family, accessory (guesthouse, in-law suite) ; see section 4.2

2. Institutional/Public
   a. Educational use, private; see section 4.2
   b. Swimming pools, commercial; see section 4.2
   c. Tennis courts, swimming pools, play or recreation areas, community; see section 4.2

[TMOD-22-001]

DIVISION 21. MU-3 (MIXED-USE MEDIUM DENSITY) DISTRICT

Sec. 2.21.1. District requirements, standards and criteria.

With the exception of the use list below, all provisions found in the MU-2 (Mixed-Use Medium Density) District shall apply to the MU-3 (Mixed-Use Medium Density) District, except that:

A. The maximum allowed dwelling unit density before application of any bonus is 12 dwelling units per acre, and after application of any bonuses is 24 dwelling units per acre.

B. Section 2.19.8 regarding retail size restrictions shall not apply.

C. Height restrictions apply to the MU-3 (Mixed-Use Low-Medium Density) District based on a relationship of density, as achieved through bonuses, in accordance with Table 2.9 or 2.11, as applicable.

(Ord. of 8-2-2017, § 1(2.21.1)) [TMOD-22-001]

Sec. 2.21.2. Permitted and special land uses.

Permitted uses and uses requiring special land use permits shall be as provided in Table 4.1. In cases where a use is permitted but there exist supplemental use regulations for that use specified in article 4 of this chapter, such regulations shall also apply.

A. Permitted Uses

The following uses are permitted as of right under this code:

1. Agricultural Activities
   a. Urban Community Garden, up to 5 acres; see section 4.2

2. Residential
   a. Bed and breakfast establishment; see section 4.2
   b. Child day care center
   c. Convents or monasteries; see section 4.2
   d. Dwelling, multifamily
   e. Dwelling, single-family (attached)
   f. Dwelling, single-family (detached)
   g. Dwelling, three-family
   h. Dwelling, townhouse; see section 4.2
   i. Dwelling, two family
   j. Dwelling, urban single-family; see section 4.2
   k. Fraternity house or sorority house
   l. Live/work unit; see section 4.2
   m. Nursing care facility or hospice

3. Institutional/Public
   a. Club, order or lodge, fraternal, non-commercial
   b. Colleges, universities, research and training facilities
   c. Funeral home, mortuary
   d. Government facilities

e. Hospital or accessory ambulance service
f. Library or museum
g. Neighborhood or subdivision clubhouse or amenities; see section 4.2
h. Places of worship; see section 4.2
i. School, public kindergarten, elementary, middle or high schools
j. School, specialty; see section 4.2
k. School, vocational; see section 4.2

4. Commercial
   a. Adult daycare center, 7 or more; see section 4.2
   b. Adult daycare facility, up to 6; see section 4.2
   c. Art gallery
   d. Automobile or truck rental or leasing facilities; see section 4.2
   e. Banks, credit unions or other similar financial institutions
   f. Barber shop/beauty salon or similar establishments
   g. Brewpub/beer growler
   h. Catering establishment
   i. Check cashing establishment, accessory; see section 4.2
   j. Child day care facility, up to 6; see section 4.2
   k. Child day care center (kindergarten), 7 or more
   l. Child day care facility, 7 or more; see section 4.2
   m. Clinic, health services
   n. Coin laundry
   o. Dog day care
   p. Dog grooming
   q. Dry cleaning agencies, pressing establishments or laundry pick-up stations
   r. Farmer's market, permanent; see section 4.2
   s. Fitness center
   t. Kidney dialysis center
   u. Office, medical
   v. Office, professional
   w. Parking, commercial lot; see section 4.2
   x. Parking, commercial garage
   y. Personal services establishment
   z. Recreation, indoor
   aa. Restaurants (accessory to hotel/motel)
   bb. Restaurants (non drive-thru)
   cc. Retail, 5,000 sf or less (with the exception of small box discount stores)
   dd. Retail, over 5,000 sf (with the exception of small box discount stores, see also shopping center)
   ee. Retail warehouses/wholesalers providing sales of merchandise with no outdoor storage
   ff. Shopping center
   gg. Special events facility
   hh. Taxi stand
   ii. Theaters with live performance, assembly or concert halls, or similar entertainment within an enclose building

5. Industrial
   a. Contractor, general (see also building or construction office)

6. Communications – Utility
   a. Essential services

b. Radio or television broadcasting studio
c. Satellite television antenna; see section 4.2

7. Wireless Telecommunications
a. Attached wireless telecommunication facility; see section 4.2
b. Carrier on Wheels (declared emergency); see section 4.2

B. Special Administrative Uses
The following uses are permitted only with administrative approval:
1. Agricultural
a. Urban, community garden, over 5 acres

2. Residential
a. Home occupation, no customer contact; see section 4.2
b. Hotel/motel

3. Commercial
a. Farmer's market, temporary/seasonal; see section 4.2
b. Medical or dental laboratories
c. Temporary outdoor retail sales; see section 4.2
d. Temporary outdoor sales; seasonal; see section 4.2
e. Temporary outdoor sales or events, seasonal; see section 4.2
f. Temporary produce stand; see section 4.2
g. Temporary trailer, as home sales office or construction trailer; see section 4.2

4. Wireless Telecommunications
a. Carrier on wheels (non-emergency or event, no more than 120 days); see section 4.2
b. Small cell installations (new support structures or collocation) on private property or ROW; see section 4.2

C. Special Land Use Permit
The following uses are permitted only with a special land use permit:
1. Residential
a. Child care home, 5 or less; see section 4.2
b. Child care facility, 6 or more; see section 4.2
c. Home occupation, with customer contact; see section 4.2
d. Personal care home, 7 or more; see section 4.2
e. Senior housing; see section 4.2

2. Institutional/Public
a. Coliseum or stadium, not associated with a church or school; see section 4.2
b. Cultural facilities
c. School, private kindergarten, elementary, middle or high schools; see section 4.2

3. Commercial
a. Alcohol outlet-package store, primary; see section 4.2
b. Alcohol outlet -beer and/or wine store, beer growler, primary; see section 4.2
c. Bus or rail stations or terminals for passengers
d. Drive-through facilities; see section 4.2
e. Heliport; see section 4.2
f. Nightclub or late night establishment; see section 4.2

D. Permitted Accessory

The following uses are permitted as accessory only to a principal use:

1. Residential
   a. Accessory uses or structures
   b. Dormitory
   c. Dwelling, single-family, accessory (guesthouse, in-law suite) ; see section 4.2

2. Institutional/Public
   a. Swimming pools, commercial; see section 4.2
   b. Tennis courts, swimming pools, play or recreation areas, community; see section 4.2

[TMOD-22-001]

DIVISION 22. MU-4 (MIXED-USE HIGH DENSITY) DISTRICT

Sec. 2.22.1. District requirements, standards and criteria.

With the exception of the use list below, all provisions found in the MU-3 (Mixed-Use Medium Density) District shall also apply to the MU-4 (Mixed-Use High Density) District, except that:

A. The maximum allowed dwelling unit density before application of any bonus is 24 dwelling units per acre, and after application of any bonuses is 40 dwelling units per acre.

B. Height restrictions apply to the MU-4 (Mixed-Use High Density) District in accordance with Table 2.9, 2.11, or 2.13, as applicable.

(Ord. of 8-2-2017, § 1(2.22.1)) [TMOD-22-001]

Sec. 2.22.2. Permitted and special land uses.

Permitted uses and uses requiring special land use permits shall be as provided in Table 4.1. In cases where a use is permitted but there exist supplemental use regulations for that use specified in article 4 of this chapter, such regulations shall also apply.

A. Permitted Uses

The following uses are permitted as of right under this code:

1. Agricultural Activities
   a. Urban Community Garden, up to 5 acres; see section 4.2

2. Residential
   a. Bed and breakfast establishment; see section 4.2
   b. Child day care center
   c. Convents or monasteries; see section 4.2
   d. Dwelling, multifamily
   e. Dwelling, single-family (attached)
   f. Dwelling, three-family
   g. Dwelling, townhouse; see section 4.2
   h. Dwelling, two family
   i. Dwelling, urban single-family; see section 4.2

j. Live/work unit; see section 4.2
k. Nursing care facility or hospice

3. Institutional/Public
   a. Club, order or lodge, fraternal, non-commercial
   b. Colleges, universities, research and training facilities
   c. Coliseum or stadium, not associated with a church or school; see section 4.2
   d. Funeral home, mortuary
   e. Government facilities
   f. Hospital or accessory ambulance service
   g. Library or museum
   h. Neighborhood or subdivision clubhouse or amenities; see section 4.2
   i. Places of worship; see section 4.2
   j. School, public kindergarten, elementary, middle or high schools
   k. School, specialty; see section 4.2
   l. School, vocational; see section 4.2

4. Commercial
   a. Adult daycare center, 7 or more; see section 4.2
   b. Adult daycare facility, up to 6; see section 4.2
   c. Art gallery
   d. Automobile or truck rental or leasing facilities; see section 4.2
   e. Banks, credit unions or other similar financial institutions
   f. Barber shop/beauty salon or similar establishments
   g. Brewpub/beer growler
   h. Catering establishment
   i. Check cashing establishment, accessory; see section 4.2
   j. Child day care facility, up to 6; see section 4.2
   k. Child day care center (kindergarten), 7 or more
   l. Child day care facility, 7 or more; see section 4.2
   m. Clinic, health services
   n. Coin laundry
   o. Dog day care
   p. Dog grooming
   q. Dry cleaning agencies, pressing establishments or laundry pick-up stations
   r. Farmer's market, permanent; see section 4.2
   s. Fitness center
   t. Kidney dialysis center
   u. Office, medical
   v. Office, professional
   w. Parking, commercial lot; see section 4.2
   x. Parking, commercial garage
   y. Personal services establishment
   z. Recreation, indoor
   aa. Restaurants (accessory to hotel/motel)
   bb. Restaurants (non drive-thru)
   cc. Retail, 5,000 sf or less (with the exception of small box discount stores)
   dd. Retail, over 5,000 sf (with the exception of small box discount stores, see also shopping center)
   ee. Retail warehouses/wholesalers providing sales of merchandise with no outdoor storage
   ff. Shopping center
   gg. Special events facility

hh. Taxi stand
ii. Theaters with live performance, assembly or concert halls, or similar entertainment within an enclose building

5. Communications – Utility
   a. Essential services
   b. Radio or television broadcasting studio
   c. Satellite television antenna; see section 4.2

6. Wireless Telecommunications
   a. Attached wireless telecommunication facility; see section 4.2
   b. Carrier on Wheels (declared emergency); see section 4.2

B. Special Administrative Uses

The following uses are permitted only with administrative approval:

1. Agricultural
   a. Urban, community garden, over 5 acres

2. Residential
   a. Home occupation, no customer contact; see section 4.2
   b. Hotel/motel

3. Commercial
   a. Farmer's market, temporary/seasonal; see section 4.2
   b. Medical or dental laboratories
   c. Temporary outdoor retail sales; see section 4.2
   d. Temporary outdoor sales; seasonal; see section 4.2
   e. Temporary outdoor sales or events, seasonal; see section 4.2
   f. Temporary produce stand; see section 4.2
   g. Temporary trailer, as home sales office or construction trailer; see section 4.2

4. Wireless Telecommunications
   a. Carrier on wheels (non-emergency or event, no more than 120 days); see section 4.2
   b. Small cell installations (new support structures or collocation) on private property or ROW; see section 4.2

C. Special Land Use Permit

The following uses are permitted only with a special land use permit:

1. Residential
   a. Child care home, 5 or less; see section 4.2
   b. Child care facility, 6 or more; see section 4.2
   c. Home occupation, with customer contact; see section 4.2
   d. Personal care home, 7 or more; see section 4.2
   e. Senior housing; see section 4.2

2. Institutional/Public
   a. Cultural facilities
   b. Recreation club; see section 4.2
   c. School, private kindergarten, elementary, middle or high schools; see section 4.2

3. Commercial

a. Alcohol outlet-package store, primary; see section 4.2
b. Alcohol outlet -beer and/or wine store, beer growler, primary; see section 4.2
c. Bus or rail stations or terminals for passengers
d. Drive-through facilities; see section 4.2
e. Heliport; see section 4.2
f. Nightclub or late night establishment; see section 4.2

D. Permitted Accessory
The following uses are permitted as accessory only to a principal use:
1. Residential
a. Accessory uses or structures
b. Dormitory
c. Dwelling, single-family, accessory (guesthouse, in-law suite) ; see section 4.2

2. Institutional/Public
a. Swimming pools, commercial; see section 4.2
b. Tennis courts, swimming pools, play or recreation areas, community; see section 4.2

[TMOD-22-001]

DIVISION 23. MU-5 (MIXED-USE VERY HIGH DENSITY) DISTRICT

Sec. 2.23.1. District requirements, standards and criteria.

With the exceptions of the use list below, all provisions found in the MU-3 (Mixed-Use Medium Density) District shall also apply to the MU-5 (Mixed-Use Very High Density) District, except as identified below:

A. The maximum allowed dwelling unit density before application of any bonus is 40 dwelling units per acre, and after application of any bonuses is 120 dwelling units per acre.

B. Height restrictions apply to MU-5 in accordance with Tables 2.13 and 2.15, as applicable.

(Ord. of 8-2-2017, § 1(2.23.1)) [TMOD-22-001]

Sec. 2.23.2. Permitted and special land uses.

Permitted uses and uses requiring special land use permits shall be as provided in Table 4.1. In cases where a use is permitted but there exist supplemental use regulations for that use specified in article 4 of this chapter, such regulations shall also apply.

A. Permitted Uses
The following uses are permitted as of right under this code:
1. Agricultural Activities
a. Urban Community Garden, up to 5 acres; see section 4.2

2. Residential
a. Bed and breakfast establishment; see section 4.2
b. Child day care center
c. Convents or monasteries; see section 4.2

d. Dwelling, multifamily
e. Dwelling, single-family (attached)
f. Dwelling, three-family
g. Dwelling, townhouse; see section 4.2
h. Dwelling, two family
i. Dwelling, urban single-family; see section 4.2
j. Live/work unit; see section 4.2
k. Nursing care facility or hospice

3. Institutional/Public
a. Club, order or lodge, fraternal, non-commercial
b. Colleges, universities, research and training facilities
c. Coliseum or stadium, not associated with a church or school; see section 4.2
d. Funeral home, mortuary
e. Government facilities
f. Hospital or accessory ambulance service
g. Library or museum
h. Neighborhood or subdivision clubhouse or amenities; see section 4.2
i. Places of worship; see section 4.2
j. School, public kindergarten, elementary, middle or high schools
k. School, specialty; see section 4.2
l. School, vocational; see section 4.2

4. Commercial
a. Adult daycare center, 7 or more; see section 4.2
b. Adult daycare facility, up to 6; see section 4.2
c. Art gallery
d. Automobile or truck rental or leasing facilities; see section 4.2
e. Banks, credit unions or other similar financial institutions
f. Barber shop/beauty salon or similar establishments
g. Brewpub/beer growler
h. Catering establishment
i. Check cashing establishment, accessory; see section 4.2
j. Child day care facility, up to 6; see section 4.2
k. Child day care center (kindergarten), 7 or more
l. Child day care facility, 7 or more; see section 4.2
m. Clinic, health services
n. Coin laundry
o. Dog day care
p. Dog grooming
q. Dry cleaning agencies, pressing establishments or laundry pick-up stations
r. Farmer's market, permanent; see section 4.2
s. Fitness center
t. Kidney dialysis center
u. Office, medical
v. Office, professional
w. Parking, commercial lot; see section 4.2
x. Parking, commercial garage
y. Personal services establishment
z. Recreation, indoor
aa. Restaurants (accessory to hotel/motel)

bb. Restaurants (non drive-thru)
cc. Retail, 5,000 sf or less (with the exception of small box discount stores)
dd. Retail, over 5,000 sf (with the exception of small box discount stores, see also shopping center)
ee. Retail warehouses/wholesalers providing sales of merchandise with no outdoor storage
ff. Shopping center
gg. Special events facility
hh. Taxi stand
ii. Theaters with live performance, assembly or concert halls, or similar entertainment within an enclose building

5. Communications – Utility
   a. Essential services
   b. Radio or television broadcasting studio
   c. Satellite television antenna; see section 4.2

6. Wireless Telecommunications
   a. Attached wireless telecommunication facility; see section 4.2
   b. Carrier on Wheels (declared emergency); see section 4.2

B. Special Administrative Uses

The following uses are permitted only with administrative approval:

1. Agricultural
   a. Urban, community garden, over 5 acres

2. Residential
   a. Home occupation, no customer contact; see section 4.2
   b. Hotel/motel

3. Commercial
   a. Farmer's market, temporary/seasonal; see section 4.2
   b. Medical or dental laboratories
   c. Temporary outdoor retail sales; see section 4.2
   d. Temporary outdoor sales; seasonal; see section 4.2
   e. Temporary outdoor sales or events, seasonal; see section 4.2
   f. Temporary produce stand; see section 4.2
   g. Temporary trailer, as home sales office or construction trailer; see section 4.2

4. Wireless Telecommunications
   a. Carrier on wheels (non-emergency or event, no more than 120 days); see section 4.2
   b. Small cell installations (new support structures or collocation) on private property or ROW; see section 4.2

C. Special Land Use Permit

The following uses are permitted only with a special land use permit:

1. Residential
   a. Child care home, 5 or less; see section 4.2
   b. Child care facility, 6 or more; see section 4.2
   c. Home occupation, with customer contact; see section 4.2
   d. Personal care home, 7 or more; see section 4.2
   e. Senior housing; see section 4.2

2. Institutional/Public
   a. Cultural facilities
   b. Recreation club; see section 4.2
   c. School, private kindergarten, elementary, middle or high schools; see section 4.2

3. Commercial
   a. Alcohol outlet-package store, primary; see section 4.2
   b. Alcohol outlet -beer and/or wine store, beer growler, primary; see section 4.2
   c. Bus or rail stations or terminals for passengers
   d. Drive-through facilities; see section 4.2
   e. Heliport; see section 4.2
   f. Nightclub or late night establishment; see section 4.2

D. Permitted Accessory
The following uses are permitted as accessory only to a principal use:
1. Residential
   a. Accessory uses or structures
   b. Dormitory
   c. Dwelling, single-family, accessory (guesthouse, in-law suite) ; see section 4.2

2. Institutional/Public
   a. Swimming pools, commercial; see section 4.2
   b. Tennis courts, swimming pools, play or recreation areas, community; see section 4.2

[TMOD-22-001]

DIVISION 24. NONRESIDENTIAL ZONING DISTRICTS: DIMENSIONAL REQUIREMENTS

Sec. 2.24.1. Dimensional requirements.

Dimensional requirements including overall site requirements, lot dimensions, setbacks, and heights for Nonresidential Districts are provided in Table 2.24, Nonresidential Zoning Districts Dimensional Requirements. Building setback, height and lot width may be tied to lot size compatibility, averaging as defined and required in article 5 of this chapter.

Table 2.24. Nonresidential Zoning Districts Dimensional Requirements

Nonresidential Districts								
Element	OIT	OI	NS	C-1	C-2	OD	M	M2
Overall Site Requirements (minimum, unless otherwise specified)								
Dimensional Requirements								
Lot area (min. square feet)	7,500	20,000	20,000	20,000	30,000	30,000	30,000	2 acres for heavy ind. and uses req'g SLUP, 1 acre for all other uses

Single-Family Attached Lot Area (Avg. per dwelling unit sq. ft.)	4,000	Not permitted	Not permitted	Not permitted	Not permitted	Not permitted	Not permitted	Not permitted
Lot width, street frontage (feet)	75	100	100	100	100	100	100	150
Lot coverage (maximum percentage)	80	80	80	90	90	80	80	80
Open Space Requirements								
Sites with 5,000—39,999 sq. ft. gross floor area (minimum percent)	15	15	15	10	10	15	15	15
Sites with 40,000 sq. ft. gross floor area (minimum percent)	20	20	20	20	20	20	20	20
Transitional buffer (feet)	Article 5, division 4 of this chapter							
Building Setback Requirements (minimum, unless otherwise specified)								
Front thoroughfares and arterials (feet)	40	60*	30	60	60	75	60	60
Front - all other streets (feet)	30	50*	20	50	50	75	60	60
Side - interior lot (feet)	20	20*	20	20	20	20	20	20
Side - corner lot on public streets (feet)	40	50*	15	50	50	50	60	60
Rear (feet)	30	30*	20	30	30	30	30	30
Unit Size (residential: heated living area)								
Floor area of attached dwelling unit	1,000	1,000	Not permitted	Not permitted	Not permitted	Not permitted	1,000	Not permitted

of Multifamily (min. sq. ft.)								
Floor area of live/work dwelling unit (residential portion only - min. sq. ft.)	650	650	650	650	Not permitted	Not permitted	650	Not permitted
Floor area per individual building (maximum sq. ft.)(non-res)	N/A	N/A	50,000	No maximum	No maximum	No maximum	No maximum	No maximum
*Height (maximum without a special land use permit (SLUP))***								
Height (feet)	2 story/35 feet	5 story/70 feet	2 story/35 feet	2 story/35 feet	2 story/35 feet	2 story/35 feet	**	**
Transitional height plane (see article 5 of this chapter)	No	Yes	No	No	No	Yes	Yes	Yes

* If located next to single-family residential and the building will exceed 35 feet, the building setback from SF residential shall be increased 50 percent.

** Fire department and rescue services must approve over three stories to ensure adequacy of fire protection facilities.

*** Five-story/70 feet if in an activity node, two-story/35 feet outside an activity node, unless obtaining a SLUP for up to five-story/70 feet.

(Ord. of 8-2-2017, § 1(2.24.1))

DIVISION 25. NS (NEIGHBORHOOD SHOPPING) DISTRICT

Sec. 2.25.1. Statement of purpose and intent.

The purpose and intent of the City Council in establishing the NS (Neighborhood Shopping) District is as follows:

A. To provide convenient neighborhood retail shopping and service areas within the city for all residents;

B. To provide for the development of new Neighborhood Shopping Districts where so designated on the comprehensive plan;

C. To ensure that the size and scale of neighborhood shopping centers and individual uses within said centers are compatible with the scale of adjoining neighborhoods;

D. To implement the future development map of the city's most current comprehensive plan.

(Ord. of 8-2-2017, § 1(2.25.1))

Sec. 2.25.2. Intensity limitations.

In a building that contains more than one business establishment, no single business establishment shall occupy more than 15,000 square feet, whether owned or leased. No building occupied by a single business establishment shall exceed 50,000 square feet.

(Ord. of 8-2-2017, § 1(2.25.2))

Sec. 2.25.3. Permitted and special land uses.

Permitted uses and uses requiring special land use permits shall be as provided below. In cases where a use is permitted but there are supplemental use regulations for that use specified in article 4 of this chapter, such regulations shall also apply and must be complied with.

(Ord. of 8-2-2017, § 1(2.25.3)) [TMOD-22-001]

A. Permitted Uses

The following uses are permitted as of right under this code:

1. Agricultural Activities
   a. Urban Community Garden, up to 5 acres; see section 4.2

2. Residential
   a. Child care home, 5 or less; see section 4.2
   b. Child day care center

3. Institutional/Public
   a. Government facilities
   b. Library or museum
   c. Places of worship; see section 4.2
   d. School, vocational; see section 4.2

4. Commercial
   a. Adult daycare center, 7 or more; see section 4.2
   b. Adult daycare facility, up to 6; see section 4.2
   c. Animal hospital, veterinary clinic; see section 4.2
   d. Art gallery
   e. Banks, credit unions or other similar financial institutions
   f. Barber shop/beauty salon or similar establishments
   g. Brewpub/beer growler
   h. Child day care facility, up to 6; see section 4.2
   i. Child day care center (kindergarten), 7 or more
   j. Clinic, health services
   k. Coin laundry
   l. Commercial greenhouse or plant nursery; see section 4.2
   m. Drive-through facilities; see section 4.2
   n. Dry cleaning agencies, pressing establishments or laundry pick-up stations
   o. Farmer's market, permanent; see section 4.2
   p. Fitness center
   q. Office, medical
   r. Office, professional
   s. Personal services establishment

t. Recreation, indoor
u. Restaurants (non drive-thru)
v. Retail, 5,000 sf or less (with the exception of small box discount stores)
w. Retail, over 5,000 sf (with the exception of small box discount stores, see also shopping center)
x. Shopping center
y. Taxi stand

5. Communications – Utility
   a. Essential services
   b. Satellite television antenna; see section 4.2

6. Wireless Telecommunications
   a. Attached wireless telecommunication facility; see section 4.2
   b. Carrier on Wheels (declared emergency); see section 4.2

B. Special Administrative Uses

The following uses are permitted only with administrative approval:

1. Agricultural
   a. Urban, community garden, over 5 acres

2. Institutional/Public
   a. School, vocational; see section 4.2

3. Commercial
   a. Farmer's market, temporary/seasonal; see section 4.2
   b. Temporary outdoor retail sales; see section 4.2
   c. Temporary outdoor sales; seasonal; see section 4.2
   d. Temporary outdoor sales or events, seasonal; see section 4.2
   e. Temporary produce stand; see section 4.2
   f. Temporary trailer, as home sales office or construction trailer; see section 4.2

4. Wireless Telecommunications
   a. Carrier on wheels (non-emergency or event, no more than 120 days); see section 4.2
   b. Small cell installations (new support structures or collocation) on private property or ROW; see section 4.2

C. Special Land Use Permit

The following uses are permitted only with a special land use permit:

1. Residential
   a. Child care facility, 6 or more; see section 4.2
   b. Personal care home, 6 or less; see section 4.2
   c. Personal care home, 7 or more; see section 4.2

2. Commercial
   a. Alcohol outlet -beer and/or wine store, beer growler, primary; see section 4.2
   b. Alcohol outlet-beer and wine, accessory to retail less than 12,000sf; see section 4.2
   c. Automobile service stations; see section 4.2
   d. Fuel pumps; see section 4.2
   e. Liquor store (see alcohol outlet) ; see section 4.2
   f. Nightclub or late night establishment; see section 4.2

3. Wireless Telecommunications
   a. New support structure from 51 feet to 150 feet; see section 4.2

D. Permitted Accessory
The following uses are permitted as accessory only to a principal use:
1. Residential
   a. Accessory uses or structures

2. Commercial
   a. Kennel, breeding
3. Industrial
   a. Recycling collection

[TMOD-22-001]

Sec. 2.25.4. Dimensional requirements.

Dimensional requirements for the NS (Neighborhood Shopping) District shall be as provided in Table 2.24, Nonresidential Zoning Districts Dimensional Requirements.

(Ord. of 8-2-2017, § 1(2.25.4))

Sec. 2.25.5. Site and building design standards.

Site and building design standards and regulations to be applied in this zoning district shall be as provided in article 5 of this chapter, site design and building form standards.

(Ord. of 8-2-2017, § 1(2.25.5))

DIVISION 26. C-1 (LOCAL COMMERCIAL) DISTRICT

Sec. 2.26.1. Statement of purpose and intent.

The purpose and intent of the City Council in establishing the C-1 (Local Commercial) District is as follows:

A. To provide convenient local retail shopping and service areas within the city for all residents;

B. To provide for quality control in development through materials and building placement;

C. To ensure that the uses authorized within the C-1 (Local Commercial) District are those uses which are designed to serve the convenience shopping and service needs of groups of neighborhoods;

D. To implement the future development map of the city's comprehensive plan.

(Ord. of 8-2-2017, § 1(2.26.1))

Sec. 2.26.2. Permitted and special land uses.

Permitted uses and uses requiring special land use permits shall be as provided below. In cases where a use is permitted, but there are supplemental use regulations for that use specified in article 4 of this chapter, such regulations shall also apply and must be complied with.

(Ord. of 8-2-2017, § 1(2.26.2)) [TMOD-21-17]

A. Permitted Uses

The following uses are permitted as of right under this code:

1. Agricultural Activities
   a. Urban Community Garden, up to 5 acres; see section 4.2

2. Residential
   a. Bed and breakfast establishment; see section 4.2
   b. Child care facility, 6 or more
   c. Child care home, 5 or less; see section 4.2
   d. Child day care center
   e. Hotel/motel
   f. Live/work unit; see section 4.2
   g. Nursing care facility or hospice
   h. Personal care home, 6 or less; see section 4.2
   i. Personal care home, 7 or more; see section 4.2
   j. Shelter for homeless persons, 7-20; see section 4.2
   k. Transitional housing facilities, 7-20 persons; see section 4.2

3. Institutional/Public
   a. Club, order or lodge, fraternal, non-commercial
   b. Coliseum or stadium/not associated with church or school; see section 4.2
   c. Colleges, universities, research and training facilities
   d. Funeral home, mortuary
   e. Government facilities
   f. Library or museum
   g. Places of worship; see section 4.2
   h. School, private kindergarten, elementary, middle or high schools; see section 4.2
   i. School, public kindergarten, elementary, middle or high schools
   j. School, specialty; see section 4.2
   k. School, vocational; see section 4.2
   l. Swimming pools, commercial; see section 4.2
   m. Tennis courts, swimming pools, play or recreation areas, community; see section 4.2

4. Commercial
   a. Adult daycare center, 7 or more; see section 4.2
   b. Adult daycare facility, up to 6; see section 4.2
   c. Ambulance service or emergency medical services, private
   d. Animal hospital, veterinary clinic; see section 4.2
   e. Art gallery
   f. Automobile brokerage; see section 4.2
   g. Automobile or truck rental or leasing facilities; see section 4.2
   h. Automobile or truck sales; see section 4.2
   i. Automobile wash/was service; see section 4.2
   j. Automobile repair, minor; see section 4.2
   k. Banks, credit unions or other similar financial institutions
   l. Barber shop/beauty salon or similar establishments
   m. Brewpub/beer growler
   n. Building or construction office; see section 4.2
   o. Catering establishments

p. Check cashing establishment, accessory; see section 4.2
q. Child day care facility, up to 6; see section 4.2
r. Child day care center (kindergarten), 7 or more
s. Clinic, health services
t. Coin laundry
u. Commercial greenhouse or plant nursery; see section 4.2
v. Dog day care; see section 4.2
w. Dog grooming; see section 4.2
x. Drive-through facilities; see section 4.2
y. Dry cleaning agencies, pressing establishments or laundry pick-up stations
z. Farmer's market, permanent; see section 4.2
aa. Fitness center
bb. Kennel, commercial
cc. Kidney dialysis center
dd. Medical or dental laboratories
ee. Landscape business
ff. Mini-warehouse; see section 4.2
gg. Office, medical
hh. Office, professional
ii. Parking, commercial lot; see section 4.2
jj. Parking, commercial garage
kk. Personal services establishment
ll. Recreation, indoor
mm. Recreational vehicle, boat and trailer sales and service
nn. Restaurants (accessory to hotel/motel)
oo. Restaurants (non drive-thru)
pp. Retail, 5,000 sf or less (with the exception of small box discount stores)
qq. Retail, over 5,000 sf (with the exception of small box discount stores, see also shopping center)
rr. Retail warehouses/wholesales providing sales of merchandise with no outdoor storage
ss. Shopping center
tt. Special events facility
uu. Taxi stand
vv. Theaters with live performance, assembly or concert halls, or similar entertainment within enclosed building
ww. Trade shops

5. Communications – Utility
   a. Essential services
   b. Satellite television antenna; see section 4.2

6. Wireless Telecommunications
   a. Attached wireless telecommunication facility; see section 4.2
   b. Carrier on Wheels (declared emergency); see section 4.2

B. Special Administrative Uses

The following uses are permitted only with administrative approval:

1. Agricultural
   a. Urban, community garden, over 5 acres

2. Institutional/Public
   a. School, vocational; see section 4.2

3. Commercial
   a. Farmer's market, temporary/seasonal; see section 4.2
   b. Temporary outdoor retail sales; see section 4.2
   c. Temporary outdoor sales; seasonal; see section 4.2
   d. Temporary outdoor sales or events, seasonal; see section 4.2
   e. Temporary produce stand; see section 4.2
   f. Temporary trailer, as home sales office or construction trailer; see section 4.2

4. Wireless Telecommunications
   a. Carrier on wheels (non-emergency or event, no more than 120 days); see section 4.2
   b. New support structure from 50 feet up to 199 feet; see section 4.2
   c. Small cell installations (new support structures or collocation) on private property or ROW; see section 4.2

C. Special Land Use Permit

The following uses are permitted only with a special land use permit:

1. Residential
   a. Hotel/motel, extended stay; see section 4.2
   b. Shelter for homeless persons for no more than 6 persons; see section 4.2

2. Institutional/Public
   a. Cultural facilities

3. Commercial
   a. Alcohol outlet -beer and/or wine store, beer growler, primary; see section 4.2
   b. Alcohol outlet-beer and wine, accessory to retail less than 12,000sf; see section 4.2
   c. Alcohol outlet-package store, primary; see section 4.2
   d. Automobile service stations; see section 4.2
   e. Bus or rail stations or terminals for passengers
   f. Crematoriums; see section 4.2
   g. Fuel pumps; see section 4.2
   h. Heliport; see section 4.2
   i. Liquor store (see alcohol outlet) ; see section 4.2
   j. Nightclub or late night establishment; see section 4.2
   k. Restaurants with a drive-thru configuration; see section 4.2

D. Permitted Accessory

The following uses are permitted as accessory only to a principal use:

1. Residential
   a. Accessory uses or structures
   b. Dormitory

2. Commercial
   a. Fuel pumps, accessory to large scale retail within 1,000 feet of interstate highway interchange measured from ROW to property line; see section 4.2
   b. Kennel, breeding

3. Industrial
   a. Recycling collection

[TMOD-22-001]

Sec. 2.26.3. Dimensional requirements.

Dimensional requirements for the C-1 (Local Commercial) District shall be as provided in Table 2.24, Nonresidential Zoning Districts Dimensional Requirements.

(Ord. of 8-2-2017, § 1(2.26.3))

Sec. 2.26.4. Site and building design standards.

Site and building design standards and regulations to be applied in this zoning district shall be as provided in article 5 of this chapter, site design and building form standards.

(Ord. of 8-2-2017, § 1(2.26.4))

DIVISION 27. C-2 (GENERAL COMMERCIAL) DISTRICT

Sec. 2.27.1. Statement of purpose and intent.

The purpose and intent of the City Council in establishing the C-2 (General Commercial) District is as follows:

A. To provide convenient general business and commercial service areas within the city for all residents;

B. To provide for the development of new general commercial districts where so designated on the comprehensive plan;

C. To provide for auto-oriented needs outside of applicable character areas, but to focus on the pedestrian oriented development which in these districts;

D. To provide for quality control in development through materials and building placement;

E. To ensure that the uses authorized within the C-2 (General Commercial) District are those uses which are designed to serve the general business and commercial service needs of the city;

F. To implement the future development map of the city's comprehensive plan.

(Ord. of 8-2-2017, § 1(2.27.1))

Sec. 2.27.2. Permitted and special land uses.

Permitted uses and uses requiring special land use permits shall be as provided below. In cases where a use is permitted but there are supplemental use regulations for that use specified in article 4 of this chapter, such regulations shall also apply and must be complied with.

(Ord. of 8-2-2017, § 1(2.27.2)) [TMOD-22-001]

A. Permitted Uses

The following uses are permitted as of right under this code:

1. Agricultural Activities
   a. Urban Community Garden, up to 5 acres; see section 4.2

2. Residential
   a. Bed and breakfast establishment; see section 4.2
   b. Child care facility, 6 or more
   c. Child care home, 5 or less; see section 4.2
   d. Child day care center
   e. Hotel/motel
   f. Live/work unit; see section 4.2
   g. Nursing care facility or hospice
   h. Personal care home, 6 or less; see section 4.2
   i. Personal care home, 7 or more; see section 4.2
   j. Shelter for homeless persons, no more than 6 persons; see section 4.2
   k. Transitional housing facilities, 7-20 persons; see section 4.2

3. Institutional/Public
   a. Club, order or lodge, fraternal, non-commercial
   b. Coliseum or stadium/not associated with church or school; see section 4.2
   c. Colleges, universities, research and training facilities

d. Funeral home, mortuary
e. Golf course or clubhouse, public or private; see section 4.2
f. Government facilities
g. Library or museum
h. Places of worship; see section 4.2
i. Recreation, outdoor; see section 4.2
j. School, private kindergarten, elementary, middle or high schools; see section 4.2
k. School, public kindergarten, elementary, middle or high schools
l. School, specialty; see section 4.2
m. School, vocational; see section 4.2
n. Swimming pools, commercial; see section 4.2
o. Tennis courts, swimming pools, play or recreation areas, community; see section 4.2

4. Commercial
a. Adult daycare center, 7 or more; see section 4.2
b. Adult daycare facility, up to 6; see section 4.2
c. Ambulance service or emergency medical services, private
d. Animal hospital, veterinary clinic; see section 4.2
e. Animal shelter/rescue center; see section 4.2
f. Art gallery
g. Automobile brokerage; see section 4.2
h. Automobile or truck rental or leasing facilities; see section 4.2
i. Automobile or truck sales; see section 4.2
j. Automobile upholstery shop
k. Automobile wash/was service; see section 4.2
l. Automobile repair, major; see section 4.2
m. Automobile repair, minor; see section 4.2
n. Banks, credit unions or other similar financial institutions
o. Barber shop/beauty salon or similar establishments
p. Brewpub/beer growler
q. Building or construction office; see section 4.2
r. Catering establishments
s. Check cashing establishment, accessory; see section 4.2
t. Check cashing establishment, primary; see section 4.2
u. Child day care facility, up to 6; see section 4.2
v. Child day care center (kindergarten), 7 or more
w. Clinic, health services
x. Coin laundry
y. Commercial greenhouse or plant nursery; see section 4.2
z. Contractor office, heavy construction; see section 4.2
aa. Contractor office, landscape; see section 4.2
bb. Dog day care; see section 4.2
cc. Dog grooming; see section 4.2
dd. Drive-in theater; see section 4.2
ee. Drive-through facilities; see section 4.2
ff. Dry cleaning agencies, pressing establishments or laundry pick-up stations
gg. Fairground or amusement park; see section 4.2
hh. Farmer's market, permanent; see section 4.2
ii. Fitness center
jj. Fuel dealers or wholesalers
kk. Kennel, breeding

ll. Kennel, commercial
mm. Kidney dialysis center
nn. Medical or dental laboratories
oo. Landscape business
pp. Mini-warehouse; see section 4.2
qq. Office, medical
rr. Office, professional
ss. Outdoor storage, commercial; see section 4.2
tt. Parking, commercial lot; see section 4.2
uu. Parking, commercial garage
vv. Pawn shop, title loan; see section 4.2
ww. Personal services establishment
xx. Printing or publishing establishments
yy. Recreation, indoor
zz. Recreation, outdoor; see section 4.2
aaa. Recreational vehicle, boat and trailer sales and service
bbb. Restaurants (accessory to hotel/motel)
ccc. Restaurants (non drive-thru)
ddd. Retail, 5,000 sf or less (with the exception of small box discount stores)
eee. Retail, over 5,000 sf (with the exception of small box discount stores, see also shopping center)
fff. Retail warehouses/wholesales providing sales of merchandise with no outdoor storage
ggg. Shopping center
hhh. Special events facility
iii. Taxi, ambulance or limousine service, dispatching or storage; see section 4.2
jjj. Taxi stand
kkk. Theaters with live performance, assembly or concert halls, or similar entertainment within enclosed building
lll. Trade shops

5. Industrial
   a. Building materials or lumber supply establishment
   b. Contractor, general
   c. Contractor heavy construction, outside storage
   d. Contractor, special trade
   e. Heavy equipment repair service or trade

6. Communications – Utility
   a. Essential services
   b. Radio or television broadcasting studio
   c. Radio or television or broadcasting transmission facility
   d. Satellite television antenna; see section 4.2

7. Wireless Telecommunications
   a. Attached wireless telecommunication facility; see section 4.2
   b. Carrier on Wheels (declared emergency); see section 4.2

B. Special Administrative Uses

The following uses are permitted only with administrative approval:

1. Agricultural
   a. Urban, community garden, over 5 acres
2. Institutional/Public

a. School, vocational; see section 4.2

3. Commercial
   a. Farmer's market, temporary/seasonal; see section 4.2
   b. Temporary outdoor retail sales; see section 4.2
   c. Temporary outdoor sales; seasonal; see section 4.2
   d. Temporary outdoor sales or events, seasonal; see section 4.2
   e. Temporary produce stand; see section 4.2
   f. Temporary trailer, as home sales office or construction trailer; see section 4.2

4. Wireless Telecommunications
   a. Carrier on wheels (non-emergency or event, no more than 120 days); see section 4.2
   b. New support structure from 50 feet up to 199 feet; see section 4.2
   c. Small cell installations (new support structures or collocation) on private property or ROW; see section 4.2

C. Special Land Use Permit

The following uses are permitted only with a special land use permit:

1. Residential
   a. Hotel/motel, extended stay; see section 4.2

2. Institutional/Public
   a. Cultural facilities

3. Commercial
   a. Alcohol outlet -beer and/or wine store, beer growler, primary; see section 4.2
   b. Alcohol outlet-beer and wine, accessory to retail less than 12,000sf; see section 4.2
   c. Alcohol outlet-package store, primary; see section 4.2
   d. Automobile service stations; see section 4.2
   e. Bus or rail stations or terminals for passengers
   f. Crematoriums; see section 4.2
   g. Fuel pumps; see section 4.2
   h. Heliport; see section 4.2
   i. Liquor store (see alcohol outlet) ; see section 4.2
   j. Nightclub or late night establishment; see section 4.2
   k. Restaurants with a drive-thru configuration; see section 4.2

D. Permitted Accessory

The following uses are permitted as accessory only to a principal use:

1. Residential
   a. Accessory uses or structures
   b. Dormitory

2. Commercial
   a. Fuel pumps, accessory to large scale retail within 1,000 feet of interstate highway interchange measured from ROW to property line; see section 4.2
   b. Service area, outdoor; see section 4.2

3. Industrial
   a. Recycling collection

[TMOD-22-001]

Sec. 2.27.3. Dimensional requirements.

Dimensional requirements for the C-2 (General Commercial) District shall be as provided in Table 2.24, Nonresidential Zoning Districts Dimensional Requirements.

(Ord. of 8-2-2017, § 1(2.27.3))

Sec. 2.27.4. Site and building design standards.

Site and building design standards and regulations to be applied in this zoning district shall be as provided in article 5 of this chapter, site design and building form standards.

(Ord. of 8-2-2017, § 1(2.27.4))

DIVISION 28. OD (OFFICE-DISTRIBUTION) DISTRICT

Sec. 2.28.1. Statement of purpose and intent.

The purpose and intent of the City Council in establishing the OD (Office-Distribution) District is as follows:

A. To provide convenient areas within the city for the development of office and distribution establishments which are necessary for the residents and business practitioners within the city; and

B. To implement the future development map of the city's most current comprehensive plan.

(Ord. of 8-2-2017, § 1(2.28.1))

Sec. 2.28.2. Permitted and special land uses.

Permitted uses and uses requiring special land use permits shall be as provided below. In cases where a use is permitted but there exist supplemental use regulations for that use specified in article 4 of this chapter, such regulations shall also apply and must be complied with.

(Ord. of 8-2-2017, § 1(2.28.2)) [TMOD-22-001]

A. Permitted Uses

The following uses are permitted as of right under this code:

1. Agricultural Activities
   a. Urban Community Garden, up to 5 acres; see section 4.2

2. Residential
   a. Hotel/motel

3. Institutional/Public
   a. Cemetery, columbarium, mausoleum; see section 4.2
   b. Club, order or lodge, fraternal, non-commercial
   c. Coliseum or stadium/not associated with church or school; see section 4.2
   d. Colleges, universities, research and training facilities
   e. Educational use, private; see section 4.2

f. Golf course or clubhouse, public or private; see section 4.2
g. Government facilities
h. Library or museum
i. Places of worship; see section 4.2
j. Recreation club; see section 4.2
k. Recreation, outdoor; see section 4.2
l. School, private kindergarten, elementary, middle or high schools; see section 4.2
m. School, public kindergarten, elementary, middle or high schools
n. School, specialty; see section 4.2
o. School, vocational; see section 4.2
p. Swimming pools, commercial; see section 4.2
q. Tennis courts, swimming pools, play or recreation areas, community; see section 4.2

4. Commercial
a. Adult daycare center, 7 or more; see section 4.2
b. Adult daycare facility, up to 6; see section 4.2
c. Alcohol outlet -beer and/or wine store, beer growler, primary; see section 4.2
d. Alcohol outlet-beer and wine, accessory to retail less than 12,000sf; see section 4.2
e. Alcohol outlet-package store, primary; see section 4.2
f. Animal hospital, veterinary clinic; see section 4.2
g. Animal shelter/rescue center; see section 4.2
h. Art gallery
i. Barber shop/beauty salon or similar establishments
j. Building or construction office; see section 4.2
k. Child day care facility, up to 6; see section 4.2
l. Child day care center (kindergarten), 7 or more
m. Clinic, health services
n. Contractor office, heavy construction; see section 4.2
o. Contractor office, landscape; see section 4.2
p. Drive-through facilities; see section 4.2
q. Farmer's market, permanent; see section 4.2
r. Liquor store (see alcohol outlet); see section 4.2
s. Mini-warehouse; see section 4.2
t. Office, medical
u. Office, professional
v. Parking, commercial lot; see section 4.2
w. Parking, commercial garage
x. Pawn shop, title loan; see section 4.2
y. Recreation, indoor
z. Recreation, outdoor; see section 4.2
aa. Restaurants (accessory to hotel/motel)
bb. Retail, 5,000 sf or less (with the exception of small box discount stores)
cc. Retail, over 5,000 sf (with the exception of small box discount stores, see also shopping center)
dd. Retail warehouses/wholesales providing sales of merchandise with no outdoor storage
ee. Shopping center
ff. Special events facility
gg. Taxi, ambulance or limousine service, dispatching or storage; see section 4.2
hh. Taxi stand
ii. Trade shops

5. Industrial

a. Warehousing or storage

6. Communications – Utility
   a. Essential services

7. Wireless Telecommunications
   a. Attached wireless telecommunication facility; see section 4.2
   b. Carrier on Wheels (declared emergency); see section 4.2

B. Special Administrative Uses

The following uses are permitted only with administrative approval:

1. Agricultural
   a. Urban, community garden, over 5 acres

2. Institutional/Public
   a. School, vocational; see section 4.2

3. Commercial
   a. Farmer's market, temporary/seasonal; see section 4.2
   b. Temporary outdoor retail sales; see section 4.2
   c. Temporary outdoor sales; seasonal; see section 4.2
   d. Temporary outdoor sales or events, seasonal; see section 4.2
   e. Temporary produce stand; see section 4.2
   f. Temporary trailer, as home sales office or construction trailer; see section 4.2

4. Wireless Telecommunications
   a. Carrier on wheels (non-emergency or event, no more than 120 days); see section 4.2
   b. New support structure from 50 feet up to 199 feet; see section 4.2
   c. Small cell installations (new support structures or collocation) on private property or ROW; see section 4.2

C. Special Land Use Permit

The following uses are permitted only with a special land use permit:

1. Institutional/Public
   a. Cultural facilities

2. Commercial
   a. Alternative energy production
   b. Fuel pumps; see section 4.2
   c. Heliport; see section 4.2
   d. Nightclub or late night establishment; see section 4.2

D. Permitted Accessory

The following uses are permitted as accessory only to a principal use:

1. Residential
   a. Accessory uses or structures
   b. Dormitory

2. Commercial

a. Fuel pumps, accessory to large scale retail within 1,000 feet of interstate highway interchange measured from ROW to property line; see section 4.2

[TMOD-22-001]

Sec. 2.28.3. Dimensional requirements.

Dimensional requirements for the OD (Office-Distribution) District shall be as provided in Table 2.24, Nonresidential Zoning Districts Dimensional Requirements.

(Ord. of 8-2-2017, § 1(2.28.3))

Sec. 2.28.4. Site and building design standards.

Site and building design standards and regulations to be applied in this zoning district shall be as provided in article 5 of this chapter, site design and building form standards.

(Ord. of 8-2-2017, § 1(2.28.4))

DIVISION 29. OI (OFFICE-INSTITUTIONAL) DISTRICT

Sec. 2.29.1. Statement of purpose and intent.

The purpose and intent of the City Council in establishing the OI (Office-Institutional) District is as follows:

A. To provide convenient areas within the city for the location of office and institutional uses which are necessary for the residents and business and professional practitioners within the city;

B. To provide accessory commercial and residential uses to reduce auto dependence;

C. To provide locations for the development of cultural, recreational, educational and health service facilities for the city;

D. To promote compatible development, in size and scale, to surrounding development;

E. To promote campus style developments;

F. To promote pedestrian oriented compact design;

G. To implement the future development map of the city's most current comprehensive plan.

(Ord. of 8-2-2017, § 1(2.29.1))

Sec. 2.29.2. Permitted and special land uses.

Permitted uses and uses requiring special land use permits shall be as provided below. In cases where a use is permitted but there are supplemental use regulations for that use specified in article 4 of this chapter, such regulations shall also apply and must be complied with.

(Ord. of 8-2-2017, § 1(2.29.2)) [TMOD-22-001]

A. Permitted Uses

The following uses are permitted as of right under this code:

1. Agricultural Activities
   a. Urban Community Garden, up to 5 acres; see section 4.2

2. Residential
   a. Bed and breakfast establishment
   b. Child care home, 5 or less; see section 4.2
   c. Child care facility, 6 or more; see section 4.2
   d. Child day care center
   e. Convents or monasteries; see section 4.2
   f. Dwelling, multifamily
   g. Hotel/motel
   h. Live/work unit
   i. Nursing care facility or hospice
   j. Personal care home, 6 or less; see section 4.2
   k. Personal care home, 7 or more; see section 4.2

3. Institutional/Public
   a. Cemetery, columbarium, mausoleum; see section 4.2
   b. Club, order or lodge, fraternal, non-commercial
   c. Colleges, universities, research and training facilities
   d. Funeral home, mortuary
   e. Golf course or clubhouse, public or private; see section 4.2
   f. Government facilities
   g. Hospital or accessory ambulance service
   h. Library or museum
   i. Neighborhood or subdivision clubhouse or amenities; see section 4.2
   j. Places of worship; see section 4.2
   k. School, private kindergarten, elementary, middle or high schools; see section 4.2
   l. School, public kindergarten, elementary, middle or high schools
   m. School, specialty; see section 4.2
   n. School, vocational; see section 4.2
   o. Swimming pools, commercial; see section 4.2
   p. Tennis courts, swimming pools, play or recreation areas, community; see section 4.2

4. Commercial
   a. Adult daycare center, 7 or more; see section 4.2
   b. Automobile or truck rental or leasing facilities; see section 4.2
   c. Banks, credit unions or other similar financial institutions
   d. Building or construction office; see section 4.2
   e. Catering establishments
   f. Child day care facility, up to 6; see section 4.2
   g. Child day care center (kindergarten), 7 or more
   h. Clinic, health services
   i. Drive-through facilities; see section 4.2
   j. Dry cleaning agencies, pressing establishments, or laundry pick-up stations
   k. Farmer's market, permanent; see section 4.2
   l. Fitness center
   m. Kidney dialysis center
   n. Medical or dental laboratories
   o. Office, medical

p. Office, professional
q. Printing or publishing establishments
r. Restaurants (accessory to hotel/motel)
s. Restaurant with a drive-thru configuration
t. Special events facility
u. Taxi stand
v. Theaters with live performance, assembly or concert halls, or similar entertainment within an enclosed building
w. Trade shops

5. Communications – Utility
   a. Essential services
   b. Radio or television broadcasting studio
   c. Satellite television antenna; see section 4.2

6. Wireless Telecommunications
   a. Attached wireless telecommunication facility; see section 4.2
   b. Carrier on Wheels (declared emergency); see section 4.2

B. Special Administrative Uses

The following uses are permitted only with administrative approval:

1. Agricultural
   a. Urban, community garden, over 5 acres

2. Commercial
   a. Farmer's market, temporary/seasonal; see section 4.2
   b. Temporary outdoor retail sales; see section 4.2
   c. Temporary outdoor sales; seasonal; see section 4.2
   d. Temporary outdoor sales or events, seasonal; see section 4.2
   e. Temporary produce stand; see section 4.2
   f. Temporary trailer, as home sales office or construction trailer; see section 4.2

3. Wireless Telecommunications
   a. Carrier on wheels (non-emergency or event, no more than 120 days); see section 4.2
   b. New support structure from 50 feet up to 199 feet; see section 4.2
   c. Small cell installations (new support structures or collocation) on private property or ROW; see section 4.2

C. Special Land Use Permit

The following uses are permitted only with a special land use permit:

1. Residential
   a. Dwelling, apartment
   b. Fraternity or sorority house
   c. Hotel/motel, extended stay
   d. Senior housing; see section 4.2
   e. Shelter for homeless persons, 7—20; see section 4.2
   f. Shelter for homeless persons for no more than 6 persons; see section 4.2
   g. Transitional housing facilities, 7-20 persons; see section 4.2

2. Institutional/Public

a. Cultural facilities

3. Commercial
   a. Barber shop/beauty salon or similar establishment
   b. Fuel pumps; see section 4.2
   c. Heliport; see section 4.2

4. Industrial
   a. Crematoriums; see section 4.2

D. Permitted Accessory

The following uses are permitted as accessory only to a principal use:

1. Residential
   a. Accessory uses or structures
   b. Dormitory

2. Commercial
   a. Barber shop/beauty salon or similar establishments
   b. Liquor store (see alcohol outlet); see section 4.2
   c. Nightclub or late night establishments; see section 4.2
   d. Parking, commercial garage
   e. Parking, commercia lot; see section 4.2
   f. Personal services establishment
   g. Restaurants (non drive-thru)
   h. Retail 5,000 sf or less (with the exception of small box discount stores)

3. Industrial
   a. Recycling collection

4. Communication-Utility
   a. Radio or television broadcasting transmission facility

[TMOD-22-001]

Sec. 2.29.3. Dimensional requirements.

Dimensional requirements for the OI (Office-Institutional) District shall be as provided in Table 2.24, Nonresidential Zoning Districts Dimensional Requirements.

(Ord. of 8-2-2017, § 1(2.29.3))

Sec. 2.29.4. Site and building design standards.

Site and building design standards and regulations to be applied in this zoning district shall be as provided in article 5 of this chapter, site design and building form standards.

(Ord. of 8-2-2017, § 1(2.29.4))

DIVISION 30. OIT (OFFICE-INSTITUTIONAL-TRANSITIONAL) DISTRICT

Sec. 2.30.1. Statement of purpose and intent.

The purpose and intent of the City Council in establishing the OIT (Office-Institutional-Transitional) District is as follows:

A. To provide areas within the city for the location of office and institutional uses which are necessary for the residents, business practitioners, and professional practitioners in existing buildings no longer viable for residential uses;

B. To limit said buildings' height to be compatible to those potential redevelopment parcels and structures;

C. To provide for the transition from residential to office and associated commercial uses which do not generate large volumes of traffic, noise or other harmful effects, and which are compatible with residential uses in locations so designated in the comprehensive plan in the applicable character areas.

(Ord. of 8-2-2017, § 1(2.30.1))

Sec. 2.30.2. Permitted and special land uses.

Permitted uses and uses requiring special land use permits shall be as provided below. In cases where a use is permitted, but there are supplemental use regulations for that use specified in article 4 of this chapter, such regulations shall also apply and must be complied with.

(Ord. of 8-2-2017, § 1(2.30.2)) [TMOD-22-001]

A. Permitted Uses

The following uses are permitted as of right under this code:

1. Agricultural Activities
   a. Urban Community Garden, up to 5 acres; see section 4.2

2. Residential
   a. Bed and breakfast establishment
   b. Child care home, 5 or less; see section 4.2
   c. Child day care center
   d. Convents or monasteries; see section 4.2
   e. Dwelling, single-family attached; see section 4.2
   f. Dwelling, townhouse; see section 4.2
   g. Dwelling, urban single-family; see section 4.2
   h. Live/work unit
   i. Nursing care facility or hospice
   j. Personal care home, 6 or less; see section 4.2
   k. Personal care home, 7 or more; see section 4.2

3. Institutional/Public
   a. Cemetery, columbarium, mausoleum; see section 4.2
   b. Club, order or lodge, fraternal, non-commercial
   c. Colleges, universities, research and training facilities
   d. Funeral home, mortuary
   e. Golf course or clubhouse, public or private; see section 4.2

f. Government facilities
g. Hospital or accessory ambulance service
h. Library or museum
i. Neighborhood or subdivision clubhouse or amenities; see section 4.2
j. Places of worship; see section 4.2
k. School, private kindergarten, elementary, middle or high schools; see section 4.2
l. School, public kindergarten, elementary, middle or high schools
m. School, specialty; see section 4.2
n. School, vocational; see section 4.2
o. Swimming pools, commercial; see section 4.2
p. Tennis courts, swimming pools, play or recreation areas, community; see section 4.2

4. Commercial
a. Adult daycare center, 7 or more; see section 4.2
b. Automobile or truck rental or leasing facilities; see section 4.2
c. Banks, credit unions or other similar financial institutions
d. Barber shop/beauty salon or similar establishments
e. Building or construction office; see section 4.2
f. Catering establishments
g. Child day care facility, up to 6; see section 4.2
h. Child day care center (kindergarten), 7 or more
i. Clinic, health services
j. Dry cleaning agencies, pressing establishments, or laundry pick-up stations
k. Farmer's market, permanent; see section 4.2
l. Fitness center
m. Kidney dialysis center
n. Medical or dental laboratories
o. Office, medical
p. Office, professional
q. Printing or publishing establishments
r. Restaurant with a drive-thru configuration
s. Special events facility
t. Taxi stand
u. Theaters with live performance, assembly or concert halls, or similar entertainment within an enclosed building
v. Trade shops

5. Communications – Utility
a. Essential services
b. Satellite television antenna; see section 4.2

6. Wireless Telecommunications
a. Attached wireless telecommunication facility; see section 4.2
b. Carrier on Wheels (declared emergency); see section 4.2

B. Special Administrative Uses
The following uses are permitted only with administrative approval:
1. Agricultural
a. Urban, community garden, over 5 acres

2. Commercial

a. Farmer's market, temporary/seasonal; see section 4.2
b. Temporary outdoor retail sales; see section 4.2
c. Temporary outdoor sales; seasonal; see section 4.2
d. Temporary outdoor sales or events, seasonal; see section 4.2
e. Temporary produce stand; see section 4.2
f. Temporary trailer, as home sales office or construction trailer; see section 4.2

3. Wireless Telecommunications
a. Carrier on wheels (non-emergency or event, no more than 120 days); see section 4.2
b. Small cell installations (new support structures or collocation) on private property or ROW; see section 4.2

C. Special Land Use Permit
The following uses are permitted only with a special land use permit:

1. Residential
a. Child care facility, 6 or more; see section 4.2
b. Dwelling, apartment
c. Senior housing; see section 4.2
d. Shelter for homeless persons, 7—20; see section 4.2
e. Shelter for homeless persons for no more than 6 persons; see section 4.2
f. Transitional housing facilities, 7-20 persons; see section 4.2

2. Institutional/Public
a. Cultural facilities

3. Commercial
a. Barber shop/beauty salon or similar establishment
b. Fuel pumps; see section 4.2
c. Mini-warehouse; see section 4.2

4. Wireless Telecommunications
a. New support structure from 51 feet to 150 feet; see section 4.2

D. Permitted Accessory
The following uses are permitted as accessory only to a principal use:
1. Residential
a. Accessory uses or structures
b. Dormitory

2. Commercial
a. Personal services establishment
b. Restaurants (non drive-thru)
c. Retail 5,000 sf or less (with the exception of small box discount stores)

[TMOD-22-001]

Sec. 2.30.3. Dimensional requirements.

Dimensional requirements for the OIT (Office-Institutional-Transitional) District shall be as provided in Table 2.24, Nonresidential Zoning Districts Dimensional Requirements.

(Ord. of 8-2-2017, § 1(2.30.3))

Sec. 2.30.4. Site and building design standards.

Site and building design standards and regulations to be applied in this zoning district shall be as provided in article 5 of this chapter, site design and building form standards.

(Ord. of 8-2-2017, § 1(2.30.4))

DIVISION 31. M (LIGHT INDUSTRIAL) DISTRICT

Sec. 2.31.1. Statement of purpose and intent.

The purpose and intent of the City Council in establishing the M (Light Industrial) District is as follows:

A. To provide areas for the establishment of businesses engaged in the manufacturing, processing, creating, repairing, renovating, painting, cleaning, or assembling of goods, merchandise, or equipment and the sale and distribution of such goods, merchandise or equipment in locations so designated in the comprehensive plan;

B. To provide an environment for light industrial uses that produces no appreciable impact on adjacent properties and preserve the appeal and appearance of residential and commercial areas;

C. To ensure that all establishments located within the M (Light Industrial) District operate in compliance with the noise standards contained in this chapter and that any negative noise impact resulting from the use of land within the M (Light Industrial) District is contained within the boundaries of said district and does not create noise problems for adjoining residential, office or commercial districts;

D. To provide an area within City of Stonecrest for recycling and green businesses to locate;

E. To generate employment opportunities and economic development;

F. To ensure that M (Light Industrial) Districts are so located that transportation access to thoroughfares and freeways is available;

G. To implement the future development map of the city's most current comprehensive plan

(Ord. of 8-2-2017, § 1(2.31.1))

Sec. 2.31.2. Permitted and special land uses.

Permitted uses and uses requiring special land use permits shall be as provided below. In cases where a use is permitted but there are supplemental use regulations for that use specified in article 4 of this chapter, such regulations shall also apply and must be complied with.

(Ord. of 8-2-2017, § 1(2.31.2)) [TMOD-22-001]

A. Permitted Uses

The following uses are permitted as of right under this code:

1. Agricultural Activities
   a. Dairy
   b. Keeping of livestock
   c. Keeping of poultry/pigeons
   d. Sawmill; temporary or portable
   e. Urban Community Garden, up to 5 acres; see section 4.2

2. Institutional/Public
   a. Colleges, universities, research and training facilities
   b. Golf course or clubhouse, public or private; see section 4.2
   c. Government facilities
   d. Hospital or accessory ambulance service
   e. Places of worship; see section 4.2
   f. Swimming pools, commercial; see section 4.2
   g. Tennis courts, swimming pools, play or recreation areas, community; see section 4.2

3. Commercial
   a. Adult daycare center, 7 or more; see section 4.2
   b. Alcohol outlet-package store, primary; see section 4.2
   c. Alcohol outlet- beer and/or wine store, beer growler, primary; see section 4.2
   d. Alcohol outlet-beer and wine, accessory to retail less than 12,000 sf (see also 4.1.3 (F)) ; see section 4.2
   e. Ambulance service or emergency medical services, private
   f. Animal hospital, veterinary clinic; see section 4.2
   g. Animal shelter/rescue center; see section 4.2
   h. Automobile brokerage; see section 4.2
   i. Automobile recovery and storage
   j. Automobile service station; see section 4.2
   k. Automobile or truck rental or leasing facilities; see section 4.2
   l. Automobile or truck sales; see section 4.2
   m. Automobile upholstery shop
   n. Automobile wash/was service; see section 4.2
   o. Automobile repair, major; see section 4.2
   p. Automobile repair, minor; see section 4.2
   q. Banks, credit unions or other similar financial institutions
   r. Barber shop/beauty salon or similar establishments
   s. Brewery, craft (micro-brewery)
   t. Brewpub/beer growler
   u. Building or construction office; see section 4.2
   v. Catering establishments
   w. Check cashing establishment, accessory; see section 4.2
   x. Check cashing establishment, primary; see section 4.2
   y. Child day care center (kindergarten), 7 or more
   z. Clinic, health services
   aa. Club, order or lodge, fraternal, non-commercial
   bb. Commercial greenhouse or plant nursery; see section 4.2
   cc. Contractor office, landscape; see section 4.2
   dd. Distillery (micro-distillery)
   ee. Dog day care; see section 4.2

ff. Dog grooming; see section 4.2
gg. Drive-in theater; see section 4.2
hh. Drive-through facilities; see section 4.2
ii. Dry cleaning agencies, pressing establishments or laundry pick-up stations
jj. Fairground or amusement park; see section 4.2
kk. Farmer's market, permanent; see section 4.2
ll. Fitness center
mm. Fuel dealers or wholesalers
nn. Heliport; see section 4.2
oo. Kennel, breeding
pp. Kennel, commercial
qq. Kidney dialysis center
rr. Medical or dental laboratories
ss. Landscape business
tt. Liquor store (see alcohol outlet) ; see section 4.2
uu. Mini-warehouse; see section 4.2
vv. Outdoor storage, commercial; see section 4.2
ww. Parking, commercial lot; see section 4.2
xx. Parking, commercial garage
yy. Pawn shop, title loan; see section 4.2
zz. Personal services establishment
aaa. Printing or publishing establishments
bbb. Recreational vehicle, boat and trailers sales and service
ccc. Restaurants (non drive-thru)
ddd. Retail, 5,000 sf or less (with the exception of small box discount stores)
eee. Retail warehouses/wholesales providing sales of merchandise with no outdoor storage
fff. Special events facility
ggg. Taxi, ambulance or limousine service, dispatching or storage; see section 4.2
hhh. Taxi stand
iii. Trade shops

4. Industrial
a. Alternative energy production
b. Building materials or lumber supply establishment
c. Contractor, general
d. Contractor heavy construction, outside storage
e. Contractor, special trade
f. Crematorium; see section 4.2
g. Fabricated metal manufacture without EPD permit required (Light manufacturing)
h. General aviation airport; see section 4.2
i. Heavy equipment repair service or trade
j. Industrial, light
k. Manufacturing, light
l. Outdoor storage, industrial; see section 4.2
m. Railroad car classification yards or team truck yards; see section 4.2
n. Recovered materials facility wholly within a building; see section 4.2
o. Recovered materials processing wholly within a building
p. Recycling collection
q. Recycling plant
r. Research and testing facilities
s. Towing or wreckage service

t. Transportation equipment storage or maintenance (vehicle) ; see section 4.2
u. Truck stop
v. Truck terminal
w. Vehicle storage yard
x. Warehousing or storage

5. Communications – Utility
   a. Essential services
   b. Radio or television broadcasting studio
   c. Radio or television or broadcasting transmission facility
   d. Satellite television antenna; see section 4.2

6. Wireless Telecommunications
   a. Attached wireless telecommunication facility; see section 4.2
   b. Carrier on Wheels (declared emergency); see section 4.2

B. Special Administrative Uses

The following uses are permitted only with administrative approval:

1. Agricultural
   a. Urban, community garden, over 5 acres

2. Commercial
   a. Farmer's market, temporary/seasonal; see section 4.2
   b. Temporary outdoor retail sales; see section 4.2
   c. Temporary outdoor sales; seasonal; see section 4.2
   d. Temporary outdoor sales or events, seasonal; see section 4.2
   e. Temporary produce stand; see section 4.2
   f. Temporary trailer, as home sales office or construction trailer; see section 4.2

3. Wireless Telecommunications
   a. Carrier on wheels (non-emergency or event, no more than 120 days); see section 4.2
   b. New support structure from 50 feet up to 199 feet; see section 4.2
   c. Small cell installations (new support structures or collocation) on private property or ROW; see section 4.2

C. Special Land Use Permit

The following uses are permitted only with a special land use permit:

1. Institutional/Public
   a. Cultural facilities
   b. School, specialty; see section 4.2
   c. School, vocational; see section 4.2

2. Commercial
   a. Bus or rail stations or terminals for passengers
   b. Fuel pumps; see section 4.2
   c. Nightclub or late night establishment; see section 4.2
   d. Recreation, outdoor; see section 4.2
   e. Restaurants with a drive-thru configuration; see section 4.2

D. Permitted Accessory

The following uses are permitted as accessory only to a principal use:

1. Commercial
   a. Fuel pumps, accessory to large scale retail within 1,000 feet of interstate highway interchange measured from ROW to property line; see section 4.2
   b. Service area, outdoor; see section 4.2

2. Industrial
   a. Incidental retail sales of goods produced or processed on the premises

[TMOD-22-001]

Sec. 2.31.3. Dimensional requirements.

Dimensional requirements for the M (Light Industrial) District shall be as provided in Table 2.24, Nonresidential Zoning Districts Dimensional Requirements.

(Ord. of 8-2-2017, § 1(2.31.3))

Sec. 2.31.4. Site and building design standards.

Site and building design standards and regulations to be applied in this zoning district shall be as provided in article 5 of this chapter, site design and building form standards.

(Ord. of 8-2-2017, § 1(2.31.4))

Sec. 2.31.5 Conversion of buildings to residential prohibited.

The conversion of buildings in the M (Light Industrial) District to residential use is prohibited.

(Ord. of 8-2-2017, § 1(2.31.5))

DIVISION 32. M-2 (HEAVY INDUSTRIAL) DISTRICT

Sec. 2.32.1. Statement of purpose and intent.

The purpose and intent of the City Council in establishing the M-2 (Heavy Industrial) District is as follows:

A. To provide areas for manufacturing, warehousing and distribution facilities at locations so designated in the comprehensive plan;

B. To provide for a location for intense industrial uses that do not require and may not be appropriate for a nuisance free environment;

C. To provide for a location that allows nuisances such as noise, vibration and other impacts which cannot be contained on-site;

D. To ensure that all businesses located within the M-2 (Heavy Industrial) District operate in compliance with the noise standards contained in this chapter;

E. To ensure that industrial districts are so located that transportation access to thoroughfares and freeways is available;

F. To implement the future development map of the city's most current comprehensive plan.

(Ord. of 8-2-2017, § 1(2.32.1))

Sec. 2.32.2. Permitted and special land uses.

Permitted uses and uses requiring special land use permits shall be as provided below. In cases where a use is permitted but there are supplemental use regulations for that use specified in article 4 of this chapter, such regulations shall also apply and must be complied with.

(Ord. of 8-2-2017, § 1(2.32.2)) [TMOD-22-001]

A. Permitted Uses

The following uses are permitted as of right under this code:

1. Agricultural Activities
   a. Dairy
   b. Livestock sales pavilion; see section 4.2
   c. Sawmill; temporary or portable
   d. Urban Community Garden, up to 5 acres; see section 4.2

2. Institutional/Public
   a. Government facilities
   b. Places of worship; see section 4.2

3. Commercial
   a. Animal hospital, veterinary clinic; see section 4.2
   b. Animal shelter/rescue center; see section 4.2
   c. Automobile brokerage; see section 4.2
   d. Automobile recovery and storage
   e. Automobile service station; see section 4.2
   f. Automobile or truck sales; see section 4.2
   g. Automobile upholstery shop
   h. Automobile repair, major; see section 4.2
   i. Automobile repair, minor; see section 4.2
   j. Building or construction office; see section 4.2
   k. Check cashing establishment, accessory; see section 4.2
   l. Contractor office, landscape; see section 4.2
   m. Dog day care; see section 4.2
   n. Dog grooming; see section 4.2
   o. Drive-in theater; see section 4.2
   p. Dry cleaning agencies, pressing establishments or laundry pick-up stations
   q. Fairground or amusement park; see section 4.2
   r. Farmer's market, permanent; see section 4.2
   s. Fitness center
   t. Fuel dealers or wholesalers
   u. Heliport; see section 4.2
   v. Kennel, breeding
   w. Kennel, commercial
   x. Medical or dental laboratories
   y. Landscape business
   z. Mini-warehouse; see section 4.2
   aa. Outdoor storage, commercial; see section 4.2
   bb. Printing or publishing establishments
   cc. Retail, 5,000 sf or less (with the exception of small box discount stores)
   dd. Service area, outdoor; see section 4.2
   ee. Sexually oriented businesses; see section 4.2
   ff. Taxi, ambulance or limousine service, dispatching or storage; see section 4.2
   gg. Taxi stand
   hh. Trade shops

4. Industrial
   a. Alternative energy production
   b. Brewery, Large scale
   c. Contractor, general
   d. Contractor heavy construction, outside storage
   e. Contractor, special trade
   f. Crematorium; see section 4.2
   g. Distillery, Large scale
   h. Fabricated metal manufacturing without EPD Permit Required (Light Manfacturing)
   i. General aviation airport; see section 4.2
   j. Heavy equipment repair service or trade
   k. Industrial, heavy
   l. Industrial, light
   m. Intermodal freight terminal, bus or rail freight or passenger terminal, or truck terminal
   n. Manufacturing, heavy; see section 4.2

o. Manufacturing, light
p. Manufacturing operations not housed within a building; see section 4.2
q. Mines or mining operations, quarries, asphalt plants, gravel pits or soil pits; see section 4.2
r. Outdoor storage, industrial; see section 4.2
s. Railroad car classification yards or team truck yards; see section 4.2
t. Recovered materials facility wholly within a building; see section 4.2
u. Recovered materials processing wholly within a building
v. Recycling collection
w. Recycling plant
x. Research and testing facilities
y. Salvage yard (junkyard); see section 4.2
z. Storage yard, except vehicle; see section 4.2
aa. Storage yard for vehicles; see section 4.2
bb. Towing or wreckage service; see section 4.2
cc. Transportation equipment storage or maintenance (vehicle) ; see section 4.2
dd. Truck stop
ee. Truck terminal
ff. Vehicle storage yard
gg. Warehousing or storage

5. Communications – Utility
   a. Essential services
   b. Radio or television broadcasting studio
   c. Radio or television or broadcasting transmission facility
   d. Satellite television antenna; see section 4.2

6. Wireless Telecommunications
   a. Attached wireless telecommunication facility; see section 4.2
   b. Carrier on Wheels (declared emergency); see section 4.2

B. Special Administrative Uses

The following uses are permitted only with administrative approval:

1. Agricultural
   a. Urban, community garden, over 5 acres

2. Commercial
   a. Farmer's market, temporary/seasonal; see section 4.2
   b. Temporary outdoor retail sales; see section 4.2
   c. Temporary outdoor sales; seasonal; see section 4.2
   d. Temporary outdoor sales or events, seasonal; see section 4.2
   e. Temporary produce stand; see section 4.2
   f. Temporary trailer, as home sales office or construction trailer; see section 4.2

3. Wireless Telecommunications
   a. Carrier on wheels (non-emergency or event, no more than 120 days); see section 4.2
   b. New support structure from 50 feet up to 199 feet; see section 4.2
   c. Small cell installations (new support structures or collocation) on private property or ROW; see section 4.2

C. Special Land Use Permit

The following uses are permitted only with a special land use permit:

1. Institutional/Public
   a. School, specialty; see section 4.2
   b. School, vocational; see section 4.2

2. Commercial
   a. Bus or rail stations or terminals for passengers
   b. Fuel pumps; see section 4.2
   c. Nightclub or late night establishment; see section 4.2

3. Industrial
   a. Fabricated metal manufacturing with EPD Permit Required (Heavy Manufacturing)

D. Permitted Accessory
The following uses are permitted as accessory only to a principal use:

1. Industrial
   a. Incidental retail sales of goods produced or processed on the premises

[TMOD-22-001]

Sec. 2.32.3. Dimensional requirements.

Dimensional requirements for the M-2 (Heavy Industrial) District shall be as provided in Table 2.24, Nonresidential Zoning Districts Dimensional Requirements.

(Ord. of 8-2-2017, § 1(2.32.3))

Sec. 2.32.4. Site and building design standards.

Site and building design standards and regulations to be applied in this zoning district shall be as provided in article 5 of this chapter, site design and building form standards.

(Ord. of 8-2-2017, § 1(2.32.4))

Sec. 2.32.5. [RESERVED] [TMOD-22-001]

Sec. 2.32.6. – Conversion of buildings to residential use prohibited.

The conversion of buildings in the M-2 (Heavy Industrial) District to residential use is prohibited.

(Ord. of 8-2-2017, § 1(2.32.5))

ARTICLE 3. OVERLAY DISTRICT REGULATIONS

DIVISION 1. OVERLAY DISTRICTS

Sec. 3.1.1. Overlay districts generally.

Overlay districts are supplemental to the zoning district classifications established in article 2 of this chapter. This section shall supersede the applicability statements in each overlay district except as provided in subsection (F) of this section, and are applicable as follows:

A. All development and building permits for lots located, in whole or in part, within any overlay district shall meet all of the regulations of the underlying zoning district in which they are located as well as all of the regulations of the applicable overlay district.

B. For new development after the effective date of the ordinance from which this chapter is derived, when no complete application for a land disturbance or building permit has been filed with respect to a property located within an overlay district and the property has conditions of zoning that were approved prior to, and in conflict with the overlay district regulations contained in this article, the overlay district regulations shall prevail. If a condition of zoning does not conflict with the overlay district regulations, the condition of zoning shall remain applicable to the property.

C. For existing development, if overlay district regulations conflict with the conditions of zoning applicable to property within in an overlay district, the existing zoning conditions remain applicable to the property.

D. If overlay district regulations conflict with other regulations contained in this chapter, the overlay district regulations shall prevail.

E. The use of property may be permitted without rezoning if listed as allowed by the overlay. Uses allowed by the underlying zoning in article 4 of this chapter, shall also be permitted in the overlay district, unless they are listed as prohibited within the overlay district.

F. Each application for a business license, land disturbance permit, building permit or sign permit, which involves the development, use, exterior alteration, exterior modification or addition of any structure, must demonstrate compliance with all overlay district regulations, subject to article 8 of this chapter, nonconforming uses, structures and buildings.

G. The zoning district designations contained in article 3 of this chapter, titled Overlay District Regulations, were not revised to reflect the new zoning district designations utilized in the updated zoning ordinance. Any discontinued zoning district references contained in this article 3 of this chapter shall therefore be construed using the conversion chart contained in Table 1.1 of article 1 of the zoning ordinance, and applied as appropriate to the updated provision of the zoning ordinance.

H. When a plan package for a proposed development is submitted for conceptual plan review or a final design package approval for a land disturbance or building permit application, the governing district by related to design or dimensional standards by which the development will be reviewed under must be clearly stated. That governing district standards must be associated with either the underlying zoning district, or an authorized district as permitted by the applicable Overlay Tier at the time of application submittal.

I. If the governing underlying district does not match the existing underlying district, the city may initiate a rezoning of the underlying property to the governing district, with property owner approval, at any point after final plat approval or the issuance of a Certification of Occupancy.

(Ord. of 8-2-2017, § 1(3.1.1)) [TMOD-21-015]

Sec. 3.1.2. Purpose and intent.

Each Subarea Overlay has its own purpose and intent based on original overlay requirements.

(Ord. of 8-2-2017, § 1(3.1.2))

Sec. 3.1.3. Plan submittal, review and approval.

A. *Pre-submittal conference.* Prior to the submittal for review of a land disturbance or building permit application for property located within an overlay district, the applicant and the staff shall have a preliminary meeting to discuss the submittal requirements.

B. *Conceptual plan submittal requirements.* As part of any land-disturbance permit, building permit, or sign permit application, the applicant shall submit to the director of planning a conceptual plan package and a final design package. Each package must include full architectural and landscape plans and specifications. The submitted plans must include a site plan, architectural elevations and sections; renderings depicting the building design including elevations and architectural details of proposed buildings, exterior materials and colors, and plans and elevations of all hardscape, landscape and signs, all of which shall demonstrate that the proposed design is in compliance with all the requirements of the applicable overlay district and the underlying zoning classification. The plans must clearly state the governing district requirements by which the plans will be reviewed. If the proposed development is also located in an historic district as designated in the Code, the development shall also comply with the regulations established for the historic district in chapter 13.5 of the DeKalb County Code.

C. *Review by staff.* Staff will review the conceptual plans for compliance with specifications and design guidelines contained in this zoning ordinance for the governing district requested by the applicant. If the application fails to comply with any section in this zoning ordinance, the application shall be marked "failed compliance," shall be returned to the applicant with any comments and/or redlines for revisions, and may be re-submitted with corrections addressing the staffs comments and/or redlines for further consideration. Once the application is found to be in compliance, the final design shall be forwarded to the director of planning for approval.

    1. Where the director of planning determines that said plans comply with the requirements of the overlay district, the director of planning shall approve the plans for compliance as part of the application for land disturbance, building or signs permits.

    2. Where the director of planning determines that submitted conceptual plans do not comply with the requirements of this chapter, then the director of planning shall notify the applicant in writing of the manner in which the conceptual plans fail to comply with such requirements. All applications shall be considered and decided by the director of planning within 30 days of receipt of a complete application.

    3. Any appeal to vary overlay district development standards shall be to the zoning board of appeals pursuant to article 7 of this chapter.

D. *Fees.* Plans shall be accompanied by an application and payment of a fee in an amount determined by the city council.

(Ord. of 8-2-2017, § 1(3.1.3)) [TMOD-21-015]

Sec. 3.1.4. Conceptual plan package review.

A. The conceptual plan package shall include the following:

    1. A narrative addressing the proposed development explaining how it meets the purpose, intent, and standards of this article. The narrative shall include a statement of what governing district review standards will be applied. The narrative shall include a tabulation of the approximate number of acres for each different land use type within the project, the approximate number of dwelling units by type, the approximate gross residential density, the approximate commercial density as well as square feet,

the common open space acreage, the approximate open space acreage, the anticipated number, type and size of recreational facilities and other public amenities, and the legal mechanism for protecting and maintaining common/public open, as required in article 5 of this chapter; [TMOD-21-015]

2. A site location map showing the proposed development, abutting properties, the access connections of the proposed development to surrounding and existing development, and transitional buffer zones, if required;

3. A multi-modal access plan, prepared at a scale not greater than one inch equals 100 feet, to demonstrate a unified plan of continuous access to and between all structures in the proposed development and adjacent properties where connections are appropriate. The multi-modal access plan shall cover the entire proposed development along with public right-of-way of adjoining streets and any other property lying between the subject property and any primary or secondary streets. Safe and convenient pathways shall be provided from sidewalks along streets to each structure entrance, including pedestrian access routes across parking lots and between adjacent buildings within the same development. Connections to available transportation nodes, such as driveways, sidewalks, and bike paths shall be shown along adjacent streets and those entering adjoining properties. Where an existing or planned public transportation station or stop is within 1,250 feet from the nearest boundary of the subject property, the access plan shall show how pedestrians may safely travel from such station or stop to the subject property. Where an existing or planned bike path is located within 1,500 feet from the nearest boundary of the subject property, the access plan shall show how safe, continuous and convenient bicycle access shall be provided to the subject property.

4. Two copies of a plan drawn to a designated scale of not less than one inch equals 100 feet, certified by a professional engineer or land surveyor licensed by the state, presented on a sheet having a maximum size of 24 inches by 36 inches, and one 8½ inches by 11 inches reduction of the plan. A .jpg copy of the plan shall be e-mailed to the director of planning. If presented on more than one sheet, match lines shall clearly indicate where the several sheets join. Such plan shall contain the following information:

    a. Boundaries of the entire property proposed to be included in the development, with bearings and distances of the perimeter property lines;

    b. Scale and north arrow, with north, to the extent feasible, oriented to the top of the plat and on all supporting graphics;

    c. Location and approximate dimensions in length and width, for landscape strips and required transitional buffers, if any;

    d. Existing topography with a maximum contour interval of five feet and a statement indicating whether it is an air survey or field run;

    e. Delineation of any floodplain designated by the Federal Emergency Management Agency, United States Geological Survey, or City of Stonecrest;

    f. Delineation of any jurisdictional wetlands, as defined by section 404 of the Federal Clean Water Act;

    g. Approximate delineation of any significant historic or archaeological feature, grave, object or structure marking a place of burial if known, and a statement indicating how the proposed development will impact it;

    h. Delineation of all existing structures and whether they will be retained or demolished;

    i. General location, in conceptual form, of proposed uses, lots, buildings, building types and building entrances;

    j. Height and setback of all existing and proposed buildings and structures;

k. Location, size and number of all on-street and off-street parking spaces, including a shared parking analysis, if shared parking is proposed;

l. Identification of site access points and layout, width of right-of-way and paved sections of all internal streets;

m. Conceptual plans for drainage with approximate location and estimated size of all proposed stormwater management facilities and a statement as to the type of facility proposed;

n. Development density and lot sizes for each type of use;

o. Areas to be held in joint ownership, common ownership or control;

p. Identification of site access points and layout, width of right-of-way and paved sections of all internal streets;

q. Location of proposed sidewalks and bicycle facilities, trails, recreation areas, parks, and other public or community uses, facilities, or structures on the site;

r. Conceptual layout of utilities and location of all existing and proposed utility easements having a width of ten feet or more;

s. Standard details of signs, sidewalks, streetlights, driveways, medians, curbs and gutters, landscaped areas, fencing, street furniture, bicycle lanes, streets, alleys, and other public improvements demonstrating compliance with the design guidelines for the overlay district; and

t. Seal and signature of the professional preparing the plan.

5. Two copies of the conceptual building designs including elevation drawings drawn to a scale of not less than one-sixteenth-inch equals one foot showing architectural details of proposed building, exterior materials, all of which demonstrate that the proposed design is in compliance with the Subarea Overlay District in which it is located. Drawings shall be presented on a sheet having a maximum size of 24 inches by 36 inches, along with one 8½ inches by 11 inches reduction of each sheet. A .pdf copy of the drawings shall be e-mailed to the director of planning. If the drawings are presented on more than one sheet, match lines shall clearly indicate where the several sheets join.

6. Lighting plan. See article 5 of this chapter.

7. Traffic study. See article 5 of this chapter.

(Ord. of 8-2-2017, § 1(3.1.4))

Sec. 3.1.5. Final design package.

Upon receiving and addressing the city's comments with respect to the conceptual design package, the applicant must submit the final design package, including color .pdf copies, for review and approval. The final design package must contain a statement of which governing district standards are being applied, full architectural and landscape plans, site plan, elevations, section renderings depicting the building design containing elevations and architectural detailing of proposed buildings, exterior materials and color, and plans and elevations of hardscape landscape and signs all of which must demonstrate compliance with overlay district regulations. All items and specifications necessary for obtaining land disturbance and building permits must be submitted with the final design package. The applicant may submit the final design package simultaneously with the land disturbance or building permit application, as applicable.

(Ord. of 8-2-2017, § 1(3.1.5)) [TMOD-21-015]

Sec. 3.1.6. – Overlay Use table.

Table 3.1 indicates the permitted uses within the overlay zoning districts. Even though a use is listed as an allowable use within a particular base zoning district, additional use restrictions may apply based on the applicable overlay zoning district requirements specified in this article.

A. The uses listed in Table 3.1 shall be permitted only within the zoning overlay districts identified, and no use shall be established and no structure associated with such use shall be erected, structurally altered or enlarged unless the use is permitted as:

   1. A permitted use (P);

   2. A special use (SP) subject to the special land use permit application procedures specified in article 7 of this chapter;

   3. An administratively approved use (SA) subject to the special administrative permit procedures specified in article 7 of this chapter;

   4. An accessory use (PA) as regulated by article 4 of this chapter. Table 3.1 does not list all accessory uses but clarifies uses acceptable as accessory, though not typically considered principal uses for the zoning classification.

   5. Uses lawfully established prior to the effective date of this zoning ordinance.

B. Any use not listed in Table 3.1, below, or interpreted to be allowed by the director of planning pursuant to section 4.1.2 is prohibited. Any applicant denied a permit to allow a use of property in a zoning district other than as provided in this section may file an appeal before the zoning board of appeals as provided in article 7 of this chapter.

C. If there is a conflict between Table 3.1 and the text of this chapter, the text shall prevail.

Table 3.1 Overlay Use Table

Land Use	Stonecrest Area Overlay						Interstate 20 Corridor Overlay*			Arabia Mountain Conservation Overlay*	
"Key: P - Permitted use Pa - Permitted as an accessory Use SA - Special administrative permit required SP - Special Land Use Permit (SLUP) required X - Prohibited Use * Note : Uses permitted in Tiers 5 and 6 of the Stonecrest Area Overlay and the Arabia Mountain Conservation Overlay are determined by the underlying zoning district, though the Overlay takes precedence.	T1	T2	T3	T4	T5*	T6*	T1 In Mixed Use	T2 In Mixed Use	T3 In Mixed Use		
AGRICULTURAL ACTIVITIES											
Agriculture and Forestry											
Commercial greenhouse or plant nursery	P	P	P	P							✓
Sawmill, Temporary or portable											✓
Urban, community garden, up to 5 ac.	P		P	P						P	✓
Urban, community garden, over 5 ac.	P	P	P	P						P	
Animal Oriented Agriculture											
Dairy			P								✓
Keeping of livestock			P								✓
Keeping of poultry/pigeons			P								✓
Livestock sales pavilion											✓
Riding academies or stables											✓
RESIDENTIAL											
Dwellings											
Dwelling, apartment	SP	SP		SP							
Dwelling, cottage home	P	P	P								✓
Dwelling, mobile home			Pa								✓
Dwelling, multi-family	P	P	P		X		P	P	P		
Dwelling, multi-family (supportive living)	P	P	P		X						✓
Dwelling, townhouse	P	P	P								✓
Dwelling, urban single-family	P	P	Pa								✓
Dwelling, single-family (attached)	P	P	P				P	P	P		
Dwelling, single-family (detached)	P	P	P		P						
Dwelling, three-family	P	P	P								
Dwelling, two-family	P	P	P								
Dwelling, single-family, accessory (guesthouse, in-law suite)	Pa	Pa	Pa								✓
Home occupation, no customer contact	P	P									✓
Home occupation, with customer contact	P	P									✓

Land Use	Stonecrest Area Overlay						Interstate 20 Corridor Overlay*			Arabia Mountain Conservation Overlay*	
"Key: P - Permitted use Pa - Permitted as an accessory Use SA - Special administrative permit required SP - Special Land Use Permit (SLUP) required X - Prohibited Use * Note : Uses permitted in Tiers 5 and 6 of the Stonecrest Area Overlay and the Arabia Mountain Conservation Overlay are determined by the underlying zoning district, though the Overlay takes precedence.	**T1**	**T2**	**T3**	**T4**	**T5***	**T6***	**T1 In Mixed Use**	**T2 In Mixed Use**	**T3 In Mixed Use**		
Live/work unit	P	P	P	P							✓
Mobile home park											
Accessory uses or structures	Pa	Pa	Pa	Pa							✓
Housing and Lodging											
Bed and breakfast establishments	P	P	SP	P	P					P	✓
Boarding/Rooming house	P	P	P								
Child care home, up to 5	P	P	P	P							✓
Child care facility, 6 or more	P	P	P	P							✓
Child day care center	P	P	P	P	P						
Convents or monasteries	P	P	SP								✓
Dormitory	Pa	Pa	Pa	Pa							
Hotel, Motel, Extended Stay	SP	SP	SP	SP			X	X	X	X	✓
Fraternity house or sorority house	P	P	P	SP							
Hotel/Motel	X	X	X	X	X		P	P	P		
Nursing care facility or hospice	P	P	P	P							
Party House	X	X	X	X	X						✓
Personal care facility, 7 or more	P	P	P	P	P						✓
Personal care home, up to 6	P	P	P	P	P						✓
Senior housing	P	P	P	P							✓
Shelter for homeless persons, 7-20	SP	SP	SP	P						X	✓
Shelter for homeless persons for no more than six (6) persons	SP	SP	SP	SP						X	✓
Short Term Vacation Rental											
Transitional housing facility, 7-20	SP	SP	SP	P						X	✓

Land Use	Stonecrest Area Overlay						Interstate 20 Corridor Overlay*			Arabia Mountain Conservation Overlay*	See Section 4.2
"Key: P - Permitted use Pa - Permitted as an accessory Use SA - Special administrative permit required SP - Special Land Use Permit (SLUP) required X - Prohibited Use * Note : Uses permitted in Tiers 5 and 6 of the Stonecrest Area Overlay and the Arabia Mountain Conservation Overlay are determined by the underlying zoning district, though theOverlay takes precedence.	T1	T2	T3	T4	T5*	T6*	T1 In Mixed Use	T2 In Mixed Use	T3 In Mixed Use		
INSTITUTIONAL/PUBLIC											
Community Facilities											
Cemetery, columbarium, mausoleum	P	P	P	P							✓
Club, order or lodge, fraternal, non-commercial	P	P	P	P			P	P	P		
Coliseum or stadium/not associated with church or school	P	P	P	P						X	✓
Dog Park										P	
Funeral home, mortuary	P	P	X	X	X		P	P	P	P	
Golf course or clubhouse, public or private	P	P	P	P							✓
Government facilities	P	P	P	P							
Hospital or accessory ambulance service	P	P	P	P							
Library or museum	P	P	P	P							
Cultural Facilities	SP	SP	SP	SP	P		P	P	P		
Recreation Club	P	P	P								
Neighborhood or subdivision clubhouse or amenities	P	P	P	P							
Places of Worship	P	P	P	P	P		P	P	P		
Recreation, outdoor	P	P	P	P							
Swimming pools, commercial	P	P	P	P						X	✓
Tennis center, club and facilities							P	P	P		
Tennis courts, swimming pools, play or recreation areas, community	P	P	P	P			Pa	Pa	Pa		✓
Education											
Colleges, universities, research and training facilities	P	P	P	P							
Educational use, private	P	P									✓
School, Private kindergarten, elementary, middle or high	P	P	P	P			P	P	P		✓
School, Public kindergarten, elementary, middle or high	P	P	P	P			P	P	P		✓
School, Vocational	P	P	P	P			P	P	P		✓
Scholl, Specialized	P	P	P	P			P	P	P		✓

Land Use	Stonecrest Area Overlay						Interstate 20 Corridor Overlay*			Arabia Mountain Conservation Overlay*	See Section 4.2
"Key: P - Permitted use Pa - Permitted as an accessory Use SA - Special administrative permit required SP - Special Land Use Permit (SLUP) required X - Prohibited Use * Note : Uses permitted in Tiers 5 and 6 of the Stonecrest Area Overlay and the Arabia Mountain Conservation Overlay are determined by the underlying zoning district, though the Overlay takes precedence.	T1	T2	T3	T4	T5*	T6*	T1 In Mixed Use Development	T2 In Mixed Use Development	T3 In Mixed Use Development		
COMMERCIAL											
Automobile, boat and trailer sales and service											
Automobile or truck rental or leasing facilities	X	X	P	P						X	
Automobile brokerage	P	P	P	P						X	
Automobile recovery and storage										X	
Automobile emission testing facility	X	X	X	X							
Automobile repair, minor	P	X	X	P			P	P	P	X	
Automobile repair, major	X	X	X	X	X					X	
Automobile sales, used							X	X	X		
Automobile sales or truck sales	P	P	X	P	X					X	
Automobile service stations	SP	SP	X	SP						X	
Automobile service stations over 4,000 square feet			SP								
Automobile upholstery shop	P	P	P	P						X	
Automobile wash/wax service	X	X	X	X	X		X	X	X	X	✓
Recreational vehicle boat and trailer sales and service	P	P	P	P						X	✓
Retail automobile parts or tire store	P	P	P	P			P	P	P		✓
Service area, outdoor	Pa	Pa	Pa	Pa							✓
											✓
Office											
Building or construction office	P	P	P	P			P	P	P		✓
											✓

Office, Heavy Construction contractor	P	P	P	P							✓
Office, Landscape Contractor	P	P	P	P							✓
Office, Professional	P	P	P	P	P		P	P	P		
Land Use	**Stonecrest Area Overlay**						**Interstate 20 Corridor Overlay***			**Arabia Mountain Conservation Overlay***	**See Section 4.2**
"Key: P - Permitted use Pa - Permitted as an accessory Use SA - Special administrative permit required SP - Special Land Use Permit (SLUP) required X - Prohibited Use * Note : Uses permitted in Tiers 5 and 6 of the Stonecrest Area Overlay and the Arabia Mountain Conservation Overlay are determined by the underlying zoning district, though the Overlay takes precedence.	**T1**	**T2**	**T3**	**T4**	**T5***	**T6***	**T1 In Mixed Use Development**	**T2 In Mixed Use Development**	**T3 In Mixed Use Development**		
Recreation and Entertainment											
Sexually Oriented Business	X		X	X		X	X	X	X	X	✓
Drive-in theater	P	P	P	P						X	✓
Fairground or amusement park		P		P						X	✓
Recreation, Indoor	P	P	P	P			P	P	P		
Nightclub or late-night establishment (maximum 10,000 square feet)	SP	X	X	X	X			X	X	X	✓
Recreation Outdoor	P	P	P	P	X		X	X	X		✓
Special events facility	P	P	P	P							
Theaters with live performance, assembly or concert halls, or similar entertainment within enclosed building	P	P	P	P	P						
Outdoor concert hall										P	
Recreation, passive										P	
Retail											
Alcohol outlet- package store, primary	P	P		SP		X				X	✓
Alcohol outlet- beer and/or wine store, beer growler, primary	P	P	P	SP						X	✓
Alcohol outlet- beer and wine, accessory to retail less than 12,000 sf (see also 4.1.3 (F))	P	P	P	SP						X	✓
Art gallery	P	P	P	P	P		P	P	P		

Land Use	Stonecrest Area Overlay						Interstate 20 Corridor Overlay*			Arabia Mountain Conservation Overlay*	See Section 4.2
"Key: P - Permitted use Pa - Permitted as an accessory Use SA - Special administrative permit required SP - Special Land Use Permit (SLUP) required X - Prohibited Use * Note : Uses permitted in Tiers 5 and 6 of the Stonecrest Area Overlay and the Arabia Mountain Conservation Overlay are determined by the underlying zoning district, though the Overlay takes precedence.	**T1**	**T2**	**T3**	**T4**	**T5***	**T6***	**T1** **In Mixed Use Development**	**T2** **In Mixed Use Development**	**T3** **In Mixed Use Development**		
Commercial greenhouse or plant nursery	P	P	P	P	P						✓
Convenience store (see alcohol outlet or fuel pumps accessory)	P	P	P	P			P	P	P	X	✓
Drive-through facilities (other than restaurants)			P							X	✓
Farmer's market, permanent	P	P	P	P	P						✓
Farmer's market, temporary/seasonal	P	P	P	P	P						✓
Fuel pumps	X	X	X	X	X					X	✓
Liquor store (see alcohol outlet)	P	P	X	X	X		X	X	X		✓
Pawn shop, title loan	X	X	X	X	X	X	X	X	X	X	

Land Use	Stonecrest Area Overlay						Interstate 20 Corridor Overlay*			Arabia Mountain Conservation Overlay*	See Section 4.2
"Key: P - Permitted use Pa - Permitted as an accessory Use SA - Special administrative permit required SP - Special Land Use Permit (SLUP) required X - Prohibited Use * Note : Uses permitted in Tiers 5 and 6 of the Stonecrest Area Overlay and the Arabia Mountain Conservation Overlay are determined by the underlying zoning district, though the Overlay takes precedence.	**T1**	**T2**	**T3**	**T4**	**T5***	**T6***	**T1** **In Mixed Use Development**	**T2** **In Mixed Use Development**	**T3** **In Mixed Use Development**		
Retail, 5,000 sf or less (with the exception of small box discount stores)	P	P	P	P	P						
Retail, over 5,000 sf (see also shopping center, with the exception of small box discount stores	P	P	P	P	P						
Retail warehouses/wholesales providing sales of merchandise with no outdoor storage	P	P	P	P	P						
Shopping center	P	P	P	P	P		P	P	P		
Trade shops	P	P	P	P	P						
Temporary Commercial Uses											
Temporary outdoor sales, seasonal	P	P	X	P	X		X	X	X		✓
Temporary produce stand	P	P	P	P							✓
Temporary outdoor retail sales	P	P		P							✓
Temporary outdoor sales or events	P	P	P	P							✓
Temporary trailer, as home sales office or construction trailer	P	P	P	P							✓
Restaurant/Food establishments											
Brewpub/Beer Growler	P	P	P	P							
Catering establishments	P	P	P	P							
Restaurants (acc. to hotel/motel)	P	P	P	P							
Restaurants (non-drive-thru)	P	P	P	P			P	P	P		
Restaurants with a drive-thru configuration	SP	SP	SP	SP							✓
Transportation and Storage											
Bus or rail stations or terminals for passengers	SP	SP	SP	SP						X	
Heliport	SP	SP	SP	SP			SP	SP	SP		✓
Parking, commercial lot	X	X	X	P			Pa	Pa	Pa	X	✓

Land Use	Stonecrest Area Overlay						Interstate 20 Corridor Overlay*			Arabia Mountain Conservation Overlay*	See Section 4.2
"Key: P - Permitted use Pa - Permitted as an accessory Use SA - Special administrative permit required SP - Special Land Use Permit (SLUP) required X - Prohibited Use * Note : Uses permitted in Tiers 5 and 6 of the Stonecrest Area Overlay and the Arabia Mountain Conservation Overlay are determined by the underlying zoning district, though the Overlay takes precedence.	**T1**	**T2**	**T3**	**T4**	**T5***	**T6***	**T1** **In Mixed Use Development**	**T2** **In Mixed Use Development**	**T3** **In Mixed Use Development**		
Parking, commercial garage	P	P	P	P			Pa	Pa	Pa	X	
Taxi, ambulance or limousine service, dispatching or storage.	P	P	P	P						X	✓
Taxi, ambulance, limousine dispatch office only (no vehicle parking)	P	P	P	P			P	P	P		
Taxi stand	P	P	P	P			P	P	P		
Services											
Adult day care center - 7 or more	P	P	P	P	P						✓
Adult day care facility - up to 6	P	P	P	P	P						✓
Animal hospitals, veterinary clinic	P	P	P	P			P	P	P		✓
Animal shelter/rescue center	P	P	P	P							✓
Banks, credit unions or other similar financial institutions	P	P	P	P			P	P	P		
Barber shop/ beauty salon or similar establishments	P	P	P	P			P	P	P		
Check cashing establishment, primary	X	X	X	X		X				X	✓
Check cashing establishment, accessory	X	X	X	X		X				X	✓
Child day care center (Kindergarten) - 7 or more	P	P	P	P			P	P	P		✓
Child day care facility - up to 6	P	P	P	P			P	P	P		✓
Coin laundry	P	P	P	P							
Dog day care	P	P	P	P							
Dog grooming	P	P	P	P							
Dry cleaning agencies, pressing establishments, or laundry pick up stations	P	P	P	P			P	P	P		
Fitness center	P	P	P	P			P	P	P		
Kennel, breeding	X	X	X	X	X		X	X	X		
Kennel, commercial	X	X	X	X	X		X	X	X		
Kennel, noncommercial	X	X	X	X	X		X	X	X		
Landscape business	P	P	P	P							
Mini-warehouse	P	P	P	P						X	✓
Outdoor storage, commercial	X	X	X	X	X		X	X	X	X	✓

Land Use	Stonecrest Area Overlay						Interstate 20 Corridor Overlay*			Arabia Mountain Conservation Overlay*	See Section 4.2
"Key: P - Permitted use Pa - Permitted as an accessory Use SA - Special administrative permit required SP - Special Land Use Permit (SLUP) required X - Prohibited Use * Note : Uses permitted in Tiers 5 and 6 of the Stonecrest Area Overlay and the Arabia Mountain Conservation Overlay are determined by the underlying zoning district, though the Overlay takes precedence.	**T1**	**T2**	**T3**	**T4**	**T5***	**T6***	**T1** **In Mixed Use**	**T2** **In Mixed Use**	**T3** **In Mixed Use**		
Personal services establishment	P	P	P	P	P					X	
Services, Medical and Health											
Ambulance service or emergency medical services, private	P	P	P	P			P	P	P	X	
Kidney dialysis center	P	P	P	P							
Services, Repair											
Service area, outdoor	Pa	Pa	Pa	Pa							✓
INDUSTRIAL											
Alternative energy production	SP	SP	SP								
Building materials or lumber supply establishment	P	P	P	P							

Land Use	Stonecrest Area Overlay						Interstate 20 Corridor Overlay*			Arabia Mountain Conservation Overlay*	See Section 4.2
"Key: P - Permitted use Pa - Permitted as an accessory Use SA - Special administrative permit required SP - Special Land Use Permit (SLUP) required X - Prohibited Use * Note : Uses permitted in Tiers 5 and 6 of the Stonecrest Area Overlay and the Arabia Mountain Conservation Overlay are determined by the underlying zoning district, though the Overlay takes precedence	**T1**	**T2**	**T3**	**T4**	**T5***	**T6***	**T1** **In Mixed Use Development**	**T2** **In Mixed Use Development**	**T3** **In Mixed Use Development**		
Contractor, general (See also Building or Construction Office)	P	P	P	P							
Contractor, heavy construction, outside storage	P	P	P	P						X	
Contractor, special trade	P	P	P	P							
Crematoriums	SP	SP	X	X	X					X	
Dry cleaning plant											
General aviation airport											✓
Heavy equipment repair service or trade	P	P	P	P			X	X	X		
Incidental retail sales of goods produced or processed on the premises			Pa								
Industrial, heavy											
Industrial, light											
Intermodal freight terminal, bus or rail freight or passenger terminal, or truck terminal											
Manufacturing, light											
Manufacturing, heavy											✓
Manufacturing operations not housed within a building											✓
Mines or mining operations, quarries, asphalt plants, gravel pits or soil pits											✓

Land Use	Stonecrest Area Overlay						Interstate 20 Corridor Overlay*			Arabia Mountain Conservation Overlay*	See Section 4.2
"Key: P - Permitted use Pa - Permitted as an accessory Use SA - Special administrative permit required SP - Special Land Use Permit (SLUP) required X - Prohibited Use * Note : Uses permitted in Tiers 5 and 6 of the Stonecrest Area Overlay and the Arabia Mountain Conservation Overlay are determined by the underlying zoning district, though the Overlay takes precedence.	**T1**	**T2**	**T3**	**T4**	**T5***	**T6***	**T1** **In Mixed Use Development**	**T2** **In Mixed Use Development**	**T3** **In Mixed Use Development**		
Outdoor storage, industrial	X	X	X	X	X		X	X	X		✓
											✓
											✓
											✓
Railroad car classification yards or team truck yards											✓
Recovered materials facility wholly within a building											✓
Recovered materials processing wholly within a building											✓
Recycling collection	Pa	Pa	Pa	Pa							
Recycling plant											
Research, and training facilities											
Salvage yard (Junkyard)	X	X	X	X	X		X	X	X	X	✓
Solid waste: general disposal, landfill, private industry disposal, handling facility, thermal treatment technology or hazardous/toxic materials including radioactive materials										X	✓
Storage yard, except vehicle											
Storage yard for vehicles		X					X	X	X		
Sugar refineries		X									
Tire retreading and recapping	X	X	X	X	X		X	X	X		
Towing or wreckage service											
Transportation equipment storage or maintenance (vehicle)										X	✓
Truck stop										X	
Truck Terminal										X	
Vehicle storage yard										X	
Warehousing or Storage	P	P								X	

Land Use	Stonecrest Area Overlay						Interstate 20 Corridor Overlay*			Arabia Mountain Conservation Overlay*	See Section 4.2
"Key: P - Permitted use Pa - Permitted as an accessory Use SA - Special administrative permit required SP - Special Land Use Permit (SLUP) required X - Prohibited Use * Note : Uses permitted in Tiers 5 and 6 of the Stonecrest Area Overlay and the Arabia Mountain Conservation Overlay are determined by the underlying zoning district, though the Overlay takes precedence.	T1	T2	T3	T4	T5*	T6*	T1 In Mixed Use Development	T2 In Mixed Use Development	T3 In Mixed Use Development		
COMMUNICATION – UTILITY											
Amateur radio service or antenna											✓
Radio or television broadcasting studio	P	P	P	P			P	P	P		
Radio or television broadcasting transmission facility	P	P	P	P							
Satellite television antenna	P	P	P	P							✓
WIRELESS TELECOMMUNICATION (cell tower)											
New support structure from 51 feet to 150 feet											✓
New support structure from 50 feet up to 199 feet	P	P	P	P							✓
COW's (non-emergency or event, no more than 120 days)	P	P	P	P							✓
COW's (declared emergency)	P	P	P	P							✓
Attached wireless telecommunication facility, used for non-residential purposes (prohibited if used as residential)											
Attached wireless telecommunication facility	P	P	P	P							✓
Small cell installations (new support structures or collocation) on private property or ROW	P	P	P	P							✓

[TMOD21-017]

DIVISION 4. ARABIA MOUNTAIN CONSERVATION OVERLAY DISTRICT

Sec. 3.4.1. Title.

The provisions contained within this division are the regulations of the Arabia Mountain Conservation Overlay District.

(Ord. No. 2019-02-001, § 1, 2-11-2019)

Sec. 3.4.2. Purpose and intent.

The purpose and intent of the city council in establishing the Arabia Mountain Conservation Overlay District (AMCOD) is as follows:

A. To provide for the protection of natural resources and of scenic views of areas within the boundaries of the AMCOD, so as to protect and enhance the public welfare associated with these natural resources and the aesthetic qualities within this area, consistent with the policies of the Stonecrest Comprehensive Plan;

B. To provide reasonable and creative planning and development within the AMCOD while preserving the natural land form and features, trees and tree canopy, and the views to and from Arabia Mountain as indicated on the adopted map;

C. To assure that all activities and authorized uses of land allowed within the AMCOD, whether allowed uses or permitted uses, are activities or uses which are designed so as not to detract from or damage the protected natural resources and scenic beauty of this district;

D. To encourage and promote the dedication of conservation easements to appropriate public and not-for-profit entities established and authorized to hold easements in perpetuity pursuant to the Georgia Uniform Conservation Easement Act (O.C.G.A. 44-10 and 12-6A), for the purposes of protecting historical and [archaeological] areas, the habitat of endangered or threatened animal and plant species (as defined in the federal Endangered Species Act U.S.C. 1531 and the Endangered Wildlife Act of 1973), providing passive recreational and educational opportunities, preserving the cultural history of the area, protecting open space within the city, and protecting scenic views to and from Arabia Mountain; and

E. To provide consistent development standards that will adhere to common design characteristics that include but are not limited to: deep setbacks from the main road; strategic buffer zones; home "clustering"; shorter streets within a development and shared open spaces connected by trails, walkways and paths.

(Ord. No. 2019-02-001, § 1, 2-11-2019)

Sec. 3.4.3. District boundaries.

The boundaries of the AMCOD shall be depicted on the official zoning maps entitled "Official Zoning Map, City of Stonecrest, Georgia, Arabia Mountain Conservation Overlay District" (the "AMCOD overlay maps"). The Official Zoning Map, City of Stonecrest, Georgia, Arabia Mountain Conservation Overlay District, to be adopted contemporaneously with this chapter, together with all explanatory information contained or referenced thereon, is hereby adopted by reference and declared to be a part of this chapter.

The AMCOD overlay maps shall be adopted contemporaneously with this chapter in digital format and contained on a compact disk to be maintained in its original, unedited and unaltered form by the clerk to the city council. A printed copy of the compact disk's contents depicting the AMCOD overlay maps on the date of its initial adoption shall also be maintained in its original, unedited and unaltered form by the clerk to the city council.

(Ord. No. 2019-02-001, § 1, 2-11-2019)

Sec. 3.4.4. Applicability of regulations.

This division establishes standards and procedures that apply to development of any lot or portion thereof which is in whole or in part contained within the boundaries of the AMCOD. The procedures, standards, and criteria shall apply only to that portion of the subject property within the boundaries of the district.

(Ord. No. 2019-02-001, § 1, 2-11-2019)

Sec. 3.4.5. Principal uses and principal structures.

A. The principal uses of land and structures which are allowed in the AMCOD are as is provided by the applicable underlying zoning district, except for those listed in B below, subject to the limitations and standards contained within this district. Additional permitted uses are as follows:

   1. Recreation, passive and Nature preserve.
   2. Dog Parks.
   3. Bed and Breakfast homes.
   4. Outdoor Concert halls.
   5. Urban Gardens.

B. Prohibited uses. The following principal uses of land and structures shall be prohibited within the AMCOD:

   1. Sexually-oriented businesses.
   2. Drive-in Theater.
   3. Fairground or Amusement Park.
   4. Swimming pools as part of a commercial Recreation, Outdoor use or Recreation club; but not including swimming pools incidental to Open space, clubhouse or pool amenity.
   5. Coliseum or stadium, except for outdoor Concert Halls.
   6. Nightclub or late night establishment.
   7. Outdoor storage, mini-warehouses, and storage buildings.
   8. Pawn shops.
   9. Mortuary or Crematorium.
   10. Alcohol Outlets.
   11. Salvage yards and junk yards.
   12. Motel or Extended Stay Motel.
   13. Shelter for homeless persons.
   14. Transitional housing facility.

15. Fuel Dealers, Fuel Pumps and Accessory Fuel Pumps.
16. Automobile and truck rental and leasing, Automobile brokerage, Automobile mall, Automobile recovery and storage, Automobile rental and leasing, Automobile repair and maintenance, major, Automobile repair and maintenance, minor, Automobile sales, Automobile service station, Automobile upholstery shop, Automobile wash/wax service, Recreational vehicle, boat and trailer sales and service, Freight service, Transportation equipment and storage or maintenance (vehicle), and Vehicle storage yard. [TMOD-22-001]
17. Commercial parking garage/structure; Commercial parking lots.
18. Convenience store.
19. Drive-through facilities.
20. Personal service establishments.
21. Check cashing facility.
22. Heavy equipment storage.
23. Truck stops.
24. Warehouses.
25. Solid waste disposal, Private industry solid waste disposal facility.
26. Bus station or terminal.
27. Ambulance service facility, Private ambulance service, Dispatch office.

(Ord. No. 2019-02-001, § 1, 2-11-2019)

Sec. 3.4.6. Accessory uses and accessory structures.

The accessory uses of land and structures which are allowed in the AMCOD are as is provided by the applicable underlying zoning district, subject to the limitations and standards contained within this division.

(Ord. No. 2019-02-001, § 1, 2-11-2019)

Sec. 3.4.7. Lot coverage.

Except as provided in Sub-Section 3.4.9.A., Conservation communities, lot coverage within the AMCOD shall not exceed 25 percent of net lot area. Net lot area refers to the total area intended to be subdivided as shown on a city approved site plan submitted for a land disturbance permit or preliminary plat, exclusive of the area intended to be dedicated for street or utility rights of way or easements, see definition of net lot area (lot area, net) in Article 9, Definitions.

(Ord. No. 2019-02-001, § 1, 2-11-2019) [TMOD-22-001]

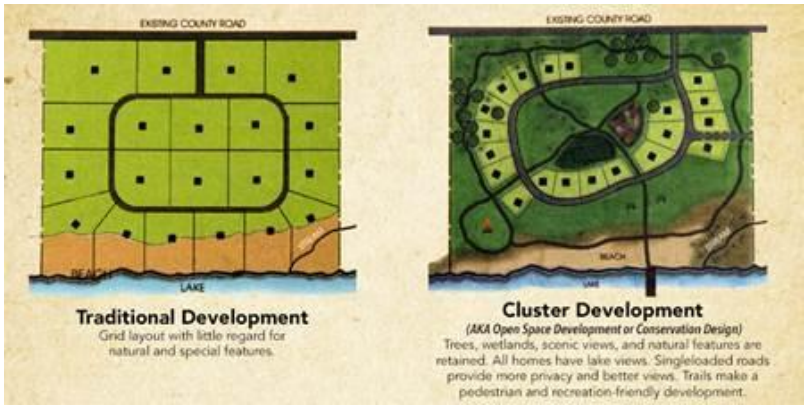
Sec. 3.4.8. Clearing and grading of lots.

No lot as shown on a city approved site plan submitted for a land disturbance permit or preliminary subdivision plat shall be cleared and graded to an extent exceeding 35 percent of the net lot area before subdivision. This does not apply to individual single-family lots as shown on a city approved final subdivision plat, see Sub-Section. 3.4.9.A, Conservation communities.

(Ord. No. 2019-02-001, § 1, 2-11-2019) [TMOD-22-001]

Sec. 3.4.9. Development standards.

There shall be no impervious surfaces with in the 75 foot stream buffer. All dwelling units shall be provided convenient access to all green space throughout the development via pedestrian paths or trails.



A. *Conservation Communities (residential subdivisions).*

Maximum density: Eight dwelling units to the acre of total land area excluding undevelopable areas listed below:

1. Streams and stream buffers.
2. Wetlands.
3. Rock outcroppings.
4. Slopes steeper than 1:2 slope.
5. Sites of archaeological significance.
6. Floodplains.
7. Areas intended to be dedication for right of way.

Minimum lot width: 70 feet as measured from the front building setback line; except for a lot on a cul-de-sac, which shall have a measurement of 35 feet

Minimum lot area: 7,500 square feet, except that each lot on the periphery of the development is at least 10,000 square feet.

Minimum side-yard setback: Ten feet.

Maximum single-family dwelling lot coverage: 50 percent of each individual single family residential lot in a conservation community as shown on an approved subdivision plat.

Greenspace: A minimum of 30 percent of the total land area shown on an approved preliminary subdivision plat must be designated greenspace. A minimum of 65 percent of the greenspace should be in a contiguous tract.

Green space may consist of:

1. Natural undisturbed areas.
2. Passive recreational areas.

3. Trails and Green ways.
4. Bikeways and paths.
5. Mature wooded areas.

Greenspaces shall be preserve and maintained by one of the following:

1. Establishment of a mandatory home owner's association (HOA) to own and maintain the common green space.
2. Dedication of legally described and platted "greenspace" to a land trust.

Minimum building setback adjacent to public or private street(s):

- From thoroughfares, arterials and collectors: 30 feet.
- Local streets: 20 feet.

[TMOD-22-001]

B. *Road Specifications.* All roads shall be built in accordance with Chapter 14. In the event of a conflict, the provisions of this section shall control. The design of the streets must be designed as noted below with the approval of the City Engineer:

1. Minimal amount of cul-de-sac streets by providing more than one entrance to the to the development and interconnect streets as much as possible.
2. Cul-de-sac streets must minimize the amount of impervious surface by limiting the internal radius to 35 feet and the width of the paved lane to 16 feet. Use grass and vegetation for the inner circle of turn-arounds, rather than paving the whole area. Declare the HOA responsible for the maintenance of the grassy area in the neighborhood bylaws.
3. Omit curbs where possible.
4. As an alternative to curbs and gutters, allow run off from roofs and pavements to pass immediately through grass swales or infiltration basins. Use plant materials that will absorb rainwater and act as a natural filter to oil and pollution.
5. Provide marked, paved paths for non-vehicular traffic within the development and connecting neighboring residential and commercial areas.

C. *Buffer Requirements.* An exterior boundary buffer is required (per community/subdivision). The land area designated to the exterior buffer may be used as part of the required greenspace. The buffer area shall not be included as part of any platted residential lot within the community/subdivision.

Lots less than 10,000 sq. ft.	25 ft.
Lots between 10,000—15,000 sq. ft.	30 ft.
Lots greater than 15,000 sq. ft.	50 ft.

D. *Trails.* Trails maybe constructed with in the buffer. The maximum width is eight feet and must be located within the first 25 percent of the buffer furthest from the exterior boundary line.

(Ord. No. 2019-02-001, § 1, 2-11-2019)

Sec. 3.4.9.1. Non-residential zoning district dimensional requirements.

All non-residential districts shall be developed in accordance with the regulations for the Neighborhood Shopping (NS) District.

(Ord. No. 2019-02-001, § 1, 2-11-2019)

Sec. 3.4.9.1.a. Design standards.

Buildings. New commercial buildings and renovations shall conform to the guidelines noted below.

1. *Pedestrian Amenities.* All buildings shall be configured to allow safe, convenient, direct and continuous access for pedestrians to all primary building entrances. Principle building entry shall open directly on to the public right-of-way.
2. *"Build-to" line (i.e. "Building façade line").* The building shall be setback five feet from the buildable areas as indicated with in their approved site plan. Awnings and canopies are not counted in building façade line determination. Permanent structures other than buildings, such as ATMs and similar elements, shall not be located closer to the street than the building façade lines.
3. *Building height.* All new buildings shall be no more than two stories, maximum height 35 feet.
4. *Façade articulation.* Street-facing building façades shall be horizontally divided by floors using architectural means such as string courses, recesses, reveals or the like. They shall also be vertically divided utilizing Major and Minor Articulations to create visual interest and avoid monotony.
    a. Major Articulations shall occur at least every 60 feet of horizontal façade length and may be accomplished through: a change of façade materials extending from grade through the cornice; change in storefront systems; physical off-sets; and/or similar means intended to convey the impression of separate buildings.
    b. Minor Articulations shall occur approximately every 30 feet of horizontal façade length and may be accomplished by: the use of pilasters; the use of off-sets; or similar means intended to create the appearance of structural bays.
5. *Entrances.* All first story uses adjacent to a sidewalk shall have a primary pedestrian entrance, which faces, is visible from, and is directly accessible from said sidewalk. All first story businesses with more than 60 feet of frontage along sidewalks shall provide one pedestrian entrance for every 60 linear feet of frontage or fraction thereof.
6. *Parking:* Parking areas should be located to the side or rear of the building. When parking areas are located in front of the building, a buffer of 10 feet of shrubbery or landscape trees is required. All vegetation should be native to the region.

    Cross Access: In order [to] reduce traffic conflicts, cross access drives with adjacent properties must be considered. This may include the interconnection of parking areas or a shared drive between properties.
7. *Storefront canopies* at least five feet in depth extending over the sidewalk are recommended at all retail frontage for relief from inclement weather and for shade. These should be roofed with glass, metal, or fabric wholly supported by brackets or cables attached to the building façade. Columns to support canopies are not permitted in the public right of way (hereafter called "R.O.W."). Awnings and canopies shall not include signage on them, except when such signage is located within an apron that is less than 12 inches in height and is subject to all other applicable sign requirements of this document.
8. *Building Finish Materials.* Each street-facing building façade shall have an exterior finish skin primarily of Lithonia tidal grey granite. Material that may be combined with the granite is limited to wood, exterior brick, cementitious stucco, rustic or cut stone, architectural cast concrete, and glass panels. No more than two additional materials may be used. Concrete masonry units or artificial materials having the appearance of wood, and/or stone are not permitted as a finish material.

Decorative embellishments shall be permanent in nature and shall be of the following materials: copper, brass, bronze, cast concrete, formed exterior plaster, porcelain tile, terracotta, formed metals, glass, wood. No artificial materials having the appearance of wood, and/or stone should be used.

Primary building façade materials shall be combined only horizontally, with the heavier appearing one(s) below the lighter appearing (ones). This shall not apply to embellishments, storefronts systems, or windows frames.

Awnings. Awnings shall be of canvas and similar fabrics, fixed metal, or similar materials. Internally lit awnings and canopies that emit light through the awning or canopy material are prohibited.

8. *Lighting.* Building façades facing a public R.O.W. shall be illuminated for safety and aesthetics. Lighting shall be designed to avoid producing glare in the public R.O.W.. Lighting should be downcast with a zero-degree tilt. Fixtures should not exceed 15 feet in height. Light spillage onto adjacent residential properties shall be minimized by cutoff luminaires.

9. *Utility service lines.* Must be provided via underground conduit or pipes. Overhead utility service is not permissible in the Overlay. New construction on existing sites within Overlay must include replacement of all above-ground utility service lines with underground service or otherwise fully concealed utility service to buildings and sites.

10. *Building Numbering.* Building numbering shall be located above or beside primary entrances of building. Numbering shall be clearly visible from sidewalks. All numbering shall be six inches in height.

11. *Dumpsters, Loading Areas and Mechanical Electrical and Plumbing Features* shall be screened so as not to be visible from any public plaza, outdoor dining area, public R.O.W., or residential area. All dumpsters shall be located behind buildings and shall be enclosed by opaque fences or walls made of stone, brick, wood, or stucco; and these enclosures shall have opaque gates made of wood or metal. Chain-link gates are not permitted.

Rooftop Mechanical features shall be set at least ten feet from the edges of roofs and screened vertically from view through use of parapet walls or similar features. Additionally, all such features greater than five feet in height shall be set a[t] least 20 feet behind front building façades.

(Ord. No. 2019-02-001, § 1, 2-11-2019)

Sec. 3.4.9.2 Height limitation.

A. Except as provided in section 5.2.5, and in subsection B., no building or structure within the Arabia Mountain Natural Resource Protection Overlay District shall exceed a height of 35 feet, all other requirements of this chapter notwithstanding.

B. If the placement of a telecommunications tower or antenna within this overlay district in excess of 35 feet in height is mandated by federal law, said tower or antenna, in addition to meeting all other standards and criteria applicable thereto, shall meet the following design requirements:

1. No portion of any such tower or antenna shall extend a distance of more than ten feet above the top of the tree canopy existing on the lot upon which the tower or antenna is placed. If no tree canopy exists on said lot, then no portion of such tower or antenna shall extend a distance of more than ten feet above the top of the tree canopy closest to such tower or antenna.

2. All portions of a tower or antenna that extend above the top of the existing mature tree canopy pursuant to subsection B.1., shall consist of an alternative tower structure that is designed and colored in a way that blends said tower or antenna with the closest tree canopy to a degree that renders said tower or antenna indistinguishable from said tree canopy at a distance of 200 feet measured horizontally from said tower or antenna.

(Ord. No. 2019-02-001, § 1, 2-11-2019)

Sec. 3.4.10. Tree removal and replacement.

No trees other than dead, dangerous or diseased trees shall be removed from any lot except within areas of permissible grading as provided in section 3.4.8 above. Removal of trees should be certified by an arborist and/or by city permit.

(Ord. No. 2019-02-001, § 1, 2-11-2019)

Sec. 3.4.11. Protection of steep slopes.

No lot or portion of a lot having a grade in excess of 15 percent shall be altered.

(Ord. No. 2019-02-001, § 1, 2-11-2019)

Sec. 3.4.12. Driveways.

The director of planning is authorized to approve shared driveways for two or more dwellings within the Arabia Mountain Natural Resource Protection Overlay District in order to minimize lot coverage and tree removal within the district.

(Ord. No. 2019-02-001, § 1, 2-11-2019)

Sec. 3.4.13. Recording of conservation easements.

The director of planning shall record, after approval by the city attorney and the city council, conservation easements within the Arabia Mountain Natural Conservation Overlay District which are made in favor of City of Stonecrest, Georgia.

(Ord. No. 2019-02-001, § 1, 2-11-2019) [TMOD-22-001]

Sec. 3.4.14. Notation of all conservation easements on official zoning maps.

The director of planning shall cause to be noted on the official zoning maps any conservation easements granted within the district to any public or private entity authorized to hold such easements.

(Ord. No. 2019-02-001, § 1, 2-11-2019)

Sec. 3.4.15. Lighting.

No light standard shall be installed that extends above the height of the tree canopy. No lighting element of any kind shall be placed upon any structure so as to extend above the height of the tree canopy. No light spillage of any kind is permitted above said tree canopy except as may be otherwise required by any applicable requirement of federal, state or local law.

(Ord. No. 2019-02-001, § 1, 2-11-2019)

Sec. 3.4.16. Density bonus.

The director of planning is authorized to approve an increase of up to 25 percent in housing density within the district for any parcel of land having a single-family residential zoning classification. In making application to the director of planning the applicant shall present a site plan in which required lot coverage limitations are met. The site plan shall further demonstrate that the tree canopy will be preserved and protected. In approving any such plan, the director of planning is authorized to approve gravel or other permeable surface for driveways and parking areas where it is demonstrated that such permeable surface will aid in minimizing damage to the root system of trees and will prevent the impaction of soil under the canopies of trees. It is the intent of these regulations that houses be clustered rather than spread out to protect and preserve the tree canopy which is essential to the maintenance of the character of the district.

(Ord. No. 2019-02-001, § 1, 2-11-2019)

Sec. 3.4.17. Approval of plats where density bonus permitted.

The director of planning is authorized to record plats in which a density bonus has been approved pursuant to section 3.4.16 above. The approval of any such plat shall be noted on the official zoning map by the director of planning.

(Ord. No. 2019-02-001, § 1, 2-11-2019)

Sec. 3.4.18. AMCOD advisory committee.

The Mayor and City Council may create an AMCOD advisory committee pursuant to Chapter 2. The AMCOD advisory committee may meet with applicants for variances, rezoning and special land use permit applications prior to the submission of the application to the Planning Commission or Board of Zoning Appeals. The AMCOD advisory committee shall act in an advisory capacity only and may present its recommendations on each application in writing to the Planning Commission or Board of Zoning Appeals, applying the standards or criteria contained in Article 7. The failure of the AMCOD to make a recommendation on an application shall not invalidate any zoning decision or decision on a variance and shall not be a condition precedent to final action on the application.

(Ord. No. 2019-02-001, § 1, 2-11-2019)

Sec. 3.4.19. Residential properties which are not subject to sections 3.4.7 and 3.4.8.

Section 3.4.7 (lot coverage) and Section 3.4.8 (clearing and grading of lots) shall not apply to any lot in the R-100, R-85, R-75, or R-60 zoning district if a certificate of occupancy for the house thereon was issued prior to August 7, 2017, and if the lot is less than one-half acre.

(Ord. No. 2019-02-001, § 1, 2-11-2019)

DIVISION 5. STONECREST AREA OVERLAY DISTRICT

Sec. 3.5.1. Scope of regulations.

This division establishes standards and procedures that apply to any development, use, alteration, height, density, parking, open space, and building on any lot or portion thereof which is in whole or in part contained within the boundaries of the Stonecrest Area Overlay District.

(Ord. of 8-2-2017, § 1(3.5.1); Ord. No. 2019-11-001, § 1, 11-25-2019)

Sec. 3.5.2. Applicability of regulations.

This division applies to each application for a permit for the development, use, alteration, or modification of any structure where the subject property is in whole or in part contained within the boundaries of the Stonecrest Area Overlay District. The procedures, standards, and criteria herein apply only to that portion of the subject property within the boundaries of the Stonecrest Area Overlay District. When the Stonecrest Area Overlay District and the underlying zoning conflict, the Stonecrest Area Overlay District regulations control absent explicit language to the contrary.

(Ord. of 8-2-2017, § 1(3.5.2); Ord. No. 2019-11-001, § 1, 11-25-2019)

Sec. 3.5.3. Statement of purpose and intent.

The purpose and intent of the city council in establishing the Stonecrest Area Compatible Use Zone Overlay District is as follows:

A. To preserve, protect and enhance existing and proposed open space networks that are adjacent to or within the Stonecrest Area;

B. To enhance the long term economic viability of this portion of City of Stonecrest by encouraging new commercial and residential developments that increase the tax base and provide jobs to the citizens of City of Stonecrest;

C. To implement the policies and objectives of the comprehensive plan and the policies and objectives of the design guidelines for the Stonecrest Overlay District;

D. To establish and maintain a balanced relationship between industrial, commercial, and residential growth to ensure a stable and healthy tax base in City of Stonecrest;

E. To provide a balanced distribution of regional and community commercial and mixed-use office centers;

F. To support high density housing in office and mixed-use centers which have the appropriate location, access, and infrastructure to accommodate it;

G. To encourage mixed-use developments that meet the goals and objectives of the Atlanta regional commission's smart growth and livable centers initiatives;

H. To allow flexibility in development standards in order to encourage the design of innovative development projects that set high standards for landscaping, greenspace, urban design, and public amenities;

I. To encourage an efficient land use and development plan by forming a live-work-play environment that offers employees and residents the opportunity to fulfill their daily activities with minimal use of single-occupant automobiles;

J. To allow and encourage development densities and land use intensities that are capable of making productive use of alternative transportation modes such as bus transit, rail transit, ridesharing, bicycling and walking;

K. To focus and encourage formation of a well-designed, pedestrian-friendly activity centers with high-density commercial and residential development that increases vitality and choices in living environments for the citizens of the City of Stonecrest;

L. To protect established residential areas from encroachment of uses which are either incompatible or unduly cause adverse impacts on such communities;

M. To protect the health, safety and welfare of the citizens of the City of Stonecrest;

N. To promote uniform and visually aesthetic architectural features which serve to unify the distinctive visual quality of the Stonecrest Area Overlay District.

(Ord. of 8-2-2017, § 1(3.5.3); Ord. No. 2019-11-001, § 1, 11-25-2019)

Sec. 3.5.4. District boundaries.

A. The boundaries of the Stonecrest Area Overlay District composed of Tiers I, II, III, IV, V, and VI described in the subparagraph B below, shall be depicted on the official zoning maps entitled "Official Zoning Map, Stonecrest, Georgia, Stonecrest Area Overlay District" (the "Stonecrest Overlay Maps"). The Stonecrest Overlay Maps are to be adopted contemporaneously with this chapter, together with all explanatory information contained or referenced thereon, is hereby adopted by reference and declared to be a part of this chapter.

B. The Stonecrest Area Overlay District shall be divided into five [six] development tiers as follows:

1. Tier I: High-Rise Mixed-Use Zone;
2. Tier II: Mid-Rise Mixed-Use Zone;
3. Tier III: Low-Rise Mixed-Use Zone;
4. Tier IV: Transitional Mixed-Use Zone;
5. Tier V: Cluster/Village Mixed-Use Zone; and
6. Tier VI: Viewshed Zone

The Stonecrest Overlay Maps shall be adopted contemporaneously with this chapter in digital format and contained on a compact disk to be maintained in its original, unedited and unaltered form by the clerk to the city council. A printed copy of the compact disk's contents depicting the Stonecrest Area Overlay maps on the date of its initial adoption shall also be maintained in its original, unedited and unaltered form by the clerk to the city council.

(Ord. of 8-2-2017, § 1(3.5.4); Ord. No. 2019-11-001, § 1, 11-25-2019)

Sec. 3.5.5. Open space.

A. *Open space:* Each lot may provide open space. Open space must be a minimum of 20 percent of the lot. To the extent possible, lands containing streams, lakes, 100-year floodplains, wetlands, slopes over 15 percent

shall remain undisturbed and included in open space. Natural open space areas shall form an interconnected and continuous network of paths, greenways, and trails throughout the development within the Stonecrest Area Overlay District. Credit for open space areas may be transferred from one parcel to another within overall developments that remain under unified control of a single property owner or group of owners, but must demonstrate interconnectedness of public areas.

B. *Maintenance and protection of public space.* Each applicant that chooses to provide for public space shall present as a part of the application for a building permit within the Stonecrest Area Overlay District a legal mechanism under which all land to be used for public space purposes shall be protected. Such legal mechanism may include deed restrictions, property owner associations, common areas held in common ownership or control, maintenance easements, or other legal mechanisms, provided that said legal mechanism shall be approved by the city attorney as assuring each of the following mandatory requirements:

1. That all subsequent property owners within said Stonecrest Area Overlay District be placed on notice of this development restriction through the deed records of DeKalb County Superior Court;
2. That all public space held in common will be properly maintained and insured with no liability or maintenance responsibilities accruing to the city;
3. That a legal mechanism exists for notice of deficiencies in maintenance of the public space held in common, correction of these deficiencies, and assessment and liens against the properties for the cost of the correction of these deficiencies by a third- party or the city;
4. When an applicant for a Stonecrest Area Overlay District chooses to utilize a property owners association in order to comply with the requirements of subsection A above, the applicant, in addition to meeting all of said requirements, shall provide for all of the following:
    a. Mandatory and automatic membership in the property owners association as a requirement of property ownership;
    b. A fair and uniform method of assessment for dues, maintenance and related costs;
    c. Where appropriate, party wall maintenance and restoration in the event of damage or destruction; and
    d. Continued maintenance of public space held in common and liability through the use of liens or other means in the case of default.

(Ord. of 8-2-2017, § 1(3.5.5); Ord. No. 2019-11-001, § 1, 11-25-2019)

Sec. 3.5.6. Greenspace requirements.

A. *Landscape strips.* Landscape strips not less than five feet in width must be provided along all side and rear property lines and on all public streets. The landscape strip along the public street must be a minimum of ten feet in width and must be planted with a row of street trees of at least three and one-half inches in caliper selected from the list of street trees species identified in the design guidelines for the Stonecrest Area Overlay District and planted not less than 75 feet on center. Continuous landscaped strips shall be constructed along public rights-of-way where surface parking lots are adjacent to such sidewalks or public right-of-way except at points of ingress or egress into the facility.

B. *Ground cover.* Ground cover must also be provided in accordance with the design guidelines for the Stonecrest Area Overlay District in order to protect tree roots and to prevent erosion. Ground cover must consist of evergreen shrubs or groundcover plant material mulched with pine bark mulch, or other similar landscaping material.

C. Newly planted trees must conform to the design guidelines for the Stonecrest Area Overlay District.

D. No tree shall be planted closer than two feet from the street or sidewalk, and no closer than five feet from a fire hydrant, sign post, streetlight standard, utility pole, or similar structure.

E. *Greenspace requirements for parking lots*:

1. Greenspace areas are required in all parking lots and must comprise at least five percent of the total lot area of parking lot.

2. In addition, all parking lots must include at least one tree for every 12 parking spaces provided. Tree planting areas may be included in the required greenspace area. Every three inches in caliper, as measured at a height of 36 inches above the ground level, of an existing tree shall count as one newly planted tree.

3. Greenspace areas must be at least 36 square feet in area.

4. All greenspace areas must be properly maintained in accordance with approved landscape plans. In the event that a tree or any plant material dies, it must be replaced within a reasonable time, so as to meet all requirements of this section and to allow for planting in the appropriate planting season.

5. All trees planted pursuant to the requirements of Section 5.4.4 shall be counted for the purpose of meeting the tree planting and tree replacement requirements imposed by this chapter.

(Ord. of 8-2-2017, § 1(3.5.6); Ord. No. 2019-11-001, § 1, 11-25-2019)

Sec. 3.5.7. Transitional buffer zone requirements.

Any lot within the Stonecrest Area Overlay District, that is contiguous to any lot outside of the Stonecrest Area Overlay District zoned for a residential use, must maintain a 50 foot transitional buffer zone. The transitional buffer zone cannot contain any structures, impervious surfaces, or water retention ponds and cannot be used for permanent parking, loading, or storage. Trees may not be removed from the transitional buffer zone, other than dead, decayed, dying, or hazardous trees. Additional trees and plant material may be added to the transitional buffer zone.

(Ord. of 8-2-2017, § 1(3.5.7); Ord. No. 2019-11-001, § 1, 11-25-2019)

Sec. 3.5.8. Street standards.

Streets within the Stonecrest Area Overlay District may be either public or private streets. Private streets must comply with requirements of public streets found in chapter 14 and all other applicable sections of the City of Stonecrest Code, with the following exceptions:

A. Streets in the Stonecrest Area Overlay District may be constructed with travel lanes at 11 feet in width, measured inside curb and gutter.

B. Private or public alleys are permitted to provide secondary or service access within developments consisting of at least four buildings. An alley must provide a continuous connection between two streets. Alleys shall be paved and constructed to the same standards as the connecting streets except that:

1. No alley shall be longer than 400 feet;

2. No alley shall have a slope greater than seven percent;

3. The paved width of an alley must be at least 12 feet;

4. Alleys must be constructed with flush curbs;

5. Alleys must have seven-foot-wide unobstructed shoulders constructed of grass sod or gravel on both sides; and
6. Buildings must be set back at least ten feet from the back curb of an alley.

(Ord. of 8-2-2017, § 1(3.5.8); Ord. No. 2019-11-001, § 1, 11-25-2019)

Sec. 3.5.9. Underground utilities.

All utilities except for major electric transmission lines and substations are required to be placed underground except where the director of planning determines that underground utilities are not feasible due to pre-existing physical conditions, such as conflicting underground structures or utilities, shallow rock, high water table, or other similar geologic or hydrologic conditions.

(Ord. of 8-2-2017, § 1(3.5.9); Ord. No. 2019-11-001, § 1, 11-25-2019)

Sec. 3.5.10. Streetlights.

When necessary for the use and convenience of the occupants or users of a development, streetlights are required and shall conform to the design guidelines for the Stonecrest Area Overlay District.

(Ord. of 8-2-2017, § 1(3.5.10); Ord. No. 2019-11-001, § 1, 11-25-2019)

Sec. 3.5.11. Interparcel access.

To the maximum extent possible, sidewalks and parking lots serving adjacent lots shall be interconnected to provide continuous driveway connections and pedestrian connections between adjoining lots and streets, except that this requirement shall not apply to lots zoned for single family or duplex residential units.

(Ord. of 8-2-2017, § 1(3.5.11); Ord. No. 2019-11-001, § 1, 11-25-2019)

Sec. 3.5.12. Multi-modal access plans required.

Each new application for a development permit within the Stonecrest Area Overlay District must be accompanied by a multi-modal access plan prepared at a scale not greater than one-inch equals 100 feet. The multi-modal access plan must cover the full extent of the proposed development along with public rights-of-way of adjoining streets and any other property lying between the subject property and the nearest public streets on all sides. The purpose of the multi-modal access plan is to demonstrate a unified plan of continuous access to and between all buildings in the proposed development and adjacent properties. Connections to available transportation modes, such as driveways, sidewalks, and bike paths must be shown along adjacent streets and those entering adjoining properties. Safe and convenient pedestrian ways must be provided from sidewalks along streets to each building entrance, including pedestrian access routes across parking lots and between adjacent buildings within the same development. Where an existing or planned public transportation station or stop is within 1,250 feet (straight line distance) from any boundary of the subject property, the access plan must show how pedestrians may safely travel from such station or stop to the subject property. Where an existing or planned bike path is located within 1,500 feet of the subject property, the access plan must show how safe, continuous and convenient bicycle access shall be provided to the subject property.

(Ord. of 8-2-2017, § 1(3.5.12); Ord. No. 2019-11-001, § 1, 11-25-2019)

Sec. 3.5.13. High-rise mixed-use zone (Tier I Zone).

A. *Permitted principal uses and structures.* The principal uses of land and structures allowed in the Tier I: High-Rise Mixed-Use Zone of the Stonecrest Area Overlay District are as provided below:

1. All uses authorized in the C-1 and C-2 (General Commercial) District, O-I (Office Institutional) District, O-D (Office-Distribution) District, and HR-2 (High Density Residential) District except those listed in B., below.

B. *Prohibited uses.* The following principal uses of land and structures are prohibited in Tier I: High-Rise Mixed-Use Zone of the Stonecrest Area Overlay District:

1. Kennels.
2. Tire retreading and recapping.
3. Sexually oriented businesses.
4. Reserved
5. Outdoor amusement services facilities.
6. Outdoor storage.
7. Farm equipment and supplies sales establishment.
8. Repair, small household appliance.
9. Hotel/motel.
10. Flea markets.
11. Automobile title loan establishments.
12. Pawn shops.
13. Salvage yards.
14. Gasoline service stations.
15. Automobile repair and maintenance, major.
16. Automobile and truck rental and leasing.
17. Commercial parking lots.
18. Automobile wash/wax service.
19. Check cashing facility.
20. Automobile emission testing facilities.
21. Small Box Discount Stores

C. *Accessory uses and structures.* The following accessory uses of land and structures are permitted in Tier I: High-Rise Mixed-Use Zone of the Stonecrest Area Overlay District:

1. Uses and structures which are customarily incidental and subordinate to the permitted principal uses and structures in this district.
2. Parking lots and parking garages.
3. Open space, clubhouse or pool amenity area.
4. Signs, in accordance with the provisions of chapter 21 and this chapter.

D. *Building setbacks.* Building setbacks are governed by the MU-3 regulations.

E. *Height of buildings and structures.* A building or structure in Tier I may exceed the five-story height limit without the necessity of obtaining a special land use permit. A parking deck may exceed five stories in height; however, a parking deck cannot exceed ten stories in height either as a separate deck structure or as part of an office building.

F. *Density.* No development in Tier I may exceed a FAR of three and one-half, unless it also provides additional public space or other amenities singly, or in combination as provided in subsection G below.

G. *Bonus density:* In exchange for providing one or more of the amenities shown in Table 3.2 an applicant may receive a density bonus as provided in Table 3.2, not to exceed a total FAR of six.

Table 3.2. Bonus FAR: Tier I

Additional Amenity	Increased FAR
Increase public space to 25 percent while providing connectivity	0.75
Increase public space to 30 percent while providing connectivity	1.50
Mixed-use building that combines office-institutional with commercial retail uses. Each mixed-use building must include one principal use and at least one secondary use. No primary or secondary use can constitute less than ten percent of the gross floor area of the building.	0.25
Mixed-use building that includes multifamily residential units constituting at least eight units per acre of land, and constructed in the same building with office, institutional, commercial or retail uses.	0.5

H. *Required parking.* Required parking may be provided through a combination of off-street, on- street, or shared parking provided that all required parking must be located within 700 feet of the principal entrance of the buildings the parking is intended to serve. The minimum number of required parking spaces shall be as provided in article 6, except as follows:

1. Retail uses, personal service uses, and other commercial and general business uses, including food stores: Minimum of four spaces per 1,000 square feet of gross floor area.
2. Office and clinic uses: Minimum of three spaces per 1,000 square feet of gross floor area.
3. Hotel and motel uses: Minimum of one space per unit.
4. Multifamily residential uses: Minimum of one and one-quarter spaces per dwelling unit.

I. *Sidewalks.* Sidewalks must be provided on all public streets. Sidewalks must be at least five feet in width with the exception of sidewalks along streets and in front of proposed high-rise buildings which must be at least ten feet in width.

(Ord. of 8-2-2017, § 1(3.5.13); Ord. No. 2019-11-001, § 1, 11-25-2019)

Sec. 3.5.14. Mid-rise mixed-use zone (Tier II Zone).

A. *Permitted principal uses and structures.* The principal uses of land and structures allowed in the Tier II: Mid-Rise Mixed-Use Zone of the Stonecrest Area Overlay District are as provided below:

1. All uses authorized in the C-1 and C-2 (General Commercial) District, O-I (Office Institutional) District, O-D (Office-Distribution) District, and HR-2 (High Density Residential) District except those listed in B., below.

B. *Prohibited uses.* The following principal uses of land and structures are prohibited in Tier II: Mid-Rise Mixed-Use Zone of the Stonecrest Area Overlay District:

1. Kennels.
2. Storage yards.
3. Tire retreading and recapping.
4. Sexually oriented businesses.
5. Outdoor storage.
6. Farm equipment and supplies sales establishment.
7. Repair, small household appliance.
8. Hotel/motel.
9. Flea markets.
10. Automobile title loan establishments.
11. Pawnshops.
12. Salvage yards.
13. Automobile repair and maintenance, major and minor.
14. Gasoline service stations.
15. Automobile and truck rental and leasing.
16. Commercial parking lots.
17. Automobile wash/wax service.
18. Late-night establishments.
19. Nightclubs.
20. Check cashing facility.
21. Automobile emission testing facilities.
22. Small Box Retail Store

[TMOD-19-005, TMOD-21-005]

C. *Accessory uses and structures.* The following accessory uses of land and structures are permitted in Tier II: Mid-Rise Mixed-Use Zone of the Stonecrest Area Overlay District.

1. Uses and structures which are customarily incidental and subordinate to the permitted principal uses and structures in this district.
2. Parking lots and parking garages.
3. Open space, clubhouse or pool amenity area.
4. Signs, in accordance with the provisions of chapter 21 and this chapter.

D. *Building setbacks.* Building setbacks are governed by the MU-3 regulations.

E. *Height of buildings and structures.* A building or structure in Tier II can have a maximum height of ten stories. A parking deck may exceed five stories in height; however, a parking deck may not exceed ten stories either as a separate deck structure or as part of an office building.

F. *Density:* No development in Tier II may exceed a FAR of two and one-half, unless it also provides additional public space or other amenities singly, or in combination as provided in subsection G, below.

G. *Bonus density:* In exchange for providing one or more of the amenities shown in Table 3.2 an applicant may receive a density bonus as provided in Table 3.2, not to exceed a total FAR of four.

Table 3.2. Bonus FAR: Tier II

Bonus Floor Area Ratio in Stonecrest Area, Tier II	
Additional Amenity	Increased FAR
Increase public space to 25 percent while providing connectivity	0.75
Increase public space to 30 percent while providing connectivity	1.50
Mixed-use building that combines office-institutional, commercial, or retail uses. Each mixed-use building must include one principal use and at least one secondary use. No primary or secondary use can constitute less than ten percent of the gross floor area of the building.	0.25
Mixed-use building that includes multifamily residential units constituting at least eight units per acre of land, and constructed in the same building with office, institutional, commercial or retail uses.	0.5

H. *Required parking.* Required parking may be provided through a combination of off-street, on- street, or shared parking. All required parking must be located within 700 feet of the principal entrance of the building that the parking intended to serve. The minimum number of required parking spaces shall be as provided in article 6, except as follows:

1. Retail uses, personal service uses, and other commercial and general business uses, including food stores: Minimum of four spaces per 1,000 square feet of gross floor area.
2. Office and clinic uses: Minimum of three spaces per 1,000 square feet of gross floor area.
3. Hotel and motel uses: Minimum of one space per unit.
4. Multifamily residential uses: Minimum of one and one and one-quarter spaces per dwelling unit.

I. *[Parking spaces.]* Parking space area requirements must comply with the provisions of Section 6.1.3.

J. *Sidewalks.* Sidewalks must be provided on all public streets. Sidewalks must be at least five feet in width.

(Ord. of 8-2-2017, § 1(3.5.14); Ord. No. 2019-11-001, § 1, 11-25-2019)

Sec. 3.5.15. Low-rise mixed-use zone (Tier III).

A. *Permitted uses and structures.* The principal uses of land and structures allowed in the Tier III: Low-Rise Mixed-Use Zone of the Stonecrest Area Overlay District are as provided below:

1. All uses authorized in the C-1 and C-2 (General Commercial) District, O-I (Office Institutional) District, O-D (Office Distribution) District, M (Light Industrial) District, and MR-2 (Medium Density Residential) District except those listed in B., below.

B. *Prohibited uses.* The following principal uses of land and structures are prohibited in Tier III: Low-Rise Mixed-Use Zone of the Stonecrest Area Overlay District:

1. Kennels.
2. Junkyard.
3. Tire retreading and recapping.

4. Sexually oriented businesses.
5. Outdoor amusement service facility.
6. Outdoor storage.
7. Automobile repair, major and minor.
8. Hotel/motel.
9. Automobile sales.
10. Temporary outdoor sales.
11. Pawn shops.
12. Liquor stores.
13. Nightclubs.
14. Late-night establishments.
15. Car wash.
16. Self-storage.
17. Funeral home.
18. Mortuary.
19. Crematorium.
20. Farm equipment and supplies sales establishment.
21. Repair, small household appliance.
22. Salvage yard.
23. Automobile service stations, except automobile service stations over 4,000 square feet with special land use permit.
24. Commercial parking lot.
25. Check cashing facility.
26. Automobile emission testing facilities.
27. Small Box Retail Stores

[TMOD-19-005]

C. *Accessory uses and structures.* The following accessory uses of land and structures shall be authorized in the Tier III: Low-Rise Mixed-Use Zone of the Stonecrest Area Overlay District:

1. Uses and structures which are customarily incidental and subordinate to the permitted principal uses and structures in this district.
2. Parking lots and parking garages.
3. Clubhouses, including meeting rooms or recreation rooms.
4. Swimming pools, tennis courts, and other recreation areas and similar amenities.

D. *Building setbacks.* The following building setback requirements shall apply to all structures in the Tier III: Low-Rise Mixed-Use Zone of the Stonecrest Area Overlay District:

1. *Minimum front yard setback:* 15 feet from right-of-way of public street, except that front-facing garages of residential units shall be set back a minimum of 25 feet from rights-of-way.
2. *Minimum interior side yard:* Ten feet. There shall be a minimum of 15 feet between buildings and structures less than two stories in height and a minimum of 20 feet between any two buildings and structures when one of them is greater than two stories in height.
3. *Minimum rear yard:* Ten feet.

E. *Height of buildings and structures.* Maximum height, three stories

F. *Density:* No development in Tier III may exceed 30 dwelling units per acre and a combined FAR of one and a half, unless it also provides additional public space or other amenities singly, or in combination as provided in subsection G, below.

G. *Bonus density:* In exchange for providing one or more of the amenities shown in Table 3.3 an applicant may receive a density bonus as provided in Table 3.3, not to exceed a total FAR of three.

Table 3.3 Bonus FAR: Tier III

Additional Amenity	Increased FAR
Increase public space to 25 percent while providing connectivity	0.5
Increase public space to 30 percent while providing connectivity	1.0
Mixed-use building that combines office-institutional with commercial or retail uses. Each mixed-use building must include one principal use and at least one secondary use. No primary or secondary use may constitute less than ten percent of the gross floor area of the building.	0.25
Mixed-use building that includes multifamily residential units constituting at least eight units per acre of land, and constructed in the same building with office, institutional, commercial or retail uses.	0.5

H. *Required parking.* Required parking may be provided through a combination of off-street, on- street, or shared parking. All required parking must be located within 700 feet of the principal entrance of the building that the parking is intended to serve. The minimum number of required parking spaces must be as provided in article 6, except as follows:

1. Retail uses, personal service uses, and other commercial and general business uses, including food stores: Minimum of four spaces per 1,000 square feet of gross floor area.
2. Office and clinic uses: Minimum of three spaces per 1,000 square feet of gross floor area.
3. Hotel and motel uses: Minimum of one space per unit.
4. Multifamily residential uses: Minimum of one and one-half spaces per dwelling unit.

I. *Parking space area requirements.* Parking space area requirements must comply with the provisions of section 6.1.3.

J. *Sidewalks.* Sidewalks must be provided on all public streets. Sidewalks must be at least five feet in width.

K. *New or used motor vehicle dealers.* New or used motor vehicle dealers are authorized in Tier III of the Stonecrest Overlay District only if they comply with the following requirements:

New or used motor vehicle dealers must be located on a parcel with a lot area of no less than three acres, and must contain at least 6,000 square feet of building floor space.

New or used motor vehicle dealers must provide vegetative screening along any automobile display areas that abut a public right-of-way. Said vegetative screening shall be located outside any guard rails or security

fencing abutting such public right-of-way. Within three years of planting, the vegetative screening must be of sufficient height to screen all guard rails or security fencing abutting the public right-of-way. Planting materials shall be subject to the approval of the City of Stonecrest Arborist.

New or used motor vehicle dealers must provide screening of all maintenance areas and storage yards for automobiles stored for service. Such screening shall be sufficient to shield the maintenance areas and storage yards from visibility from any adjacent properties or public rights-of-way. Should vegetative screening be used, planting material shall be subject to the approval of the City of Stonecrest Arborist.

No overhead bay doors opening into vehicle service areas shall be visible from a public right-of-way.

(Ord. of 8-2-2017, § 1(3.5.15); Ord. No. 2018-12-01, § 1(3.5.15), 12-1-2018; Ord. No. 2019-11-001, § 1, 11-25-2019)

Sec. 3.5.15.1. Transitional mixed use zone (Tier IV).

A. *Statement of purpose and intent.* The intent of this tier is to encourage mixed use development in a well-planned community and encourage principally office, residential and commercial uses to serve the convenience needs of the local community. This tier provides an economic balance to the other Stonecrest Area Compatible Use Overlay District development categories which focus more on retail uses.

B. *Mixed use requirements.* All properties in Tier IV which are proposed for new development shall comply with the minimum requirements of this mixed use development category. Permits for repairs, interior alterations or tenant buildout improvements that do not alter the exterior appearance or the building footprint of the structure shall be exempt from the requirements of this division. Properties in Tier IV shall contain a minimum of two principal uses and any residential use shall not exceed 70 percent of the total floor area. The mixed use development may be combined vertically or horizontally in one or more buildings or may be provided in separate buildings or areas within a mixed-use development. A minimum of one residential and one non-residential use must be selected.

C. *Permitted principal uses and structures.* The principal uses of land and structures which are allowed in the Tier IV: Transitional Mixed-Use Zone are as is provided below:

1. All uses authorized in the C-1 and C-2 (General Commercial) District, O-I (Office Institutional) District, MU-4 (Mixed Use High Density) District, and HR-2 (High Density Residential-2) District, except those listed in D., below.

   Single-family attached detached units that are part of a master planned community so long as such single-family detached units are part of a mixed-use development and the development provides opportunities for lifelong and aging-in-place communities as defined by the Atlanta Regional Commission.

D. *Prohibited uses.* The following principal uses of land and structures are prohibited in Tier IV: Transitional Mixed-Use Zone:

1. Kennels.
2. Tire retreading and recapping.
3. Sexually oriented businesses.
4. Outdoor amusement services facilities.
5. Outdoor storage.
6. Farm equipment and supplies sales establishments.
7. Repair, small household appliance.
8. Hotel/motels.

9. Automobile title loan establishments.
10. Pawnshops.
11. Liquor stores.
12. Salvage yards.
13. Automobile repair and maintenance, major.
14. Automobile wash/wax service.
15. Nightclubs.
16. Late-night establishments.
17. Check cashing facility.
18. Automobile emission testing facilities.
19. Car wash, self-service.
20. Self-storage.
21. Funeral home.
22. Crematorium.
23. Mortuary.
24. Small Box Retail Stores

E. *Accessory uses and structures.* The following accessory uses of land and structures are permitted in Tier IV: Transitional Mixed-Use Zone:

1. Uses and structures which are customarily incidental and subordinate to the permitted principal uses and structures in this district.
2. Open space, clubhouse or pool amenity area.
3. Parking lots and decks.
4. Signs, in accordance with the provisions of chapter 21 and this chapter.

F. *Mixed-use developments:* Lot width, lot area and setbacks.

1. *Lot width and area.* All lots shall have at least 100 feet of frontage as measured along the public street frontage.
    a. Minimum lot area: One acre.
2. *Setback requirements.*
    a. *Front yard.* Minimum of zero feet and a maximum of 20 feet to allow for architectural features, outdoor seating, and other project site amenities.
    b. *Side yard.* Minimum of zero feet and a maximum of 20 feet to allow for architectural features, outdoor seating, plazas and other project site amenities.
    c. *Rear yard.* Minimum of 20 feet.
    d. *Interior side yard.* Minimum of zero feet. However, where an interior side yard is facing a structure with windows on an adjoining lot the distance between the existing structure and the proposed structure shall be a minimum of 20 feet.

G. *Single-family detached units:* Lot width, lot area and setbacks.

1. *Lot width and area.* All lots must have at least 50 feet of frontage as measured along the public street frontage.

    a. *Minimum lot area.* 5,000 square feet.

2. *Setback requirements.*

    a. *Front yard.* Minimum of ten feet and a maximum of 20 feet.

    b. *Side yard.* Minimum of ten feet.

    c. *Interior side yard.* Minimum of five feet.

    d. *Rear yard.* Minimum of 30 feet.

H. *Single-family attached units:* Lot width, lot area and setbacks.

l. *Lot width and area.* All lots must have at least 30 feet of frontage as measured along the public street frontage.

    a. *Minimum lot area.* 3,000 square feet. Maximum of eight units or 240 feet.

2. *Setback requirements:*

    a. Front yard: Minimum of five feet and a maximum of 20 feet.

    b. Side yard: Minimum of ten feet between buildings.

    c. Rear yard: Minimum of ten feet.

    d. Structures which are front face to front face, back face to back face, or front face to back face shall be not less than 60 feet apart. Structures which are side face to side face shall not be less than 20 feet apart. Structures which are side face to front face or back face shall be not less than 40 feet apart.

I. *Height of buildings and structures.* The maximum height of any mixed-use building or structure shall not exceed five stories or 75 feet. Buildings in excess of three stories must be approved by the director of planning to assure adequacy of fire protection facilities and services. The maximum height of any residential single-family detached building or structure shall not exceed a height of 35 feet and shall not exceed two stories.

J. *Density and floor area ratios.* Multifamily dwellings may be developed at a density not exceeding 30 dwelling units per acre and the combined floor area ratio for any development shall not exceed one and one-half.

1. *Density bonus.* The maximum allowable FAR of a building or development in Tier IV shall be increased to a FAR not to exceed a total of three if one or more of the additional amenities is provided as described in the table below:

Table 3.4 Bonus FAR: Tier IV

Additional Amenity	Increased FAR
Increase public space to 25 percent while providing interparcel access for pedestrians and vehicles.	0.5
Increase public space to 30 percent while providing interparcel access for pedestrians and vehicles.	1.0
Mixed-use building that combines office-institutional with commercial or retail uses. Each mixed-use building shall include one principal use and at least one secondary use. No primary or secondary use can constitute less than ten percent of the gross floor area of the building.	0.25

Mixed-use building that includes multifamily residential units constituting at least eight units per acre of land, and constructed in the same building with office, institutional, commercial or retail uses.	0.5

K. *Required parking.* Required parking may be provided through a combination of off-street, on- street, or shared parking. All required parking must be located within 700 feet of the principal entrance of the building the parking is intended to serve. The minimum number of required parking spaces must be as provided in the underlying zoning district regulations for the lot except as follows:

1. Retail uses, personal service uses, and other commercial and general business uses, including food stores: Minimum of four spaces per 1,000 square feet of gross floor area.
2. Office and clinic uses: Minimum of three spaces per 1,000 square feet of gross floor area.
3. Hotel and motel uses: Minimum of one space per unit.
4. Multifamily residential uses: Minimum of one and one-half spaces per dwelling unit.
5. Parking space area requirements shall comply with the provisions of section 6.1.3.
6. Single-family detached residential dwelling units shall have two spaces per unit. Garages and any surface parking areas are to be accessed by shared driveways located at the rear of the residential structure. Garages that face the public right-of-way shall be setback a minimum of 20 feet.

L. *Sidewalks.* Sidewalks must be at least five feet in width and must be provided along the right-of-way of all public streets.

(Ord. of 8-2-2017, § 1(3.5.15.1); Ord. No. 2019-11-001, § 1, 11-25-2019)

Sec. 3.5.15.2. Cluster village mixed-use zone (Tier V).

A. *Statement of purpose and intent.* The primary intent of Tier V is to encourage single-family detached residential developments with associated neighborhood commercial and office uses to serve the convenience needs of the local community in a village or cluster concept. This tier provides for the preservation of open space while allowing compatible development that complements the other Stonecrest Overlay District development categories. Tier V also seeks to preserve the rural and scenic beauty of Arabia Mountain Preserve while providing flexibility to allow for creativity in site design and development. The goal of Tier V is to minimize the environmental and visual impacts of new development on natural resources and historically and culturally significant sites and structures while encouraging residential and neighborhood commercial development in a well planned community.

B. *Permitted principal uses and structures.* All properties in Tier V shall be governed by all of the underlying zoning district regulations and the requirements of this section. In addition, all properties in Tier V may be used for the following principal uses of land and structures:

1. Adult day ~~care facility.~~ center
2. Bed and breakfast.
3. Child day care facility.
4. Assembly hall.
5. Cultural facility.
6. Detached single-family dwelling.
7. Office uses.

8. Personal care facility.
9. Place of worship.
10. Retail, excluding drive-through facilities, automobile service stations, commercial amusements, convenience store, liquor stores, package store, and video arcades, pool halls, and Small Box Discount Stores.
11. Office/medical.
12. Personal services establishment.

C. *Accessory uses and structures.* The following accessory uses of land and structures shall be authorized in Tier V: Cluster Village Mixed-Use Zone

1. Uses and structures which are customarily incidental and subordinate to the permitted principal uses and structures in this district.
2. Open space, clubhouse or pool amenity area.

D. *Prohibited uses.* The following principal uses of land and structures are prohibited in Tier V: Cluster Village Mixed-Use Zone:

1. Kennels.
2. Junkyard.
3. Tire retreading and recapping.
4. Sexually oriented businesses.
5. Go-cart concession.
6. Outdoor storage.
7. Automobile repair, major.
8. Hotel/motel.
9. Automobile sales.
10. Temporary outdoor sales.
11. Pawn shops.
12. Liquor stores.
13. Nightclubs.
14. Late-night establishments.
15. Automobile wash, self service.
16. Self-storage.
17. Funeral home.
18. Mortuary.
19. Crematorium.
20. Farm equipment and supplies sales establishment.
21. Multifamily dwelling unit.

E. *Lot width, lot area and setbacks.*

1. All single-family detached residential dwellings located on Klondike Road, Plunkett Road or Rockland Road must have a minimum of 100 feet of frontage as measured along the public street frontage.
    a. *Minimum lot area.* 15,000 square feet.
    b. *Minimum setback requirements.*
        i. *Front yard.* 35 feet.
        ii. *Side yard.* 35 feet.
        iii. *Rear yard.* 40 feet.
        iv. *Interior side yard.* Ten feet.
2. All single-family detached residential lots which are located on new roadways must have a minimum of 50 feet of frontage as measured along the public street frontage.
    a. *Minimum lot area.* 5,000 square feet.
    b. *Minimum setback requirements.*
        i. *Front yard.* Minimum of ten feet and a maximum of 25 feet.
        ii. *Side yard.* 15 feet.
        iii. *Rear yard.* 20 feet.
        iv. *Interior side yard.* Five feet.
3. Reserved.
4. Office and commercial uses may not be located along Klondike or Rockland Road. Any uses otherwise authorized in Tier V shall be clustered together in a "village" or "hamlet" setting and must include convenient access to neighboring residential communities in a manner that preserves the open space on the lot. Such uses must be developed in a manner that also preserves the rural and scenic nature of Tier V and is compatible with the natural design and forestation of the Arabia Mountain Preserve. Such uses must be developed in a manner that minimizes the environmental and visual impact of new development on the existing natural landscape and the historically and culturally significant sites and structures. To the extent possible, developments must be constructed in a manner that preserves the bucolic nature and farming community appearance of Tier V.
    a. Office and commercial uses must be a maximum of 2,500 square feet per tenant space.
    b. Single-use structures must be a maximum of 10,000 square feet.
    c. Lot width and lot area. Office and commercial lots must be a minimum of 20,000 square feet.

F. *Height of buildings and structures.* No building or structure may exceed 35 feet in height or two stories whichever is less.

G. *Required parking.* The minimum number of required parking spaces must be as provided in the underlying zoning district regulations except as follows:

1. Residential, single-family detached: Minimum of two spaces.
2. Retail uses, personal service uses, and other commercial and general business uses, including food stores: Minimum of four spaces per 1,000 square feet of gross floor area.
3. Office and clinic uses: Minimum of three spaces per 1,000 square feet of gross floor area.
4. Parking space area requirements must comply with the provisions of section 6.1.3.

H. *Sidewalks.* A landscape strip must be provided between the curb and the pedestrian travel lane in compliance with land development standards. Sidewalks must be provided along the right-of-way of all public streets.

(Ord. of 8-2-2017, § 1(3.5.15.2); Ord. No. 2019-11-001, § 1, 11-25-2019) [TMOD-19-006]

Sec. 3.5.15.3. Viewshed zone (Tier VI).

A. *Statement of purpose and intent.* The intent of Tier VI is to promote uniform and visually aesthetic development which serves to unify the distinctive visual quality of the Stonecrest Area Overlay District.

B. *Permitted principal uses and structures.* The permitted principal uses of land and structures for property in Tier VI shall be governed by all of the underlying zoning district regulations.

C. *Accessory uses and structures.* The permitted accessory uses and structures for property in Tier VI shall be governed by the underlying zoning district.

D. *Prohibited uses.* The following principal uses of land and structures are prohibited in Tier V [VI]: Viewshed Zone:

1. Sexually oriented businesses.
2. Pawn shops.
4. Package stores.
5. Check cashing facility.

E. *Lot width, lot area and setbacks.* Lot width, lot area and setbacks of property in Tier VI shall be governed by the underlying zoning district.

F. *Height of buildings and structures.* The height of buildings and structures on property within Tier VI shall be governed by the underlying zoning district.

G. *Required parking.* The minimum number of required parking spaces of property in Tier VI shall be governed by the underlying zoning district.

H. *Sidewalks.* A landscape strip must be provided between the curb and the pedestrian travel lane in compliance with land development standards. Sidewalks must be provided along the right-of-way of all public streets.

(Ord. No. 2019-11-001, § 1, 11-25-2019)

Sec. 3.5.16. Shared parking.

Shared parking is encouraged and may be authorized by the director of planning. Applicants may make application to the director of planning for authorization for a special exception for shared parking. Said applications shall be considered and decided by the director of planning pursuant to the standards and procedures set forth in section 7.6.5.

(Ord. of 8-2-2017, § 1(3.5.16); Ord. No. 2019-11-001, § 1, 11-25-2019)

Sec. 3.5.17. Permits for uses.

Any use authorized by this division shall require that a development permit be issued before property improvements can be made in accordance with section 7.7.2 and a building permit required in accordance with the provisions of section 7.7.3.

(Ord. of 8-2-2017, § 1(3.5.17); Ord. No. 2019-11-001, § 1, 11-25-2019)

Sec. 3.5.18. Design guidelines.

The Stonecrest Overlay District Design Guidelines dated May 2008 in DeKalb County, shall apply to all uses and structures within the Stonecrest Overlay District and shall be maintained by the planning director and available for public inspection. The design guidelines provide acceptable minimum standards to guide design and development within this overlay district. The planning director or designee is authorized to create, administer, and amend design guidelines for the Stonecrest Area Overlay District. These guidelines provide acceptable architectural design controls, landscaping, detail drawings, signage, fencing, lighting, street and site furniture, and grating criteria. These guidelines shall be used to promote proper design criteria and shall guide the planning director or designee in deciding whether a proposed design complies with the requirements of the Stonecrest Area Overlay District.

(Ord. of 8-2-2017, § 1(3.5.18); Ord. No. 2019-11-001, § 1, 11-25-2019)

Sec. 3.5.19. Plans required; certificates of compliance.

A. *Plans required.* Prior to the issuance of any land disturbance permit, building permit, or sign permit, the applicant shall submit to the director of planning an application which shall include a conceptual plan package as defined by this chapter which shall demonstrate that the proposed design is in compliance with all of the requirements of this Stonecrest Overlay District and the underlying zoning classification.

B. *Fees.* Plans shall be accompanied by an application and payment of a fee in an amount determined by the City of Stonecrest City Council.

C. *Review.* The director of planning shall review each application for compliance with all requirements of the Stonecrest Overlay District and the underlying zoning classification. Where the director determines that said plans comply with the requirements of the Stonecrest Overlay District a certificate of compliance shall be issued in the form of the director or the director's designee signing the plans and drawings after which the applicant shall then apply for land disturbance, building or signs permits. Where the director determines that said plans do not comply with the requirements of this chapter, then the director shall notify the applicant in writing stating the manner in which said applicant fails to comply with such requirements. All applications shall be considered and decided by the director of planning within 30 days of receipt of a complete application. Any appeal of the director of planning's decision in this regard shall be to the zoning board of appeals pursuant to section 7.5.2.

(Ord. of 8-2-2017, § 1(3.5.19); Ord. No. 2019-11-001, § 1, 11-25-2019)

Sec. 3.5.20. Conceptual plan package review.

A. The conceptual plan package must be composed of the following:

1. A narrative addressing the proposed development explaining how it meets the purpose, intent, and standards of this chapter. The narrative shall include a tabulation of the approximate number of acres in each land use, the approximate number of dwelling units by type, the approximate gross residential density, the approximate commercial density, the approximate public space acreage, the anticipated number, type and size of recreational facilities and other public amenities; the legal mechanism for protecting and maintaining public space, as required in section 3.5.5.A.1.;

2. A site location map showing the proposed development, abutting property, the relationship of the proposed development to surrounding natural features and existing development, and transitional buffer zones, if required; and

3. A multi-modal access plan meeting the requirements of section 3.5.12.

B. The plan to be submitted in the conceptual plan package must contain the following information:

1. Six copies of a plan drawn to a designated scale of not less than one inch equals 100, certified by a professional engineer or land surveyor licensed by the State of Georgia, presented on a sheet having a maximum size of 24 inches by 36 inches, and one, 8 and ½-inch by 11-inch reduction of the plan. If presented on more than one sheet, match lines must clearly indicate where the several sheets join. Such plan must contain the following information:

a. Boundaries of the entire property proposed to be included in the development, with bearings and distances of the perimeter property lines.

b. Scale and north arrow, with north, to the extent feasible, oriented to the top of the plat and on all supporting graphics.

c. Location and approximate dimensions in length and width, for landscape strips and required transitional buffers, if any.

d. Existing topography with a maximum contour interval of five feet and a statement indicating whether it is an air survey or field run.

e. Approximate delineation of any floodplain designated by the Federal Emergency Management Agency, United States Geological Survey, or City of Stonecrest.

f. The delineation of any jurisdictional wetlands as defined by Section 404 of the Federal Clean Water Act.

g. Approximate delineation of any significant historic or archaeological feature, grave, object or structure marking a place of burial if known, and a statement indicating how the proposed development will impact it.

h. A delineation of all existing structures and whether they will be retained or demolished.

i. General location, in conceptual form, of proposed uses, lots, buildings, building types and building entrances.

j. Height and setback of all buildings and structures.

k. Approximate areas and development density for each type of proposed use.

l. Location, size, and number of all on-street and off-street parking spaces, including a shared parking analysis, if shared parking is proposed.

m. Identification of site access points and layout, width of right-of-way and paved sections of all internal streets.

n. Conceptual plans for drainage with approximate location and estimated size of all proposed stormwater management facilities and a statement as to the type of facility proposed.

o. Development density and lot sizes for each type of use.

p. Areas to be held in joint ownership, common ownership or control.

q. Identification of site access points and layout, width of right-of-way and paved sections of all internal streets.

r. Location of proposed sidewalks and bicycle facilities trails, recreation areas, parks, and other public or community uses, facilities, or structures on the site.

s. Conceptual layout of utilities and location of all existing or proposed utility easements having a width of 25 feet or more.

t. Standard details of signs, sidewalks, streetlights, driveways, medians, curbs and gutters, greenspace areas, fencing, grating, street furniture, bicycle lanes, streets, alleys, and other public improvements demonstrating compliance with the design guidelines for the Stonecrest Area Overlay District.

u. Seal and signature of professional preparing the plan.

(Ord. of 8-2-2017, § 1(3.5.20); Ord. No. 2019-11-001, § 1, 11-25-2019)

DIVISION 33. INTERSTATE 20 CORRIDOR COMPATIBLE USE OVERLAY DISTRICT

Sec. 3.33.1. Scope of regulations.

This division establishes standards and procedures that apply to any development, use, alteration, height, density, parking, open space, and building on any lot or portion thereof which is in whole or in part contained within the boundaries of the I-20 Corridor Compatible Use Overlay District. This division shall be governed by chapter 27, article 3, division 1.

(Ord. of 8-2-2017, § 1(3.33.1))

Sec. 3.33.2. Applicability of regulations.

This division applies to each application for a business license, land disturbance permit, building permit or a sign permit which involves the development, use, alteration, or modification of any structure where the subject property is in whole or in part contained within the boundaries of any of the I-20 Corridor Compatible Use Overlay District. The procedures, standards, and criteria herein apply only to that portion of the subject property within the boundaries of the I-20 Corridor Compatible Use Overlay District.

(Ord. of 8-2-2017, § 1(3.33.2))

Sec. 3.33.3. Statement of purpose and intent.

The purpose and intent of the City of Stonecrest in establishing the I-20 Corridor Compatible Use Overlay District is as follows:

A. To encourage development and redevelopment of properties within the district in order to achieve a variety of mixed-use communities;

B. To provide for the development of sidewalks and walkways in order to promote safe and convenient pedestrian access and to reduce dependence on automobiles and other motorized means of transportation;

C. To promote physically attractive, environmentally safe and economically sound mixed-use communities;

D. To permit and to encourage mixed-use developments containing both commercial and residential uses so as to create pedestrian oriented communities in which people can live, work and play;

E. To improve the visual appearance and increase property values within the I-20 corridor and to implement the objectives of the comprehensive plan;

F. To enhance the long-term economic viability of the portion of the City of Stonecrest within the overlay by encouraging new commercial and residential developments that increase the tax base and provide employment opportunities to the citizens of the City of Stonecrest;

G. To implement the policies and objectives of the comprehensive plan and the policies and objectives of the design standards for the I-20 Corridor Compatible Use Overlay District;

H. To establish and maintain a balanced relationship between industrial, commercial, and residential growth to ensure a stable and healthy tax base;

I. To provide a balanced distribution of regional and community commercial and mixed-use office centers;

J. To support high-density housing in office and mixed-use centers which have the appropriate location, access, and infrastructure to support such development;

K. To encourage mixed-use developments that meet the goals and objectives of the Atlanta Regional Commission's Smart Growth and Livable Centers Initiatives;

L. To allow flexibility in development standards in order to encourage the design of innovative development projects that set high standards for landscaping, green space, urban design, and public amenities;

M. To encourage an efficient land use and development plan by forming a live-work-play environment that offers employees and residents the opportunity to fulfill their daily activities with minimal use of single-occupant automobiles;

N. To allow and encourage development densities and land use intensities that are capable of making productive use of alternative transportation modes such as bus transit, rail transit, ridesharing, bicycling and walking;

O. To focus and encourage formation of well designed, pedestrian-friendly activity centers with high-density commercial and residential development that increases vitality and choices in living environments for the citizens;

P. To protect established residential areas from encroachment of uses which are either incompatible or unduly cause adverse impacts on such communities, and to protect the health, safety and welfare of the citizens;

Q. To promote uniform and visually aesthetic architectural features which serve to unify the distinctive visual quality of the I-20 corridor area.

(Ord. of 8-2-2017, § 1(3.33.3))

Sec. 3.33.4. District boundaries and maps.

A. The I-20 Corridor Overlay District shall be comprised of the following six areas that are centered along the roadways that intersect with Interstate 20: The Panola Road area; the Snapfinger Woods area; the Wesley Chapel Road area; the I-20/I-285 interchange area; the Candler Road corridor and the Gresham Road area.

B. The boundaries and tiers of the Interstate 20 Corridor Compatible Use Overlay District shall be depicted on the official zoning maps entitled "Official Zoning Map, Stonecrest, Georgia, I-20 Corridor Overlay District")(the "I-20 Corridor overlay maps"). The Official Zoning Map, Stonecrest, Georgia, I-20 Corridor Overlay District, to be adopted contemporaneously with this chapter, together with all explanatory information contained or referenced thereon, is hereby adopted by reference and declared to be a part of

this chapter. The I-20 Corridor overlay maps shall be adopted contemporaneously with this chapter in digital format and contained on a compact disk to be maintained in its original, unedited and unaltered form by the clerk to the city council. A printed copy of the compact disk's contents depicting the I-20 Corridor overlay maps on the date of its initial adoption shall also be maintained in its original, unedited and unaltered form by the clerk to the city council.

C. The I-20 Corridor Overlay District shall be divided into three tiers to guide future development and redevelopment. The tiers are based on the future land use recommendations.

Tier 1. High-intensity area focused around the four activity centers of Panola, Wesley Chapel, Candler Road and the Gresham Road area. The purpose of this tier is to allow the most intense mixed-use development. The goal is to allow for redevelopment of the oversized parking areas with new buildings including retail, office, and residential on one parcel to decrease the need for vehicular trips. The maximum height shall be up to 20 stories and 60 dwelling units/acre.

Tier 2. Medium-intensity area wraps around the high-intensity area or at the locations of Snapfinger Woods and I-20/I-285 intersections. The purpose of this tier is to allow medium-density development in a mixed-use development. The maximum height shall be up to eight stories and allows for up to 40 dwelling units per acre.

Tier 3. Low-intensity area which provides for a transition from the higher-intensity areas and more compatibility to the single-family neighborhoods adjacent to the overlay boundaries. The maximum height shall be up to four stories and allows up to 40 dwelling units per acre.

D. The planning and development director shall be the final authority to determine whether any property is located within the boundaries of this section.

(Ord. of 8-2-2017, § 1(3.33.4))

Sec. 3.33.5. Principal uses and structures.

The principal uses of land and structures which are allowed in the I-20 Corridor Overlay District are as provided by the applicable zoning district, subject to the limitations and standards contained within this division. All properties zoned C-1 (Local Commercial) District, C-2 (General Commercial) District, O-I (Office-Institutional) District, O-D (Office-Distribution) District, M (Industrial) and any RM (Multifamily Residential) District shall be used in accordance with the underlying zoning district and/or for the following principal uses of land and structures in mixed use developments subject to the standards and limitations contained within this division.

A. Animal hospital, veterinary clinic, pet supply store, animal grooming shop, and boarding and breeding kennel as an interior accessory use.

B. Art gallery and art supply store.

C. Automobile services as follows:

1. Minor automobile repair and maintenance, subject to the requirements of section 4.2.14.

2. Automobile parts and tire stores.

D. Bank, credit union and other similar financial institution.

E. Business service establishment.

F. Child daycare center and kindergarten.

G. Communications uses as follows:

1. Radio and television broadcasting station.

2.

H. Community facilities as follows:

1. Cultural facilities.
2. Noncommercial club or lodge.
3. [TMOD-22-001]

I. Dwellings including apartments, condominiums, and multifamily units. Mixed-use developments may include any combination above plus retail or office uses, subject to the requirements of the I-20 Overlay District regulations.

J. Educational uses as follows:

1. Vocational schools.
2. Private schools, elementary, middle or high.
3. Public school, elementary, middle or high
4. Specialized non-degree schools to include ballet, music, martial arts, etc.

K. Movie theater, bowling alley, and other recreational facilities where such activities are wholly enclosed within a building. Nightclubs are permitted only in Tier 1 (maximum 10,000 square feet in floor area), subject to approval of the planning and development director and business license requirements.

L. Office uses

M. Place of worship.

N. Restaurants.

O. Retail sales

P. Retail building supplies as follows:

1. Electrical supply store.
2. Hardware and other building materials establishments.
3. Paint, glass and wallpaper store.

Q. Services, medical and health as follows:

1. Health service clinic.
2. Medical and dental laboratories.
3. Offices of health service practitioners.
4. Pharmacy and drugstore.
5. Private ambulance and emergency medical services.

R. Services, personal, as follows:

1. Barber shop, beauty shop, and similar personal service establishments.
2. Laundry and dry-cleaning store.
3. Funeral home.
4. Linen and diaper service, garment pressing, alteration and repair.
5. Photographic studios.

S. Services, repair

T. Shopping center.

U. Taxi stand and taxi dispatching office.

V. Tennis center, club and facilities.

W. Fitness center and health center.

X. Hotel.

(Ord. of 8-2-2017, § 1(3.33.5)) [TMOD-22-001]

Sec. 3.33.6. Prohibited uses.

A. The following principal uses of land and structures shall be prohibited within the I-20 Corridor Compatible Use Overlay District:

1. Boarding and breeding kennels as a primary use.
2. Storage yard for damaged automobiles or confiscated automobiles.
3. Tire retreading and recapping.
4. Sexually oriented businesses.
5. Reserved.
6. Go-cart concession.
7. Outdoor equipment and materials storage.
8. Heavy repair shop and trade shop.
9. Extended stay motels.
10. Used cars sales as a primary use.
11. Temporary and/or seasonal outdoor sales.
12. Title and pawn shops.
13. Liquor stores.
14. Night clubs excluded in Tiers 2 and 3.
15. Salvage yards/junkyards.
16. Automobile, wash/Wax 17. Self-storage.
18. Small Box Discount Stores

(Ord. of 8-2-2017, § 1(3.33.6)), [TMOD-19-005] [TMOD-22-001]

Sec. 3.33.7. Accessory uses and structures.

The following accessory uses of land and structures shall be authorized in the I-20 Corridor Compatible Use Overlay District:

A. Accessory uses and structures incidental to any authorized use.

B. Parking lots and parking garages.

C. Club house, including meeting room or recreation room.

D. Swimming pools, tennis courts, and other recreation areas and similar amenities.

E. Signs, in accordance with the provisions of chapter 21 and this chapter.

(Ord. of 8-2-2017, § 1(3.33.7))

Sec. 3.33.8. Special permits.

The following uses and structures shall be authorized only by permits of the type indicated:

A. Special administrative permit from the director of planning and development as referenced in section 4.2.21, commercial recreation and entertainment:

1. Art shows, carnival rides, festivals and special events of community interest.

2. Temporary outdoor social, religious, entertainment or recreation activity where the time period does not exceed 14 days duration, adequate parking is provided on the site.

3. Telecommunications antennas that are incorporated in architectural features such as steeples, clock towers, water towers and attached to the top of high-rise buildings subject to requirements of section 4.2.51.

4. Outdoor recreation/entertainment facilities.

B. Special land use permit from the city council:

1. Heliport.

(Ord. of 8-2-2017, § 1(3.33.8))

Sec. 3.33.9. Development standards.

The following requirements shall apply to all structures in the I-20 Corridor Overlay District:

A. *Building setbacks.* The following requirements apply:

1. *Minimum front yard setback.* Zero feet from right-of-way of public street where the distance between the back of curb and property line is 15 feet in width or greater.

2. *Minimum interior Side yard:* Ten feet. In mixed-use developments there shall be a minimum of 15 feet between buildings and structures less than two stories in height and a minimum of 20 feet between buildings and structures when one of them is greater than two stories in height, and a minimum of 25 feet between buildings when one of them is greater than five stories in height.

3. *Minimum Rear yard:* Ten feet.

B. *Height of building and structures.* All buildings and structures within the I-20 Corridor Overlay District shall comply with the height restrictions for the development category in which the subject parcels are located. The I-20 Corridor Overlay District shall be comprised of three development categories. The height restrictions are as follows:

*Tier 1.*Buildings and structures shall not exceed 20 stories.

*Tier 2.*Buildings and structures shall not exceed eight stories.

*Tier 3.*Buildings and structures shall not exceed four stories.

A building in the I-20 Corridor Compatible Use Overlay District may exceed any of the limitations specified by an application to the city council for a special land use permit. A parking deck may exceed five stories in height; however, a parking deck shall not exceed ten stories either as a separate deck structure or as part of an office building.

C. *Density.* No development shall exceed a floor-area ratio (FAR) of 3 ½, unless it also provides additional public space or other amenities singly, or in combination as provided in section D. below.

D. *Density bonus.* The maximum allowable FAR of a building or development in a Tier 1 Zone shall be increased to a FAR not to exceed a total of 5½ in exchange for one or more of the additional amenities provided in the table below:

Table 3.9. Maximum Bonus Floor Area Ratio in Interstate 20 Corridor Compatible Use Overlay

Additional Amenity	Increased FAR
Increase public space to 25 percent while providing connectivity	0.75
Increase public space to 30 percent while providing connectivity	1.50
The nonresidential component of mixed-use developments shall constitute not less than 30 percent of the gross floor area of the development.	0.25
Mixed-use building that includes multifamily residential units constituting at least 40 units per acre of land, and constructed in the same building with office-institutional, commercial and retail uses.	0.5

E. *Required parking.* Required parking may be provided through a combination of off-street, on-street, or shared parking, provided that all required parking is located with 700 feet of the principal entrance of buildings which it is intended to serve. The minimum number of required parking spaces shall be as provided in article 6 of this chapter, except as follows:

1. Retail uses, personal service uses, and other commercial and general business uses, including food stores: Minimum of four spaces per 1,000 square feet of gross floor area.
2. Office and clinic uses: Minimum of three spaces per 1,000 square feet of gross floor area.
3. Hotel and motel uses: Minimum of one space per unit.
4. Multifamily residential uses: Minimum of 1¼ spaces per dwelling unit.

(Ord. of 8-2-2017, § 1(3.33.9))

Sec. 3.33.10. Open space requirements.

A. A minimum of 20 percent open space shall be provided for each new development. Open space areas may be transferred from one parcel to another within overall developments that remain under unified control of a single property owner or group of owners, but must demonstrate interconnectedness of public areas.

B. Open spaces shall be at grade, and surrounded by a mix of uses directly accessible from a public sidewalk and building entrances.

C. Open spaces may include any combination of the following: yards, planted areas, fountains, parks, plazas, trails and paths, hardscape elements related to sidewalks and plazas, and similar features which are located on private property and accessible to the general public; on-street parking; and natural stream buffers shall be permitted to be counted toward the 20 percent open space requirement.

D. Private courtyards and other private outdoor amenities may be located at the interior of the block, behind buildings or on rooftops. Private courtyards and outdoor amenities shall not be counted toward the 20 percent requirement.

E. All open space including buffers, setbacks, sidewalk clear zones, sidewalk zones and open spaces shall be fully implemented prior to issuance of a certificate of occupancy for the primary development.

F. Each applicant shall present as a part of the application for a building permit within the I-20 Corridor Overlay District a legal mechanism under which all land to be used for public space purposes shall be maintained and protected. Such legal mechanism may include deed restrictions, property owner associations, common areas held in common ownership or control, maintenance easements, or other legal mechanisms, provided that said legal mechanism shall be approved by the city attorney as ensuring each of the following mandatory requirements:

1. That all subsequent property owners within said I-20 Corridor Overlay District be placed on notice of this development restriction through the deed records of DeKalb County Superior Court;

2. That all public space held in common will be properly maintained and insured with no liability or maintenance responsibilities accruing to the city;

3. That a legal mechanism exists for notice of deficiencies in maintenance of the public space held in common, correction of these deficiencies, and assessment and liens against the properties for the cost of the correction of these deficiencies by a third-party or the city;

4. When an applicant for an I-20 Corridor Overlay District chooses to utilize a property owners association in order to comply with the requirements of subsection A. of this section, the applicant, in addition to meeting all of said requirements, shall provide for all of the following:

    a. Mandatory and automatic membership in the property owners association as a requirement of property ownership;

    b. A fair and uniform method of assessment for dues, maintenance and related costs;

    c. Where appropriate, party wall maintenance and restoration in the event of damage or destruction; and

    d. Continued maintenance of public space held in common and liability through the use of liens or other means in the case of default.

(Ord. of 8-2-2017, § 1(3.33.10))

Sec. 3.33.11. Transitional buffer zone and transitional height requirements.

A. Where a lot on the external boundary of the I-20 Corridor Overlay District adjoins the boundary of any property outside the district that is zoned for any R zoning classification, RM zoning classification, MHP zoning classification, or TND zoning classification, a transitional buffer of not less than 30 feet in width shall be provided and maintained in a natural state or so as to maintain an effective visual screen. Said transitional buffer zone shall not be paved or otherwise covered with impervious surfaces and shall not be used for parking, loading, storage or any other use, except that portions of the transitional buffer zone may be utilized for installation of utilities when necessitated by the development, and when the applicant shows that the utilities cannot be located outside of the transitional buffer zone. Water detention ponds shall not be located within the transitional buffer zones. No trees, other than dead or diseased trees, shall be removed from said transitional buffer zone, but additional trees and plant material may be added to the transitional buffer zone.

B. Where a lot on the external boundary of the I-20 Corridor Overlay District adjoins the boundary of any property outside the district that is zoned for any R zoning classification, RM zoning classification, MHP

zoning classification, or TND zoning classification, a transitional height plane of 45 degrees shall apply. Sensitivity shall be exercised for developments adjacent to residentially zoned properties through the use of staggered heights, greater setbacks, and enhanced buffers. Building heights in excess of 35 feet shall increase setbacks from the buffer line at a ratio of one to one.

(Ord. of 8-2-2017, § 1(3.33.11))

Sec. 3.33.12. Architectural regulations.

The following architectural regulations shall apply to all uses and structures within the I-20 Corridor Overlay District. The architectural style within the I-20 Corridor Overlay Districts shall be governed by the I-20 Corridor Design Standards.

A. All building facades visible from the public street shall consist of concrete, stone, brick or stucco.

B. Architectural accents, where utilized, shall consist of non-reflective glass, glass block, natural stone, pre-cast concrete, brick, terra cotta, stucco or wood.

C. Seventy-five percent of the width of the front facade of the building at the ground level shall consist of fenestration.

D. Roof materials shall not consist of any reflective surface.

E. All exterior painted surfaces, where visible from the public street, shall be painted in earth tones. Colors shall be non-primary colors, including darker and cooler shades of green, red such as brick, yellow including beige, and lighter shades of brown including tan.

F. Burglar bars and steel roll-down doors or curtains shall not be visible from the public street.

G. Service bays for automobile service and repair uses shall be designed so that the openings of service bays are not visible from a public street.

H. Chain link fences shall not be visible from the public right-of-way and metal or temporary awnings are not permitted within the district.

I. Dumpsters shall not be visible from the public street and shall be fenced or screened so as not to be visible from any adjoining residential district.

J. Fabric and canvas awnings and all other building materials must be of durable quality and shall be compatible with materials used in adjoining buildings.

(Ord. of 8-2-2017, § 1(3.33.12))

Sec. 3.33.13. Landscaping requirements.

The following landscaping regulations shall apply to all uses within the I-20 Corridor Overlay District, with the exception of mixed-use developments. Such developments shall require the submittal of a landscape plan for approval.

A. *Landscape strips.* Any landscape strip shown as part of final design package shall not be less than five feet in width and shall be provided along all side and rear property lines. The landscape strip in the front yard shall be a minimum of ten feet in width and shall be planted with a row of street trees of at least 3½ inches in caliper selected from the list of street trees species identified in the design standards for the I-20 Corridor Overlay District and planted not less than 75 feet on center. Continuous landscaped strips shall be constructed along public rights-of-way except at points of ingress or egress into the facility.

B. *Ground cover.* Ground cover shall also be provided in accordance with the design guidelines for the I-20 Corridor Overlay District in order to protect tree roots and to prevent erosion. Ground cover shall consist of evergreen shrubs or groundcover plant material mulched with pine bark mulch, or other similar landscaping material.

C. *New trees.* Newly planted trees shall conform to the design guidelines for the I-20 Corridor Overlay District.

D. *Tree spacing.* No tree shall be planted closer than two feet from the street or sidewalk, and no closer than five feet from a fire hydrant, sign post, streetlight standard, utility pole, or similar structure.

E. *Parking lot landscaping requirements.* All parking lots within the I-20 Corridor Overlay District shall be landscaped pursuant to the requirements of section 5.4.4.

(Ord. of 8-2-2017, § 1(3.33.13))

Sec. 3.33.14. Sidewalks, street tree planting zone, landscaping and ground cover requirements, and curb cuts.

A. *Sidewalk requirement.* There shall be a public sidewalk constructed along all public street frontages contiguous to all properties within the I-20 Corridor Overlay Districts. The sidewalk shall be located five feet from the curb and shall be ten feet in width. The five-foot zone adjacent to the curb shall be the street tree-planting zone. In blocks where there are overhead utility lines, the director of planning and development may authorize a two-foot planting zone from the curb with the five-foot tree-planting zone to be located at the sidewalk.

B. *Street tree planting.* Street trees of a caliper that is not less than three inches shall be planted no less than 30 feet between centerlines along properties within the district having street frontage. Trees of the following type shall be used:

1. Crape myrtle, standard trunk.
2. October glory red maple.
3. Sunset maple.
4. Nuttal oak (Quercus nattalli).
5. Shumard oak (Quercus shumardii).
6. Willow oak.
7. Zelkova serrata.
8. Ginkgo (Ginkgo biloba).
9. Trident maple (Acer buergeranum).
10. Allee lacebark elm (Ulmus parvifolia emer (II)).

C. *Maintenance of trees and ground cover.* All street trees and other trees and all ground cover required by this chapter or by chapter 14 of the Code shall be maintained in a healthy condition, and any trees or ground cover which die shall be replaced within the earliest possible planting season.

D. *Curb cuts.* There shall be a minimum distance of 25 feet between curb cuts. Curb cuts shall not be permitted within 100 feet of the intersection of any two public streets and shall not be more than 24 feet wide.

(Ord. of 8-2-2017, § 1(3.33.14))

Sec. 3.33.15. Underground utilities.

All utilities except for major electric transmission lines and substations are required to be placed underground except where the director of development determines that underground utilities are not feasible due to pre-existing physical conditions, such as conflicting underground structures or utilities, shallow rock, high water table, or other similar geologic or hydrologic conditions.

(Ord. of 8-2-2017, § 1(3.33.15))

Sec. 3.33.16. Streetlights and street furnishings.

Streetlights and furnishings are required for all public streets and shall conform to the design guidelines for the I-20 Corridor Area Overlay District.

(Ord. of 8-2-2017, § 1(3.33.16))

Sec. 3.33.17. Street and interparcel access.

Streets within the I-20 Corridor Area Overlay District may be either public or private streets. Private streets shall comply with the requirements of public streets found in chapter 14 and all other applicable sections of the Code. To the maximum extent possible, sidewalks and parking lots serving adjacent lots shall be interconnected to provide continuous driveway connections and pedestrian connections between adjoining lots and streets, except that this requirement shall not apply to lots zoned for single-family residential development. Where necessary, the City of Stonecrest may require access easements be provided to ensure continuous access and egress routes connecting commercial, office and multifamily lots.

(Ord. of 8-2-2017, § 1(3.33.17))

Sec. 3.33.18. Multimodal access plans required.

Each new application for a development permit within the I-20 Corridor Overlay District shall be accompanied by a multi-modal access plan prepared at a scale not greater than one inch equals 100 feet. The multi-modal access plan shall cover the full extent of the proposed development along with public rights-of-way of adjoining streets and any other property lying between the subject property and the nearest public streets on wall sides. The purpose of the multi-modal access plan is to demonstrate a unified plan of continuous access to and between all buildings in the proposed development and adjacent properties. Connections to available transportation modes, such as driveways, sidewalk, and bike paths shall be shown along adjacent streets and those entering adjoining properties. Safe and convenient pedestrian ways shall be provided from sidewalks along streets to each building entrance, including pedestrian access routes across parking lots and between adjacent buildings within the same development. Where an existing or planned public transportation station or stop is within 1,250 feet (straight-line distance) from any boundary of the subject property, the access plan shall show how pedestrians may safely travel from such station or stop to the subject property, the access plan shall show how safe, continuous and convenient bicycle access shall be provided to the subject property.

(Ord. of 8-2-2017, § 1(3.33.18))

Sec. 3.33.19. Sign regulations.

All lots in the I-20 Corridor Overlay District shall comply with all requirements of chapter 21 subject to the following additional regulations:

A. Signs shall be designed so as to be compatible with the I-20 Corridor Design Standards;

B. All ground signs shall be monument style signs with a base and framework made of brick; the design of ground signs must comply with the I-20 Overlay District Design Guidelines;

C. Each lot shall have no more than one ground sign;

D. The sign area of ground signs shall not exceed 32 square feet, unless the lot contains a shopping center, in which case ground signs are limited to 64 square feet;

E. Ground signs shall not exceed a height of six feet, unless the lot contains a shopping center, in which case ground signs shall not exceed a height of 15 feet;

F. Each separate store front may have a maximum of two wall signs, each of which shall not exceed an area of ten percent of the area of the facade of the ground floor of the building or 75 square feet, whichever is less;

G. Wall signs shall be located on the primary building facade and within 15 feet of the public right-of-way;

H. Window signs are prohibited;

I. Banners are prohibited;

J. Wall-mounted signs shall be channel cut letters applied directly to the building facade. Flashing, animated, marquee, sound emitting, fluorescent, rotating or otherwise moving signs are prohibited;

K. Sign shape and lettering shall be limited as follows:

1. Signs with more than two faces are prohibited;

2. Sign facing shall be flat in profile and shall not exceed a thickness of eight inches;

3. Sign faces shall be parallel;

4. Sign lettering shall consist of block lettering in which individual letters are proportional in size to the overall size of the sign, but in no event shall individual letters exceed 18 inches in height; and

5. Sign lettering shall be of an opaque material.

L. Any violation of this section shall be punishable by fine not exceeding $500.00 or imprisoned for a term not to exceed six months, or both.

(Ord. of 8-2-2017, § 1(3.33.19))

Sec. 3.33.20. Shared parking.

Shared parking is encouraged and may be authorized by the director of planning and development. Parking facilities within the parcel may be shared if multiple uses cooperatively establish and operate parking facilities and if these uses generate parking demands primarily when the remaining uses are not in operation, so that the off-street parking requirements for each use are met or exceeded during said use's operational hours. Applicants may make an application to the director of planning and development for authorization for a special exception for shared parking.

(Ord. of 8-2-2017, § 1(3.33.20))

Sec. 3.33.21. Design guidelines.

The planning director or designee is authorized to create, administer, and amend design standards for the I-20 Corridor Compatible Use Overlay District. These standards shall provide acceptable architectural design controls, landscaping, detail drawings, signage, fencing, lighting, street and site furniture and grating. These standards shall be used to promote proper design criteria for the overlay district and shall guide the planning director in deciding whether a proposed design complies with the requirements of this overlay district. The design standards are hereby made a part of this division and shall be amended from time to time.

(Ord. of 8-2-2017, § 1(3.33.21))

Sec. 3.33.22. Plans required; certificates of compliance.

A. *Plans required.* Prior to the issuance of any land disturbance permit, building permit, or sign permit, the applicant shall submit a conceptual design package and final design package to the director of planning and development. The final design package must include full architectural and landscape architectural plans and specifications. The submitted plans must include a site plan, architectural elevations and sections; renderings depicting the building design including elevations and architectural details of proposed buildings, exterior materials and colors, and plans and elevations of all landscape, landscape and signs, all of which shall demonstrate that the proposed design is in compliance with all the requirements of this I-20 Corridor Overlay District and the underlying zoning classification.

B. *Fees.* The conceptual design package shall be accompanied by an application and payment of a fee in an amount determined by the city council.

(Ord. of 8-2-2017, § 1(3.33.22))

Sec. 3.33.23. Conceptual plan package review.

A. The conceptual plan package shall be composed of the following:

   1. A narrative addressing the proposed development explaining how it meets the purpose, intent, and standards of this chapter. The narrative shall include a tabulation of the approximate number of acres in each land use, the approximate number of dwelling units by type, the approximate gross residential density, the approximate commercial density, the approximate public space acreage, the anticipated number, type and size of recreational facilities and other public amenities; the legal mechanism for protecting and maintaining public space, as required in section 3.5.5.A.1;

   2. A site location map showing the proposed development, abutting property, the relationship of the proposed development to surrounding and existing development, and transitional buffer zones, if required; and

   3. A multi-modal access plan meeting the requirements of section 3.33.18.

B. The plan to be submitted in the conceptual plan package shall contain the following information:

   1. Ten copies of a site plan drawn to a designated scale of not less than one inch equals 100 feet, certified by a professional engineer or land surveyor licensed by the state, presented on a sheet having a maximum size of 24 inches by 36 inches, and one 8 ½-inch reduction of the plan. If presented on more than one sheet, match lines shall clearly indicate where the several sheets join. Such plan shall contain the following information:

a. Boundaries of the entire property proposed to be included in the development, with bearings and distances of the perimeter property lines.

b. Scale and north arrow, with north, to the extent feasible, oriented to the top of the plat and on all supporting graphics.

c. Location and approximate dimensions in length and width, for landscape strips and required transitional buffers, if any.

d. Existing topography with a maximum contour interval of five feet and a statement indicating whether it is an air survey or field run.

e. Approximate delineation of any floodplain designated by the Federal Emergency Management Agency, United States Geological Survey, or the City of Stonecrest.

f. The delineation of any jurisdictional wetlands, as defined by section 404 of the Federal Clean Water Act.

g. Approximate delineation of any significant historic or archaeological feature, grave, object or structure marking a place of burial if known, and a statement indicating how the proposed development will impact it.

h. A delineation of all existing structures and whether they will be retained or demolished.

i. General location, in conceptual form, of proposed uses, lots, buildings, building types and building entrances.

j. Height and setback of all buildings and structures.

k. Approximate areas and development density for each type of proposed use.

l. Location, size and number of all on-street and off-street parking spaces, including a shared parking analysis, if shared parking is proposed.

m. Identification of site access points and layout, width of right-of-way and paved sections of all internal streets.

n. Conceptual plans for drainage with approximate location and estimated size of all proposed stormwater management facilities and a statement as to the type of facility proposed.

o. Development density and lot sizes for each type of use.

p. Areas to be held in joint ownership, common ownership or control.

q. Location of proposed sidewalks and bicycle facilities trails recreation areas, parks, and other public or community uses, facilities, or structures on the site.

r. Conceptual layout of utilities and location of all existing or proposed utility easements having a width of 25 feet or more.

s. Standard details of signs, sidewalks, streetlights, driveways, medians, curbs and gutters, landscaped areas, fencing, grating, street furniture, bicycle lanes, streets, alleys, and other public improvements demonstrating compliance with the design guidelines for the I-20 Corridor Area Overlay District.

t. Conceptual layout of building designs including elevations showing architectural details of proposed buildings, exterior materials, all of which shall demonstrate that the proposed design is in compliance with all of the requirements of the overlay district regulations.

u. Seal and signature of the professional preparing the site plan.

(Ord. of 8-2-2017, § 1(3.33.23))

Sec. 3.33.24. Final design package review and approval process.

A. *Review, approval of final design package.* Upon receiving comments on the conceptual design package, the applicant will submit the final design package for review and approval. The final design package must include full architectural and landscape architectural plans and specifications. The submitted plans must include a site plan, architectural elevations and sections; renderings depicting the building design including elevations and architectural details of proposed buildings, exterior materials and colors, and plans and elevations of all hardscape, landscape and signage, all of which shall demonstrate that the proposed design is in compliance with all requirements of this I-20 Corridor Overlay District and the underlying zoning classification. The final design package must be signed and sealed by a professional engineer/architect. The final design package must contain all plans, elevations, sections and specifications necessary for obtaining development and building permits. The applicant may submit the final design package simultaneously with the submission for permitting.

B. *Review.* The director of planning shall review each application for compliance with all requirements of the I-20 Corridor Overlay District and the underlying zoning classification. Where the director determines that said plans comply with the requirements of the I-20 Corridor Overlay District, a certificate of compliance shall be issued in the form of the director or the director's designee signing the plans and drawings after which the applicant shall then apply for land disturbance, building or signs permits. Where the director determines that said plans do not comply with the requirements of this chapter, then the director shall notify the applicant in writing stating the manner in which said applicant fails to comply with such requirements. All applications shall be considered and decided by the director of planning within 30 days of receipt of a complete application. Any appeal of the director of planning's decision in this regard shall be to the zoning board of appeals pursuant to section 7.5.2.

(Ord. of 8-2-2017, § 1(3.33.24))

Sec. 3.33.25. Final approval of plans.

Prior to issuance of any development or building permit, the conceptual design package and final design package shall be submitted to and approved by the planning and development director, consistent with the I-20 Corridor Overlay District requirements.

By enacting the I-20 overlay, the City Council authorizes the planning and development department director to approve the proposed development that provides for unique site features and innovative design in concert with the design guidelines and all related requirements of this division.

(Ord. of 8-2-2017, § 1(3.33.25))

ARTICLE 4. USE REGULATIONS

DIVISION 1. OVERVIEW OF USE CATEGORIES AND USE TABLE

Sec. 4.1.1. Overview.

A. *General Overview.* The regulations contained within this article 4 of this chapter shall apply to all zoning districts within City of Stonecrest except as otherwise specified herein. Dimensions, site location and architectural requirements shall be indicated on required site development plans.

B. *General Findings and Purpose.* Certain land uses require the imposition of additional regulations to mitigate a range of negative impacts on the public health, safety, welfare as well as environmental, aesthetic, and infrastructure impacts.

C. *Findings and Purpose for Certain Land Uses.* National studies show that a concentration of certain land uses, including alcohol outlets, automobile gas stations, check cashing establishments, convenience stores, drive-through restaurants, and pawn shops, negatively impact the public health, safety, welfare, property values, economic development and social vitality of communities and neighborhoods. Local governments across the country recognize the negative impacts of such uses and impose additional regulations and distance requirements to mitigate such impacts, such as indicated in the studies presented to DeKalb County, including the report The Relationship Between SLUP6 Businesses and Negative Outcomes in DeKalb County, by Dean Dabney, Ph.D., presented on May 9, 2017. Said study indicates these land uses in DeKalb County are associated with increased crime, automobile accidents, lower property values, and other negative impacts to the public health and welfare.

(Ord. of 8-2-2017, § 1(4.1.1))

Sec. 4.1.2. Interpretation of unlisted uses.

Where a particular use is not specifically listed in Table 4.1, Use Table, the director of planning shall have the authority to permit the use if the use is similar to uses permitted by this article. The director of planning shall give due consideration to the purpose and intent statements contained in this zoning chapter concerning the base zoning districts involved, the character of the uses specifically identified and the character of the uses in question.

(Ord. of 8-2-2017, § 1(4.1.2))

Sec. 4.1.3. Use table.

Table 4.1 indicates the permitted uses within the base zoning districts. Even though a use is listed as an allowable use within a particular base zoning district, additional use restrictions may apply based on the applicable overlay zoning district requirements specified in article 3 of this chapter, overlay districts.

A. The uses listed in Table 4.1 shall be permitted only within the zoning districts identified, and no use shall be established and no structure associated with such use shall be erected, structurally altered or enlarged unless the use is permitted as:

1. A permitted use (P);

2. A special use (SP) subject to the special land use permit application procedures specified in article 7 of this chapter;

3. An administratively approved use (SA) subject to the special administrative permit procedures specified in article 7 of this chapter;

4. An accessory use (PA) as regulated by this article 4 of this chapter. Table 4.1 does not list all accessory uses but clarifies uses acceptable as accessory, though not typically considered principal uses for the zoning classification.

5. Uses lawfully established prior to the effective date of this zoning ordinance.

B. Any use not listed in Table 4.1, below, or interpreted to be allowed by the director of planning pursuant to section 4.1.2 is prohibited. Any applicant denied a permit to allow a use of property in a zoning district other than as provided in this section may file an appeal before the zoning board of appeals as provided in article 7 of this chapter.

C. If there is a conflict between Table 4.1 and the text of this chapter, the text shall prevail.

D. Prohibited Uses. The following uses are considered contrary to the vision and intent of the City's Comprehensive Plan, and would be detrimental to the city's continuing effort to adhere to that vision, and are prohibited city wide.

1. Distillation of bones or glue manufacture
2. Dry Cleaning Plant
3. Dye Works
4. Explosive Manufacture or storage
5. Fat rendering or fertilizer manufacture
6. Fuel Manufacture
7. Incineration of garbage or refuse
8. Landfills
9. Paper or Pulp Manufacture
10. Petroleum or inflammable liquids production/refining
11. Radioactive materials storage and processing
12. Rubber or plastics manufacture
13. Disposal or storage of hazardous/toxic solid waste, including the application of thermal treatment technology
14. Smelting copper, iron, zinc or ore
15. Sugar refineries
16. Tire retreading or recapping

.

Table 4.1. Use Table

	KEY: P - Permitted use Pa - Permitted as an accessory use										SA - Special administrative permit from Community Development Director SP - Special land use permit (SLUP)														
Use	**RE**	**RLG**	**R-100**	**R-85**	**R-75**	**R-60**	**RSM**	**MR-1**	**MR-2**	**HR-1,2,3**	**MHP**	**RNC**	**OI**	**OIT**	**NS**	**C-1**	**C-2**	**OD**	**M**	**M-2**	**MU-1**	**MU-2**	**MU-3**	**MU-4,5**	**See Section 4.2**
AGRICULTURAL ACTIVITIES																									
Agriculture and Forestry																									
Sawmill, Temporary or portable	P																		P	P					✓
Urban, community garden, up to 5 ac.	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	✓
Urban, community garden, over 5 ac.	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	
Animal Oriented Agriculture																									
Dairy	P																		P	P					✓
Keeping of livestock	P	P	P	P	P							P							P						✓
Keeping of poultry/pigeons	P	P	P	P	P							P							P						✓
Livestock sales pavilion	P																			P					✓
Riding academies or stables	P	P	P	P	P																				✓
RESIDENTIAL																									
Dwellings																									
Dwelling, cottage home						P	P	P	P	P		P													✓
Dwelling, mobile home											P														✓
Dwelling, multifamily								P	P	P			P								P	P	P	P	
Dwelling, townhouse							P	P	P	P		P		P							P	P	P	P	✓
Dwelling, urban single-family							P	P	P	P		P		P							P	P	P	P	✓
Dwelling, apartment										P			SP										P	P	
Dwelling, single-family (attached)							P	P	P	P				P							P	P	P	P	
Dwelling, single-family (detached)	P	P	P	P	P	P	P	P	P	P	P	P									P	P	P		
Dwelling, three-family							P	P	P	P		P									P	P	P	P	
Dwelling, two-family							P	P	P	P		P									P	P	P	P	
Dwelling, single-family, accessory (guesthouse, in-law suite)	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa												Pa	Pa	Pa	Pa	✓
Home occupation, no customer contact	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA									SA	SA	SA	SA	✓
Home occupation, with customer contact	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP									SP	SP	SP	SP	✓
Live/work unit								P	P	P			P	P		P	P				P	P	P	P	✓
Mobile home park											P														
Accessory uses or structures	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa				Pa	Pa	Pa	Pa	✓
Housing and Lodging																									
Bed and breakfast establishment	SP	SP	SP				SP	SP	SP	SP			P	P		P	P					P	P	P	✓
Boarding/Rooming house								SP	P	P															
Use	**RE**	**RLG**	**R-100**	**R-85**	**R-75**	**R-60**	**RSM**	**MR-1**	**MR-2**	**HR-1,2,3**	**MHP**	**RNC**	**OI**	**OIT**	**NS**	**C-1**	**C-2**	**OD**	**M**	**M-2**	**MU-1**	**MU-2**	**MU-3**	**MU-4,5**	**See Section 4.2**

Child care home,-5 or less	SP	SP	SP	SP	SP	SP	SP					SP	P	P	P	P	P				SP	SP	SP	SP	✓
Child care facility, 6 or more													P	~~SP~~	SP	P	P				SP	SP	SP	SP	✓
Child day care center													P	P	P	P	P				P	P	P	P	
Convents or monasteries	SP	SP	SP	SP	SP	SP	SP	SP	SP				P	P								P	P	P	✓
Dormitory													Pa	Pa		Pa	Pa	Pa			Pa	Pa	Pa	Pa	
Hotel/motel, Extended stay hotel/motel													SP			SP	SP					SP	SP	SP	✓
Fraternity house or sorority house								SP	P	P			SP									P	P		
Hotel/Motel													P			P	P	P				P	P	P	
Nursing care facility or hospice								P	P				P	P		P	P				P	P	P	P	
Senior housing	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP							SP	SP	SP	SP	✓
Party House	SA	SA																							
Personal care home, 7 or more							SP	SP	SP	SP			P	P	SP	P	P				SP	SP	SP	SP	✓
Personal care home, 6 or less	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP		SP	P	P	SP	P	P								✓
Shelter for homeless persons, 7—20									SP	SP			SP	SP		P	P								✓
Shelter for homeless persons for no more than six (6) persons								SP	SP	SP			SP	SP		SP									✓
Short Term Vacation Rental	SP	SP	SP					SP													SP	SP			
Transitional housing facilities, 7—20								SP	SP	SP			SP	SP		P	P								✓
INSTITUTIONAL/PUBLIC																									
Community Facilities																									
Cemetery, columbarium, mausoleum	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP			P	P				P							✓
Club, order or lodge, fraternal, non-commercial													P	P		P	P	P	P		P	P	P	P	
Coliseum or stadium/not associated with church or school																P	P	P					SP	P	✓
Cultural facilities								SP	SP	SP			SP	SP		SP	SP	SP	SP		SP	SP	SP	SP	
Funeral home, mortuary													P	P		P	P				P	P	P	P	
Golf course or clubhouse, public or private	P	P	P	P	P	P	P				P		P	P			P	P	P						✓
Government facilities	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Hospital or accessory ambulance service													P	P									P	P	
Library or museum								P	P	P			P	P	P	P	P	P			P	P	P	P	
Neighborhood or subdivision clubhouse or amenities	P	P	P	P	P	P	P	P	P	P	P	P	P	P							P	P	P	P	✓
Recreation club	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP		SP						P						SP	✓
Places of worship	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP		SP	P	P	P	P	P	P	~~P~~	~~P~~	P	P	P	P	✓
Recreation, outdoor																	P	P	P	P					✓
Swimming pools, commercial	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	P	P		P	P	P	~~P~~			Pa	Pa	Pa	✓
Tennis courts, swimming pools, play or recreation areas, community,	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	P	P		P	P	P	P			Pa	Pa	Pa	✓
Use	**RE**	**RLG**	**R-100**	**R-85**	**R-75**	**R-60**	**RSM**	**MR-1**	**MR-2**	**HR-1,2,3**	**MHP**	**RNC**	**OI**	**OIT**	**NS**	**C-1**	**C-2**	**OD**	**M**	**M-2**	**MU-1**	**MU-2**	**MU-3**	**MU-4,5**	**See Section 4.2**
Education																									

Colleges, universities, research and training facilities													P	P		P	P	P	P		P	P	P	P	
Educational use, private	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa		Pa						P			Pa	Pa			✓
School Private kindergarten, elementary, middle or high	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	P	P		P	P	P				SP	SP	SP	✓
School, Public kindergarten, elementary, middle or high	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P	P			P	P	P	P	
School, Specialized													P	P		P	P	P	SP	SP	P	P	P	P	✓
School, Vocational								SP	SP	SP			P	P	P	P	P	P	SP	SP	P	P	P	P	✓
COMMERCIAL																									
Automobile, boat and trailer sales and service																									
Automobile brokerage													P	P		P	P		P	P					✓
Automobile or truck rental or leasing facilities													P	P		P	P		P			P	P	P	✓
Automobile recovery and storage																			P	P					✓
Automobile sales or truck sales																P	P		P	P					✓
Automobile service stations															SP	SP	SP		P	P					✓
Automobile upholstery shop																	P		P	P					
Automobile wash/wax service																P	P		P						✓
- Recreational vehicle, boat and trailer sales and service																P	P		P						✓
Automobile repair, major																	P		P	P					✓
Automobile repair, minor																P	P		P	P					✓
Service area, outdoor																	Pa		Pa	Pa					✓
Office																									
Building or construction office,								Pa	Pa	Pa			P	P		P	P	P	P	P					✓
Contractor office, heavy construction																	P	P	P	P					✓
Contractor office, landscape																	P	P	P	P					✓
Office, Professional								Pa	Pa	Pa			P	P	P	P	P	P			P	P	P	P	
Office, Medical								Pa	Pa	Pa			P	P	P	P	P	P			P	P	P	P	
Recreation and Entertainment																									
Sexually Oriented Business																				P					✓
Drive-in theater																	P		P	P					✓

Use	RE	RLG	R-100	R-85	R-75	R-60	RSM	MR-1	MR-2	HR-1,2,3	MHP	RNC	OI	OIT	NS	C-1	C-2	OD	M	M-2	MU-1	MU-2	MU-3	MU-4,5	See Section 4.2
Fairground or amusement park																	P		P	~~P~~					✓
Recreation, Indoor recreation															P	P	P	P	~~P~~	~~P~~	P	P	P	P	
Nightclub or Late night establishments													Pa		SP	SP	SP	SP	~~SP~~	~~SP~~	SP	SP	SP	SP	✓
Recreation, Outdoor	SP																P	P	SP						✓
Special events facility	SP												P	P		P	P	P	~~P~~		P	P	P	P	
Theaters with live performance, assembly or concert halls, or similar entertainment within enclosed building													P	P		P	P						P	P	
Retail																									
Alcohol outlet-package store, primary																SP	SP	P	P		SP	SP	SP	SP	✓
Alcohol outlet- beer and/or wine store, beer growler, primary															SP	SP	SP	P	P		SP	SP	SP	SP	✓
Alcohol outlet-beer and wine, accessory to retail less than 12,000 sf (see also 4.1.3 (F))															SP	SP	SP	P	P		SP	SP	SP	SP	✓
Art gallery								Pa	Pa	Pa					P	P	P	P			P	P	P	P	
Commercial greenhouse or plant nursery															P	P	P		P		P				✓
Drive-through facilities													**P**		**P**	**P**	**P**	~~**P**~~	~~**P**~~		SP	SP	SP	SP	✓
Farmer's market, permanent													P	P	P	P	P	~~P~~	~~P~~	P	P	P	P	P	✓
Farmer's market, temporary/ seasonal	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	✓

Use	RE	RLG	R-100	R-85	R-75	R-60	RSM	MR-1	MR-2	HR-1,2,3	MHP	RNC	OI	OIT	NS	C-1	C-2	OD	M	M-2	MU-1	MU-2	MU-3	MU-4,5	See Section 4.2
Fuel dealers, manufacturers or wholesalers																	P		P	P					
Fuel pumps													SP	SP	SP	SP	SP	SP	SP	SP					✓
Fuel pumps, accessory to large scale retail w/in 1000 feet of interstate highway interchange measured from RW to property line																Pa	Pa	Pa	Pa						✓
Liquor store (see alcohol outlet)													Pa		SP	SP	SP	P	P						✓
Pawn shop, title loan																	P	P							✓
Retail, 5,000 sf or less (with the exception of Small Box Discount Stores)								Pa	Pa	Pa			Pa	Pa	P	P	P	P	P	P	P	P	P	P	
Retail, over 5,000 sf (with the exception of Small Box Discount Stores, see also shopping center)															P	P	P	P			P	P	P	P	
Retail warehouses/wholesales providing sales of merchandise with no outdoor storage																P	P	P	P		P	P	P	P	
Shopping center															P	P	P	P			P	P	P	P	
Trade shops													P	P		P	P	P	P	P					

Use	RE	RLG	R-100	R-85	R-75	R-60	RSM	MR-1	MR-2	HR-1,2,3	MHP	RNC	OI	OIT	NS	C-1	C-2	OD	M	M-2	MU-1	MU-2	MU-3	MU-4,5	See Section 4.2
Temporary Commercial Uses																									
Temporary outdoor sales, seasonal	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	✓
Temporary produce stand	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	✓
Temporary outdoor retail sales	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	✓
Temporary outdoor events	SA	SA	SA	SA	SA	SA	SA						SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	✓

Temporary trailer, as home sales office or construction trailer	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	✓
Eating and Drinking establishments																								
Brewery, Craft (micro-brewery)															P	P			P		SU	SU	SU	SU	✓
Brewpub/Beer Growler															P	P	P		P		P	P	P	P	
Catering establishments													P	P		P	P		P		P	P	P	P	
Distillery, Craft (micro-distillery)															P	P			P		SU	SU	SU	SU	✓
Restaurants (acc. to hotel/motel)													P			P	P	P				P	P	P	
Restaurants (non-drive-thru)								Pa	Pa	Pa		Pa	Pa	Pa	P	P	P		P		P	P	P	P	
Restaurants with a drive-thru configuration													P	P		SP	SP		SP						✓
Transportation and Storage																									
Bus or rail stations or terminals for passengers																SP	SP		SP	SP	SP	SP	SP	SP	
Heliport													SP			SP	SP	SP	P	P			SP	SP	✓
Parking, commercial lot													Pa			P	P	P	P	P	P	P	P	P	✓
Parking, commercial garage													Pa			P	P	P	P		P	P	P	P	
Taxi, ambulance or limousine service, dispatching or storage.																	P	P	P	P					✓
Taxi stand													P	P	P	P	P	P	P	P	P	P	P	P	
Services																									
Adult day care center—7 or more								P	P	P	P		P	P	P	P	P	P	P			P	P	P	✓
Adult day care facility—Up to 6	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP		SP			P	P	P	P			P	P	P	P	✓
Animal hospitals, veterinary clinic															P	P	P	P	P	P	P	P			✓
Animal shelter/rescue center	SP																P	P	P	P					✓
Banks, credit unions or other similar financial institutions								Pa	Pa	Pa			P	P	P	P	P		P		P	P	P	P	
Barber shop/beauty salon or similar establishments								Pa	Pa	Pa			Pa	P	P	P	P	P	P		P	P	P	P	
Check cashing establishment, primary																	P								✓
Check cashing establishment, accessory																P	P				P	P	P	P	✓
Child day care center (Kindergarten)—7 or more								P	P	P	P		P	P	P	P	P	P	P		P	P	P	P	✓

Use	RE	RLG	R-100	R-85	R-75	R-60	RSM	MR-1	MR-2	HR-1,2,3	MHP	RNC	OI	OIT	NS	C-1	C-2	OD	M	M-2	MU-1	MU-2	MU-3	MU-4,5	See Section 4.2
Child day care facility—Up to 6	SP	SP	SP	SP	SP	SP	SP	P	P	P		SP	P	P	P	P	P	P				P	P	P	✓
Coin laundry								Pa	Pa	Pa		Pa			P	P	P					P	P	P	
Dog day care								SP	SP	SP						P	P		P	P	P	SP	SP	SP	✓
Dog grooming								Pa	Pa	Pa						P	P		P	P	P	P	P	P	✓
Dry cleaning agencies, pressing establishments, or laundry pick-up stations								Pa	Pa	Pa			P	P	P	P	P		P	P	P	P	P	P	
Fitness center	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa		P	P	P	P	P		P	P	P	P	P	P	
Kennel, breeding	SP														Pa	Pa	P		P	P					✓
Kennel, commercial	SP															P	P		P	P					
Kennel, noncommercial	P	SP	SP	SP	SP																				
Landscape business																P	P		P	P					
Mini-warehouse														SP		P	P	P	P	P					✓
Outdoor storage, commercial																	P		P	P					✓
Personal services establishment								Pa	Pa	P		Pa	Pa	Pa	P	P	P				P	P	P	P	
Printing or Publishing establishments													P	P			P		P	P					
Services, Medical and Health																									
Ambulance service or emergency medical services, private																P	P		P						
Clinic, Health services													P	P	P	P	P	P	P		P	P	P	P	
Kidney dialysis center													P	P		P	P		P		P	P	P	P	
Medical or dental laboratories													P	P		P	P		P	P			SA	SA	
Service area, outdoor																	Pa		Pa	P					✓
INDUSTRIAL																									
Alternative energy production																		SP	P	P					
Brewery, Large Scale																				P					

Use	RE	RLG	R-100	R-85	R-75	R-60	RSM	MR-1	MR-2	HR-1,2,3	MHP	RNC	OI	OIT	NS	C-1	C-2	OD	M	M-2	MU-1	MU-2	MU-3	MU-4,5	See Section 4.2
Building materials or lumber supply establishment																	P		P						

Contractor, general (See also Building or Construction Office)																	P		P	P		P	P		✓
Contractor, heavy construction, outside storage																	P		P	P					✓
Contractor, special trade																	P		P	P					
Crematoriums													SP			SP	SP		P	P					✓
Distillery, Large-scale																				P					
Fabricated metal manufacture, without EPD required																			P	P					
Fabricated metal manufacture, with EPD required																				SP					
General aviation airport																			SP	SP					✓
Heavy equipment repair service or trade																	P		P	P					
Incidental retail sales of goods produced or processed on the premises																			Pa	Pa					
Industrial, heavy																				P					
Industrial, light																			P	P					
Intermodal freight terminal, bus or rail freight or passenger terminal, or truck terminal																				P					
Manufacturing, light																			P	P					
Manufacturing, heavy																				P					✓

Use	RE	RLG	R-100	R-85	R-75	R-60	RSM	MR-1	MR-2	HR-1,2,3	MHP	RNC	OI	OIT	NS	C-1	C-2	OD	M	M-2	MU-1	MU-2	MU-3	MU-4,5	See Section 4.2
Manufacturing operations not housed within a building																				P					✓
Mines or mining operations, quarries, gravel pits or soil pits																				P					✓
Mines or mining operations, Asphalt Plant																			SP	SP					
Outdoor storage, industrial																			P	P					✓
Railroad car classification yards or team truck yards																			P	P					✓
Recovered materials facility wholly within a building																			P	P					✓
Recovered materials processing wholly within a building																			P	P					✓
Recycling collection													Pa		Pa	Pa	Pa		P	P					
Recycling plant																			P	P					
Research and testing facilities																			P	P					
Salvage yard (Junkyard)																				P					✓
Storage yard, except vehicle																				P					✓
Storage yard for vehicles																				P					✓
Towing or wreckage service																			P	P					
Transportation equipment storage or maintenance (vehicle)																			P	P					✓
Truck stop																			P	P					
Vehicle storage yard																			P	P					

Use	RE	RLG	R-100	R-85	R-75	R-60	RSM	MR-1	MR-2	HR-1,2,3	MHP	RNC	OI	OIT	NS	C-1	C-2	OD	M	M-2	MU-1	MU-2	MU-3	MU-4,5	See Section 4.2
Warehousing or Storage																		P	P	P					
SOLAR ENERGY SYSTEMS																									
Integrated SES	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	✓
Rooftop SES	Pa	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	Pa	SA	SA	SA	SA	SA	SA	Pa	Pa	SA	SA	SA	SA	✓
Ground Mounted SES, Small Scale	Pa	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	Pa	Pa	Pa	Pa	Pa	Pa	P	P	SP	SP	SP	SP	✓
Ground Mounted SES, Intermediate Scale	SP	SP	SP									SP							P	P					✓
Ground Mounted SES, Large Scale	SP	SP										SP							SP	SP					✓
COMMUNICATION—UTILITY																									
Amateur radio service or antenna	SP	SP	SP	SP	SP	SP	SP				SP														✓
Essential Services	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Radio or television broadcasting studio													P				P		P	P	P	P	P	P	
Radio or television broadcasting transmission facility													Pa				P		P	P					
Satellite television antennae	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P	P	P	P	P	✓
WIRELESS TELECOMMUNICATION (cell tower)																									
New support structure from 51 feet to 150 feet residential districts	SP	SP	SP	SP	SP	SP	SP																		✓
New support structure from 51 feet up to 199 feet in non-residential districts													SA	SP	SP	SA	SA	SA	SA	SA					✓
Carrier on Wheels (non-emergency or event, no more than 120 days)	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	✓
Carrier on Wheels (declared emergency)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	✓
Attached wireless telecommunication facility, used for non-residential purposes (prohibited if used as residential)	SA	SA	SA	SA	SA	SA	SA																		
Attached wireless telecommunication facility								P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	✓
Small cell installations (new support structures or collocation) on private property or ROW	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	✓

(Ord. of 8-2-2017, § 1(4.1.3); Ord. No. 2018-09-01, § 00, 9-17-2018; Ord. No. 2019-06-01, § (Exh. A), 6-10-2019) [TMOD-19-004, TMOD-19-005, TMOD-19-006, TMOD-21-001, TMDO-21-002, TMOD-21-003, TMOD-21-010, TMOD-21-011, TMOD-22-001]]

DIVISION 2. SUPPLEMENTAL USE REGULATIONS

Sec. 4.2.1. Accessory buildings, structures, and uses.

Accessory buildings, structures and uses determined by the director to be normally incidental to one or more permitted principal uses are hereby permitted as follows:

A. Accessory structures allowed in all residential districts may include, but are not limited to, garages, storage sheds, and personal recreational facilities such as swimming pools and tennis courts.

B. Accessory structures must be constructed in conjunction with or after the principal building is constructed.

(Ord. of 8-2-2017, § 1(4.2.1))

Sec. 4.2.2. Accessory buildings, structures and uses; location, yard and building restrictions.

The following provisions apply to accessory buildings, structures, and uses of land that are incidental to authorized and permitted uses:

A. All accessory buildings, accessory structures, and accessory uses of land, including off-street parking, shall be located on the same lot as the principal buildings to which they are accessory.

B. All accessory structures in which effluent is produced shall be connected to water and sewer if the primary structure is connected to water and sewer.

C. Yard and setbacks.

1. All accessory buildings or structures shall be located in the rear yard of the lot, with the exception of ATM bank machines which are also allowed in the front or Side yard:

2. Accessory structures must not encroach in the minimum yard setbacks for the district in which they are located.

3. Accessory buildings or structures shall meet the minimum side yard setback for the district or ten feet, whichever is less, and shall not be located closer than ten feet to a rear lot line in any district.

4. Basketball goals attached to the principal residential structure or erected adjacent to and abutting the driveway of the principal residential structure shall be allowed in the front yard but not within the right-of-way of a public street. No basketball goal shall be erected in such a manner that the play area for the basketball goal is located within any portion of a public right-of-way.

5. Additional supplemental regulations in this article regarding minimum yards and setbacks for specific accessory buildings, structures, or uses of land may also apply.

D. Corner lot, rear yards. Where the rear yard of a corner lot adjoins the side yard of a lot in a residential district, no accessory building or structure shall be located closer than 15 feet to the rear property line and no closer to the side street right-of-way line than the principal building.

E. Materials. Accessory structures that are buildings or sheds shall be constructed out of a material similar to the principal structure.

F. No accessory building or structure in a nonresidential district shall be used by anyone other than employees of the owner, lessee or tenant of the premises, unless otherwise allowed by provisions of this chapter.

G. Where an accessory building or structure is attached to the principal building by a breezeway, passageway or similar means, the accessory building or structure shall comply with the yard setback requirements of the principal building to which it is accessory.

H. Setbacks for swimming pools, as accessory structures in a residential district, shall be measured from the edge of the decking to the applicable property line. No part of the decking for an accessory swimming pool shall be within five feet of a side or rear property line.

I. Except as expressly provided elsewhere in this chapter, an accessory structure shall be limited to the lesser of 24 feet in height or the height of the principal structure, whichever is less.

J. The floor area of an accessory buildings that is accessory to a single-family, two-family, or three-family residential structure shall not exceed the maximum floor areas set forth in Table 4.2, below.

Table 4.2. Maximum Accessory Building Floor Area - Select Residential Structures

Maximum Accessory Building Floor Area	
Property Size	Maximum Floor Area
0 to 0.999 acres	900 square feet
1 to 4.999 acres	1,200 square feet
5 to 9.999 acres	2,000 square feet
10 or more acres	No size limit

(Ord. of 8-2-2017, § 1(4.2.2))

Sec. 4.2.3. Accessory dwelling unit, guesthouse, in-law suite.

A. On parcels zoned for residential single-family dwellings as a principal use, an accessory dwelling unit may be allowed as one of the following:

1. Attached (addition to existing building);
2. Detached; or
3. Within existing house (renovations to basements, wings or attics converted into separate living unit).

B. The heated floor area of a dwelling unit shall not include the square footage of the garage.

C. Attached and detached accessory dwelling units are permitted by right, subject to the following:

1. The minimum lot size shall be 10,000 square feet.
2. The accessory dwelling unit shall conform to applicable standards of the state, city and city building codes for residential units as principal uses.
3. The property owner, who shall include titleholders and contract purchasers, must occupy either the principal dwelling unit or the accessory dwelling unit as their residence, and possess a homestead exemption.
4. The appearance of the accessory dwelling unit shall be similar to that of the principal residence.
5. Only one accessory dwelling unit of any type shall be permitted on a lot.

6. Prior to issuance of a building permit for an accessory dwelling unit, an applicant must provide evidence to the director of planning showing that existing or proposed septic tank facilities, as applicable, are adequate to serve both the principal dwelling and the accessory dwelling unit.
7. Any detached accessory dwelling unit shall be located in the Rear yard:
8. A second kitchen facility may be constructed and used within a single-family residence.
9. Paved off-street parking shall be provided for one additional vehicle.
10. Accessory dwelling units shall not exceed 900 square feet of heated floor area and shall not exceed 24 feet in height.
11. The main entrance shall not face the closest property line. Windows, doors, balconies, porches and decks shall be sited to ensure the privacy of neighbors.
12. For parcels located in a designated historic district and individually designated historic structures, the placement of an accessory dwelling unit and its architectural design shall require a certificate of appropriateness from the historic preservation commission.

(Ord. of 8-2-2017, § 1(4.2.3))

Sec. 4.2.4. Adult daycare center (seven or more clients).

Each adult daycare center shall be subject to the following requirements:

A. All outdoor recreation areas shall be enclosed by a fence or wall not less than four feet in height.

B. Each adult daycare center shall provide off-street parking spaces as required by the applicable zoning district and an adequate turnaround on the site.

(Ord. of 8-2-2017, § 1(4.2.4))

Sec. 4.2.5. Adult daycare facility (up to six clients).

Each adult daycare facility shall be subject to the following requirements:

A. All outdoor recreation areas shall be enclosed by a fence or wall not less than four feet in height.

B. Each adult daycare facility shall provide off-street parking spaces as required by the applicable zoning district.

C. No adult daycare facility shall be located within 1,000 feet of another adult daycare facility.

D. No adult daycare facility may be established and operated until a permit to do so has been obtained in accordance with the procedures set forth below.

1. Permit application. Persons seeking to operate an adult daycare facility in the city must file a permit application with the planning department. Each application shall also be accompanied by the applicant's affidavit certifying the maximum number of adults that will be served simultaneously and that the proposed adult daycare facility will meet and be operated in compliance with all applicable state laws and regulations and with all ordinances and regulations of the city. The planning department may require clarification or additional information from the applicant that is deemed necessary by the city to determine whether the proposed service will meet applicable laws, ordinances and regulations.
2. Notwithstanding the above provisions, if a proposed adult daycare facility is subject to the requirement that the applicant obtain a certificate of registration from the state department of

human resources, and even though the application may have been approved under the provisions of this section, a permit for the operation of such facility shall not be issued until proof has been submitted by the applicant that the certificate of registration has first been obtained from the state.

(Ord. of 8-2-2017, § 1(4.2.5))

Sec. 4.2.6. Sexually oriented businesses.

A. *Purpose.* It is a purpose of this chapter to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the city. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material.

B. *Findings and rationale.* Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the city council, and on findings, interpretations, and narrowing constructions incorporated in the cases of City of Littleton v. Z.J. Gifts D-4, L.L.C., 541 U.S. 774 (2004); City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425 (2002); City of Erie v. Pap's A.M., 529 U.S. 277 (2000); City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986); Young v. American Mini Theatres, 427 U.S. 50 (1976); Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991); California v. LaRue, 409 U.S. 109 (1972); N.Y. State Liquor Authority v. Bellanca, 452 U.S. 714 (1981); Sewell v. Georgia, 435 U.S. 982 (1978); FW/PBS, Inc. v. City of Dallas, 493 U.S. 215 (1990); City of Dallas v. Stanglin, 490 U.S. 19 (1989); and Flanigan's Enters., Inc. v. Fulton County, 596 F.3d 1265 (11th Cir. 2010); Peek-a-Boo Lounge v. Manatee County, 630 F.3d 1346 (11th Cir. 2011); Daytona Grand, Inc. v. City of Daytona Beach, 490 F.3d 860 (11th Cir. 2007); Jacksonville Property Rights Ass'n, Inc. v. City of Jacksonville, 635 F.3d 1266 (11th Cir. 2011); Artistic Entertainment, Inc. v. City of Warner Robins, 331 F.3d 1196 (11th Cir. 2003); Artistic Entertainment, Inc. v. City of Warner Robins, 223 F.3d 1306 (11th Cir. 2000); Williams v. Pryor, 240 F.3d 944 (11th Cir. 2001); Williams v. A.G. of Alabama, 378 F.3d 1232 (11th Cir. 2004); Williams v. Morgan, 478 F.3d 1316 (11th Cir. 2007); Gary v. City of Warner Robins, 311 F.3d 1334 (11th Cir. 2002); Ward v. County of Orange, 217 F.3d 1350 (11th Cir. 2002); Boss Capital, Inc. v. City of Casselberry, 187 F3d 1251 (11th Cir. 1999); David Vincent, Inc. v. Broward County, 200 F.3d 1325 (11th Cir. 2000); Sammy's of Mobile, Ltd. v. City of Mobile, 140 F.3d 993 (11th Cir. 1998); Lady J. Lingerie, Inc. v. City of Jacksonville, 176 F.3d 1358 (11th Cir. 1999); This That And The Other Gift and Tobacco, Inc. v. Cobb County, 285 F.3d 1319 (11th Cir. 2002); DLS, Inc. v. City of Chattanooga, 107 F.3d 403 (6th Cir. 1997); Grand Faloon Tavern, Inc. v. Wicker, 670 F.2d 943 (11th Cir. 1982); International Food and Beverage Systems v. Ft. Lauderdale, 794 F.2d 1520 (11th Cir. 1986); 5634 E. Hillsborough Ave., Inc. v. Hillsborough County, 2007 WL 2936211 (M.D. Fla. Oct. 4, 2007), aff'd, 2008 WL 4276370 (11th Cir. Sept. 18, 2008) (per curiam); Fairfax MK, Inc. v. City of Clarkston, 274 Ga. 520 (2001); Morrison v. State, 272 Ga. 129 (2000); Flippen Alliance for Community Empowerment, Inc. v. Brannan, 601 S.E.2d 106 (Ga. Ct. App. 2004); Oasis Goodtime Emporium I, Inc. v. DeKalb County, 272 Ga. 887 (2000); Chamblee Visuals, LLC v. City of Chamblee, 270 Ga. 33 (1998); World Famous Dudley's Food and Spirits, Inc. v. City of College Park, 265 Ga. 618 (1995); Airport Bookstore, Inc. v. Jackson, 242 Ga. 214 (1978); Imaginary Images, Inc. v. Evans, 612 F.3d 736 (fourth Cir. 2010); LLEH, Inc. v. Wichita County, 289 F.3d 358 (fifth Cir. 2002); Ocello v. Koster, 354 S.W.3d 187 (Mo. 2011); 84 Video/Newsstand, Inc. v. Sartini, 2011 WL 3904097 (6th Cir. Sept. 7, 2011); Plaza Group Properties, LLC v. Spencer County Plan Commission, 877 N.E.2d 877 (Ind. Ct. App. 2007); East Brooks Books, Inc. v. Shelby County, 588 F.3d 360 (6th Cir. 2009); Entm't Prods., Inc. v. Shelby County, 588 F.3d 372 (6th Cir. 2009); Sensations, Inc. v. City of Grand Rapids, 526 F.3d 291 (6th Cir. 2008); World Wide Video of Washington, Inc.

v. City of Spokane, 368 F.3d 1186 (9th Cir. 2004); Ben's Bar, Inc. v. Village of Somerset, 316 F.3d 702 (7th Cir. 2003); HandA Land Corp. v. City of Kennedale, 480 F.3d 336 (fifth Cir. 2007); Hang On, Inc. v. City of Arlington, 65 F.3d 1248 (fifth Cir. 1995); Fantasy Ranch, Inc. v. City of Arlington, 459 F.3d 546 (fifth Cir. 2006); Illinois One News, Inc. v. City of Marshall, 477 F.3d 461 (7th Cir. 2007); G.M. Enterprises, Inc. v. Town of St. Joseph, 350 F.3d 631 (7th Cir. 2003); Richland Bookmart, Inc. v. Knox County, 555 F.3d 512 (6th Cir. 2009); Bigg Wolf Discount Video Movie Sales, Inc. v. Montgomery County, 256 F. Supp. 2d 385 (D. Md. 2003); Richland Bookmart, Inc. v. Nichols, 137 F.3d 435 (6th Cir. 1998); Spokane Arcade, Inc. v. City of Spokane, 75 F.3d 663 (9th Cir. 1996); DCR, Inc. v. Pierce County, 964 P.2d 380 (Wash. Ct. App. 1998); City of New York v. Hommes, 724 N.E.2d 368 (N.Y. 1999); Taylor v. State, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002); Fantasyland Video, Inc. v. County of San Diego, 505 F.3d 996 (9th Cir. 2007); Gammoh v. City of La Habra, 395 F.3d 1114 (9th Cir. 2005); Starship Enters. of Atlanta, Inc. v. Coweta County, No. 3:09-CV-123, R. 41 (N.D. Ga. Feb. 28, 2011); High Five Investments, LLC v. Floyd County, No. 4:06-CV-190, R. 128 (N.D. Ga. Mar. 14, 2008); 10950 Retail, LLC v. Fulton County, No. 1:06-CV-1923, R. 62 Order (N.D. Ga. Dec. 21, 2006); 10950 Retail, LLC v. Fulton County, No. 1:06-CV-1923, R. 84 Contempt Order (N.D. Ga. Jan. 4, 2007); Z.J. Gifts D-4, L.L.C. v. City of Littleton, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001); People ex rel. Deters v. The Lion's Den, Inc., Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005); Reliable Consultants, Inc. v. City of Kennedale, No. 4:05-CV-166-A, Findings of Fact and Conclusions of Law (N.D. Tex. May 26, 2005); Goldrush II v. City of Marietta, 267 Ga. 683 (1997); and based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, "Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD," Journal of Urban Health (2011); "Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime?" Crime and Delinquency (2012) (Louisville, KY); Metropolis, Illinois - 2011—2012; Manatee County, Florida - 2007; Hillsborough County, Florida - 2006; Clarksville, Indiana - 2009; El Paso, Texas - 2008; Memphis, Tennessee - 2006; New Albany, Indiana - 2009; Louisville, Kentucky - 2004; Fulton County, GA - 2001; Chattanooga, Tennessee - 1999—2003; Jackson County, Missouri - 2008; Ft. Worth, Texas - 2004; Kennedale, Texas - 2005; Greensboro, North Carolina - 2003; Dallas, Texas - 1997; Houston, Texas - 1997, 1983; Phoenix, Arizona - 1995—1998, 1979; Tucson, Arizona - 1990; Spokane, Washington - 2001; St. Cloud, Minnesota - 1994; Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Grove, California - 1991; Los Angeles, California - 1977; Whittier, California - 1978; Oklahoma City, Oklahoma - 1986; New York, New York Times Square - 1994; the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota); Dallas, Texas - 2007; "Rural Hotspots: The Case of Adult Businesses," 19 Criminal Justice Policy Review 153 (2008); "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; Law Enforcement and Private Investigator Affidavits (Pink Pony South, Forest Park, GA, and Adult Cabarets in Sandy Springs, GA), the city council finds:

(1) Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects, including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation. Alcohol consumption impairs judgment and lowers inhibitions, thereby increasing the risk of adverse secondary effects.

(2) Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.

(3) Each of the foregoing negative secondary effects constitutes a harm which the City has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the city's rationale for this section, exists independent of any comparative

analysis between sexually oriented and non-sexually oriented businesses. Additionally, the city's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the city. The city finds that the cases and documentation relied on in this section are reasonably believed to be relevant to said secondary effects.

The city hereby adopts and incorporates herein its stated findings and legislative record related to the adverse secondary effects of sexually oriented businesses, including the judicial opinions and reports related to such secondary effects.

C. *Unlawful to operate within 500 feet of a similar business.* It shall be unlawful to establish, operate, or cause to be operated a sexually oriented business in the city within 500 feet of another sexually oriented business. Measurements for this subsection shall be made in a straight line without regard to intervening structures or objects, between the closest points on the property lines of the two sexually oriented businesses.

D. *Unlawful to operate within 500 feet of certain public places.* It shall be unlawful to establish, operate, or cause to be operated a sexually oriented business in the city within 500 feet of a residential district, place of worship, park, or public library. Measurements for this subsection shall be made in a straight line without regard to intervening structures or objects, from the closest part of the structure containing the sexually oriented business to the closest point on the boundary line of the residential district or the closest point on the property line of the place of worship, park, or public library.

(Ord. of 8-2-2017, § 1(4.2.6))

Sec. 4.2.7. Agriculture and forestry.

A. *Agricultural produce stands.* Agricultural produce stands shall comply with the front yard setback requirement for the district in which they are located, and shall provide a minimum of four off-street parking spaces. If temporary, mobile, or farmers market, see temporary uses, section 4.3.1.

B. *Commercial greenhouses and plant nurseries.* Any structure used as a commercial greenhouse or plant nursery shall be set back no less than 100 feet from any adjoining property that is zoned for residential use.

C. *Dairies.* Notwithstanding subsection E. of this section, any structure used for housing or processing of dairy cows shall be set back not less than 200 feet from property lines, and all dairy cows shall be kept at least 100 feet from property lines.

D. *Structures used in production and processing of fruits, tree nuts and vegetables.* Any structure used in the processing or production of fruits, tree nuts, and vegetables that uses mechanized equipment or is not fully enclosed in a building, that emits noise, dust or vibration, shall be setback no less than 50 feet from property zoned or used for residential purposes.

E. *Livestock.*

1. Livestock regulations apply to animals over 12 months of age.
2. Livestock shall only be permitted on a lot containing two or more acres, and there shall be no more than two animals, per fenced acre for horses, llamas, mules, asses, cows or large aviary such as emus; and no more than three animals per fenced acre for sheep or goats.
3. Except as otherwise provided herein, any structure used for housing or processing of livestock shall be set back not less than 100 feet from any property line.
4. Dwarf livestock may be kept at up to two per 50 square feet of fenced area, with no minimum lot size, except lots less than 10,000 square feet shall be limited to a total of three dwarf livestock animals.
5. Structures for housing dwarf livestock shall be setback not less than ten feet from any property line.

6. Fenced areas for livestock may not include lot area covered by the principal structure or driveway.
7. A structure providing at least 100 square feet of floor space per animal for housing horses, llamas, mules, ass, cow or large aviary such as emus is required, and at least 25 square feet of floor space per animal is required for housing sheep or goats. A structure housing dwarf livestock shall provide three square feet per animal.
8. Pigs and hogs are prohibited, except pot-bellied pigs. Pot-bellied pigs shall be treated as livestock, and subject to the standards for sheep and goats.
9. Livestock is not permitted to run at-large beyond the confines of its owner's property.
10. Parking of livestock trailers and recreation vehicles related to the livestock shall comply with the parking standards in article 6 of this chapter.
11. Composted animal waste can be used as fertilizer for the purpose of enriching the property owner's soil.
12. Animals must be kept under sanitary conditions and shall not be a public nuisance.
13. Disposal of dead livestock shall be subject to the DeKalb County Sanitation rules and regulations or requirements.

F. *Livestock sales pavilion or abattoirs.* Livestock sales pavilions and/or abattoirs shall be operated in accordance with state and county health regulations. All buildings shall be located at least 100 feet from any property line. All animals to be processed shall be fenced at least 100 feet from any property zoned or used for residential purposes.

G. *Riding stables.* Riding stables shall be established on a lot having an area of not less than ten acres. Any structure that houses animals used as part of the riding stable shall be located at least 100 feet from any property line. All animals shall be fenced at least 20 feet from any property line.

H. *Temporary or portable sawmill.* The time limit for any permit for a temporary or portable sawmill shall not exceed six months. A temporary or portable sawmill may only process timber removed from the property on which the sawmill is located. Operation of a temporary or portable sawmill shall be set back not less than 500 feet from any residential structure other than the owner's.

I. *Keeping of chickens, pigeons.*

1. The minimum fenced yard area for chickens shall be 25 square feet per hen.
2. Chickens and pigeons must be housed at least 20 feet from any property line, and 50 feet from any residence other than the owner's.
3. Any structure housing chickens and pigeons must be located in the rear yard if a principal building exists.
4. The minimum lot size for the keeping of chickens or pigeons is 10,000 square feet. Fenced area for chickens shall comply with the setback requirements for accessory structures. Chickens and pigeons and associated structures and fencing shall comply with relevant articles of chapters 16 and 18, relating to noise and property maintenance.
5. No roosters are allowed.
6. The maximum number of hens shall be one hen per 2,000 square feet of lot size.
7. Each coop shall have at least four square feet of floor space per chicken over four months old. For Bantams, a variety defined as miniature, each coop shall have one square foot of floor area per chicken over four months old.
8. Chickens must be kept securely in an enclosed yard or pen at all times.

9. Chickens are only permitted as pets or for egg production; the chickens cannot be kept for slaughter.
10. Composted animal waste can be used as fertilizer for the purpose of enriching the soil of the owner's property.
11. Animals must be kept under sanitary conditions and shall not be a public nuisance.

J. *Beekeeping.*

1. No more than two apiary colonies are allowed per one-quarter acre.
2. Apiary colonies must be setback from all property lines a minimum of ten feet.
3. Apiary colonies must be located in the side or rear yard if a principal building exists.
4. Apiary colonies must be maintained responsibly with adequate space and management techniques to prevent overcrowding and swarming.
5. In any instance in which a colony becomes a nuisance, the beekeeper must re-queen the hive.

(Ord. of 8-2-2017, § 1(4.2.7))

Sec. 4.2.8. Alcohol outlets, retail, package liquor store.

A. Package stores shall not be located:

1. Within 1,000 feet of an existing package store or alcohol outlet;
2. Within 600 feet of any residence, church, school, school building or grounds, educational facility, college campus, or sexually oriented business; or
3. Within 600 feet of a substance abuse treatment center owned, operated or approved by the state or any county or municipal government.

B. Alcohol outlets shall not be located:

1. Within 600 feet of any school building, school grounds, educational facility, college campus, or sexually oriented business; or
2. Within 600 feet of a substance abuse treatment center owned, operated, or approved by the state or any county or municipal government.

C. For the purpose of this section, distance shall be measured according to chapter 4.

D. For alcohol sales as an accessory use to retail, the area devoted to the sale and storage of alcohol shall not exceed 20 percent of gross floor area.

E. The sale or distribution of individual cups and individual servings of ice at package stores is prohibited.

F. Alcohol outlets accessory to convenience stores with gas pumps require a special land use permit.

(Ord. of 8-2-2017, § 1(4.2.8))

Sec. 4.2.9. Amateur radio service antenna structure.

Amateur radio service antenna structures are a permitted accessory use in single-family residential districts, provided that no such antenna structure, including any support upon which it may be constructed, shall exceed a combined height of 70 feet. Amateur radio service antenna structures in single-family residential districts exceeding 70 feet in height shall be permitted only by special land use permit subject to all of the requirements of

section 4.2.51 of this chapter. Amateur radio service antenna structures shall be located a distance of at least one-half of the height of the tower from all property lines.

(Ord. of 8-2-2017, § 1(4.2.9))

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 30 days after submission of a properly completed application or within 15 days of the records in subsection (d) of this section, 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 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 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 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 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.

(Ord. of 8-2-2017, § 1(4.2.10); Ord. No. 2017-10-04, § 1(4.2.10), 10-16-2017)

Sec. 4.2.11. Animal care facilities.

A. Animal hospitals and veterinary clinics.

1. Any building or enclosed structure used as an animal hospital or veterinary clinic shall be located and the activities associated with the use shall be conducted at least 100 feet from any property zoned or used for residential purposes.
2. When located within a shopping center, the use shall be adequately soundproofed and odor-proofed so as not to create a nuisance.
3. No boarding shall be allowed unless required in connection with medical treatment;
4. Outside runs or kennels are prohibited.

B. Animal shelter, four or more.

1. Any building or enclosed structure for the housing of animals shall have a minimum setback of at least 100 feet from all property lines and at least 200 from property zoned for residential use.
2. All areas housing animals shall be completely enclosed by walls or fences at least five feet in height.
3. No animal shelter shall be located within 500 feet of a residential district.
4. Outside pens must be located a minimum of 75 feet from any stream.

C. *Pet grooming shops.* Any building or enclosed structure used as a pet grooming shop shall be located and activities shall be conducted at least 100 feet from any property zoned or used for residential purposes.

D. *Pet daycare.* Any building or enclosed structure for the housing of animals associated with a pet daycare use shall have a minimum setback of at least 100 feet from all property lines and at least 200 feet from property zoned or used for residential use. All areas housing animals shall be completely enclosed by walls or fences at least five feet in height.

E. *Kennels, commercial boarding and breeding kennels.* All kennels shall comply with the following:

1. Any building or enclosed structure used for kennels shall be located and related activities shall be conducted at least 100 feet from any property line and at least 200 feet from property zoned for residential use.
2. Kennels shall be located on a site of not less than two acres.
3. Any building or enclosed structure used for kennels shall be constructed and related activities shall be conducted in accordance with applicable law.
4. All outdoor areas used as a dog kennel or outdoor confinement must be surrounded by an opaque fence or wall no less than eight feet in height.
5. The floor of all buildings or structures used as a kennel to which animals have access shall be surfaced with concrete or other impervious material.
6. The portion of the building or structure in which animals are housed shall be adequately soundproofed to meet the minimum requirements of the city's noise ordinance.

F. *Household pets.* Except as is otherwise herein provided, in any residential district within the city a person may keep not more than three household pets on each lot which is two acres or less in size. On any lot exceeding two acres in size, a person may keep one additional household pet for each additional acre above two acres up to a maximum of ten household pets. Litters of animals of not more than six months of age shall not be counted for the purpose of calculating the total number of household pets on a lot.

(Ord. of 8-2-2017, § 1(4.2.11))

Sec. 4.2.12. Antennas, satellite dishes, television receivers.

A. Antennas, satellite dishes, or other television transmission receivers located in residential zoning districts may only be located on the roof or in the rear yard of properties.

B. Antennas, satellite dishes, or other television transmission receivers located in a nonresidential zoned district are prohibited in any yard which adjoins a residential zoned district.

C. Any ground mounted antennas, satellite dishes, or other television transmission receivers shall be screened from view from surrounding properties at ground level, and from public streets.

(Ord. of 8-2-2017, § 1(4.2.12))

Sec. 4.2.13. Automobile wash service, principal, accessory, detail or mobile.

A. Automobile wash services shall provide a paved area with capacity to store five vehicles waiting to use automatic carwash facilities, and two vehicles per bay for self-service car washes.

B. Wastewater from all automobile wash services shall be pretreated in accordance with watershed management standards prior to being drained into the public sanitary sewer or into any stormwater structure, as may be approved by the director of planning.

C. No storage or repair of vehicles shall be allowed on property on which the car washing facility is located.

D. An accessory single-bay automatic (not self-service) car wash completely enclosed except for openings necessary to allow entry and exit of vehicles shall be permitted subject to the following:

1. The car wash structure shall be constructed of building materials consistent with that of the principal building, including the roof.

2. The doors of the car wash building shall be fully closed when the facility is not available for operation.

3. The car wash structure shall be located behind the rear building line of the principal building,

(Ord. of 8-2-2017, § 1(4.2.13))

Sec. 4.2.14. Automotive sales and service; boat, trailer sales and service.

A. *Automobile and truck sales.*

1. No other unrelated retail use shall be on the same property or in the same building with automobile and truck sales.

2. For purposes of this Section 4.2.14, the term “automobile and truck sales” does not apply to salvage yards in which automobile and truck sales are incidental to the primary use.

3. The automobile and truck sales lot shall be on a lot no less than five acres in area.

4. Only customer and employee parking shall be allowed in the front or side corner yard.

a. Parking spaces located in the front or side corner yard shall be setback at least ten feet from the street right-of-way.

b. The ten-foot setback from the street right-of-way shall comply with section 5.4.4.D.3 of this chapter.

5. Motor vehicles for sale shall be parked in marked, striped spaces only, and only in areas designated for the display of vehicles for sale.

6. All vehicles in sales lots are always in operating condition.

B. *Automobile repair, major, and paint shops.* Major automobile repair and paint shops shall meet the following:

(1) Upon the minor redevelopment of existing buildings or structures, as defined in section 27-8.1.16, that also requires a land development permit or building permit, the director of his designee may require additional improvements to landscaping, signage, parking lots, sidewalks, or building facades. Any minor redevelopment of existing structures, buildings, and physical appurtenances is permitted by right if such changes result in greater conformity with the specifications of this section.

(2) Shops shall not be permitted on property located within 300 feet of any property used for a school, park, playground or hospital.

(3) All automobile repair activities must be contained entirely within an enclosed building, unless located in M (Light Industrial) District. For the purposes of determining whether a building is enclosed, the use of open overhead bay doors that can be closed after business hours shall be permitted.

(4) Vehicles awaiting service shall be parked on-site. If stored overnight, they shall be stores inside an enclosed building or in the side or rear yard enclosed with an opaque fence made of masonry or wood and at least six feet in height.

(5) Outdoor displays of merchandise shall be prohibited beyond ten feet from the primary building and shall only be displayed during business hours.

(6) Overnight outdoor storage of any materials, equipment, tires, or rims is prohibited.

(7) New facilities must be designed with automobile bays facing away from the primary street frontage.

(8) Junk vehicles shall not be stored on the property.

(9) All parking located in front of the primary building shall be limited to customers seeking services only and not for storing vehicles overnight waiting to be repaired.

(10) No automobile sales or curb stoning, which is the sale of used vehicles by unlicensed dealers, shall be permitted on the property.

(11) For the purpose of this section, distance shall be measured by the most direct route of travel on the ground.

C. *Automobile repair and maintenance establishments, minor.* Minor automobile repair and maintenance establishments shall meet the following:

(1) Upon the minor redevelopment of existing structures or buildings, as defined by section 27-8.1.16, that also requires a land development permit or building permit, the director or his designee may require additional improvements to landscaping, signage, parking lots, sidewalks, or building facades. Any minor redevelopment of existing structures, buildings, and physical appurtenances is permitted by right if such changes result in greater conformity with this section.

(2) Operations, including the servicing of vehicles, storage of materials and similar activities connected with the use, must be contained entirely within an enclosed building. For the purpose of determining whether a building is enclosed, the use of open overhead bay doors that can be closed after business hours shall be permitted.

(3) Vehicles awaiting service shall be parked on-site. If stored overnight, they shall be stored inside an enclosed building or in the side or rear yard enclosed with an opaque fence at least six feet in height).

(4) Outdoor displays of merchandise shall be prohibited beyond ten feet from the building and shall only be displayed during business hours.

(5) Overnight outdoor storage of any materials, equipment, tires, or rims is prohibited.

(6) New facilities must be designed with automobile bays facing away from the primary street frontage.

(7) Junk cars shall not be stored on the property.

(8) No automobile sales or curb storing, which is the sale of used vehicles by unlicensed dealers, shall be permitted on the property.

(9) All parking located in front of the primary building shall be limited to customers seeking service only.

D. *Automobile service stations, including gas sales.* Unless otherwise permitted within the applicable zoning district, major automobile repair in association with an automobile service station shall not be permitted. Gasoline pumps and other service facilities shall comply with the requirements of section 4.2.29.

E. *Automobile, truck and trailer lease and rental.* Where a lot is used for automobile, truck and trailer lease and rental, all inventory vehicles parked outdoors shall be set back at least ten feet from the street right-of-way. The ten-foot setback from the street right-of-way shall comply with section 5.4.4.D.3. of this chapter. All parking areas shall be clearly marked and no automobile, truck or trailer shall be parked outdoors other than within these marked parking areas, except when being serviced. The lot shall be no less than one acre in area.

F. *Automobile, truck and trailer lease and rental where accessory to an automobile service station or shopping center.* Where the lease and rental of automobiles, trucks and trailers is a use which is an accessory use, the following requirements shall apply:

1. The lot on which the inventory vehicles are parked shall be no less than one acre in area.

2. Parking areas for inventory vehicles which are available for lease or rental shall be located only in the side or Rear yard:

G. Any work on vehicles conducted outdoors shall only be permitted in the rear yard, but shall be prohibited if the rear yard is adjacent to property zoned or used for a residential purpose.

H. Boat and boat trailer sales. All boats and boat trailers located on property used for boat and boat trailer sales shall be set back at least ten feet from the street right-of-way. The ten-foot setback from the street right-of-way shall comply with section 5.4.4.D.3. of this chapter.

I. Retail automobile parts and tire stores. Unless otherwise authorized or permitted within the applicable zoning district, the following limitations apply to the conduct of retail sale of automobile parts and tire stores:

1. There shall be no dismantling of vehicles on the premises to obtain automobile parts.

2. There shall be no automobile parts installation other than the installation of tires and the installation of minor accessory parts.

3. Major automobile repair shall not be permitted in connection with these uses.

4. Outside display of merchandise shall not extend into the parking lot.

J. *Trailer and RV salesrooms and sales lots.* All inventory vehicles located on property used for trailer and RV salesrooms or sales lots shall be set back at least ten feet from the street right-of-way. The ten-foot setback from the street right-of-way shall comply with section 5.4.4.D.3. of this chapter.

K. Automobile recovery, storage yards for damaged or confiscated automobiles. The following provisions shall apply to storage yards for damaged or confiscated automobiles:

1. The use shall be enclosed by a fence or wall which is not less than eight feet in height which provides visual screening.

2. No dismantling, repair or other similar activity shall be conducted on the premises.
3. The use shall be located at least 1,000 feet from any residential district or use.
4. Automobiles shall not be stored longer than provided by state and city law.

(Ord. of 8-2-2017, § 1(4.2.14))

Sec. 4.2.15. Bed and breakfast inn and home stay.

A. The following applies to all bed and breakfast establishments:
   1. The operator of the establishment shall reside on-site.
   2. The use shall require a building permit and approval of the fire department.
   3. Rooms to be let may not be equipped with cooking facilities.
   4. No restaurant use is permitted. Breakfast may be served on the premises only for guests and employees of the bed and breakfast.
   5. The bed and breakfast shall not be operated in such a way as to change the residential character of the neighborhood in which it is located and shall comply with the noise ordinance.
   6. The structure shall be compatible with the character of the neighborhood in terms of height, setbacks and bulk, subject to the approval of the director of planning.

B. In addition to the requirements in subsection A. of this section, the following requirements apply to home stay bed and breakfast establishments:
   1. In addition to providing the off-street parking required for the dwelling unit, there shall also be provided at least one off-street parking space for each bedroom used as a part of the home stay bed and breakfast residence.
   2. No signs or advertising are permitted to identify or advertise the existence of the home stay bed and breakfast residence beyond those otherwise allowed for residential property.
   3. No individual other than the owner or an employee shall stay for longer than seven consecutive days.

(Ord. of 8-2-2017, § 1(4.2.15))

Sec. 4.2.16. Building and construction office, landscape contractors.

The following standards shall be required for building and construction offices and landscape contractor offices:

A. Storage of equipment and/or materials shall be located in the rear yard and screened from view from adjoining properties and the public street with a fence a minimum of six feet in height.

B. Parking of vehicles shall be located in the side or rear yard only.

(Ord. of 8-2-2017, § 1(4.2.16))

Sec. 4.2.17. Cemetery, columbarium, mausoleum, as principal use.

A cemetery allowed as a principal use on a property must meet the requirements below. Cemeteries that are allowed as an accessory use to a church or other place of worship must comply with provisions in section 4.2.42, places of worship.

A. A cemetery, columbarium or mausoleum shall be located on property with a minimum lot size of ten acres.

B. The lot on which a cemetery, columbarium or mausoleum is located shall have a minimum public road frontage of 100 feet.

C. Permanent public ingress/egress shall be provided for the lot on which a cemetery, columbarium or mausoleum is located.

D. Compliance must be maintained with all requirements of the State of Georgia and the county tax commissioner.

(Ord. of 8-2-2017, § 1(4.2.17))

Sec. 4.2.18. Check cashing.

The following provisions shall apply to all check cashing facilities:

A. Check cashing facilities, either as a primary use or on its own lot or as part of a retail shopping center, shall not be permitted within 1,000 feet of an existing check cashing facility or pawn shop. For the purpose of this section, distance shall be measured by the most direct route of travel on the ground.

B. The window and door area of any existing first floor facade that faces public street or sidewalk shall not be reduced, covered, or otherwise obscured nor shall changes be made to such windows or doors that block views into the building at eye level from the street or sidewalk.

C. For new construction, at least 30 percent of the first floor facade that faces a public street or sidewalk shall be window or doors of clear or lightly tinted glass that allow views into the building at eye level from the street or sidewalk.

D. The use of bars, chains, roll down doors, or similar security devices placed on the outside of the building is prohibited.

E. The use of light emitting diodes, neon lights, and illuminated panels placed around the windows or on the outside of the building are prohibited.

(Ord. of 8-2-2017, § 1(4.2.18))

Sec. 4.2.19. Child daycare facility (up to six children), or child daycare center (seven or more children).

Each child daycare facility and child daycare center shall be subject to the following requirements. A child daycare facility or center may also be a kindergarten or preschool.

A. Each child daycare facility and child daycare center shall comply with all applicable state daycare requirements for standards, licensing and inspection. A City of Stonecrest business license is required.

B. Prior to the issuance of a business license for a child daycare facility or child daycare center, the necessary licensing from the State of Georgia shall be obtained, including compliance with all requirements related to minimum area for classrooms, play areas, and fencing. Each child daycare facility and child daycare center shall provide off-street parking spaces as required by the applicable zoning district. Each child daycare center shall provide an adequate turnaround on the site.

C. The exterior appearance of any child daycare facility located in a residential district shall be maintained as a residential structure, and no signs other than those otherwise authorized within the applicable

zoning district shall be erected (no cut-outs, animal characters, or other graphics shall be affixed to the exterior of the structure or displayed upon the premises).

D. No child daycare facility shall be located within 1,000 feet of another child daycare facility.

E. See also additional approval criteria in article 7 of this chapter, administration.

(Ord. of 8-2-2017, § 1(4.2.19))

Sec. 4.2.20. Coliseum, stadium, amphitheater.

The following provisions apply to coliseums, stadiums and amphitheaters:

A. Prior to the issuance of a land disturbance permit, a traffic study shall be submitted to the planning department.

B. All structures shall be located and all activities shall take place no less than 100 feet from any property line adjacent to a residential district or use.

(Ord. of 8-2-2017, § 1(4.2.20))

Sec. 4.2.21. Commercial recreation and entertainment.

A. *Drive-in theaters.* The following provisions shall apply to drive-in theaters:

1. The theater screen, projection booth and any other structures associated with the drive-in theater use shall be set back not less than 50 feet from any property line.

2. Driving and parking areas shall be paved.

3. Ingress and egress from a public street shall be designed and constructed so as to provide for safe traffic movement.

4. Central loudspeakers shall be prohibited.

5. The theater screen shall not be visible from any freeway or thoroughfare.

6. The portion of the property used for drive-in theater purposes shall be enclosed by a six-foot-high screening fence.

7. The property shall have a minimum buffer area ten feet in width surrounding the portion of the property used for drive-in theater purposes.

B. *Fairgrounds and amusement parks.* The following provisions shall apply to fairgrounds and amusement parks:

1. All buildings and structures associated with such uses shall be set back not less than 200 feet from any property line.

2. Such uses shall not be permitted within 500 feet of a residential district.

3. Such facilities shall be enclosed by a six-foot screening fence.

C. *Golf driving ranges and batting cage facilities.* The following provisions shall apply to golf driving ranges and batting cage facilities:

1. Such uses shall be enclosed by a six-foot-high screening fence or a 25-foot-wide buffer to screen adjacent property.

2. Central loudspeakers shall be prohibited.

3. Lighting shall be directed inward such that adjacent properties and roadways are not adversely affected and that no direct light is cast upon adjacent properties and roadways.

D. *Miniature golf courses.* The following provisions shall apply to miniature golf courses:

1. Such uses shall be enclosed by a six-foot-high screening fence and a buffer ten feet in width to screen adjacent property.

2. Central loudspeakers shall be prohibited.

3. Lighting shall be directed inward such that adjacent properties and roadways are not adversely affected and that no direct light is cast upon adjacent properties and roadways.

E. *Golf courses.* The following provisions shall apply to golf courses:

1. Except for emergency purposes, loudspeakers shall be prohibited.

2. Lighting shall be directed inward such that adjacent properties and roadways are not adversely affected and that no direct light is cast upon adjacent properties and roadways.

F. *Recreation grounds, fishing lakes and other related facilities.* The following provisions shall apply to recreation grounds and facilities:

1. Such uses shall be enclosed by a screening fence six feet in height or a 25-foot-wide buffer to screen adjacent property.

2. Central loudspeakers shall be prohibited.

3. Lighting shall be directed inward such that adjacent properties and roadways are not adversely affected and that no direct light is cast upon adjacent properties and roadways.

G. *Tennis centers, clubs and facilities.* The following provisions shall apply to tennis centers, clubs and facilities:

1. Such uses shall be enclosed by a screening fence six feet in height or a 25-foot-wide planted buffer to screen adjacent property.

2. Central loudspeakers shall be prohibited.

3. Lighting shall be directed inward such that adjacent properties and roadways are not adversely affected and that no direct light is cast upon adjacent properties and roadways.

H. *Go-cart concessions.* The following provisions shall apply to outdoor go-cart concessions:

1. All buildings and structures associated with such use shall be set back not less than 200 feet from any property line.

2. Such use shall not be permitted within 500 feet of the boundary of a residential district.

3. Such use shall be enclosed by a six-foot-high masonry wall.

4. The motor size of any cart used shall not exceed five horsepower.

5. The maximum area occupied by the facility, excluding areas used solely for parking, shall not exceed 40,000 square feet.

6. Central loudspeakers shall be prohibited.

I. Other outdoor recreation shall meet the standards provided in subsection G. of this section.

(Ord. of 8-2-2017, § 1(4.2.21))

Sec. 4.2.22. Crematories.

Crematory use shall be located at least 100 feet from the property line of any property zoned or used for residential purposes.

(Ord. of 8-2-2017, § 1(4.2.22))

Sec. 4.2.23. Drive-through facility, restaurant.

All drive-through facilities must comply with the following:

A. Drive-through facilities shall not be located within 60 feet of a residentially zoned property, as measured from any menu or speaker box to the property line of adjacent residential property, unless part of a mixed use development.

B. No drive-through facility shall be located on a property less than 10,000 square feet in area, unless part of a mixed use development. Stacking spaces for queuing of cars shall be provided for the drive-through area as required in article 6 of this chapter.

C. Drive-through lanes and service window serving drive-through lanes shall only be located to the side or rear of buildings.

D. Drive-through canopies and other structures, where present, shall be constructed from the same materials as the primary building and with a similar level of architectural quality and detailing.

E. Speaker boxes shall be directed away from any adjacent residential properties and shall require masonry sound attenuation walls with landscaping or other speaker volume mitigation measures. Speaker boxes shall not play music but shall only be used for communication for placing orders.

F. All lighting from drive-through facilities shall be shaded and screened so as to be directed away from any adjacent residential properties.

G. Stacking spaces shall be provided for any use having a drive-through facility or areas having drop-off and pick-up areas in accordance with the following requirements. Stacking spaces shall be a minimum of ten feet wide and 25 feet long. Stacking spaces shall begin at the last service window for the drive-through lane (typically the pick-up window).

H. All drive-through facilities with the exception of drive-through restaurants shall provide at least three stacking spaces for each window or drive-through service facility.

I. The following general standards shall apply to all stacking spaces and drive-through facilities:

   a. Drive-through lanes shall not impede on- and off-site traffic movements, shall not cross or pass through off-street parking areas, and shall not create a potentially unsafe condition where crossed by pedestrian access to a public entrance of a building.

   b. Drive-through lanes shall be separated by striping or curbing from off-street parking areas. Individual lanes shall be striped, marked or otherwise distinctly delineated.

   c. All drive-through facilities shall include a bypass lane with a minimum width of ten feet, by which traffic may navigate around the drive-through facility without traveling in the drive-through lane. The bypass lane may share space with a parking access aisle.

   d. Drive-through lanes must be set back five feet from all lot lines and roadway right-of-way lines.

   e. Owner and operator are responsible for daily litter clean-up to ensure the property remains free of trash, litter, and debris.

f. Drive-through restaurants shall not be located within 500 feet of an elementary, middle, or high school.

g. Drive-through restaurants located in activity centers require a special land use permit. In all other character areas a special land use permit is required unless the facility can meet at least two of the following criteria:

i. Facility is located within 400 feet of an intersection of a major arterial street and a major or minor arterial street, or within 1,000 feet of an interstate highway interchange do not require a special land use permit.

ii. Facility is accessible only through interparcel access or through a shared driveway.

iii. Facility is part of a major redevelopment, as defined in section 27-8.1.16.

h. Distance shall be measured from the right-of-way of the exit or entrance ramp, or street corner (middle of the radius), along the intersecting street right-of-way, to the nearest property line.

(Ord. of 8-2-2017, § 1(4.2.23))

Sec. 4.2.24. Dwellings; cottage, mobile home, townhouse, urban single-family, and condominium.

A. *Cottage.* Notwithstanding any other provision to the contrary, a cottage development may be subdivided into individual lots that do not meet the minimum street frontage requirements and may be treated as fee-simple or condominium lots.

B. *Mobile home or manufactured home.* When permitted outside of a mobile home zoning district, mobile homes or manufactured homes may be used to house caretakers or security personnel only, and may not be used for commercial purposes.

C. *Townhouse and urban single-family (U-SF).* Notwithstanding any other provision to the contrary, a townhouse or U-SF development may be subdivided into individual lots that do not meet the minimum street frontage requirements and may be treated as fee simple or condominium lots.

D. *Condominium standards.* If a condominium form of ownership is proposed for a development, the development shall meet all applicable state laws, including the Georgia Condominium Act (O.C.G.A. § 44-3-70 et seq.). Proposed bylaws and the articles of incorporation for the condominium association shall be submitted to the director of planning with the application for development approval.

(Ord. of 8-2-2017, § 1(4.2.24))

Sec. 4.2.25. Emission stations.

Emission stations shall be setback no less than 35 feet from the public right-of-way. A metal building may be used if it has a brick base at least three feet high. No fabric structures may be used. Large planters for landscaping must be installed around any building.

(Ord. of 8-2-2017, § 1(4.2.25))

Sec. 4.2.26. Extended stay motels/hotels.

Extended stay motels/hotels shall meet the following requirements:

A. Extended-stay motels/hotels shall have no more than 25 guest rooms per acre.

B. Each guest room must have a minimum of 300 square feet and access with a magnetic keycard entry/locking device.

C. Extended-stay hotels/motels shall not be more than four stories in height.

D. Extended-stay hotels/motels must be constructed on a tract of land containing at least two acres.

E. Extended-stay hotels/motels must contain an enclosed, heated and air conditioned laundry space containing a minimum of three clothes washers and three clothes dryers for the use of guests.

F. Extended-stay hotels/motels must provide a minimum of 1,000 square feet for recreational use by guests. In computing the 1,000 square feet requirement, swimming pools, fitness or recreation centers and other recreational facilities may be used in determining the square footage required by this subsection.

G. Management must be on the property 24 hours a day, seven days a week.

H. Daily maid service must be included in the standard room rate.

I. Parking areas must have security fencing and lighting with a minimum luminescence of one footcandle at pavement level.

J. No extended stay motel/hotel may be located within 1,000 feet of another extended stay motel/hotel.

K. Change of location or name.

1. No applicant shall operate, conduct, manage, engage in, or carry on an extended-stay motel/hotel under any name other than his name and the name of the business as specified on the occupation tax certificate.

2. Any application for an extension or expansion of a building or other place of business where an extended-stay motel/hotel is located shall require inspection and shall comply with the provisions and regulations of this article.

3. The applicant shall pay an administrative fee to be set by the city council to apply for a change of name for an extended-stay motel.

(Ord. of 8-2-2017, § 1(4.2.26))

Sec. 4.2.27. Farmers markets, temporary seasonal.

Temporary or seasonal farmers markets must obtain a special administrative permit for temporary seasonal sales or event in order to operate and shall adhere to the following requirements:

A. The operator of a farmers market shall obtain a business license from City of Stonecrest prior to opening the farmers market.

B. City of Stonecrest shall be provided a list of the names of persons, firms or corporations who shall provide produce or merchandise for sale as part of the public market. The list shall also generally describe the type of item sold by each said person, firm or corporation. The list shall be updated quarterly during the term of the business license.

C. Displayed inventory of the products sold may include:

1. Farm products such as fruits, vegetables, mushrooms, herbs, grains, legumes, nuts, shell eggs, honey or other bee products, flowers, nursery stock, livestock food products (including meat, milk, yogurt, cheese and other dairy products), and seafood.

2. Value-added farm products such as baked goods, jams and jellies, canned vegetables, dried fruit, syrups, salsas, salad dressings, flours, coffee, smoked or canned meats or fish, sausages, or prepared foods.

3. All other items may not be displayed and sold.

D. At least 75 percent of the vendors participating during the market's hours of operation must be either producers (a person or entity that raises farm products on farms the person or entity owns, rents or leases), family members, employees or agents of producers or preparer of said products.

E. If a booth sells farm products or value-added farm products that are not produced by the vendor, said booth must explicitly disclose the producer's name and location in writing with lettering that is at least two inches tall and visible to the consumer.

F. Vending structures may include a temporary, movable booth, stall, table, tent or other structure used for the sale of goods or for display purposes at a farmers market.

G. Hours of operation. Temporary or seasonal market hours may be between 7:00 a.m. and 9:00 p.m. Temporary or seasonal markets shall not operate more than six hours per day nor more than three days per week. Set-up of market operations shall begin no earlier than 6:00 a.m. and take-down and clean-up shall end no later than 10:00 p.m.

H. Market manager. On-site presence of a market manager is required during all hours of operation. The market manager shall direct the operations of all vendors participating in the market and verify that the requisite number of individual vending structures are operated by producers.

I. Parking. Two parking spaces per vendor shall be provided on-site or within 500 feet of the boundary line of the property hosting a temporary or seasonal farmer's market.

J. Access to public toilet facilities shall be provided to customers.

K. Farmers markets must obtain a special administrative permit for temporary seasonal sales or event to operate in City of Stonecrest. The application shall include:

1. Name and current address of the applicant.

2. A notarized letter signed by the property owners or authorized property manager or agent, consenting to the placement of the farmers market on the property.

3. A site plan drawn to-scale showing:

a. Property lines, street curbs, street names, adjacent sidewalks as applicable.

b. Plan layout and dimensions showing the on-site market area including the number, arrangement, and size of the vending structures to be located in the market.

c. Location of on-site and off-site parking spaces.

d. Any other documents or information requested and deemed by the director of planning as applicable to the specific application.

(Ord. of 8-2-2017, § 1(4.2.27))

Sec. 4.2.28. Fuel pumps, accessory.

A. Upon the minor redevelopment of existing structures or buildings, as defined in section 28-8.1.16, that also requires a land disturbance permit or building permit, the director may require additional improvements to landscaping, signage, parking lots, sidewalks, or building facades. Any minor redevelopment of existing

structures, buildings, and physical appurtenances is permitted by right if such changes result in greater conformity with the specifications of this section.

B. Gas station and convenience store design shall comply with the design standards and transitional buffer requirements set forth in article 5 of this chapter.

C. The following standards apply to all gas pumps:

(1) All associated light fixtures shall be directed away from surrounding residential neighborhoods.

(2) Canopies covering gasoline dispensers shall be set back not less than 15 feet from all street rights-of-way.

(3) Canopy height shall not exceed the greater of 20 feet or the height of the principal building.

(4) Canopies and their columns shall be complementary to the overall color scheme and building materials scheme of the building facade to which the canopy is necessary.

(5) Canopy lighting shall not extend beyond the area immediately beneath the canopy and all fixtures shall be recessed, including any fixture or lens. Lighting shall project inward and downward, shall not have any spillover to adjacent properties, and shall cut off no later than 30 minutes after closure of the facility.

(6) Automobile service stations with gas sales shall have a capacity to store one car per bay (car area in front of a pump), so as not to interfere with driveway ingress and egress traffic flow.

(7) A minimum of 30 feet is required between a property line and the nearest gasoline pump.

(8) Owner and operator are responsible for daily litter clean-up to ensure that property remains free of litter, trash, and debris.

(9) When a separate retail or restaurant use is located on the same property as fuel pumps, there shall be separate and distinct parking spaces for each use.

(10) The use of light emitting diodes, neon lights, and illuminated panels placed around the windows or on the outside of the building is not prohibited, but must not be visible from or face adjacent residential uses.

D. Location criteria. Fuel pumps associated with convenience stores, gas stations, and service stations must meet the following criteria:

1. Facility is located within 100 feet of an intersection of a major arterial street and a major or minor arterial street, or located within 500 feet of an interstate highway intersection with an arterial street as designated on the Functional Classification Map in the City Comprehensive Plan.

2. Facility is accessible via direct or secondary access to two roads.

3. Facility includes at least 5,000 square feet of retail space.

4. No more than two facilities may be located at any given intersection.

5. Except for facilities located at the same roadway intersection, facilities cannot be located closer than 1,500 feet apart.

E. Distance shall be measured from the right-of-way of the exit or entrance ramp, or street corner (middle of the radius), along the intersecting street right-of-way, to the nearest property line.

F. Facility must include at least two bathrooms capable of serving at least three persons at a time, open to the public, and compliant with the Americans with Disabilities Act.

G. If a reverse frontage design is proposed the primary building shall be located close to the street to define street edge. Pump islands shall not be located between the building and the street, but shall be placed

behind or to the side of the primary building. The facade of the primary building located closest to the street shall include architectural features and shall have an active entrance either on the side or rear, with clear unobstructed pedestrian access from the public sidewalk. The street facade shall have at least 25 percent fenestration or faux fenestration.

H. Service areas, storage areas, and trash enclosure shall be oriented away from public view and screened from adjacent properties.

I. Facilities must provide a two-foot-high masonry wall with landscaping and/or an evergreen hedge to help screen the pumps from view from a public right-of-way.

(Ord. of 8-2-2017, § 1(4.2.28))

Sec. 4.2.29. Heavy industrial uses.

In addition to the submission requirements of article 7 of this chapter, any application for a special land use permit (SLUP) or a rezoning related to a heavy industrial use shall provide the following information as applicable:

A. Submit within the letter of application the following details:

1. Specific operations to be performed.
2. Hours of operation.
3. Whether operations will be indoors or outdoors.
4. How long materials will be stored on the property.
5. Whether any hazardous wastes will be involved in the operation, including an explanation of how safety measures will ensure that there is no air or water contamination and how the operators will safely dispose of such hazardous materials.
6. A description of any solid wastes handled, produced, or disposed of, including whether the operations will require a solid waste handling permit.
7. How many employees there will be.
8. Whether the operation will be open to the public.
9. What types of vehicles will be delivering materials to the property; and how many and how often, what thoroughfares or major route plan the trucks will take to get to and from the site to minimize any impact on residential area, and whether trucks will be covered to minimize dust/odor impacts on adjacent roadways used to get to the site.
10. Whether the proposed use requires the submittal of a development of regional impact (DRI).

B. Copies of any required state and/or federal agency applications, requirements, environmental assessment reports, or related data; or, if none have been submitted, an indication as to whether such documentation is required.

C. Data from reputable industry sources on current industry standards regarding the proposed land use and how the proposed operation will comply with industry standards to ensure that surrounding properties are not adversely impacted.

D. For any of the following uses, certification by an environmental professional that the proposed operation will not have any adverse air or water quality impacts on surrounding properties:

1. Any use requiring a solid waste handling permit.
2. Any use which utilizes burning, melting, or degasification.

3. Any use which involves the emissions of particulate matter.

4. Any use which processes or stores hazardous materials.

E. Detailed information on proposed methods to minimize any adverse air/water quality impacts based on current industry standards.

F. Detailed information on proposed methods to minimize any noise, odor, dust, and vibration on surrounding properties in light of current industry standards.

G. Detailed information regarding how traffic impacts will be accommodated on the surrounding road network.

H. Any data regarding any monthly, quarterly, or yearly required inspections by any state or federal agency to ensure compliance with any state or federal permits once use has been approved by City of Stonecrest.

(Ord. of 8-2-2017, § 1(4.2.29))

[TMOD-22-001]

Sec. 4.2.30. Heliport, general aviation airport.

Heliports must comply with FAA regulations AC No. 150/5390 for design standards for general aviation, hospital heliports, and rooftop emergency facilities.

(Ord. of 8-2-2017, § 1(4.2.30))

Sec. 4.2.31. Home occupations and private educational uses.

The following provisions apply to home occupations:

A. A home occupation where no customer contact occurs shall be considered a Type I home occupation and may be conducted with administrative approval by the director of planning and zoning.

1. The owner/operator of the business must reside on the premises.

2. Up to two (2) full-time residents of the premises are allowed to conduct separate home occupations in the same dwelling. In reviewing such a request, the local government may consider the reason, potential residential impact, parking needs, hours of operation and other relevant factors.

B. All home occupations other than Type I home occupations shall be considered a Type II home occupation and shall require a special land use permit (SLUP). Additional conditions may be placed on the approval of a Type II home occupation in order to ensure the home occupation will not be a detriment to the character of the residential neighborhood.

1. Customer contact is allowed for Type II home occupations.

2. Up to two (2) full-time residents of the premises are allowed to conduct separate home occupations in the same dwelling. In reviewing such a request, the local government may consider the reason, potential residential impact, parking needs, hours of operation and other relevant factors.

C. All home occupations shall meet the following standards:

1. There shall be no exterior evidence of the home occupation.

2. No use shall create noise, dust, vibration, odor, smoke, glare or electrical interference that would be detectable beyond the dwelling unit.
3. The use shall be conducted entirely within the dwelling unit, and only persons living in the dwelling unit shall be employed at the location of the home occupation.
4. No more than twenty-five (25) percent of the dwelling unit and or 500 square feet, whichever is less, may be used for the operation of the home occupation.
5. No more than one (1) business vehicle per home occupation is allowed.
6. No home occupation shall be operated so as to create or cause a nuisance.
7. Home occupation shall not include the use of a dwelling unit for the purpose of operating any automobile repair establishment, or car wash.
8. Occupations that are mobile or dispatch-only may be allowed, provided that any business vehicle used for the home occupation complies with section 6.1.3, and is limited to one (1) business vehicle per occupation.

D. Private educational services shall comply with home occupation standards and no more than three (3) students shall be served at a time. Family members residing in the home are not counted towards the three (3) students allowed.

E. Child Care Homes and Personal Care Homes are considered Home Occupations and must adhere to these provisions in addition to Section 4.2.41.

(Ord. of 8-2-2017, § 1(4.2.31)) [TMOD-21-002]

Sec. 4.2.32. Late-night establishments and night clubs.

A. The regulations that follow regarding late-night establishments and nightclubs are intended to afford protection to residential uses and other uses so as to protect the public health, safety, and welfare while respecting and providing adequate opportunities for nightlife in the city.

B. Late-night establishments and nightclubs shall be subject to all of the following standards:

1. Parking facilities within a lot may be shared in accordance with article 6 of this chapter, parking.
2. Valet parking shall not be used to satisfy the requirement to meet applicable parking standards.
3. Methods of traffic circulation, ingress and egress shall be consistent with best management practices as approved by the planning department.
4. Noise from the proposed use shall be contained within the subject retail center units or standalone structures. The facility shall comply with chapter 16.

C. No late night establishment or night club boundary line shall be located within 1,500 feet from the boundary line of property zoned for residential use without the issuance of a special land use permit (SLUP). A late-night establishment or night club is not required to obtain a special land use permit when their closest residential neighbor is on the opposite side of an interstate highway.

D. Every special land use permit application for a late-night establishment or nightclub shall include a scaled drawing of the location of the proposed premises, showing the distance measured in feet from the boundary line of the property proposed to be used as a late-night establishment or nightclub to the boundary line of property zoned for residential use. Such drawing shall be certified by a land surveyor or professional engineer registered in the State of Georgia. For the purposes of this section, distance shall be measured in feet as follows:

1. From the property line of the land upon which the late-night establishment or nightclub is located;
2. To the property line of the land which is zoned for a residential use;
3. Along a straight line which describes the shortest distance between the two property lines (i.e., "as the crow flies").

E. Any late-night establishment or nightclub operating pursuant to a validly issued business and liquor license issued prior to the effective date of November 18, 2008, shall be a legal nonconforming use, as defined in article 9 of this chapter. No late-night establishment or nightclub currently operating under a valid license issued prior to the effective date set forth in this section shall be required to secure a special land use permit from the city council in order to continue operation. Such establishments shall be required to comply with the applicable provisions of article 4, division 5 [sic] of this chapter regarding cessation, expansion, movement, enlargement or other alteration of the late-night establishment or nightclub. If a licensee is operating a legal nonconforming late-night establishment or nightclub at a particular location pursuant to this zoning ordinance, and such license is revoked, upon revocation, the legal nonconforming status of the licensee at that particular location shall be terminated.

(Ord. of 8-2-2017, § 1(4.2.32))

Sec. 4.2.33. Live-work.

A live-work unit is a residential unit used as both living accommodations, which includes cooking space and sanitary facility in conformance with applicable building standards and board of health standards, and adequate working space accessible from the living area. If a live-work unit is not constructed to commercial fire safety standards, the commercial portion of the live-work unit may only be operated by one or more persons who reside in the unit. If a live-work unit is constructed to commercial fire safety standards, a resident of the live-work unit may allow the commercial portion of the live-work unit to be operated by a third-party.

A. Live-work units shall meet all of the following standards:
   1. Uses shall be compatible with residential uses and shall not produce or create noise, smoke, vibrations, glare, fumes, odors, electrical interference, or fire hazards that would unreasonably interfere with residential uses.
   2. If a live-work unit is in a residential district, permitted uses shall be limited to those uses allowed in the Neighborhood Shopping (NS) District. For a live-work unit located in a nonresidential district, permitted uses shall be limited to those uses allowed in that district.
   3. Restroom facilities shall be provided to serve the commercial portion of the unit. Individual public restrooms facilities are not required within each live-work unit when disabled accessible public restroom facilities are provided elsewhere on an accessible route within the building or building site.
   4. A live-work unit will be subject to all applicable licenses and business taxes.
   5. See also article 5 of this chapter for additional design requirements, including section 5.7.7.

(Ord. of 8-2-2017, § 1(4.2.33))

Sec. 4.2.34. Mines, mining, quarries, gravel pits, borrow pits, and sand pits.

The following regulations apply to the use of land as a mine, mining operation, quarry, gravel pit, borrow pit, and sand pit. See also article 7 of this chapter, administration for additional approval criteria.

A. The following provisions apply to removal or extraction of dirt, sand and soil:

1. Drainage plans and a plan for the redevelopment of the site when the removal is completed shall be submitted with the application for a development permit.
2. The use shall not be established within 1,000 feet of a residential zoning district or use nor within 300 feet of any other use.
3. This subsection shall not prohibit the removal of earth and rock and filling and grading in any district done for land development purposes, upon issuance of a development permit in accordance with the provisions of this chapter.

B. Quarry and mining. The following provisions apply to the use of any parcel of land for a quarry, mine or mining operation:

1. All improved and maintained entrances shall be fenced and locked during non-business hours. The property shall be adequately posted as is required by state law, and evidence of such posting shall be filed with the director of planning.
2. Operators shall comply with state department of natural resources, surface mining land reclamation program rules and regulations, and the mining permit number issued by the state shall be filed with the director of planning.
3. A blasting limit of two inches per second peak particle velocity, as measured from any of three mutually perpendicular directions in the ground at off-site buildings, shall not be exceeded.
4. An air blast limit of 128 decibels (linear-peak), measured at off-site residential buildings, shall not be exceeded.
5. Seismographic and noise instrumentation shall be required for a minimum of one blast per three-month period. The records of such instrumentation and records of all blasts, including total charge weight, charge weight per delay, charge depth, date and time, location and meteorological conditions, shall be retained by the operator for a period of not less than two years. All non-instrumented blasts shall be in compliance with the recommended scaled distance, as defined by the United States Department of the Interior, Bureau of Mines Bulletin 656, entitled "Blasting Vibrations and Their Effects on Structures."

C. Prior to the issuance of any development permit for any mine, quarry, gravel pit, or sand pit, the applicant shall provide to the director a reuse or reclamation plan which meets all requirements of chapter 14 of the Code.

(Ord. of 8-2-2017, § 1(4.2.34))

Sec. 4.2.35. Mini-warehouses.

A. Outside storage for mini-warehouses shall be limited to vehicles such as boats, RVs, etc., and shall only be allowed in side and rear yards.

B. Storage units may not be used for the following uses: The operation of a business or service enterprise; personal activities such as hobbies, arts and crafts, woodworking, repair, restoration or maintenance of machinery or equipment; hazardous or toxic material storage; and/or living or sleeping quarters.

C. Wares, goods and/or personal property stored therein shall not include explosives, paint, flammable chemicals or other materials which might be corrosive or hazardous.

D. Buffer standards in article 5 of this chapter shall apply.

E. Exterior lighting for a mini-warehouse facility shall project inward and downward, and shall not spillover to adjacent properties.

(Ord. of 8-2-2017, § 1(4.2.35))

Sec. 4.2.36. Moving buildings, requirements.

No dwelling unit or other permanent structure shall be moved within or into the city unless, when relocated, it meets all requirements of chapter 27 of the Code and is first approved by the director of planning.

(Ord. of 8-2-2017, § 1(4.2.36))

Sec. 4.2.37. Outdoor display and seating.

This section applies to the placement of merchandise and/or merchandise vending machines outside the walls of any enclosed building with the intent being to entice potential customers onto the premises through the public display of such merchandise and/or merchandise vending machines. The term "outdoor display" shall not apply to merchandise which is placed outside temporarily for the purpose of sales. See division 3 of this article, temporary use regulations. Outdoor display shall be permitted in conjunction with permitted uses in the NS, C-1, C-2, MU districts, M, and M-2 zoning districts, provided the following requirements are met:

A. Areas devoted to outdoor display, as referred to in this section, shall be allowed on public and private sidewalks, provided that all ADA requirements are fulfilled.

B. All outdoor display areas shall be located contiguous to the principal building, subject to all fire safety requirements.

C. No outdoor display shall be permitted to occupy or interfere with traffic circulation, required parking areas or pedestrian access.

D. The type of merchandise permitted in outdoor displays shall be limited to automobiles, boats, recreational vehicles, farm equipment, yard and garden accessories, prefabricated storage sheds, nursery and agricultural products, gas pump island beverage shelving, and vending machines. This section shall not be interpreted to include supply yards, salvage yards, or other items or materials considered outdoor storage.

E. Outdoor displays of tires shall be within ten feet of the building.

F. Outdoor displays shall be permitted in any yard, but shall not encroach into any public rights-of-way.

G. Outdoor displays shall present a neat and orderly appearance.

H. Outdoor displays shall be permitted only where such display is incidental to and supportive of the principal use of the structure located on the same parcel.

I. Each outdoor display location must be shown on the site plan at time of initial permitting of land development permits and building permits and shall not encroach on any required landscaping and parking areas.

J. These standards shall apply to outdoor seating areas at restaurants, coffee shops, etc.

(Ord. of 8-2-2017, § 1(4.2.37))

Sec. 4.2.38. Outdoor storage of materials, supplies, equipment or vehicles.

The following regulations shall apply to outdoor storage of materials, supplies, equipment, or vehicles. The term outdoor storage does not include outside display of merchandise; outdoor temporary sales or events; auto-

dealerships; salvage yards; junkyards; automobile wrecking yards; or storage yards for non-operable, confiscated, or dilapidated vehicles, equipment, or materials.

A. In the O-I, NS, and C-1 districts, accessory outdoor storage associated with the operation of a business is allowed subject to the following requirements:

   1. The outdoor storage area shall be at least 50 feet from the street right-of-way.

   2. The outdoor storage area shall be screened so as not to be visible at ground level from any adjoining property or public street.

   3. The materials stored must be for use by the owner and not displayed for sale to third parties.

   4. Fleet vehicles associated with the operation of the business are exempt from these requirements.

B. In the C-2, M, and M-2 districts, any outdoor storage areas (primary or accessory) are allowed subject to the following requirements:

   1. The outdoor storage area shall be at least 50 feet from the street right-of-way.

   2. The outdoor storage area shall be screened so as not to be visible at ground level from any adjoining property or public street.

   3. A ten-foot-wide evergreen landscape buffer around the outside perimeter of the screened area shall be provided when adjacent to any property not zoned C-2, M, or M-2.

   4. Fleet vehicles associated with the operation of a business are exempt from these requirements.

C. In residential districts, outdoor storage is allowed for items such as barbecue grills, lawn furniture, hoses, garden tools, lawn equipment and outdoor play equipment. Outdoor storage of the following are expressly prohibited:

   1. Indoor appliances, whether or not in use;

   2. Indoor furniture, whether or not used for outdoor leisure furniture; and

   3. Items that are no longer used for their intended purpose; for example, a bike missing a tire, broken machinery, old appliances and scrap metal or other scrap materials.

(Ord. of 8-2-2017, § 1(4.2.38))

Sec. 4.2.39. Parking, commercial lot.

Commercial parking lots shall meet all the streetscape, landscaping, buffering and screening requirements provided in article 5 of this chapter.

(Ord. of 8-2-2017, § 1(4.2.39))

Sec. 4.2.40. Pawn shops.

The following provisions shall apply to pawn shops:

A. Pawn shops shall not be permitted within 1,000 feet of an existing pawn shop or check cashing facility. For the purpose of this section, distance shall be measured by the most direct route of travel on the ground.

B. The window and door area of any existing first floor facade that faces a public street or sidewalk shall not be reduced, covered, nor otherwise obscured, nor shall changes be made to such windows or doors that block one's view into the building at eye level from the street or sidewalk.

C. For new construction, at least 30 percent of the first floor facade that faces a public street or sidewalk shall be window or doors of clear or lightly tinted glass that allows a person to see into the building at eye level form the street or sidewalk.

D. The use of bars, chains, roll down doors or similar security devices placed on the outside of the building is prohibited.

E. The use of light emitting diodes, neon lights, and illuminated panels placed around the windows or the outside of the building is prohibited.

(Ord. of 8-2-2017, § 1(4.2.40))

Sec. 4.2.41. Personal care homes and child caring institutions.

A. *Personal care homes, general requirements.*

1. The owner of a group personal care home must be a person, sole proprietor, single owner Limited Liability Company, or a single owned business entity. The owner/operator must own and reside in the group personal care home.

2. Each personal care home must obtain all licenses and/or permits required by the State of Georgia before beginning to operate. Each personal care home licensed and/or permitted by the State of Georgia must display its state-issued and city-issued licenses and/or permits in plain view, visible from the front doorway of the facility.

3. No personal care home may display any exterior signage that violates the sign ordinance in chapter 21 of the Code or the sign provisions in the zoning regulations for the underlying zoning district where the personal care home is located.

4. Personal care homes may apply for an FHA Accommodation Variance as provided for in section 7.5.9 of this chapter.

5. No city permit for the operation of the personal care home shall be transferable.

B. *Personal care home, group (four to six persons).*

1. Two (2) copies of complete architectural plans for the subject group personal care home, signed or sealed by a registered architect, shall be submitted to the director of planning prior to issuance of a building permit or business license.

2. Each group personal care home must provide at least four (4) parking spaces within a driveway, garage or carport and must comply with any applicable requirements in article 6 of this chapter.

3. The home must be at least 1,800 sq. ft in size.

4. In order to prevent institutionalizing residential neighborhoods, no group personal care home located in a residential zoning district may be operated within one thousand five hundred (1,500) feet of any other group personal care home. The one-thousand-five-hundred-foot distance requirement is measured by a straight line which is the shortest distance (i.e., "as the crow flies") between the property lines of the two (2) tracts of land on which the group personal care homes are located.

C. *Personal care home, (seven (7) or more persons).*

1. Two copies of complete architectural plans for the subject community personal care home, signed or sealed by a registered architect, shall be submitted to the director of planning prior to issuance of a building permit or business license.
2. Each personal care home must provide at least one-half (0.5) parking space for each employee and resident, and must comply with any applicable requirements in article 6 of this chapter.

D. *Child Care Home, and Child Care Facility, general requirements.*

1. The owner of a child care home or child care facility must be a sole proprietor, single owner Limited Liability Company, or a single owned business entity. The owner/operator must own and reside in the child care home, or child care facility.
2. No child care home, or child care facility shall be located within 1,500 feet of another child care home or child care facility. The one-thousand-five-hundred-foot distance requirement is measured by a straight line which is the shortest distance (i.e., “as the crow flies") between the property lines of the two (2) tracts of land on which the child care homes, or child care facilities are located.
3. Each child caring home, and child care facility must obtain all license(s) and/or permit(s) required by the State of Georgia in order to operate. Each child caring institution must display its state-issued and city-issued license(s) and/or permit(s) in plain view, visible from the front doorway of the facility.
4. Child Care homes and Child Care facilities are not permitted in Multi-family dwellings.
5. No child caring home, facility may display any exterior signage that violates the sign ordinance in chapter 21 of the Code or the sign provisions in the zoning regulations for the underlying zoning district where the personal care home is located.
6. Each child care home, facility shall meet the minimum state requirements for playground size, location, and fencing.

E. *Child Care Homes, (up to five (5) children).*

1. Each group child caring institution must provide at least four (4) parking spaces within a driveway, garage or carport, and must comply with any applicable requirements in article 6 of this chapter.

F. *Child Care Facility, (six (6) or more children).*

1. Two (2) copies of the complete architectural plans of the subject community child caring institution, signed and sealed by a registered architect, shall be submitted to the director of planning prior to issuance of a building permit or business license.
2. Each community child caring institution must provide at least one-half (0.50) parking spaces for each employee and resident, and must comply with any applicable requirements in article 6 of this chapter.

(Ord. of 8-2-2017, § 1(4.2.41)) [TMOD-21-002]

Sec. 4.2.42. Places of worship, convents; monasteries; temporary religious meetings.

The following subsections shall apply to places of worship, convents and monasteries and their related uses, buildings and structures located in a residential district:

A. Any building or structure established in connection with places of worship, monasteries or convents shall be located at least 50 feet from any residentially zoned property. Where the adjoining property is zoned for nonresidential use, the setback for any building or structure shall be no less than 20 feet for a side-yard and no less than 30 feet for a rear-yard.

B. The required setback from any street right-of-way shall be the front-yard setback for the applicable residential district.

C. The parking areas and driveways for any such uses shall be located at least 20 feet from any property line, with a visual screen, provided by a six-foot-high fence or sufficient vegetation established within that area.

D. Places of worship, convents and monasteries shall be located on a minimum lot area of three acres and shall have frontage of at least 100 feet along a public street.

E. Places of worship, convents and monasteries shall be located only on a thoroughfare or arterial.

F. Any uses, buildings or structures operated by a place of worship that are not specifically included within the definition of place of worship must fully comply with the applicable zoning district regulations, including, but not limited to, any requirement for a special land use permit.

(Ord. of 8-2-2017, § 1(4.2.42))

Sec. 4.2.43. Private elementary, middle and high school.

A. The minimum lot size for private elementary, middle and high school, for which an application for a special land use permit is filed, shall be as follows:

1. *Elementary school.* Two acres plus one additional acre for each 100 students based on the designed capacity of the school.

2. *Middle school.* Three acres plus two acres for each 100 students based on the designed capacity of the school.

3. *High school.* Five acres plus two acres for each 100 students based on the designed capacity of the school.

B. The minimum public road frontage for a private school is 200 feet.

C. Accessory ball fields shall be located at least 50 feet from a residential district or property used for a residential purpose.

D. A 50-foot undisturbed buffer is required if adjacent to a residential district or property used for a residential purpose.

(Ord. of 8-2-2017, § 1(4.2.43))

Sec. 4.2.44. Salvage yard, junkyard.

The following provisions shall be required for automobile salvage, wrecking yards and junkyards, primary or accessory:

A. The site shall be enclosed by a wall or opaque fence not less than eight feet in height.

B. No activity and no vehicle storage associated with such uses shall be conducted within 100 feet of any property zoned or used for residential purposes.

C. No activity and no vehicle storage associated with such uses, except for deliveries, pickups, and signs, shall be conducted within 50 feet of the street right-of-way.

D. No activity and no vehicle storage associated with such uses shall be conducted within 50 feet of the side and rear property lines, unless the adjacent property is zoned M or M-2.

E. The use shall not be permitted within 300 feet of any property used for a school, park, playground or hospital.

F. The sale of automobile parts removed from vehicles on the site shall be permitted.

G. A ten-foot-wide evergreen landscape buffer around the outside perimeter of the screened area shall be provided when adjacent to any property not zoned C-2, M, or M-2.

(Ord. of 8-2-2017, § 1(4.2.44))

Sec. 4.2.45. School, specialized and vocational.

Specialized and vocational schools must meet the applicable requirements of section 4.2.42 and, with the exception of facilities located in industrial districts, all activities shall occur within enclosed buildings.

(Ord. of 8-2-2017, § 1(4.2.45))

Sec. 4.2.46. Senior housing; independent and assisted living, nursing, and continuing care.

A. Primary uses. Senior housing facilities shall include either independent living units or assisted living units, or both. The independent living units may be either single-family (detached) residences or multifamily (attached) residences.

B. Accessory uses. Senior housing facilities shall include one or more of the following accessory uses:

1. Ancillary clinics, personal service, retail (e.g., pharmacy, hair salon, medical offices).
2. Central kitchen and dining facility.
3. Recreation and amenities.
4. Building/clubhouse for classes, meetings, concerts, storytelling, etc.
5. Adult daycare.

C. The maximum number of unrelated residents living independently (not requiring personal care) and at age 55 or older allowed in an independent living unit is one per bedroom.

D. Height standards. A senior living facility in which all of the occupied units are occupied by at least one senior aged 55 or older is authorized up to ten stories without a height SLUP in HR, MU-3, MU-4, and MU-5 zoning districts, subject to transitional height plane regulations in article 5 of this chapter.

E. Accessibility standards. All senior housing shall incorporate accessibility standards that meet certification requirements for easy living or universal design and/or include all of the following minimum features:

1. At least one step free entrance to the main floor at either the front or side of the structure; if only one is provided, it shall not be from a patio or raised deck.
2. Main floor of each unit shall include a kitchen, entertaining area, and master bedroom with full bathroom.
3. Every door on the main floor shall provide a minimum width of 34 inches of clear passage.
4. Blocking shall be installed in the master bath around toilet, tub, and shower for placement or future placement of grab bars.

F. Assisted living, nursing and continuing care facilities shall provide the following:

1. Primary and secondary support services: Approval for assisted living, nursing or continuing care facilities shall not be granted without documentation of provisions for the following primary and secondary services:

a. Primary services: on-site dining facility, 24-hour on-call medical services, on-site licensed practical nurse, on-call registered nurse, linen and housekeeping services, and transportation services.

b. Secondary services: physical therapy, medication administration program, care technician services (clothes changing, bathing, etc.), on-site personal care (barber, beauty salon), fitness center, library.

c. Access to outdoor seating and walking areas shall be provided as part of every assisted living, nursing or continuing care facility.

G. A senior housing facility shall only be approved after consideration of the use permit criteria, found in article 7 of this chapter and after consideration of the following:

1. Proximity and pedestrian access to retail services and public amenities.
2. Transportation alternatives.
3. Integration into existing neighborhoods through connectivity and site design.
4. Diverse housing types.
5. Site and building design that encourages social interaction.
6. Building design that meets easy living standards.

H. In addition, in consideration of the special land use permit or special administrative permit for a senior housing facility, the following criteria shall be evaluated based on the degree to which these elements provide transition from the proposed project to adjacent existing development:

1. Building height.
2. Landscaping.
3. Maximum lot coverage.
4. Setbacks from exterior property lines.
5. Site size.
6. Access to thoroughfare.

I. Submittal requirements. The following documents and information are required for submittals for rezoning, special land use permits, land development permits and building permits associated with proposed senior living facilities:

1. Survey and site plan (per established requirements in article 7 of this chapter).
2. Landscape and tree plan.
3. Number and location of residential units.
4. Types of units.
5. Amenities.
6. Institutional/nonresidential services.
7. Proximity to services such as health care, shopping, recreation, and transit.
8. Other documents addressing the approval criteria in subsections G. and H. of this section.

(Ord. of 8-2-2017, § 1(4.2.46))

Sec. 4.2.47. Service areas, outdoor, for nonresidential uses.

All service areas for nonresidential uses shall be established so as not to encroach into any yard requirement and shall be visually screened from adjacent residential properties.

(Ord. of 8-2-2017, § 1(4.2.47))

Sec. 4.2.48. Shelters for homeless or battered persons and transitional housing facilities.

A. No shelter for homeless or battered persons and no transitional housing facility shall be designed to exceed a capacity of 20 persons, unless accessory to a place of worship.

B. Prior to issuance of any approvals for operation of a shelter for homeless or battered person or transitional housing facility, the applicant for such approval shall disclose, in writing, the capacity and floor plan of the facility.

C. Such shelters shall comply with all applicable City of Stonecrest building, housing, and fire codes and shall fully comply with O.C.G.A. § § 30-3-1 et seq. before a certificate of occupancy can be issued. The loss of any state license or permit shall result in an automatic revocation of that city issued permit or license.

D. There shall be no use on the property other than the shelter, unless accessory to place of worship.

E. No new shelter or transitional housing facility shall be located within 1,000 feet of an existing shelter or transitional housing facility.

F. Shelters for homeless or battered persons and transitional housing facilities may apply for an FHA Accommodation Variance as provided for in section 7.5.9 if the residents would constitute disabled persons under the FHA.

(Ord. of 8-2-2017, § 1(4.2.48))

Sec. 4.2.50. Swimming pool, community.

Community swimming pools and their customary accessory buildings and structures shall be set back at least 15 feet from all side and rear lot lines and be enclosed by a wall or fence, not less than four feet nor more than six feet in height. Setback is measured from the pool decking except where established elsewhere.

(Ord. of 8-2-2017, § 1(4.2.50))

Sec. 4.2.51. Telecommunications towers and antennas.

See section 4.2.57, wireless telecommunications.

(Ord. of 8-2-2017, § 1(4.2.51))

Sec. 4.2.52. Tennis court, accessory to residential.

Tennis courts on individual residential lots shall be located in rear yards and shall be set back at least 15 feet from all side and rear property lines and be enclosed by a fence or freestanding wall at least eight feet high. Lighting for the private tennis court shall not be permitted, except by a special administrative permit.

(Ord. of 8-2-2017, § 1(4.2.52))

Sec. 4.2.53. Transit shelters.

A. Transit shelters may be located within a street right-of-way with permission from the director of planning or within an established yard fronting a street, but may not be located so as to obstruct the sight distance triangle per article 5 of this chapter.

B. A schematic plan of the transit shelter must be submitted and approved by the director of planning. The plan must include the following:

1. The location of the proposed shelter relative to street, property lines, and established building yards;

2. The size and design of the shelter, including front, side, and rear elevations, building materials, and any public convenience or safety features such as telephone, lighting, heating, or trash containers. Trash containers shall be provided for all transit shelters.

(Ord. of 8-2-2017, § 1(4.2.53))

Sec. 4.2.54. Truck stop.

The following provisions apply to truck stops whether designed as a primary use or accessory use as part of an industrial development:

A. Truck stops shall be permitted only on parcels of ten acres or more.

B. Entrance drives for truck stop facilities shall not be closer than 300 feet from any point of an interstate highway interchange.

C. Truck stops shall meet all state and federal environmental guidelines and requirements.

(Ord. of 8-2-2017, § 1(4.2.54))

Sec. 4.2.55. Urban garden or community gardens.

A. If an urban garden or community garden is greater than five acres, a special administrative permit is required. The permit shall expire 24 months from issuance, and such use shall thereafter only operate upon issuance of a new permit in the manner prescribed herein.

B. The following items shall be submitted with the special administrative permit application:

1. Name and current address of the applicant.

2. Address of the garden.

3. Proof of ownership or leasehold interest (for the duration of the special administrative permit) of the lot on which the garden is located; or a notarized letter signed by the property owners, or authorized property manager or agent, consenting to the placement of a garden on the lot.

4. A site plan showing:

a. Property lines, street curbs, street names, and adjacent sidewalks as applicable.

b. Plan layout and dimensions showing plot layout, structures and compost areas.

c. Source of water, including any rain barrel locations.

5. Permit fee.

6. Other documents or information reasonably deemed necessary to determine the compatibility of the use identified in the permit application.

C. Sales of produce from the community garden site is allowed with the approval of a special administrative permit for temporary outdoor seasonal activities, provided the following regulations are met and documentation, where required, is provided with the application:

1. *Sales hours.* Garden sales and pickups may occur between 7:00 a.m. and 9:00 p.m. Set-up of sales operations shall begin no earlier than 6:00 a.m., and take-down and clean-up shall end no later than 10:00 p.m.

2. *Management.* An individual shall be present on-site during all sales hours to direct the vending operations.

D. The following requirements apply for all urban or community gardens, of any acreage. Gardens accessory to a residence are excluded from these standards.

1. Garden operating rules and regulations. A set of operating rules shall be established to address the governance structure of the garden, hours of operation, maintenance, and security.

2. Fencing. All fences shall comply with all applicable sections in the Code pertaining to the relevant zoning district in which the garden is located.

3. Synthetic fertilizers, pesticides, and herbicides. Gardens may submit documentation of organic methods. Alternatively, the garden shall be designed and maintained so that synthetic fertilizers, pesticides, and herbicides will not harm any adjacent property.

4. Waste removal. The garden shall recycle and remove waste in accordance with all applicable sections of the Code.

5. Parking requirements. The garden shall provide a minimum of one parking space per one-half acre of property on which the community garden is located during the hours of operation. The parking requirement may be met by providing either on-site parking or off-site parking within 500 feet of the property line of the property on which the community garden is located.

6. Permitted structures. The following structures are permitted in association with an urban or community garden:

a. Greenhouses, hoop houses, cold-frames and similar structures used to extend the growing season.

b. Storage buildings limited to tool sheds, shade pavilions, barns, restroom facilities with composting toilets, and planting preparation houses.

c. Benches, bike racks, raised and accessible beds, compost bins, picnic tables, seasonal farm stands, fences, garden art, rain barrel systems, chicken coops, beehives and children's area.

7. Use of machinery. Use of machinery and equipment is allowed, but use of machinery is limited to the hours of 8:00 a.m. to 8:00 p.m. When not in use, all such machinery and equipment (with the exception of machinery and equipment that is:

(i) Intended for ordinary household use;

(ii) Borrowed or rented for a period not to exceed seven days; or

(iii) Located in an urban garden in Light Industrial District or Heavy Industrial District);

shall be stored so as not to be visible from any public street, sidewalk, or right-of-way.

8. Buildings. Buildings shall be set back a minimum of ten feet from property lines.

9. A minimum of 20 feet of lot frontage along a public right-of-way, or an access easement not less than ten feet wide to provide vehicular access in case of an emergency is required.
10. Driveways and parking may be surfaced with pervious material, including gravel.
11. The site should be designed and maintained so that water does not cause erosion or allow sedimentation on adjacent property.
12. No fencing shall exceed six feet in height. Fencing along the front shall not exceed four feet.
13. Compost and waste collection bins must be located in the rear yard (if a building exists) and be placed at least ten feet from any property line.
14. One sign located on a community garden site is permitted, provided that it shall not exceed six square feet of sign area, excluding the base, and shall not exceed four feet in height. Garden signs shall not be illuminated. Internally located directional, instructional, educational and labeling signs are allowed without a permit.
15. Hours of operation (other than sales) shall be allowed from dawn until dusk. No lighting is allowed.
16. Community gardens must comply with supplemental regulations regarding livestock, bee keeping, and temporary, seasonal sales or events, as applicable.

(Ord. of 8-2-2017, § 1(4.2.55))

Sec. 4.2.56. Utility structure necessary for transmission or distribution of service.

Any utility structure necessary for the transmission or distribution of service, whether an authorized use or a permitted use, shall provide security fencing and landscaping to lessen the visual impact of such structures on adjoining property. Noise resulting from temporary construction activity pursuant to a valid development or building permit, that is not a part of the usual and ongoing operation of the use on the site, that occurs between 7:00 a.m. and 7:00 p.m. shall be exempt from the requirements of this section. Such structures shall be located only within the buildable area of any lot where permitted or authorized by zoning and shall meet all requirements of the district in which such structure is located.

(Ord. of 8-2-2017, § 1(4.2.56))

Sec. 4.2.57. Wireless telecommunications

A. *Purpose and goals.* The purpose of this section is to ensure that residents, public safety operations, and businesses in City of Stonecrest have reliable access to wireless telecommunications networks and state of the art communication services while also ensuring that this objective is achieved in a manner consistent with City of Stonecrest's planning and zoning standards, to maintain to the extent possible the aesthetic integrity of the community, and in accordance with applicable state law and with federal law, regulations, and guidance, including the Telecommunication Act of 1996, which preserved, with certain limitations, local government land use and zoning authority concerning the placement, construction, and modification of wireless telecommunication facilities. The goals of this section are:

1. To ensure City of Stonecrest has sufficient wireless infrastructure to support its public safety communications throughout the city;
2. To provide access to reliable wireless telecommunication services by residents, businesses, and visitors throughout all areas of the city;
3. To minimize the total number of support structures within the city by promoting and encouraging the joint use of new and existing wireless support structures among wireless service providers;

4. To encourage the location of wireless support structures, to the extent possible, in areas where adverse impacts on the community will be minimized;
5. To encourage the design and construction of towers and antennas to minimize adverse visual impacts;
6. To avoid potential damage to property caused by wireless communications facilities by ensuring that such structures are soundly and carefully designed, constructed, modified, maintained, and removed when no longer used or when determined to be structurally unsound;
7. To preserve those areas of scenic or historic significance;
8. To facilitate implementation of an existing tower map for City of Stonecrest;
9. To promote and encourage the joint use of new and existing tower sites among service providers;
10. To enhance the ability of the providers of wireless communications services to deliver such services to the community effectively, safely, and efficiently;
11. To be consistent with all overlay districts within the city, to the extent practicable and so as to not to conflict with this section;
12. To encourage the location of telecommunication facilities, including all Telecommunication Support Structures, Equipment and/or Antenna(s) in nonresidential areas;
13. To promote health, safety, and general welfare of the public by regulating the siting of and establishing development standards for wireless facilities and related wireless support structures, equipment, and infrastructure; and
14. To follow and promote policies embodied in Section 704 of the Federal Telecommunications Act of 1996 and O.C.G.A. §36-66B-1, et. seq., in such manner as not to unreasonably discriminate between providers of functionally equivalent wireless services or to prohibit or have the effect of prohibiting personal wireless services in the City.

B. *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning. Words not defined herein shall be construed to have the meaning given by common and ordinary usage and shall be interpreted within the context of the sentence and section in which they occur:

Accessory equipment (or Equipment) means any device or telecommunications infrastructure component serving or being used in conjunction with the delivery or transmission of all types of Telecommunication Services.. This equipment includes, but is not limited to, Antennas, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or similar structures, small cell devices and similar wireless transmitters or conduits

Administrative approval means zoning approval that the director of planning is authorized to grant in the form of a special administrative permit.

Administrative review means evaluation of an application by the director of planning in connection with the review of an application for a building permit.

Alternative Telecommunication Support Structure means clock towers, bell towers, water tanks, church steeples, light/power poles, electric transmission support structures, man-made trees and similar natural or man-made alternative-design mounting structures that camouflage or conceal the presence of Antennas or telecommunication support structures. An Alternative Telecommunication Support Structure may include a pre-existing building and outdoor advertising sign.

Antenna means any communications equipment that transmits, receives, or transmits and receives electromagnetic radio signal used in the provision of all types of wireless communication services, including, but not limited to, cellular, paging, personal communications services (PCS) or microwave communications. Such

structures and devices include, but are not limited to, directional antennas, such as panels, microwave dishes and satellite dishes, and omnidirectional antennas, such as whips. The term "antenna" does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes designed for residential or household purposes.

Applicant means a person or entity with an application for an administrative or special use permit for the erection of, Modification of, or Co-location of Telecommunication Facilities in the City, whether located on private lands or in a Public Right-of-Way. For purposes of this section, this term shall include any Co-Applicant or party with an ownership interest in a proposed or affected existing Telecommunication Facility, including, but not limited to, property owners, telecommunication support structure owners, and any proposed tenants for the facility.

Application means a formal request submitted to City of Stonecrest to construct, collocate or modify a Telecommunication Facility, Telecommunication Support Structure or Alternative Telecommunication Support Structure..

Attached wireless telecommunications facility means an antenna or antenna array that is secured to an existing building or structure (except an antenna support structure) with any accompanying pole or device which attaches it to the building or structure, together with transmission cables and an equipment cabinet, which may be located either on the roof or inside/outside of the building or structure, and do not significantly change the profile of the existing structure and are not readily noticeable to the untrained eye. Attached wireless telecommunications facilities may be concealed or contained in an architectural feature and should complement the existing theme and rhythm of the structure. An attached wireless telecommunications facility is considered to be an accessory use to the existing principal use on a site.

Carrier on wheels or *cell on wheels (COW)* means a portable self-contained telecommunications facility that can be moved to a location and set up to provide wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the antenna support structure, though it may use a separate temporary mast for the placement of antennas.

Collocate or *collocation* means the placement or installation of new wireless facilities on previously approved and constructed Telecommunication Support Structures or Alternative Telecommunication Support Structures, including monopoles and towers, both self-supporting and guyed, in a manner that negates the need to construct a new freestanding Telecommunication Support Structure or Alternative Telecommunication Support Structure. Such a term includes the placement of accessory equipment within an existing equipment compound.

Commission means the Georgia Public Service Commission

Distributed antenna systems (DAS) means a network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure. A DAS is considered a type of Small Cell Installation.

Equipment compound means an area surrounding or adjacent to the base of a wireless support structure within which accessory equipment is located.

FAA means the Federal Aviation Administration.

Fall zone means the maximum distance from its base a Telecommunication Support Structure or Alternative Telecommunication Support Structure will collapse in the event of a failure, usually less than the total height of such structure. This distance must be defined by a professional civil or structural engineer licensed in the State of Georgia.

FCC means the Federal Communications Commission.

Geographic search area (GSA) means a geographic area designated by a wireless provider or operator as the area within which a new telecommunication facility must be located to serve an identified system need, produced in accordance with generally accepted principles of wireless engineering.

Grantee means an Applicant in receipt of written authorization from the City to erect, operate, and/or maintain Telecommunication Facilities in the Public Right-of-Way.

Guyed Structure means a style of Telecommunication Support Structure consisting of a single truss assembly composed of sections with bracing incorporated. The sections are attached to each other, and the assembly is attached to a foundation and supported by a series of wires that are connected to anchors placed in the ground or on a building.

Height means the distance measured from ground level to the highest point on a Telecommunication Support Structure or Alternative Telecommunication Support Structure, including all Antennas or lighting rods.

Modification means the improvement, upgrade, expansion, or replacement of wireless facilities on an existing Telecommunication Support Structure or Alternative Telecommunications Support Structure or within an existing equipment compound, including improvements, upgrades, expansions, or the replacement of any existing telecommunication Equipment, conduit, or infrastructure apparatus, provided such improvement, upgrade, expansion, or replacement does not increase the Height of the Telecommunication Support Structure *Monopole* means a single, freestanding Telecommunication Support Structure that consists of a single shaft usually composed of two or more hollow sections that are in turn attached to a foundation. This type of support structure is designed to support itself without the use of guy wires or other stabilization devices. These facilities are mounted to a foundation that rests on or in the ground or on the roof of a building.

Ordinary maintenance means action taken to ensure that telecommunications facilities and support structures are kept in good operating condition. Ordinary maintenance includes inspections, testing and modifications that maintain functional capacity, aesthetic and structural integrity; for example the strengthening of a support structure's foundation, or of the support structure itself. Ordinary maintenance includes replacing antennas of a similar size, weight, shape and color and accessory equipment within an existing telecommunications facility, and relocating the antennas of approved telecommunications facilities to different height levels on an existing Telecommunication Support Structure or Alternative Telecommunication Support Structure upon which they are currently located. Ordinary maintenance does not include modifications.

Provider means any legal entity authorized and/or engaged in the provision of Telecommunication Services.

Public Right(s)-of-Way means and includes all public streets and utility easements now or hereafter owned by or granted to the City, but only to the extent of the City's right, title, interest or authority to authorize or permit an Applicant to occupy and use such streets and easements for the erection and operation of Telecommunication Facilities.

Public Street means a street, road, highway, boulevard, freeway, lane, path, alley, court, sidewalk, parkway, or drive which is owned by a public entity or to which a public entity has an easement for street purposes, and with respect to which, and to the extent that, the City has a right to grant use of the surface of and space above and below in connection with an authorized Provider of Telecommunication Services and/or owner of Telecommunication Facilities.

Small Cell or Small Cell Installation means an antenna facility that meets the following conditions:

(i) Mounted on structures 50 feet or less in Height, including their antennas; or

(ii) Mounted on structures no more than 10 percent taller than other adjacent structures; or

(iii) Do not extend existing structures on which they are located to a Height of more than 50 feet or by more than 10 percent, whichever is greater;

AND

(iv) Each antenna, excluding associated Equipment, is no more than three cubic feet in volume; and

(v) All wireless equipment associated with the structure, including any pre-existing associated Equipment on the structure, is no more than 28 cubic feet in volume.

Substantial Increase in Size means:

(i) Any increase in an existing Telecommunication Support Structure's Height by more than 10% or 10 feet (on private property) or 20 feet (on Rights-of-Way), whichever is greater, or width of the added appurtenances more than 20 feet on property or 6 feet on the Right-of-Way, as previously approved by the City or County, as a result of Modification or Collocation of Antennas or similar telecommunication Equipment;

(ii) An increase in the dimensions of a Telecommunication Facility's Equipment compound as approved by the City or County as a result of Modification or Collocation by more than 10%, inclusive of the increase due to placement of an additional Equipment compound or, if in the Right-of-Way, an installation of any Equipment compound where none existed prior to the Modification or Collocation;

(iii) A Modification or Collocation that will, as proposed, violated condition(s) of approval of an existing Telecommunication Facility, including any subsequently adopted amendments;

(iv) A Modification or Collocation of Equipment that, as proposed, will exceed the applicant weight limits for an existing Telecommunication Facility, as approved by the City or County;

(v) The addition of more than four (4) new Equipment cabinets or one (1) new shelter;

(vi) The excavation outside existing leased or owned property and current easements; and/or

(vii) For concealed or stealth-designed facilities, if a Modification or Collocation would defeat the concealment elements of the Telecommunication Facility or base station.

Telecommunications facility means any physical component utilized in the provision of all types of Telecommunications Services, including all Telecommunication Support Structures, Alternative Telecommunication Support Structures, Antennas, Equipment, infrastructure apparatus, based support mechanism, accessory equipment, towers, Monopoles, Small Cell Installations, and physical attachments necessary for the provision of such Telecommunication Services.

Telecommunication Facility Owner(s) means any person or entity that directly or indirectly owns, controls, operated or manages Telecommunication Facilities, including any related Equipment or property within the City, used or to be used for the purpose of offering or transmitting signals used in the provision of any Telecommunication Services.

Telecommunication Service(s) means the transmittal of voice, data, image, graphic, and video programming between or among points by wire, cable, fiber, optics, laser, microwave, radio, satellite, or other facilities. This term shall include commercial mobile radio services, unlicensed wireless services, and common carrier wireless exchange services as identified in the Telecommunications Act of 1996.

Telecommunication Support Structure means a freestanding structure that is designed to support or capable of supporting and constructed primarily for the purpose of supporting telecommunication Equipment; this term shall include self-supporting, guyed, and Monopole support structures. The term includes, and is not limited to, radio and television transmission telecommunication support structures, microwave telecommunication support structures, common-carrier telecommunication support structures, cellular telecommunication support structures, man-made trees, Alternative Telecommunication Support Structures, and other similar structures. In the Public Right-of-Way, only Telecommunication Support Structures erected for the installation of Small Cells shall be permitted.

Utility means any person, corporation, municipality, county, or other legal entity or department thereof or entity related or subordinate thereto, providing retail or wholesale electric, data, cable, or Telecommunication Services, or otherwise subject in any way to the lawful jurisdiction of the Commission.

Visual Quality means the appropriate design, arrangement, and location of Telecommunication Support Structures in relation to the built or natural environment to avoid abrupt or severe differences.

C. *Approvals required for telecommunications facilities.* It shall be unlawful for any person to erect, install, construct, enlarge, move, alter or convert any Telecommunication Support Structure, Alternative Telecommunication Support Structure or antenna or cause the same to be done within City of Stonecrest except in accordance with the provisions of this section. In addition, except as otherwise specifically provided herein, all support structures and antennas shall also comply with all applicable regulations for the zoning district in which said support structures or antenna is located and any permits authorizing said support structures or antennas.

1. All telecommunications facilities and support structures shall require the issuance of a building permit in compliance with the administrative review processes described in this chapter. The building permit for telecommunications facilities and support structures shall be in addition to either a special administrative permit or a special land use permit if required.

2. Telecommunications facilities and support structures permitted upon issuance of a special administrative permit by the director of planning shall be considered in accordance with the standards set forth in this chapter. A building permit for a telecommunications facilities and support structures may be applied for and considered contemporaneously with an application for a special administrative permit.

3. Telecommunications facilities and support structures not permitted by a special administrative permit shall be permitted upon the granting of a special land use permit by the City of Stonecrest City council in accordance with the standards set forth in this chapter, before submittal for administrative review (building permit).

D. *Exempt.* Ordinary maintenance of existing telecommunications facilities and support structures shall be exempt from zoning and permitting requirements. In addition, the following facilities are not subject to the provisions of this section:

1. Antennas used by residential households solely for broadcast radio and television reception;

2. Satellite antennas used solely for residential or household purposes;

3. Telecommunication facilities and support structures located on city-owned property;

4. COWs placed for a period of not more than 120 consecutive days at any location within City of Stonecrest after a declaration of an emergency or a disaster;

5. Television and AM/FM radio broadcast towers and associated facilities; and

6. Small Cell facilities when located within a building interior.

E. *Collocation of Telecommunications facilities permitted by Special Administrative Permit review.*

1. Collocation.

a. Collocated telecommunications facilities are permitted in all zoning districts, when located on any existing structure fifty (50) feet in height or less) subject to administrative review in accordance with the requirements of this chapter.

b. Collocated telecommunication facilities may exceed the maximum building height limitations within a zoning district, above the roof line of a flat roof or the top of a parapet wall to which they are attached, but shall be camouflaged or screened with an architectural feature compatible with the building. Any collocation that causes a substantial increase in size of the Telecommunication Facility and/or supporting structure shall be permitted only upon a demonstration deemed sufficient to the director of planning that such collocation will obviate the need for an erection of a new telecommunications support structure or alternative support structure in the same geographic search area (GSA), as well as all other applicable review criteria as stated in this section.

2. The Special Administrative Permit must follow the application requirements in subsection "F" below. The director of planning must issue a written decision approving, approving with conditions, or denying the application for Special Administrative Permit for collocation within 90 days of submission of the initial application or within sixty (60) days if the proposed Collocation does not substantially increase in size the existing Telecommunication Facility or is a Collocated Small Cell Installation.

F. Erection of new Small Cell Installations *and support structures permitted by special administrative permit.*

1. *New support structures.*

a. New Telecommunication Support Structures and Alternative Telecommunication Support Structures for Small Cell Installations shall be permitted in all zoning districts and Public Rights-of-Way by special administrative permit.

b. New Telecommunication Support Structures and Alternative Telecommunication Support Structures, from fifty (50) feet up to 199 feet in height shall be permitted by special administrative permit in the OI, OD, C-1, C-2, M and M-2 zoning districts.

c. Attached wireless telecommunications (AWT) Antennas are allowed in single-family residential districts, RE, RLG, R-100, R-85, R-75, R-60 and RSM. An AWT shall be located only on property that is used for nonresidential purposes, and attached to nonresidential structures. The height of the facility shall be measured to include the height of the structure. These facilities shall be permitted by special administrative permit in accordance with the requirements of this chapter.

2. *Cell on wheels/carrier on wheels (COW) facilities.* The use of COWs shall be permitted in any zoning district after special administrative permit approval and administrative review (building permit). COWs may be placed for a period of not more than 120 consecutive days at any location within unincorporated City of Stonecrest if used during a non-emergency or special event. Placement of a COW for the purpose of providing wireless telecommunication service in connection with a special event, subject to the COWs compliance with all federal requirements, may be up to 45 consecutive days before such special event, for the duration of the event, and for up to 14 consecutive days thereafter. After a declaration of an emergency or disaster by federal or state government, by City of Stonecrest, or a determination of public necessity by the director of planning, COWs are authorized without permitting.

4. *General standards, design requirements, and miscellaneous provisions.* Unless otherwise specified herein, all telecommunications facilities and support structures permitted by special administrative permit approval are subject to the applicable general standards and design requirements contained herein.

5. *Special administrative permit review process.* All special administrative permit applications must contain the following:

a. The special administrative permit application form signed by the applicant.

b. A copy of a lease or letter of authorization from the owner of the property on which the telecommunications facility and support structure are or proposed to be located evidencing the applicant's authority to pursue the application. Such submissions need not disclose the financial lease terms.

c. Site plans detailing proposed improvements complying with the city's site plan requirements. Site plans must depict all improvements and satisfaction of all applicable requirements contained in this Code, including property boundaries, setbacks, topography, elevation sketch, landscaping, fencing, and dimensions of improvements.

d. Proof of and/or certified copies of any required approval, registration, and/or licensure from the Commission for any Provider of Telecommunication Services to provide such services in the State

of Georgia, where applicable, and any other required FAA, FCC, or otherwise state and federal approval, registration, and/or licensure required to erect, Modify, or Collocate the proposed Telecommunication Facility.

e. An affirmative declaration that the Applicant shall comply with all applicable federal, state, and local laws and regulations, including all applicable provisions of the City's Code of Ordinances and conditions imposed by the City regarding the erection and maintenance of Telecommunication Facilities.

f. In the case of a new support structure:

i. A statement indicating why collocation could not meet the applicant's requirements. Such statement may include justifications, including why collocation is either not reasonably available or technologically or structurally feasible, as applicable, to document the reason why collocation is not a viable option.

ii. The applicant shall provide a list of all the existing structures considered by it as alternatives to the proposed location. The applicant shall provide a written explanation why the alternatives considered were either reasonably unavailable, or technologically or structurally infeasible.

iii. Applications for new support structures with accompanying telecommunications facilities shall be considered together as one application requiring only a single application fee.

iv. A list of all antennas and support structures in City of Stonecrest in which the applicant has an ownership interest or use agreement. The list shall include the location, the type of structure, the height of the structure, the number of facilities located on the same structure, and the number of facilities for which collocation would be available under existing conditions.

v. A color propagation map demonstrating the existing coverage of all telecommunications facilities owned and proposed by the applicant within the GSA.

vi. Current and proposed coverage map for the proposed Telecommunication Facility.

vii. A structural integrity analysis of a support structure shall be included where antennas and equipment will be attached to such support structure, or to establish the fall zone. Such certification and structural integrity analysis shall bear the signature and seal of a professional engineer licensed in the State of Georgia.

viii. A special administrative permit application fee as listed in City of Stonecrest's published fee schedule. Such fee for Small Cell Installations shall not exceed $500 for the first five locations submitted concurrently, and $100 for each additional location thereafter.

g. Any other information as the director of planning may require to demonstrate full compliance with this section, all other ordinances of the City and all applicable requirements of state or federal law.

h. Additional Requirements for Right-of-Way Applications. Applicants seeking to Modify, Collocate or erect new Small Cell Installations on any Public Right-of-Way within the municipal limits of the City shall provide the following in addition to the requirements of this subsection:

(i) Proof of adequate insurance or self-insurance of the Applicant to defend and cover all claims of third parties against the Applicant and/or City personnel related to the use of the Public Right-of-Way;

(ii) A description of the Applicant's service area, where applicable, which shall be sufficiently detailed so as to allow the City to respond to subscriber or end-user inquiries. For the

purpose of this paragraph, an Applicant providing Telecommunication Services may, in lieu of or as a supplement to a written description, provide a map on 8 ½ inch by 11 inch paper that is clear and legible and that fairly depicts the service area within the municipal limits of the City. If such service area is less than the municipal limits of the City, the map shall describe the boundaries of the geographic area to be served in clear and concise terms;

(iii) Proof of an executed Right-of-Way Use Agreement with the City or otherwise an existence of a valid telecommunications franchise to locate utilities in the Public Rights-of-Way of the City, as applicable, in accordance with State law.

5. *Procedure.*

a. Within 30 days of receipt of an application for special administrative permit, or within ten (10) days if for Small Cell Installations, the director of planning shall either:

(1) Inform the applicant in writing of the specific reasons why the application is incomplete and does not meet the submittal requirements; or

(2) Deem the application complete.

If the director informs the applicant that its application is incomplete within 30 days, the overall timeframe for review is suspended until such time that the applicant provides the requested information necessary to complete the application. In case of Small Cell Installations, the first subsequent resubmittal shall restart the review period anew.

b. An applicant that receives notice of an incomplete application may submit additional documentation to complete the application. An applicant's failure to complete the application within 60 days after receipt of written notice of incompleteness shall result in the withdrawal of the application without prejudice. An application withdrawn without prejudice may be resubmitted as a new application upon the filing of a new application fee.

c. The director of planning must issue a written decision approving, approving with conditions, or denying the application for the erection of a new Telecommunication Support Structure or Alternative Telecommunication Support Structure within 150 days of the submission of the initial application , or ninety (90) days in the case of application for the erection of a new Small Cell Installation, unless the director of planning notified applicant in writing that its application was incomplete within 30 days of filing. If so, the remaining time from the applicable total review time is suspended until the applicant provides the missing information.

d. Upon receipt of a completed application, the director of planning shall post a sign on the subject property with information concerning the name of the applicant, a short summary of what the application is requesting, and a deadline for decision. The same information shall also be published in the City's legal organ in the next available edition after receipt of a completed application.

G. *Special land use permit review process.*

1. Erection of a new telecommunications facility, and new support structure, located in a medium to high density residential district, or NS and OIT, from 51 to 150 feet in height (except for an attached wireless telecommunication facility) shall meet the requirements of this chapter and shall be approved by a special land use permit subject to:

a. The submission requirements below;

b. The applicable standards below; and

c. The requirements of the special land use permit general requirements provided in this chapter.

2. Submission requirements for special land use permit applications.

a. All special land use permit applications for telecommunications facilities must contain the following:

i. The special land use permit application form signed by applicant.

ii. A copy of a lease or letter of authorization from the property owner evidencing applicant's authority to pursue the special land use permit application. Such submissions need not disclose the financial lease terms.

iii. A legal description of the parent tract, the leased parcel and any associated easements, as applicable.

iv. A scaled site plan clearly indicating the location, type and height of the proposed Telecommunication Support Structure or Alternative Telecommunication Support Structure to be utilized, on-site land uses and zoning, adjacent land uses and zoning, adjacent roadways, proposed means of access, setbacks from property lines and residential structures (if located on adjacent property), elevation drawings of the proposed support structure, design of the support structure and facility and how visible obtrusiveness is reduced, accessory structure and any other structures, topography on-site and of surrounding property, existing streams, wetlands and floodplains, and other information deemed necessary by the director of planning to assess compliance with this section.

v. A letter of intent providing a detailed narrative regarding the proposed facility, including the needs it is intended to meet, the area to be served, design characteristics, collocation alternatives, nature of uses on adjacent properties, and any other information deemed necessary by the director of planning to provide an adequate description of the proposal.

vi. A radio frequency study including a description of the area of coverage, capacity and radio frequency goals to be served by the proposed facility, and the extent to which such proposed facility is needed for coverage or capacity needs. The study shall include all planned, proposed, in-service or existing sites operated by the applicant in or near the boundaries of and a color propagation study demonstrating the existing coverage of all telecommunications facilities owned and proposed by the applicant within the GSA. The study shall also demonstrate that the proposed height is the minimum necessary to achieve the required coverage. The study shall bear the signature of a qualified radio frequency engineer and certify that all emissions from any Antenna on the Telecommunication Support Structure will comply with FCC frequency emissions standards..

vii. Certification that the telecommunications facility, the foundation and all attachments are designed and will be constructed to meet all applicable local codes, ordinances, and regulations, including any and all applicable city, state and federal laws, rules, and regulations and will not interfere with public safety communications or the usual and customary transmission or reception of radio, television, or other Telecommunication Services enjoyed by adjacent properties.

viii. Line-of-sight diagram or photo simulation, including a balloon test, showing the proposed support structure set against the skyline and viewed from at least four directions within the surrounding areas.

ix. A list of all Telecommunication Support structures and Alternative Telecommunications Support Structures in the City of Stonecrest in which the applicant has an ownership interest or use agreement. The list shall include the location, the type of structure, the height of the structure, the number of facilities located on the same structure, and the number of facilities for which collocation would be available under existing conditions.

x. A statement indicating why collocation is not feasible. Such statement shall include:

(1) Such technical information and other justifications as are necessary to indicate the reasons why collocation is not a viable option; and

(2) A list of the existing structures considered by the applicant as possible alternatives to the proposed location and a written explanation why the alternatives considered were structurally deficient or otherwise unsuitable.

xi. A statement certifying that the support structure will be made available for collocation to other service providers at commercially reasonable rates.

xii. Notification to surrounding property owners as required by this chapter.

xiii. A special land use permit application fee as listed in City of Stonecrest's published fee schedule.

ix. Proof of and/or certified copies of any required approval, registration, and/or licensure from the Commission for any Provider of Telecommunication Services to provide such services in the State of Georgia, where applicable, and any other required FAA, FCC, or other State and Federal approval, registration, and/or licensure required to erect the proposed new Telecommunication Support Structure or Alternative Telecommunication Support Structure.

3. *Procedure.*

a. Within 30 days of the receipt of an application for special land use permit, the director of planning shall either:

(1) Inform the applicant in writing of the specific reasons why the application is incomplete and does not meet the submittal requirements; or

(2) Deem the application complete.

If the director informs the applicant in writing that its application is incomplete within 30 days, the overall timeframe for review is suspended until such time that the applicant provides the requested information necessary to constitute a complete application.

b. If an application is deemed incomplete, the applicant may submit additional materials to complete the application. An applicant's unreasonable failure to complete the application within 60 days after receipt of written notice of incompleteness shall result in the withdrawal of the application without prejudice. An application withdrawn without prejudice may be resubmitted upon the filing of a new application fee.

c. A complete application for a special land use permit shall be scheduled for a hearing date as required by City of Stonecrest.

d. The posting of the property and public notification of the application shall be accomplished in the same manner required for any special land use permit application under this chapter.

e. The director of planning must provide the applicant with a written decision of the city council approving, approving with conditions, or denying the request within 150 days of the submission of the initial application unless the director of planning notified applicant in writing that its application was incomplete within 30 days of filing. If so, the remaining time from the 150-day total review time is suspended until the applicant provides the missing information in writing.

H. *General standards and design requirements.*

1. *Design.*

a. Support structures shall be subject to the following:

i. Designed to accommodate a minimum number of collocations based upon their height, as follows:

(i) Support structures less than 100 feet in height shall be designed to support at least two antenna arrays;

(ii) Support structures between 100 and 150 feet shall be designed to support at least three antenna arrays; and

(iii) Support structures greater than 150 feet in height shall be designed to support at least four antenna arrays.

ii. The compound area surrounding the support structure must be in the minimum size to accommodate accessory equipment for the appropriate number of collocations.

iii. Property leased or purchased for the purpose of a telecommunication facility is not required to have minimum road frontage or lot area of the zoning district. However, the applicant must demonstrate access to a public road via an access easement.

b. Upon request of the applicant, the director of planning may waive the requirement that new support structures accommodate the collocation of other service providers if the director of planning determines that collocation at the site is not essential to the public interest and that the construction of a shorter support structure with fewer antennas would minimize adverse impact on the community. Additionally, the director may reduce the required size of the compound area if it can be demonstrated that the proposed compound is of sufficient size to accommodate the required number of collocations.

2. *Setbacks.*

a. Property lines. Unless otherwise stated herein or on public Right-of-Way, new support structures shall be set back from all property lines a distance of the fall zone plus 20 feet, or if adjacent to property zoned residential, the greater of:

(a) The fall zone plus 20 feet; or

(b) 100 feet.

b. Residential dwellings. There shall be no setback requirement from dwellings located on the same parcel as the proposed structure.

c. Unless otherwise stated herein, all accessory equipment shall be set back from all property lines in accordance with the minimum setback requirements in the underlying zoning district and any overlay district. Accessory equipment associated with an existing or replacement utility pole shall not be subject to setback requirements.

d. The zoning board of appeals shall have the authority to vary any required setback upon the request of the applicant if:

i. The applicant provides a letter stamped by a certified structural engineer licensed in the State of Georgia documenting that the proposed structure's fall zone is less than the requested setback; and

ii. The proposed telecommunication support structure or alternative support structure is consistent with the purposes and intent of this division.

3. *Height.*

a. In nonresidential districts, support structures shall be designed to be the minimum height needed to meet the service objectives of the applicant, but in no event shall exceed 199 feet in height as measured from the base of the structure to its highest point, excluding any appurtenances.

b. In medium and high density residential districts, stealth support structures shall not exceed 150 feet. Stealth support structures shall be measured from the base of the structure to the top of the highest point, excluding appurtenances. Any proposed stealth support structure shall be designed to be the minimum height needed to meet the service objectives of the applicant.

c. In all zoning districts, the zoning board of appeals shall have the authority to vary the height restrictions listed in this section upon the request of the applicant and a satisfactory showing of need for a greater height. With its variance request the applicant shall submit such technical information or other justifications as are necessary to document the need for the additional height to the satisfaction of the zoning board of appeals.

4. *Aesthetics.* Amateur radio Telecommunication Support Structures, or receiver-only Antennas, shall not be subject to the provisions of this subsection unless such structures exceed thirty-five (35) feet in Height.

a. Lighting and marking. Telecommunications facilities or support structures shall not be lighted or marked unless required by the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA). If lighting is required, the City may review the available federally-approved lighting alternatives and approve the design that would cause the least disturbance to the surrounding area.

b. Signage. Signs located at the telecommunications facility shall be limited to ownership and contact information, FCC antenna registration number (if required) and any other information as required by government regulation. Commercial advertising is strictly prohibited.

c. Landscaping. The visual impacts of a Telecommunication Facility and support structure shall be mitigated by landscaping. Unless located in heavily wooded areas, or on Public Rights-of-Way, Telecommunications Facilities shall be landscaped with a landscape buffer which effectively screens the view of the facility from all sides. The use of existing plant material and trees shall be preserved to the maximum extent practicable and may be used as a substitute for, or in supplement towards, meeting landscaping requirements.

d. Landscape buffers shall be a minimum of ten feet in width and located outside the fenced perimeter of the Telecommunications Facility compound.

e. All landscaping shall be of the evergreen variety and shall conform to the city's buffer standards.

f. Telecommunication Support Structures and Antennas shall either maintain a galvanized steel outer shell or, subject to any applicable standards of the FAA and FCC, shall be painted a neutral color so as to reduce visual obtrusiveness.

g. All Telecommunication Support Structure sites and related structure designs shall use materials, colors, textures, screening, and landscaping that will blend the Telecommunication Facilities to the natural setting and surrounding environment.

h. For Antennas erected on an Alternative Telecommunication Support structure, the Antenna and supporting electrical and mechanical ground Equipment shall be a neutral color so as to make the Antenna and related Equipment as visually unobtrusive as is reasonable.

i. Telecommunication Support Structures in the Public Right-of-Way must be substantially similar in appearance to adjacent light poles or other similar structures so as to blend in to same, including any design requirements of the adjacent zoning or overlay district. All Equipment associated with

a Telecommunication Support Structure in the Public Right-of-Way that are not placed on the Structure itself must either be located on adjacent private property, buried underground, or both. Any such Equipment placed on the Structure itself must be on the side of the Structure facing away from the Public Right-of-Way, if at all physically possible.

5. *Accessory equipment, including any buildings, cabinets or shelters.*

   a. Accessory equipment shall be used only to house equipment and other supplies in support of the operation of the on-site telecommunication facility or support structure.

   b. Any equipment not used in direct support of such on-site operation shall not be stored on the site.

   c. Accessory equipment must conform to the setback standards of the applicable zoning districts. In the situation of stacked equipment buildings, additional screening/landscaping measures may be required by the director of planning in order to accomplish the purposes and goals of this section.

6. Stealth design telecommunications facilities.

   a. Any telecommunications facility that otherwise complies with the requirements of this chapter, including procedural approvals, may be designed as a stealth telecommunication facility.

   b. Stealth telecommunication facilities are mandatory in medium and high-density residential districts and shall not exceed one hundred fifty (150) feet in height. All towers in medium and high-density residential districts must be approved by a special land use permit.

   c. Antennas must be enclosed, camouflaged, screened, obscured or otherwise not readily apparent to a casual observer.

I. *Sound provision.* No sound emanating from the facility generator during normal operations shall be audible above 70 decibels which would allow normal conversation within 15 feet of the compound.

J. Pre-existing Facilities. Any pre-existing Telecommunication Facility which does not meet the requirements of this section shall be considered nonconforming and subject to the nonconforming use provisions of the zoning ordinance; provided, however, that the installation of a new Antenna on a pre-existing Telecommunication Support Structure shall not constitute the expansion of a nonconforming use provided that (a) the new Antenna does not result in a Substantial Increase in Size and (b) the resulting Height of the pre-existing Telecommunication Support Structure is less than the maximum Height the Telecommunication Support Structure previously approved by the City.

K. Annual Registration of Telecommunication Facilities. The owner of any Telecommunication Facility shall submit an annual registration of such Facility on such forms as the director of planning shall prescribe. Each annual registration shall identify the tax parcel identification and physical street address for the parcel on which such Telecommunication Facility is located. Each annual registration of such Telecommunication Facility shall describe all Telecommunication Support Structures, Alternative Telecommunication Support Structures, Antennas, and other Telecommunication Equipment on the site, describe in detail any improvements during the preceding calendar year, and, for Telecommunication Support Structures only, state the total gross income from all improvements on the site for the preceding calendar year. Each annual return shall be filed with the City on or before April 1st of each year and shall be accompanied by an annual administrative fee in an amount as established by the Mayor and Council.

L. Principal or Accessory Use. A Telecommunication Support Structure and/or Antenna is considered a principal use if located on any parcel as the sole or primary structure, and is considered an accessory use if located on a parcel shared with a different existing primary use or existing structure. An existing use or structure on the same parcel shall not preclude the installation of an antenna or Telecommunication Support Structure. For purposes of determining whether the erection of a Telecommunication Support Structure or Antenna complies with the requirements of the zoning district in which it is located (including, but not limited to, all

setback and buffer requirements), the dimensions of the entire parcel shall control, even though the Antenna or Telecommunication Support Structure may be located on a leased area within the dimensions of such parcel.

M. Inventory of Existing Sites for New Telecommunication Support Structure or Alternative Telecommunication Support Structure Applications.

1. The City shall maintain an itemized list of all Telecommunication Support Structures or Alternative Telecommunication Support Structures, active and inactive, which are located within the municipal limits of the City. This list shall include specific information about the location (latitude and longitude coordinates), Height, design, Telecommunication Support Structure type and general suitability for Antenna co-location of each Telecommunication Support Structure and authorized Alternative Telecommunication Support Structures, and other pertinent information as may be decided by the City.

2. To facilitate collocation of Antennas, each Applicant seeking to erect a new Telecommunication Support Structure or Alternative Telecommunication Support Structure, or to modify any such existing structure, shall provide to the City an itemized list of its existing Telecommunication Support Structures and authorized Alternative Telecommunication Support Structures as provided for below. Applicants seeking to erect an amateur radio Telecommunication Support Structure or Antenna less than thirty-five (35) feet in Height shall be exempt from this provision.

3. Each Applicant seeking to erect a new Telecommunication Support Structure or Alternative Telecommunication Support Structure or to modify existing support structures shall provide the City with an itemized list, including all of the following: a complete listing of all Applicant-owned Telecommunication Support Structures that are within the municipal limits of the City or within one-quarter (1/4) mile of the municipal limits of the City; with respect to each listed Telecommunication Support Structure, specific information, including the location (latitude and longitude coordinates), Height, design, structure type, and general suitability for Antenna collocation; and other pertinent information as may be required by the director of planning. The City shall share such information with any other Applicant under this section or any other organization or governmental entity seeking to locate a Telecommunication Facility within the municipal limits of the City, provided, however, that the City shall not, by sharing such information, in any way be deemed to have represented or warranted that such sites are available or suitable.

4. An application, with the exception of an application to erect an amateur radio telecommunication support structure or Antenna less than thirty-five (35) feet in Height as set forth herein, shall not be considered complete without the itemized list required in this subsection.

N. Documentation from Applicable Regulatory Agencies and Review for Aviation Purposes. Any applicant for the erection of a Telecommunication Facility governed by this section shall demonstrate compliance with all FAA and FCC regulations with respect to prior approval, registration and/or licensure of a proposed Telecommunication Facility. No building permit shall be issued until an Applicant has received approval from the FAA and/or registered the proposed facility with the FCC where required and provided copies of all applicable approvals, registrations, and/or licenses to the City. In the alternative, Applicants may demonstrate that such prior authorization and/or registration is not required to be accompanied by a sworn affidavit asserting same. All Telecommunication Facilities must meet or exceed current standards and regulations of the FAA, the FCC, the Commission, and any other agency of the federal government authorized to regulate such facilities.

O. Building Codes; Safety Standards. To ensure structural integrity of Telecommunication Facilities, the owner, permittee, or subsequent lessee of a Telecommunication Support Structure or Alternative Telecommunication Support Structure shall ensure that all applicable Telecommunication Facilities on such site are maintained in compliance with standards contained in applicable local building codes. If, upon inspection, the City concludes that an applicable Telecommunication Facility fails to comply with all governing codes and standards, or constitutes a danger to persons or property, then upon receipt of written

notice by the owner, permittee, or lessee of such a facility, the recipient shall have fifteen (15) days to bring the Telecommunication Facility into compliance with such standards. If the owner, permittee, or lessee fails to bring the Telecommunication Facility into compliance within the 15-day period, the City may, at the direction of the City Manager, remove the non-compliant Telecommunication Facility at the owner, permittee, or lessee's expense. Prior to the removal of any telecommunication facility, the City may consider detailed plans submitted by the owner, permittee, or subsequent lessee for repair of substandard Telecommunication Support Structures, and may grant a reasonable extension of the above-referenced compliance period. Any such removal by the City shall be in the manner provided in O.C.G.A. §§ 41-2-7 through 41-2-17.

P. Change of Ownership or Control Notification. Upon the transfer of ownership or control of any Telecommunication Facility, the party transferring such ownership or control shall notify the City of the transaction in writing within thirty (30) days.

Q. Revocation or Termination of Permit.

Any authorization to erect or operate Telecommunication Facilities may be revoked for the following reasons:

(1) Erection or operation of Telecommunication Facilities at an unauthorized location;

(2) Misrepresentation or lack of candor by or on behalf of a Grantee in any representation to the City;

(3) Abandonment of applicable Telecommunication Facilities;

(4) Failure to pay required reasonable fees or costs, as may be required in this section;

(5) Failure to meet any provision of the annual registration requirement in this section;

(6) Failure to pay required reasonable fees or costs for access and use of Public Rights-of-Way, as may be required in this section; and

(7) Violation of a material provision of the City's Code of Ordinances or violation of a material condition set forth in any permit or authorization to erect and operate Telecommunication Facilities.

R. Access to the Public Right-of-Way.

(a) Fees for Access to Public Rights-of-Way. Pursuant to O.C.G.A. §46-5-1(b)(9) and in accordance with applicable state law, Providers of Telecommunication Services and Applicants governed by this section shall provide the City due compensation for use of, and access to, a Public Right-of-Way, equal to no more than three (3) percent of actual recurring local service revenues received by a Provider from its retail, end user customers located within the municipal limits of the City, and no more than three (3) percent of actual recurring revenues from the lease of governed Telecommunication Facilities. Such compensation shall not be assessed in a discriminatory fashion with respect to the Telecommunication Services to be provided or transmitted by or through a proposed Telecommunication Facility, in accordance with applicable state law. Said compensation for the use of the Public Right-of-Way shall be paid by the Applicant to the City within thirty (30) days after the end of each calendar quarter. Included with any such application for the installation of Antennas on existing structures or the erection of structural poles so as to accommodate such Antennas in Public Rights-of-Way, the Applicant shall demonstrate to the director of planning that the Applicant possesses a Certificate of Authority from the Georgia Public Service Commission. Those Applicants that do not hold such certification are subject to the rules and regulations of other wireless Applicants including tower companies and carriers. For those Applicants without end-user customers from which said percentage is calculated shall be required to execute a Right-of-Way Use Agreement with the City which shall set out fees for access thereto.

(b) Maintenance. A Telecommunication Facility erected in a Public Right-of-Way shall be maintained in good condition, as determined by the City. Maintenance of such a Telecommunication Facility shall

include, but not be limited to, the structural integrity of all Telecommunication Support Structures, Alternative Telecommunication Support Structures, Antennas, Equipment compounds, Equipment cabinets, painting, irrigation systems, buffer areas, and landscaping, to the extent applicable.

(c) Restoration of Public Rights-of-Way and City Property. When a Grantee authorized to construct Telecommunication Facilities in the Public Rights-of-Way, or any person acting on behalf of a Grantee, does any work affecting any Public Right-of-Way or City Property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such Public Right-of-Way or City Property to as good a condition as existed before the work was undertaken, unless otherwise directed by the City. Restoration will be consistent with standards required by the City.

(d) Grantee Insurance for Use of Public Right-of-Way. Unless otherwise provided by the City, any Applicant, as a condition of the grant of authorization to erect Telecommunication Facilities in a Public Right-of-Way, shall secure and maintain comprehensive insurance policies insuring both the Applicant and the City, and its officers, appointed officials, agents, employees, and assigns as coinsured. Such insurance coverage shall include general liability insurance, automobile liability insurance, worker's compensation insurance, employer's liability insurance and premises-operations insurance. Such insurance shall be maintained throughout the duration of the Applicant's authorization to own or operate a Telecommunication Facility in an applicable Public Right-of-Way.

(e) Indemnification. Each Applicant shall, upon receiving authorization form the City to erect or Modify Telecommunication Facilities in a Public Right-of-Way, and to the greatest extent permitted by law, expressly undertake to defend, indemnify, and hold the City and its officers, appointed officials, agents, employees, and assigns harmless from and against any and all damages, losses, and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless, or wrongful acts, omissions, failures to act, or misconduct of the Applicant, its affiliates, officers, employees, agents, contractors, or subcontractors in the construction, operation, maintenance, repair, or removal of any Telecommunication Facilities in Public Rights-of-Way, whether such acts are authorized, allowed, or prohibited by this section.

(f) Transfer of Authorization to Erect, Own, and Operate Telecommunication Facilities in Public Rights-of-Way. Control of an authorized Telecommunication Facility in a Public Right-of-Way may not, directly or indirectly, be transferred, assigned, or disposed of by sale, lease, merger, consolidation or other act of a Grantee, by operation of law or otherwise, without prior consent of the City, which shall not be unreasonably withheld or delayed. A Grantee and the proposed assignee or transferee of an existing permit to erect and operate a Telecommunication Facility in a Public Right-of-Way shall provide and certify, via sworn affidavit, the following information to the City not less than ninety (90) days prior to the proposed date of such transfer or assignment of control:

(1) Information setting forth the nature, terms, and conditions of the proposed transfer or assignment of ownership and/or control;

(2) With respect to the transferer/assignee, all information as outlined in subsection "F" of this section;

(3) Any changes to information provided to the City, as set forth in subsection "F" of this section; and

(4) Any other information reasonably required by the director of planning.

S. Limitations on Municipal Authority. In regulating the erection and maintenance of Telecommunication Facilities, whether located on private lands or in Public Rights-of-Way, the City shall not:

(a) Condition the approval of any application for a new Telecommunication Support Structure or Alternative Telecommunication Support Structure on a requirement that a Modification or Collocation to such structure be subject to a review inconsistent with this section;

(b) Required the removal of an existing Telecommunication Support Structure, Alternative Telecommunication Support Structure, or Telecommunication Facility as a condition of approval of an application for a new Telecommunication Facility unless such existing Telecommunication Support Structure, Alternative Telecommunication Support Structure, or Telecommunication Facility is abandoned and owned by the Applicant;

(c) Require the Applicant to place an Antenna or other Equipment on publicly owned land or on a publicly or privately owned water tank, building, or electric transmission tower as an alternative to the location proposed by the Applicant.

T. Fees. The fees levied and charged for all persons and businesses subject thereto shall be set forth on a schedule which may be amended from time to time by resolution of the Mayor and Council, a copy of which shall be maintained on file in the City Clerk's office and with the director of planning. Said fees are levied and assessed in addition to any business or occupational taxes assessed and levied under the City Code. Applications for Small Cell Installations, whether collocation or erection of new infrastructure, shall not be charged more than $500 for up to the first five (5) locations requested concurrently, and $100 for each additional location therefrom. The City shall not seek reimbursement from an Applicant for fees, consultation fees, registry fees, audit fees, or otherwise payment in connection with an application subject to this section on a contingency fee arrangement.

U. Bond Requirement for new Telecommunication Support Structures. Prior to the issuance of a permit for the erection of a Telecommunication Support Structure or Alternative Telecommunication Support Structure, an Applicant shall procure a bond or an irrevocable letter of credit in an amount not less than twenty-five thousand dollars ($25,000.00) conditioned upon the removal of the Telecommunication Support Structure or Alternative Telecommunication Support Structure, should it be deemed abandoned under the provisions set forth in this section. Such bond or letter of credit (a) shall be renewed at least every two (2) years during the life of the Telecommunication Support Structure, (b) shall not expire unless the City is given sixty (60) calendar days' prior written notice, (c) shall include the name, address, telephone number, and contact for the provider of bond or letter of credit and (d) in the case of a bond, shall include the statement that the provider of the bond is listed in the latest issue of the U.S. Treasury Circular 570.

V. Non-Discrimination. In evaluating any application governed by this section, the City shall not unreasonably discriminate among telecommunication providers of functionally equivalent services and technical capabilities and/or deny an application based solely on the financial status of an Applicant, type of Telecommunication Services to be provided should a prospective application be approved, and/or thee content of telecommunications to be provided by and/or through proposed Telecommunication Facilities.

W. Inspections.

(1) Whenever inspections of the premises used for or in connection with a Telecommunication Support Structure, Alternative Telecommunication Support Structure, or Antenna are provided for or required by ordinance, or are reasonably necessary to ensure compliance with any ordinance provision or to detect violations thereof, it shall be the duty of the Applicant, or the person(s) responsible for the premises to be inspected, to admit thereto for the purpose of making the inspection any officer, agent, or employee of the City who is authorized or directed to make such inspection, at any reasonable time that admission is requested.

(2) In addition to any other penalty which may be provided, the permit granted to any Applicant who refuses to allow any authorized officer, agent or employee of the City to make any inspection provided for in subsection (a) hereinabove, or who interferes with such officer or employee while in the

performance of his duty in making such inspection may be suspended or revoked at the reasonable discretion of the director of planning.

X. Penalties for Violation. In addition to the other remedies available to the City for violation of this section set forth herein or in any other applicable provisions of the City Code, the municipal court of the City, after notice to the Applicant or permittee and hearing, may impose a civil fine for failure to comply with the provisions of this section or a sentence not to exceed sixty (60) days. Such a civil fine shall not exceed one thousand dollars ($1,000.00) per day and may be enforced by the contempt power of the court. In addition, the Applicant or permittee shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing contained in this subsection shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation of this section.

Y. Appeals of Decisions of the Mayor and Council. Appeals of the decisions of Mayor and Council under this section shall be by writ of certiorari to the Superior Court of DeKalb County in accordance with State Law.

Z. *Miscellaneous provisions.*

1. *Fencing.*

   a. Ground-mounted accessory equipment and support structures shall be secured and enclosed with a fence to a height of at least six feet.

   b. Fencing shall be decorative, including brick or concrete columns.

   c. The director of planning may waive the requirement of subsection (j)(1)a. of this section if it is deemed that a fence is inappropriate or unnecessary at the proposed location in order to accomplish the purposes and goals of this section.

2. *Neighborhood identity.* If located in residential area, towers may incorporate features that identify neighborhoods, such as banner arms or monuments.

3. *Abandonment and removal.* If a support structure is abandoned, the director of planning may require that the support structure be removed, provided that the director of planning must first provide written notice to the owner of the support structure and give the owner the opportunity to take such actions as may be necessary to reclaim the support structure within 60 days of receipt of said written notice. In the event the owner of the support structure fails to reclaim the support structure within the 60-day period, the owner of the support structure shall be required to remove the same within six months thereafter at the owner's expense. The city shall ensure and enforce removal by means of its existing regulatory authority.

4. *Multiple uses on a single parcel or lot.* Telecommunications facilities and support structures may be located on a parcel containing another principal use on the same site or may be the principal use itself.

AA. *Telecommunications facilities and support structures in existence on the date of adoption of this chapter.*

1. Telecommunications facilities and support structures that were legally permitted nonconforming uses on or before the date the ordinance from which this chapter is derived was enacted shall be considered a legal, lawful use, subject to the nonconforming use regulation in this chapter and state law.

2. Ordinary maintenance may be performed on a nonconforming support structure or telecommunications facility.

3. Collocation or modifications of telecommunications facilities on an existing nonconforming support structure shall not be construed as an expansion, enlargement or increase in intensity of a nonconforming structure and/or use and shall be permitted through the administrative approval of a building permit process.

(Ord. of 8-2-2017, § 1(4.2.57)) [TM0D-19-004]

Sec. 4.2.58. Party Houses

A. A Single-Family Residential Property may only be utilized as a "Party House" by Special Administrative Permit in the "RE" and "RLG" zoning districts and only on lots with at least 300 feet of frontage on a public street and a primary structure no less than 4,000 square feet in area.

B. An event defined as a "Party House" may only be conducted inside the primary structure and/or in a completely fenced back yard.

C. With exception of traditional internal lighting and porch lights, no other illumination may be utilized during a "Party House" event, including, but not limited to, strobe lighting, disco-ball light, spotlight or any other light used to draw attention to the structure.

D. Any music utilized for the "Party House" event must be contained solely inside the primary structure and shall be subject to the applicable provisions of the City's Noise Ordinance contained in Chapter I 8, Article VII of the City Code.

E. In addition to a Special Administrative Permit, the owner of each "Party House" cannot have such an event at the residence without acquiring an occupation tax certificate from the City. A Special Administrative Permit and Occupation Tax Certificate for a "Party House" may only be granted to the owner of the property.

F. Event guests at a "Party House" must park only on the designated driveway or on the public street directly in front of the residential lot on which the event is taking place, on the same side of the street, and only for the length of the street frontage directly abutting the property.

G. A qualifying event at a "Party House" may not continue past 11 p.m. on Sunday - Thursday, or midnight on Friday-Saturday or any Federal Holiday.

H. Neither a Special Administrative Permit nor an Occupation Tax Certificate may be granted to any property for a "Party House" that is located within 2000 feet of any City or County park facility, senior housing or public or private school, or be within 1,000 feet of more than 2 other residential lots.

I. No alcohol may be sold during a qualifying event of a "Party House" and no more than one (1) drink may be included as part of a cover charge for said event. For purposes of this provision, one drink shall be either a 12 oz. malt beverage, 12 oz. glass of wine or an alcoholic drink featuring no more than 1.5 oz. of any distilled spirit.

J. A Special Administrative Permit and Occupation Tax Certificate for a "Party House" shall authorize the owner of the property no more than ten (10) such qualifying events in any calendar year.

[TMOD-19-005]

Sec. 4.2.59. Short term vacation rental.

The following applies to all Short Term Vacation Rentals (STVR):

A. No individual renting the property shall stay for longer than 30 consecutive days.

B. The STVR shall not be operated in such a way as to change the residential character of the neighborhood in which it is located and shall comply with the noise ordinance.

C. In every dwelling of two or more rooms, every room occupied for sleeping purposes by one occupant shall contain not less than 70 square feet of floor area, and every room occupied for sleeping purposes two occupant shall contain at least 120 additional square feet of floor area. Maximum occupancy limits for any overnight guests must not exceed two guests for every bedroom located in the STVR.

D. Every bedroom shall have a window facing directly and opening to the outdoors.

E. Every bedroom shall have access to not less than one water closet and lavatory without passing through another bedroom. Every bedroom in an STVR shall have access to not less than one water closet and lavatory located in the same story as the bedroom or an adjacent story.

G. There shall also be provided at least one off-street parking space for each bedroom used as a part of the STVR.

H. No signs or advertising are permitted to identify or advertise the existence of the STVR, beyond those otherwise allowed for the residential property.

I. All STVR units shall be furnished with a telephone that is connected to a landline or similar type connection, including a voice over internet protocol, in order that 911 dispatch may be able to readily identify the address and/or location from where the call is made when dialed.

J. A diagram depicting two evacuation routes shall be posted on or immediately adjacent to every required egress door.

K. No individual renting a STVR shall use the STVR for a special event, party, or temporary outdoor event. No owner or operator of a STVR shall permit a STVR to be used for a special event, party, or temporary event.

L. It shall be unlawful to establish, operate, or cause to be operated a STVR in the city within 500 feet of another STVR, bed and breakfast, boarding house, home stay bed and breakfast residence, hotel/motel, hotel/motel extended stay, personal care home, or child caring institutions. Measurements for this subsection shall be made in a straight line without regard to intervening structures or objects, between the closest points on the property lines of the two uses.

(Ord. No. 2018-09-01, § 1, 9-17-2018)

Sec. 4.2.60. Smoking Lounges

Smoking Lounges shall be subject to the following restrictions:

A. Smoking of hookah in any establishment that serves alcohol or food shall be prohibited.

B. Hours of operation shall not extend past 11:00 p.m.

C. Shall not serve patrons under the age of 19 or as restricted by Georgia statute.

Sec.4.2.61. Eating and Drinking Establishments that also operate another use

Any establishment that serves food and drink, but which also operates as another use under Chapter 4 (the Alcohol Code) with separate parking regulations shall follow the parking regulations in Chapter 27 applicable to that use.

DIVISION 3. TEMPORARY USE REGULATIONS

Sec. 4.3.1. Temporary outdoor uses; general requirements.

A. Temporary outdoor uses shall not be held, unless the necessary special administrative permit is obtained from the planning department, subject to the provisions of article 7 of this chapter, and any other applicable agency which may require review prior to issuance of permits.

B. Any applicant for a permit for temporary outdoor use shall have the written authorization of the owner of the property to use the property for the specific event for which the application was submitted.

C. All applicants for a permit for temporary outdoor use shall obtain a business license, if applicable.

D. All approvals, permits, or licenses granted under this division must be displayed in a conspicuous manner on the premises at all times for inspection by City of Stonecrest.

E. No temporary outdoor use may be located within or encroach upon any drainage easement, public sidewalk or right-of-way, fire lanes, designated loading areas, driveways, maneuvering aisles, or ADA minimum four-foot sidewalk width within private sidewalks or other areas intended for pedestrian movement.

F. Temporary signage is permitted subject to the size and height standards in accordance with chapter 21, signs.

G. No operator, employee, or representative of the operator of a temporary outdoor use shall solicit directly from the motoring public.

H. Any temporary outdoor uses which have not complied with this division shall be a violation of this section. Any person or entity found to be in violation of this section may be punished as provided for in article 7 of this chapter.

I. No temporary outdoor use shall be conducted within any public right-of-way unless permitted by public entity.

J. Merchandise shall only be displayed in a manner that does not obstruct pedestrian or vehicular circulation or flow of traffic.

K. Merchandise shall only be displayed in an area not wider than 50 percent of the total linear frontage of the building occupied by the merchant.

L. The premises for a temporary outdoor use shall be restored to a sanitary condition, i.e., cleaned and cleared of all litter, trash and debris; and all equipment, materials, signs, temporary power poles, etc., associated with the temporary outdoor use shall be removed from the property within two days of the last day specified for such use, except for yard sales. All unsold yard sale merchandise remaining at the conclusion of the sale must be removed immediately. Purchased yard sale merchandise must be removed within 24 hours of conclusion of the sale.

(Ord. of 8-2-2017, § 1(4.3.1))

Sec. 4.3.2. Duration, frequency and hours of operation of temporary outdoor uses.

The maximum duration, frequency and hours of operation for temporary outdoor uses shall be limited as shown in Table 4.3, below:

Table 4.3. Temporary Outdoor Uses Operational Requirements

Operational requirement maximums for temporary outdoor uses				
Temporary Use	Duration	Frequency	Hours of Operation	Special Administrative Permit Required?
Christmas tree sales	Nov. 15 through Jan. 1		Cease at 9:00 p.m. Mon.—Thurs. and Sun; 10:00 p.m. Fri. and Sat.	Yes
Pumpkin and Halloween sales	Sept. 15 through Oct. 31		Cease at 9:00 p.m. Mon.—Thurs. and Sun; 10:00 p.m. Fri. and Sat.	Yes
Charitable/non-profit event	7 consecutive days	4 times/calendar year	Daylight hours only	Yes
Temporary Produce stand	One full year	Year round	Daylight hours only	Yes
All other seasonal sales	3 consecutive days	4 times/calendar year	Daylight hours only	Yes
Temporary outdoor retail sales display	30 consecutive days	4 times/calendar year	Cease at 9:00 p.m. Mon.—Thurs. and Sun; 10:00 p.m. Fri. and Sat.	Yes
Temporary outdoor event	14 consecutive days		Cease at 9:00 p.m. Mon.—Thurs. and Sun; 10:00 p.m. Fri. and Sat.	Yes
Yard sales	3 consecutive days	Once/6 months	Daylight hours only	No
Farmer's Markets	Year Round	3 consecutive days per month or one day per week	Cease at 9:00 p.m. Mon.—Thurs. and Sun; 10:00 p.m. Fri. and Sat.	Yes

(Ord. of 8-2-2017, § 1(4.3.2))

Sec. 4.3.3. Temporary outdoor seasonal activities.

Temporary outdoor seasonal activities include the sale of retail merchandise associated only with recognized seasonal and federal holidays, the sale of farm produce, Mother's Day, Easter, and Valentine's Day, subject to the following regulations:

A. *Use regulations.*

1. A special administrative permit shall be required, for all temporary outdoor seasonal activities.
2. Events or sales of retail merchandise not customarily associated with seasonal or federal holidays or farm produce is prohibited.
3. Produce stands in residential areas shall only be located on property of nonresidential uses such as churches, schools, or recreational areas.

B. *Lot and parcel restrictions.*

1. A temporary outdoor seasonal activity may be held on a vacant parcel if within a nonresidential zoning district.
2. A temporary outdoor seasonal activity may be held on parcels where the temporary outdoor seasonal activity is not associated with the principal use of the property.
3. Temporary outdoor seasonal activities shall be permitted only on property where such activities shall not disrupt controlled vehicular ingress and egress.
4. All exterior lighting utilized in conjunction with temporary outdoor seasonal activities shall be directed downward to minimize glare on adjacent properties.
5. Spotlights and high-temperature process lighting for temporary outdoor seasonal activities are prohibited.

C. *Setback and structure requirements.*

1. All temporary outdoor seasonal activities, including installation or erection of associated temporary display and sales structures, shall not be within any public right-of-way, and no display or sales area shall be located within 25 feet of the street.
2. Tents over 200 square feet and canopies over 400 square feet shall require issuance of a building permit and approval by the fire marshal.
3. A sign may be erected on the property in accordance with chapter 21, sign ordinance, for the duration approved by the administrative permit.

(Ord. of 8-2-2017, § 1(4.3.3))

Sec. 4.3.4. Temporary outdoor retail sales displays.

Temporary outdoor retail sales displays and related outdoor storage activities include the exhibition or representation of goods, merchandise, materials, or other items sold or bought at a retail establishment in which the items are displayed or sold outside the confines of a wholly enclosed building, and which are associated with the principal use of an existing business. Temporary outdoor retail sales displays shall not include events for which no business license is required (e.g., cookie sales). Temporary outdoor retail sales displays shall be subject to the following regulations.

A. *Use regulations.*

1. A special administrative permit must be approved in accordance with the provisions of article 7 of this chapter.
2. Temporary outdoor retail sales displays shall include the display and sale of retail merchandise associated only with the principal use of the primary business on the property for a limited period of time.
3. Any object, device, display or structure, or part thereof, which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service or event, shall also be considered part of the temporary outdoor retail sales display.
4. Sales transactions associated with the temporary outdoor retail sales display shall be conducted by employees of the principal use, and goods shall be owned by the owner or tenant of the principal use, not a consignment operation or temporary arrangement with a transient merchant/vendor.

5. Sales transactions associated with the temporary outdoor retail sales display must be consummated inside the building housing the principal use located on the site.

B. *Lot and parcel restrictions.*

1. Goods and merchandise may be displayed on public sidewalks only when a sidewalk abuts the store or building. Displays on public or private sidewalks shall not interfere with pedestrian travel, and the minimum ADA-required sidewalk width clearance shall be maintained.

2. Temporary outdoor retail sales display activities are prohibited on a vacant parcel.

3. Temporary outdoor retail sales display activities shall be conducted only on a paved surface, unless approved by the director.

4. Temporary outdoor retail sales display activities shall be permitted only on property where such activities shall not disrupt controlled vehicular ingress and egress and are not permitted within areas required, set aside or designated for loading and maneuvering areas, emergency access ways, driving aisles and driveways.

5. Property zoned M (Light Industrial) and M2 (Heavy Industrial) are exempt from subsections (b)(1) and (b)(2) of this section and the duration limits (Table 4.3). An administrative use permit is required, and duration of use is subject to the approval of the director.

C. *Setback and display requirements.*

1. All temporary outdoor retail sales display activities, including installation or erection of associated temporary display and sales structures, and stand-alone merchandise, display tables, or display racks, must be set back at least ten feet from a city or state right-of-way.

2. A temporary shade structure, tent, tilt-up, umbrella or covering may be erected as a part of the temporary outdoor retail sales display activity. Mobile buildings are prohibited. Tents over 100 square feet shall require issuance of a building permit.

3. Display tables, racks or shelves may be used as part of a temporary outdoor retail sales display activity.

4. Temporary outdoor retail sales display items, excluding shade structures, tents, tilt-ups, umbrellas or coverings, shall not exceed six feet above grade.

5. A sign may be erected on the property in accordance with chapter 21, sign ordinance, for the duration approved by the administrative permit.

(Ord. of 8-2-2017, § 1(4.3.4))

Sec. 4.3.5. Temporary outdoor sales or events.

Temporary outdoor sales or events may include temporary art shows, carnival rides, special outdoor social or religious event, entertainment, athletic events, rodeos, horseshows, and other events of community interest.

A. *Use regulations.* Temporary outdoor sales or events shall be governed by the following regulations:

1. Site conditions.

a. Employees shall be uniformed and identified.

b. Security or off-duty police officers shall be on-site during operating hours.

c. Portable toilets or access to bathrooms shall be provided.

d. Approval from the property owner.

e. Traffic Control Plan must be approved by the fire marshal's office.

2. If the temporary outdoor event involves structures that require issuance of a building permit, a site plan of the event shall be included with the building permit application. The site plan submittal required by article 7 of this chapter shall indicate compliance with all zoning ordinance requirements.

B. *Lot and parcel restrictions.* Temporary outdoor event activities shall be set back at least 100 feet from any residential district or use.

C. *Temporary sites for worship.* The establishment of sites and tents for temporary worship conducted on a site not designated as a place of worship requires the grant of a special administrative permit by the director of planning.

(Ord. of 8-2-2017, § 1(4.3.5))

[TMOD-22-001]

Sec. 4.3.6. Yard sales.

A. Yard sales may be conducted without a permit on private property, but shall not be conducted within the public right-of-way.

B. Goods sold at yard sales must originate as the legal property of the homeowner, other persons participating in the sale, or members of a participating organization. Goods shall not include any items purchased for resale at the yard sale.

1. Two temporary signs are permitted during the yard sale, provided that such signs shall be on private property with permission of the owner, not within the public right-of-way or attached to a utility pole. Signs must be removed immediately following the conclusion of the sale.

2. All unsold yard sale merchandise remaining at the conclusion of the sale must be removed immediately. Purchased yard sale merchandise must be removed within 24 hours of conclusion of the sale.

(Ord. of 8-2-2017, § 1(4.3.6))

Sec. 4.3.7. Temporary buildings, use and construction of.

Except where herein otherwise specifically permitted, temporary buildings, such as a mobile home or trailer, shall not be allowed in any district except:

(1) For caretaker's residence in the industrial districts;

(2) To serve as a home sales office for a subdivision only during such time as a subdivision is under development; or

(3) In conjunction with construction work or pending completion of a permanent building for a period concurrent with approved land disturbance and building permits.

Such temporary buildings shall be sited and permitted in any district upon approval of the director of planning through a special administrative permit. Such temporary buildings shall be removed when the construction has been completed.

(Ord. of 8-2-2017, § 1(4.3.7))

ARTICLE 5. SITE DESIGN AND BUILDING FORM STANDARDS

All development shall comply with this article's site, design, and building form standards, in addition to the requirements in article 2 of this chapter, zoning districts, and chapter 14, land development.

(Ord. of 8-2-2017, art. 5)

DIVISION 1. BLOCK AND LOT REQUIREMENTS

Sec. 5.1.1. Blocks.

A. *Intent.* The intent of this section is to have the lengths, widths and shapes of blocks in residential subdivisions designed with due regard to:

1. Provision of building sites suitable to the special needs of:
    a. The building form contemplated;
    b. The conservation of open space; and/or
    c. Existing historic features.
2. Zoning requirements for lot sizes and dimensions;
3. Needs for convenient access by pedestrians and bicyclists to public transit, nearby schools, and commercial districts, vehicular circulation at safe speeds and adequate access for emergency vehicles;
4. Limitations of, and opportunities for, topography to minimize land disturbance and erosion;
5. Connectivity standards in section 5.3.2.

B. *Block length.*

1. When blocks are subdivided by new streets or created as part of a new development, including mixed-use, the minimum length of resulting new blocks shall be 200 to 300 linear feet.
2. The maximum block length for new subdivisions in the Suburban Neighborhood character area is 600 linear feet.

C. *Blocks and pedestrian access.* If a new development provides for a path with an easement through a block:

1. An easement for pedestrian use only shall be at least five feet wide.
2. An easement for pedestrian and bicycle use shall be at least ten feet wide.

(Ord. of 8-2-2017, § 1(5.1.1))

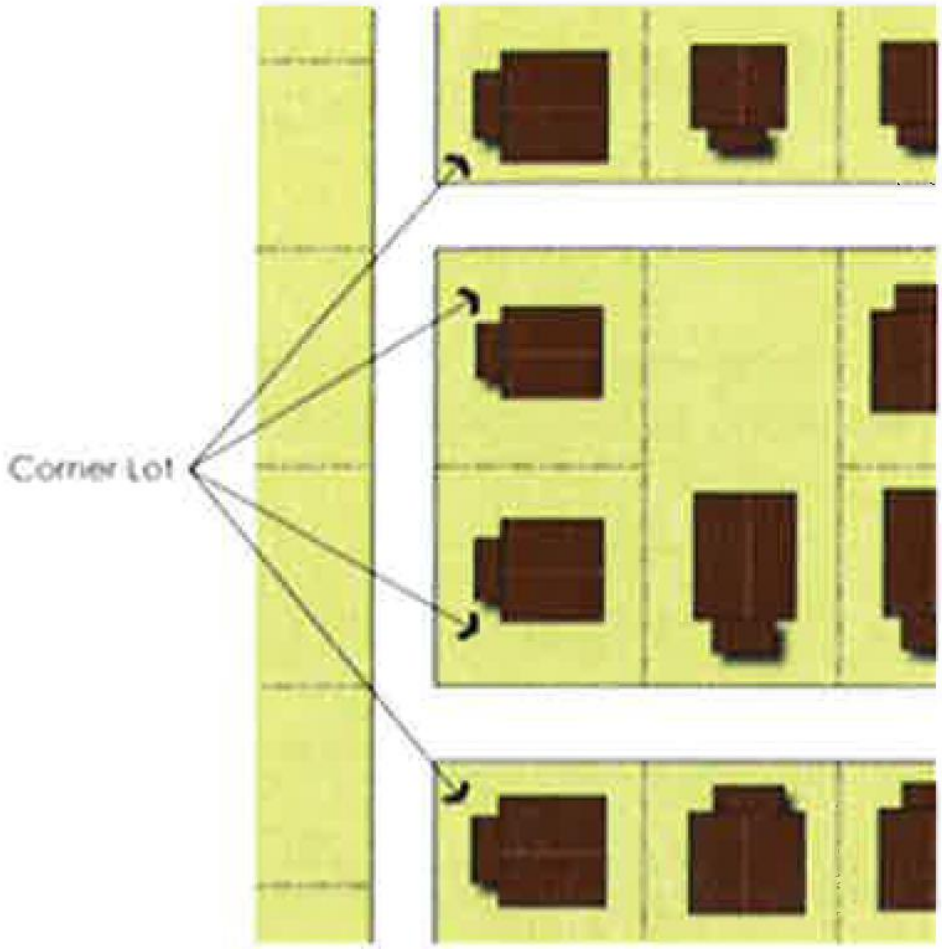
Sec. 5.1.2. Lots.

All lots shall conform to the minimum requirements for the zoning district in which such lot is located, to all applicable requirements of this article, and the requirements of chapter 14 of the Code. In the event of a conflict between the provisions of this chapter and chapter 14 of the Code with respect to regulation of lots, the provisions of this chapter shall prevail.

(Ord. of 8-2-2017, § 1(5.1.2))

Sec. 5.1.3. Lots, access.

Each lot shall have vehicular access to a public or approved private street, or, in the case of townhouses, fee simple condominiums or cottage lots, to an alley or private internal drive, provided the overall townhouse or cottage development site provides access to a public street. In new subdivisions with three or more single-family detached or single-family attached units, lots on minor or major thoroughfares with lot frontages less than 100 feet shall have driveway access via shared driveways.



(Ord. of 8-2-2017, § 1(5.1.3))

Sec. 5.1.4. Lots, corner.

A. *Front yard building setback.* On corner lots, the lot frontage with the shortest distance to a public right-of-way shall be designated as the front yard, and development shall comply with front yard building setback requirements of the zoning district in which the lot is located.

B. *Side corner yard.* Once the front of a corner lot is determined pursuant to subsection A. of this section, the remaining side adjacent to a street is the side corner yard.

C. *Side corner yard building setback.* The minimum side corner yard building setback on corner lots shall be as designated by the zoning district regulations in article 2 of this chapter. Unless otherwise restricted, buildings may face either the front or side corner.

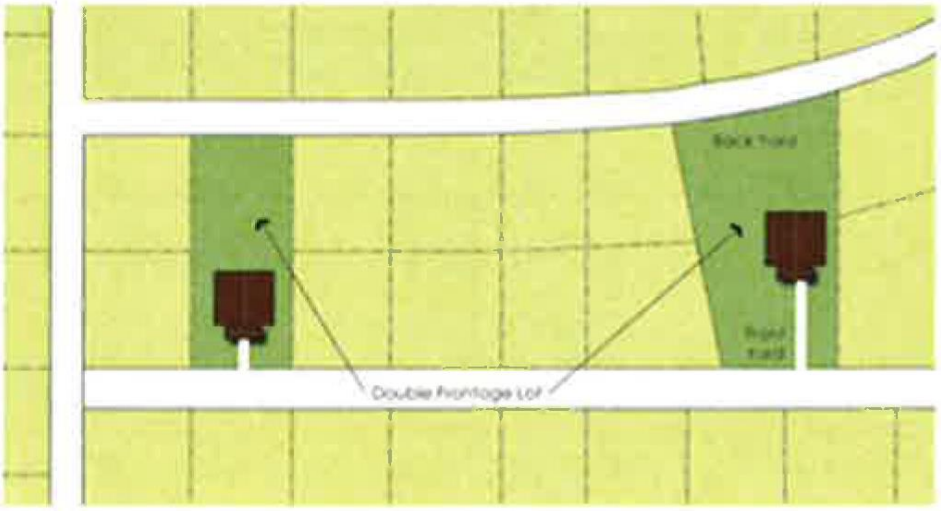
D. *Lot width.* The minimum width of corner lots with residential uses shall be increased by 15 feet above the minimum width required for the zoning district in which the lot is located.

E. *Side corner yard for nonconforming residential.* The side corner yard building setback in residential districts may be reduced to 60 percent of the minimum front yard building setback in the zoning district if:

1. The lot is a legal nonconforming lot; and
2. The lot does not abut a thoroughfare.

(Ord. of 8-2-2017, § 1(5.1.4))

Sec. 5.1.5. Lots, double frontage.



Double Frontage Lot

A. Lots which adjoin public streets in both the front and rear shall provide the minimum required front yard setback on each street.

B. For the purposes of front yard regulations, there shall be only one front yard designated, depending on which street the front of the house is built to face.

C. Driveway access on double frontage lots shall be limited to one street only. A ten-foot, no-access easement shall be provided along the frontage of the street not used for a driveway.

(Ord. of 8-2-2017, § 1(5.1.5))

Sec. 5.1.6. Every use must be upon a lot of record.

No building or structure shall be erected and no use shall be established unless upon a lot of record.

(Ord. of 8-2-2017, § 1(5.1.6))

Sec. 5.1.7. Buildings on single-family and duplex lots.

On all single-family detached and two-family residential lots, only one principal building, together with its permitted accessory structures and uses, shall occupy each lot.

(Ord. of 8-2-2017, § 1(5.1.7))

Sec. 5.1.8. Multiple principal buildings on a lot.

Multiple principal buildings with nonresidential uses, mixed-uses and mixed attached or multi-dwelling residential uses (triplex, duplex, condominium, apartment) may be established on a single unified lot, provided that all other provisions of this article 5 and this chapter are met.

(Ord. of 8-2-2017, § 1(5.1.8))

Sec. 5.1.9. Minimum lot size and minimum lot width.

A. No lot shall be created that fails to meet the minimum lot size and minimum lot width for the zoning district in which the lot is located as established in article 2 of this chapter, except as otherwise provided in article 8 of this chapter.

B. Flag lots are prohibited.

(Ord. of 8-2-2017, § 1(5.1.9))

Sec. 5.1.10. Maximum lot coverage.

No lot shall be developed to exceed the maximum allowable coverage by buildings, structures, driveways or parking areas, or any other impervious surface specified for the zoning district in which the lot is located. In addition to the maximum impervious surface amount, pervious materials may be added up to a maximum amount of 15 percent of the total lot area for non-vehicular uses only, such as walkways, patios and pool decks.

(Ord. of 8-2-2017, § 1(5.1.10))

Sec. 5.1.11. Street frontage for lots.

All lots shall meet the minimum street frontage requirements of the zoning district in which the lot is located.

(Ord. of 8-2-2017, § 1(5.1.11))

Sec. 5.1.12. Lots served by wells and septic tanks; sewer and water connections.

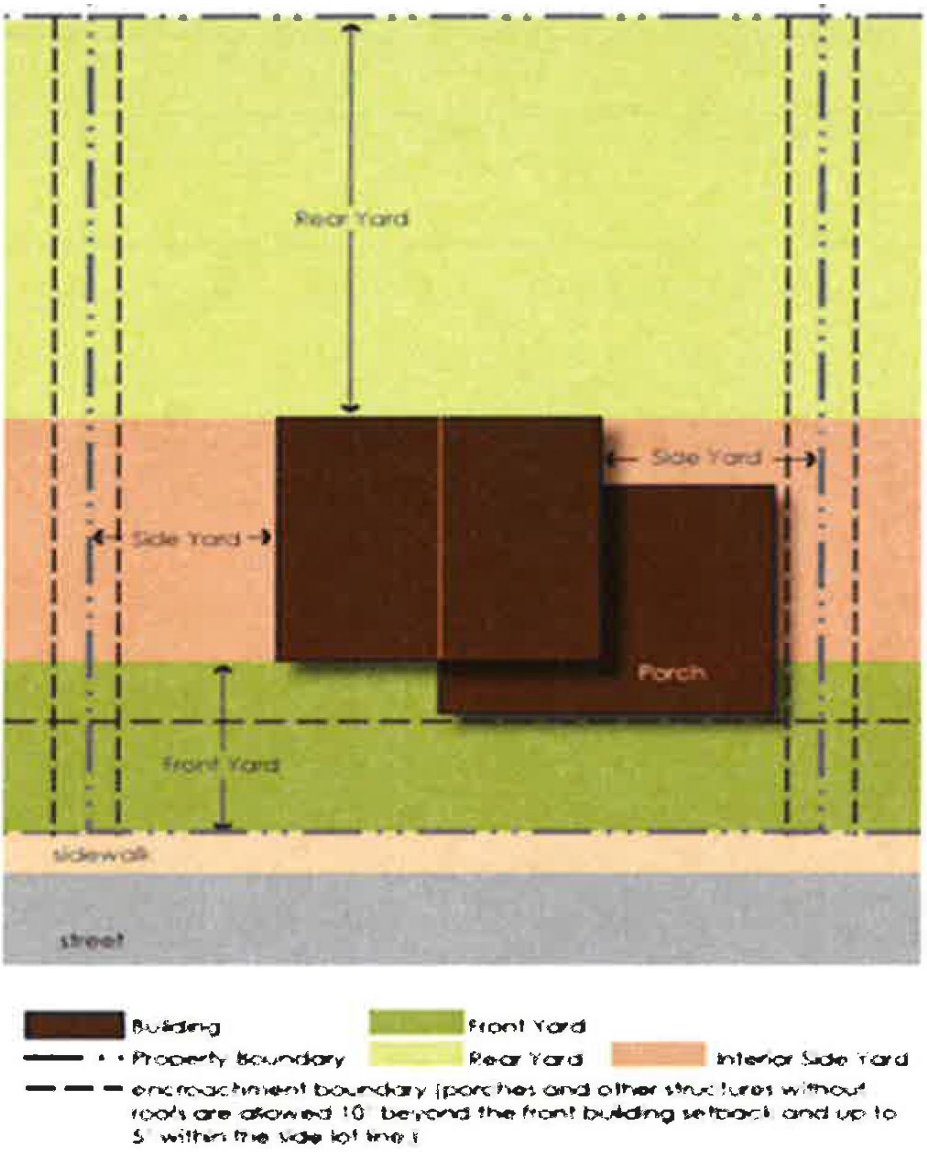
A. Any lot that is to be served by an individual well or septic tank shall have an area of not less than that required by state and DeKalb County health regulations. The site location on the lot of the facility shall be approved by the county board of health in accordance with applicable board of health regulations.

B. Sewer and water facilities and connections shall be approved by the director of planning.

(Ord. of 8-2-2017, § 1(5.1.12))

DIVISION 2. GENERAL YARD AND MEASUREMENT PROVISIONS

Sec. 5.2.1. Minimum required yards and building setbacks.



Projections into Yards

A. *Projections into yards.*

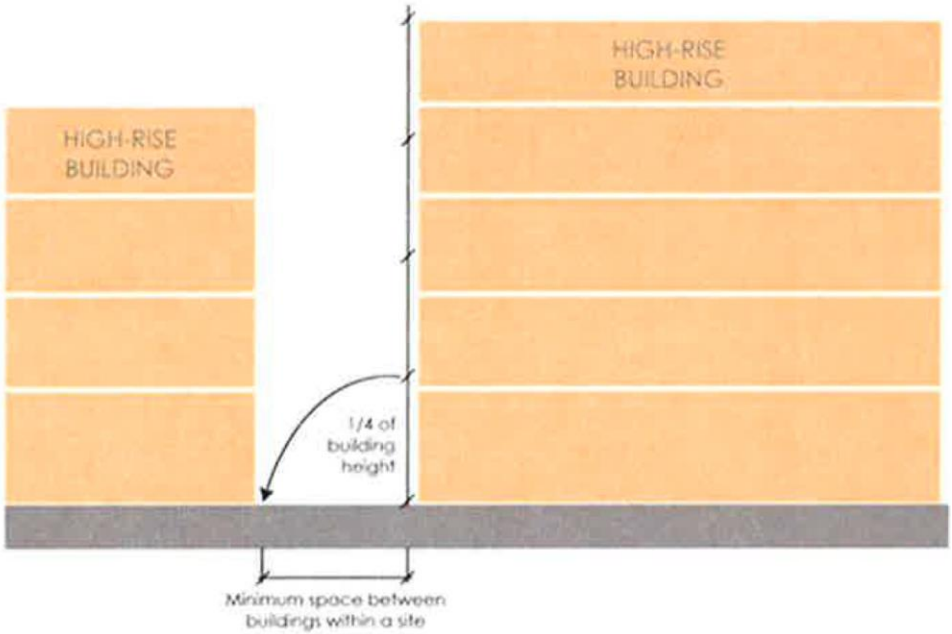
1. Every part of a required yard shall be open to the sky and unobstructed except for the ordinary projections of sills, belt courses, cornices, eaves, awnings, chimneys, buttresses and other ornamental and architectural features, provided that these features do not project more than three feet into any required yard and do not encroach on other lots or rights-of-way.

2. An open, unenclosed porch, balcony or hard-surfaced terrace, steps, stoops and similar fixtures of a building may project into a required front yard or rear yard for a distance not to exceed ten feet, and into a side yard to a point not closer than five feet from any lot line.

3. Enclosed porches may encroach for a distance of up to eight feet into the front or rear yard, but shall be no closer than five feet from the side property line.

B. *Spacing between buildings.* For single-family attached buildings and multifamily buildings:

1. Building shall be separated a distance as required by the International Codes Council (ICC).



High-rise multifamily spacing

C. *Setback averaging.* When a vacant lot located in a zoning district authorized for single-family detached dwellings is proposed for development, and is located where at least 60 percent of the other lots on the same block face are occupied by single-family detached dwellings, then setback averaging shall apply. Where setback averaging applies, the minimum front setback for the vacant lot to be developed shall be the average of the actual front setbacks of the existing dwellings adjacent to the vacant lot and on the same blockface. Where application of setback averaging would require that the proposed dwelling be located closer to the street than the otherwise applicable minimum front setback for the zoning district where the vacant lot is located, then setback averaging shall not be applied. Where application of setback averaging would make it impossible for the proposed dwelling to comply with the applicable zoning district's rear yard setback requirement, then the proposed dwelling may be constructed closer to the street, up to the minimum front setback required in the subject zoning district, only to the extent necessary to satisfy the minimum rear yard setback requirement. If the actual front setbacks of the existing dwellings on the adjacent lots on the same blockface as the vacant lot differ from each other by more than 30 feet, then the minimum front setback for the vacant lot shall be the actual front setback of the dwelling closest to the street.

(Ord. of 8-2-2017, § 1(5.1.1))

Sec. 5.2.2. Minimum floor area per dwelling unit.

A. No new dwelling unit shall have less than the minimum floor area of the applicable zoning district specified in article 2 of this chapter.

B. No existing dwelling unit shall be reduced in size so that its floor area is less than the minimum floor area for a dwelling unit established by the applicable zoning district specified in article 2 of this chapter.

(Ord. of 8-2-2017, § 1(5.1.2))

Sec. 5.2.3. Compatibility of new and existing subdivisions.

A. Lot size variability. Lots created as part of a new or redeveloped single-family detached subdivision, containing 20 or more lots, shall be compatible with existing developed single-family lots to which they are adjacent as described in subsection B. of this section.

B. Compatibility of new lots with adjacent lots shall be demonstrated by at least two of the following:

1. The lot width of the new lot is at least 80 percent of the lot width of an adjacent existing subdivision lot;

2. The lot size of the new lot is at least 80 percent of the lot size of an adjacent existing subdivision lot or eight-tenths of an acre, whichever is less;

3. The new lot provides a minimum transitional buffer of 20 feet;

4. The lot depth of the new lot is at least 20 feet deeper than the depth of the adjacent existing lot.

C. Calculations for measuring compatibility:

1. Only lots with existing residential structures adjacent to the proposed development will be used in the calculation.



Perimeter Lot Diagram

(Ord. of 8-2-2017, § 1(5.1.3))

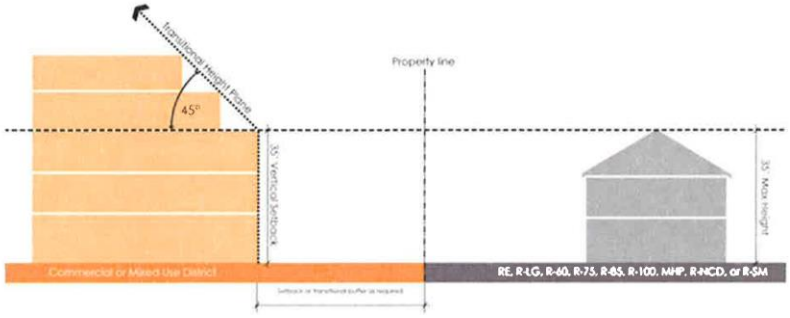
Sec. 5.2.4. Transitional height plane.

A transitional height plane shall apply to commercial or multifamily buildings that is either:

(1) Adjacent to; or

(2) Separated by a street with a width of 50 feet or less from any property zoned RE, RLG, R-60, R-75, R-85, R-100, MHP, RNC or RSM.

No portion of a commercial or multifamily structure shall protrude into a transitional height plane. The transitional height plane shall begin at a point 35 feet above any setback or transitional buffer line, whichever is furthest from the property line, and then extend at an upward angle of 45 degrees over the lot of the commercial or multifamily building.



Transitional Height Plane Diagram

(Ord. of 8-2-2017, § 1(5.1.4))

Sec. 5.2.5. Height measurement requirements and thresholds.

A. Building height of all structures other than single-family detached dwellings shall be measured from average finished grade (determined by averaging the elevations of finished grade around the entire footprint of the structure) to the top of the highest roof beams on a flat roof, to the deck level on a mansard roof, and to the average distance between the eaves and the ridge level for gable, hip, shed and gambrel roofs.

B. Building height for single-family detached dwellings shall be measured from the front-door threshold of the structure to the highest point of the roof of the structure. Threshold means the top of the subfloor in the opening that is designated as the front door of a dwelling.

C. Reserved.

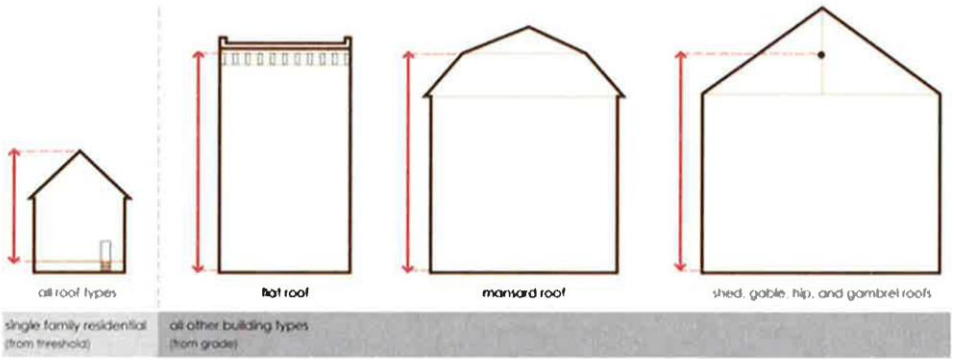
D. Elevation of single-family detached dwelling thresholds. The following standards shall apply to single-family detached dwellings:

1. *Replacement of a single-family detached dwelling.* If new construction of a single-family detached dwelling would require alteration or eradication of the threshold of a previously existing residential structure, the proposed front door threshold elevation for the new single-family detached dwelling shall not be more than two feet higher than the front door threshold elevation of the previously existing residential structure, which shall be measured and certified by a licensed surveyor or engineer.

2. *Construction on vacant or undeveloped lot.* If no dwelling previously existed on the lot, the threshold shall be no higher than the average elevation of the existing natural grade at the front building line.

3. *Sewer conditions.* If the existing residence or lot is not connected to county sewer and if an applicant for a building permit establishes that the minimum threshold height prevents gravity flow connections to county sewer, the director of planning may grant an administrative variance to allow the threshold height to be up to five feet above the threshold of the previously existing residence in order to allow for gravity flow into the existing sewer tap. Should a greater increase in threshold height be required, a variance from the zoning board of appeals must be obtained in accordance with the process set forth in article 7 of this chapter.

4. *Topographical conditions.* If exceptional topographical restrictions exist on the subject lot that were not created by the owner or applicant, then the director of planning may grant an administrative variance to allow the threshold to be up to three feet above the threshold of the previously existing house.



Building Height Measurement

E. Height requirements.

1. The maximum height of a new single-family detached dwelling shall comply with the requirements of Table 2.2.

2. The height limitations established in this chapter shall not apply to the following:

a. Barns, silos or other similar structures when located on farms; belfries, steeples, cupolas and domes; chimneys; and flagpoles.

b. Bulkheads, elevator penthouses, rooftop mechanical equipment, water tanks and scenery lofts and similar structures, provided that these structures shall not cover more than 25 percent of the total roof area of the building on which the structures are located.

c. Telecommunications towers and antennas otherwise permitted by this chapter by special administrative permit or permitted by special land use permit by the city council pursuant to section 4.2.57.

d. Any single-family detached dwelling that exceeds the building height limitations set forth in subsection E.2.a. of this section and has been damaged by fire or other act of nature may be reconstructed to its verifiable original height.

e. When an undeveloped single-family lot is located within a platted subdivision in which at least 60 percent of the lots have had certificates of occupancy issued for single-family detached homes that exceed the building height limitations set forth in subsection E.(1) of this section, a single-family detached residential structure built on the undeveloped single-family lot may be built to a maximum height equal to the average building height of the existing single-family detached homes within the same block in which the undeveloped single-family lot is located.

f. Rooftop mechanical equipment, vent pipes, lightning rods, solar panels, and/or wind vanes that are less than six feet in height measured from top of roof adjacent to such structure.

(Ord. of 8-2-2017, § 1(5.1.5))

DIVISION 3. SUPPLEMENTAL STREET REGULATIONS AND TRAFFIC IMPACT

Sec. 5.3.1. Design standards by street type.

Public and private streets shall be designed according to standards for street classification established in chapter 14 of the Code, except as otherwise provided in section 5.7.6 of this chapter.

(Ord. of 8-2-2017, § 1(5.3.1))

Sec. 5.3.2. Street connectivity.

A. *Connectivity measures.* New streets shall be designed to create an interconnected system of grid-patterned roads, modified only to accommodate topographic conditions. Each new street shall connect to the existing street grid.

B. *Pedestrian connectivity.* Common areas shall be connected by pedestrian pathways in accordance with section 5.1.1.C.

C. *Small area transportation plan conformity.* New streets shall demonstrate conformance with the intent of any and all city adopted transportation plans, thoroughfare plans and subarea plans.

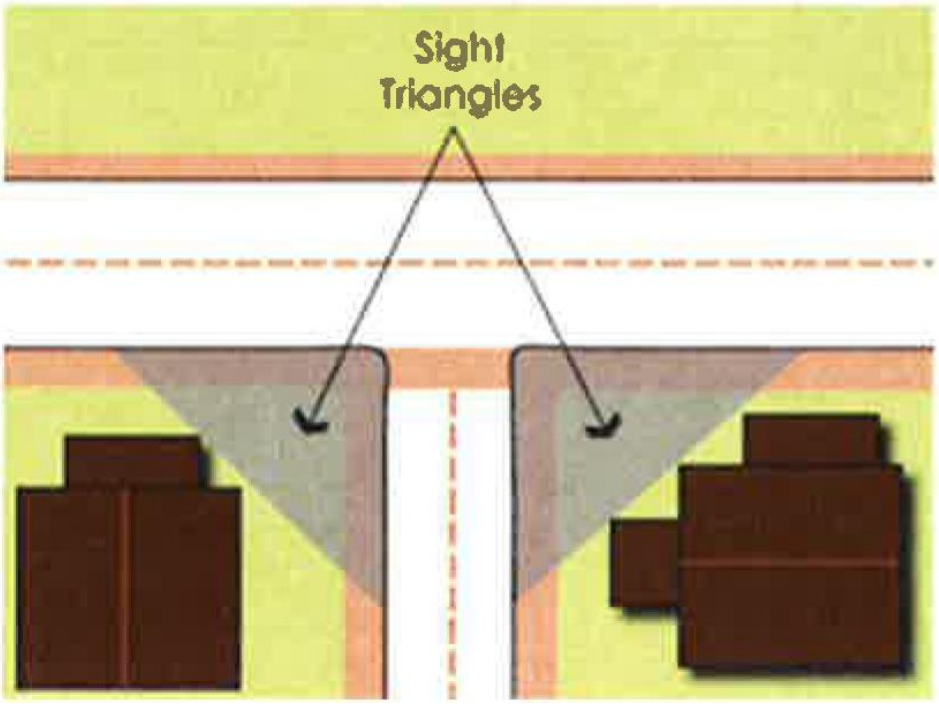
D. *Waivers.* The requirements of subsections A. and B. of this section may be waived by the director of planning in accordance with article 7 of this chapter and as provided below:

1. Waivers may only be granted for hardships resulting from unusual topography or when access constraints or other requirements imposed by city departments impede compliance.

2. As part of the waiver request, the applicant shall prepare and submit a site plan, drawn to scale and showing the existing public and private street network, and shall provide an explanation as to how the proposed street plan supports the intent of this section to design an interconnected system of grid-patterned roads.

(Ord. of 8-2-2017, § 1(5.3.2))

Sec. 5.3.3. Sight visibility triangles.



Sight Triangles

A. No structure, fence, wall, sign, hedge or planting, or any similar improvement will be permitted to obstruct the sight lines or visibility of motorists and/or pedestrians at any intersection of public or private streets or at any driveway intersection with a public or private street. All intersecting streets and driveways must meet the intersection and stopping sight distance requirements as outlined in the American Association of State Highway and Transportation Official's (AASHTOs) A Policy of Geometric Design of Highways and Streets, current edition.

B. For the purposes of this section, obstructions shall be prohibited if any part thereof is more than 30 inches and less than eight feet above local streets and driveways, or more than 30 inches and less than 12 feet above any street classified as collector or higher.

C. Properties requiring GDOT approvals shall also comply with GDOT standards for sight visibility triangles and sight distances.

(Ord. of 8-2-2017, § 1(5.3.3))

Sec. 5.3.4. Traffic impact study.

A traffic impact study, the scope of which shall be determined by the director of the planning department or his designee, necessary to establish the impact of a development project on the surrounding roads and what improvements may be available to mitigate such impacts, is required for any rezoning, special land use permit, sketch plat, and land disturbance or building permit applications for projects reasonably expected to meet any of the following criteria:

A. Multifamily development with over 300 new units at build-out;

B. Single-family developments with over 200 new lots or units at build-out;

C. Retail developments with over 125,000 gross square feet (GSF);

D. Office developments with over 200,000 GSF;

E. Medical office developments with over 55,000 GSF;

F. Industrial/warehouse developments with over 280,000 GSF, employing more than 650 workers, or covering more than 200 acres;

G. Any mixed-use development which could reasonably expect to generate 2,000 or more gross daily trips; or

H. Special traffic generating uses, including truck stops, quarries, landfills, stadiums, etc. which would require development of regional impact review.

(Ord. of 8-2-2017, § 1(5.3.4))

Sec. 5.3.5. Traffic calming features.

New subdivisions may provide a traffic calming structure for every 500 feet of road length. Traffic calming structures, curves and other traffic calming features are subject to the approval of director of the planning department, or his designee, which approval shall be given where the proposed traffic calming structure or traffic calming feature is designed in such a way as to reduce traffic speeds to a reasonably safe speed for the location.

(Ord. of 8-2-2017, § 1(5.3.5))

DIVISION 4. STREETSCAPE AND LANDSCAPING REQUIREMENTS

Sec. 5.4.1. Purpose and intent.

The requirements and regulations for landscaping in the City of Stonecrest are a critical public concern that are necessary in order to preserve and enhance property values, the aesthetic beauty of the city, and the safety and general welfare of its residents. The intent of landscape regulations is to:

A. Provide buffering between non-compatible land uses.

B. Protect, preserve, and promote aesthetic appeal and scenic beauty.

C. Reduce noise pollution and air pollution.

D. Reduce stormwater run-off, erosion and degradation of water quality.

E. Filter and reduce glare from artificial light sources.

F. Provide shaded areas along streets and in parking areas.

G. Reduce solar heat islands.

(Ord. of 8-2-2017, § 1(5.4.1))

Sec. 5.4.2. Applicability.

A. *New developments, principal building or use.* The requirements and regulations for streetscape and landscaping apply to principal buildings, new developments or open uses of land constructed or established after the effective date of this zoning ordinance.

B. *Change of use, expansions or reconstruction.* Where a change of use, expansion to, or reconstruction of an existing building or site improvements (such as parking lots) impact streetscape and/or landscape improvements, the landscaping requirements shall apply only to the area disturbed in the development process.

C. *Publicly-owned buildings.* To the extent allowed by law, the requirements and regulations for streetscape and landscaping apply to improvements to land owned by public agencies except utility rights-of way or easements.

(Ord. of 8-2-2017, § 1(5.4.2))

Sec. 5.4.3. Streetscape elements and dimensions.

All development shall comply with the streetscape element requirements described below and in Table 5.1. Topping of canopy trees within this section is prohibited.

A. *Streetscape dimensions and placement.*

1. *New streets.*

a. *Applicability.* New streets shall be constructed with continuous streetscape zones on both sides of the street, beginning from back of curb.

b. *Streetscape zone elements for new streets.* The streetscape zone on new streets shall consist of a landscape strip, a sidewalk, and, when required per Table 5.1, a supplemental zone.

c. *Sidewalks.* Sidewalks shall be provided between the landscape strip and the supplemental zone, as required in Table 5.1 and the figures following the table.

d. *Landscape strips.*

i. Landscape strips shall be located between the curb and the sidewalk.

ii. Landscape strips shall be designed with street trees and pedestrian scale streetlights as required in Table 5.1 and the figures following the table.

iii. See subsection C. of this section for planting and materials requirements.

iv. Large scale retail has additional landscape standards adjacent to streets as provided in section 5.7.8.

e. *Supplemental zone.* New streetscape zones in nonresidential areas shall provide a supplemental zone outside the right-of-way on a private easement. Private easement agreements shall be submitted to the director of planning. See subsection D. of this section.

(2) *Improvements on existing streets.*

a. *Applicability.* New development and redevelopment occurring on existing streets shall provide a streetscape zone on the side of the street where the development takes its access.

b. *Streetscape zone elements for existing streets.*

i. The streetscape zone for existing streets shall consist of a minimum of 11 feet along the existing shoulder, as indicated in Table 5.1.

ii. The streetscape zone for existing streets shall consist of a landscape strip and a sidewalk, as shown in Table 5.1 and the figures following the table.

c. *Sidewalk and landscape strip dimensions.* The width and location of sidewalks and landscape strips shall be determined by the director of the planning department or his designee, based on GDOT standards, if applicable, and compatibility with existing sidewalks and utilities.

d. *Landscape strips.*

i. Landscape strips shall be located between the curb and sidewalk, and/or between the sidewalk and the property line. The required total width of the landscape strip may be distributed on either side of the sidewalk so as to accommodate existing infrastructure.

ii. Landscape strips shall be designed with street trees and pedestrian scale streetlights as shown in Table 5.1 and the figures following the table.

iii. See subsection C. of this section for planting and materials requirements.

iv. Large-scale retail has additional landscape standards as provided in section 5.7.8.

e. *Programmed road improvement projects.* If DeKalb County, the City of Stonecrest, or GDOT has a programmed road improvement project along the frontage to be developed, then the streetscape shall be constructed consistent with the design standards for such road improvements plans.

f. *Administrative variance.* The director of planning shall have the power to grant administrative variances for streetscape requirements on existing streets upon written request by the property owner and compliance with article 7 of this chapter based on a finding that the requirement of the subsection A.2. of this section would have a significant adverse effect on the historic pattern or cannot be met due to circumstances beyond the control of the applicant, including, but not limited to,

i. Inadequate right-of-way;

ii. Conflicting standards between this section and GDOT design standards;

iii. Unique topographic or subsurface conditions;

iv. Need to relocate existing utilities.

B. *Sidewalks and interior walks.*

1. Sidewalks shall be paved in concrete and paver accents approved by the director of planning and kept clear and unobstructed for the safe and convenient use of pedestrians.

2. Sidewalks shall adhere to ADA guidelines.

3. Sidewalks shall be continued across intervening driveways by continuation of the sidewalk paving materials or other methods of differentiation.

4. Where newly constructed sidewalks abut existing sidewalks, the newly constructed sidewalk shall provide safe transition of pedestrian traffic flow to the adjacent sidewalks. Development that disturbs existing sidewalks on another property shall replace disturbed areas to their pre-disturbance state and condition.

5. For uses other than single-family residential, safe and convenient paved pedestrian pathways shall be provided from sidewalks along streets to each building entrance, including pedestrian access routes to parking decks and through parking lots and between adjacent buildings, transit stops, street crossings within the same development. All such pathways shall have a minimum width of three feet.

C. *Landscape strip materials and maintenance.*

1. *Required mix of materials.* Landscape strips in the streetscape zone shall be planted with a variety of deciduous, over story and understory trees. Species of shrubs, flowering plants, grass and other ground covers, which are well adapted to the local climate, may be included in the landscape strip.

2. *Sidewalks.* Sidewalks shall be paved in concrete and paver accents approved by the director of planning and kept clear and unobstructed for the safe and convenient use of pedestrians.

3. *Pedestrian crossing.* Landscape strips may include brick, concrete, or granite pavers where on-street parking is provided or regular pedestrian crossing of the landscape strip is reasonably anticipated to occur.

4. *Maintenance.* Required landscape strips shall be established and maintained by the owners. Topping of canopy trees is prohibited.

5. *Permanent structures.* Permanent structures such as buildings, driveways that are not perpendicular to the landscape strip, parking spaces, dumpsters, drainage structures and detention facilities shall be prohibited in required landscape strips. The prohibition of this subsection shall not include crossings perpendicular to the strip, necessary retaining walls four feet or lower, bike racks, benches, trash receptacles, signs, mailboxes, and drainage swales.

6. *Planting specifications, all trees.*

a. Planting areas for trees shall contain a minimum depth of 12 inches of screened topsoil. Below 12 inches the soil shall be uncompacted to a depth sufficient to allow proper drainage and root growth.

b. Use of root barriers such as U.B.36 or an equivalent is required at the back of the sidewalk or back of the curb if no sidewalk exists.

c. Trees shall meet the standard for American Nursery Stock ANSI Z60.1.

7. *Street trees.*

a. Street trees shall be overstory trees unless site constraints prohibit the use of large maturing trees, subject to the approval of the director of planning.

b. Street trees shall be provided with spacing as depicted in Table 5.1.

c. Street trees shall not be planted closer than 20 feet from the curb line of intersecting streets and not closer than ten feet from intersecting lines of alleys or private drives.

d. Street trees shall not be planted closer than 12 feet from light standards. No new light standard location shall be positioned closer than ten feet to any existing street tree.

e. Street trees shall not be planted closer than 2½ feet from the back of the curb.

f. Where there are overhead power lines, street tree species are to be chosen from a list provided by the city arborist that will not interfere with those lines.

g. Street trees, as they grow, shall be pruned to provide at least eight feet of clearance above sidewalks and 12 feet above driveways and roadway surfaces.

h. Street trees shall be a minimum of two-inch caliper measured at six feet above ground level at the time of planting and shall have a mature height of at least 25 feet.

i. Street trees shall be planted in a mulched area of at least 25 square feet.

D. *Supplemental zone.*

1. In supplemental zones in commercial areas where building setbacks are 15 feet or less, the supplemental zone must contain hardscape and street furniture such as trash receptacles, bike racks, and benches.

2. For additional requirements for supplemental zones abutting parking lots, see section 5.4.4.

E. *Street lighting.* Street lighting shall be accomplished with pedestrian scale lighting and street lights. Street lights shall be placed on property lot lines abutting the street. Lighting plans must be approved by the director of the planning department or his designee. Lighting shall be installed by local power company employees or contractors.

F. *Administrative variance.* An administrative variance to streetscape standards may be granted by the director of planning for adaptive reuse and redevelopment projects as specified in this section or to preserve historic patterns. In addition to other required materials, an applicant for an administrative variance to the streetscape standards shall include a site plan, drawn to scale, showing the existing right-of-way and specific conditions of the lot.

Table 5.1. Required Streetscape Dimensions

Required Streetscape Dimensions (Minimum, unless stated)						
New Streets						
Street Type	Streetscape Zone				Landscape Strip Elements	
	Total Width	Landscape Strip	Sidewalk	Supplemental Zone	Light Pole Spacing (Max)	Street Tree Spacing (typical*)
Local Residential	11'	6'	5'	NONE	100'	30'
Local Nonresidential	22'	6'	6'	10'	80'	50'
Arterial and Collector Nonresidential and Mixed Use	20'	10'	6'	4'	80'	40' in Activity Centers
						50' outside Activity Centers
Existing Streets						
Street Type	Streetscape Zone				Landscape Strip Elements	

	Total Width	Landscape Strip	Sidewalk	Supplemental Zone	Light Pole Spacing (Max)	Street Tree Spacing (typical*)
Local Residential	11'	6'	5'	NONE	100'	30'
Local Nonresidential	12'	6'	6'	NONE	80'	50'
Arterial and Collector Nonresidential and Mixed Use	16'	10'	6'	NONE	80'	40' in Activity Centers
						50' outside Activity Centers

* Location of street trees is subject to infrastructure and utility locations and approval by the city arborist and GDOT if state roads.



Streetscape Figure—Local Streets, Single-family Residential Districts



Streetscape Figure—Local Streets, all Other Districts



Streetscape Figure—Arterial and Collector Streets

(Ord. of 8-2-2017, § 1(5.4.3))

Sec. 5.4.4. Site and parking area landscaping.

A. *Single-family residential lots.* Each single-family residential lot on which new development occurs shall be planted with a minimum of three new trees. Street trees along the lot frontage shall count towards this requirement. The species and specifications for the trees to be planted in compliance with this requirement shall meet the requirements of a list approved by the city arborist.

B. *Interior strips.* Interior to nonresidential, mixed-use and multifamily developments, three-foot-wide planted landscape strips shall be required along all interior drives and pedestrian paths.

C. *Property perimeter landscape strip.* Along nonresidential, mixed-use and multifamily development perimeter lot lines, a perimeter landscape strip shall be required, as follows:

1. A five-foot-wide continuous perimeter landscape strip is required along all property lines that are not subject to streetscape requirements. This applies to individual tenant sites interior to a master planned project, even in instances where individual tenant sites do not have separately platted lot lines.

2. A perimeter landscape strip shall include one overstory deciduous shade tree, or three understory or three evergreen trees, for every 50 linear feet at a minimum size of two-inch caliper for deciduous trees and eight-foot height for evergreen trees.

3. A perimeter landscape strip is not required where a transitional buffer is also required.

D. *Parking area landscaping.* All surface parking lots that contain a total of 15 or more parking spaces that are constructed or redeveloped subsequent to the effective date of the ordinance from which this chapter is derived shall comply with the following requirements:

1. A minimum of ten percent of the total lot area of the parking lot shall be landscaped.

2. Non-continuous barrier curbs shall be installed around the perimeter of the parking lot and around landscaped areas that are required herein, except where the perimeter abuts an adjacent building or structure and except at points of ingress and egress into the facility, so as to prevent encroachment of vehicles onto adjacent property, rights-of-way, sidewalks and landscaped areas.

   a. Barrier curbs shall be a minimum of six inches in height and six inches in width, shall be concrete or stone, shall be securely installed, and shall be maintained in good condition.

3. A continuous hedge, berm, or short wall with landscaping thereon, not to exceed three feet in height shall be required between surface parking and an adjacent public street right-of-way.

4. Tree and island quantity. A minimum of one tree per eight parking spaces, and one island per ten parking spaces, shall be provided.
5. Landscape islands. All trees planted in a parking lot shall be planted in a landscape island, which island shall be a minimum of 250 square feet.
6. In addition to trees, ground cover shall also be provided in order to protect tree roots and to prevent erosion. Ground cover shall consist of shrubs, ivy, liriope, pine bark mulch, or other similar landscaping material.
7. Ground cover shrubs in parking area landscaping shall be maintained at a maximum height of 30 inches, except where such shrubs are screening the parking surface from an adjacent residential area.
8. Newly planted trees in parking area landscaping shall be a minimum of two-inch caliper as measured at a height of six inches above ground level, shall be a minimum of ten feet in height at planting, shall have a 30-foot minimum mature height, and shall be drought tolerant. Trees shall be planted at least 30 inches from any barrier curb, so as to prevent injury to trees from vehicle bumpers. A minimum of 75 percent of the trees planted pursuant to these requirements shall be deciduous hardwood shade trees.
9. All landscaped areas shall be properly maintained in accordance with landscape plans approved as part of the land disturbance permit. In the event that a tree or any plant material dies, it shall be replaced within 12 months so as to meet all requirements of this section and to allow for planting in the appropriate planting season.
10. All trees planted pursuant to the requirements of this section shall be counted for the purpose of meeting the tree planting and tree replacement requirements required by chapter 14 of the Code.

(Ord. of 8-2-2017, § 1(5.4.4))

Sec. 5.4.5. Transitional buffers.

A. *Intent.* Transitional buffers are intended to create a visual screen in order to diminish the potential negative impacts of nonresidential and mixed land uses on adjacent residential land uses. Similarly, transitional buffers diminish the potential negative impacts of higher intensity residential development on adjacent single-family residential land uses.

B. *General requirements.* Natural or planted transitional buffers required by this article shall be established and permanently maintained by the property owner as follows:

1. The required transitional buffer shall be depicted in detail on each site plan or plat prior to final approval. Type and location of natural and planted vegetation shall be included.
2. Within the transitional buffer, the natural topography of the land shall be preserved and existing growth shall not be disturbed except where necessary to remove dead or diseased trees and undergrowth or to enhance the buffer with additional landscaping in order to provide a screen so as to prevent view of the higher density development from the lower density development.
3. Grading or construction adjacent to the transitional buffer zone shall not disturb or encroach upon the transitional buffer zone.
4. Notwithstanding subsection B.3. of this section, if grading is required in the transitional buffer in order to prevent or control erosion, the area of such grading shall cover no more than 20 percent of the required transitional buffer, shall be immediately replanted upon completion of easement improvements and shall avoid disturbance of the soil within the dripline of trees within the transitional buffer.

5. Any approved utility crossings shall be perpendicular to the transitional buffer.

6. A pedestrian walkway, a maximum width of five feet, may be located in the buffer to provide pedestrian access to the adjoining property. Where a pedestrian walkway is provided, a gate shall be installed in the required screening fence.

7. If existing vegetation in a buffer area does not meet the transitional buffer standards, a five-foot-high, landscaped berm may be installed subject to the approval of the city arborist. Grading to construct the berm shall not remove significant plants designated by the city arborist as part of the approval of the landscaped berm.

C. *Buffer planting and materials.* When the conditions of the existing natural topography and vegetation are insufficient to achieve the visual screening required by this section, a landscape planting plan to enhance the transitional buffer shall be prepared and implemented to supplement existing natural growth or to provide new plant materials of such growth characteristics as will provide a screen meeting the standards below:

1. *Planting height.* Proposed planting as part of an enhanced transitional buffer shall have a height of at least six feet at the time of planting and planted in a minimum of two rows, with staggered on center spacing such that a continuous opaque screen is created within two years of planting.

2. *Plant types.* Plant species in an enhanced transitional buffer shall be evergreen, native, naturalized or other species well-adapted to the local climate and rainfall patterns, disease and pest-free, healthy and vigorous, and meet standard for American Nursery Stock, ANSI Z60.1.

3. *Plant functions.* Plants shall be approved from a list made available from the planning department, but shall not be exclusive of other plants which may be suitable, provided they can provide a continuous opaque screen.

4. *Fences.* Fences are required with transitional buffers and shall meet the requirements of section 5.4.7.

5. *Wall and fence finishes.* Walls and fences shall be constructed with the finished or decorative side facing outward from the property.

D. *Buffer dimensions and specifications.* Table 5.2(a) identifies the transitional buffer class required for each zoning district based on the zoning district to which it is adjacent. Table 5.2(b) summarizes the minimum width of the required transitional buffer for each transitional buffer class (A-E).

Table 5.2(a). Transitional Buffer Class by District

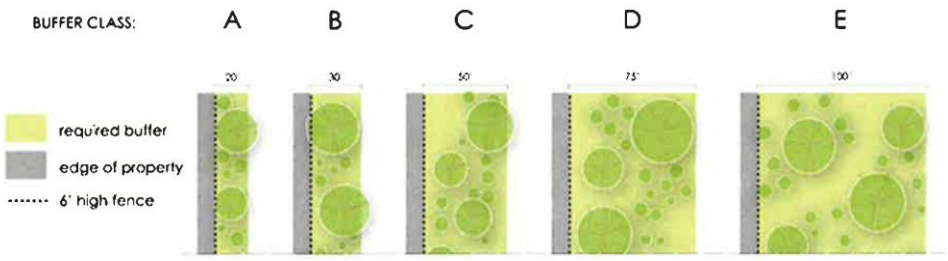
Transitional Buffer Class by District												
Districts	Adjacent District											
Residential Districts	R*	MHP	RNC	RSM	MR-1	MR-2	HR-1-3	MU-1	MU-2	MU-3	MU-4	MU-5
MHP	C	-	-	-	-	-	-	-	-	-	-	-
RNC	B	-	-	-	-	-	-	-	-	-	-	-
Mixed Residential Districts												
RSM**	A	C	A	-	-	-	-	-	-	-	-	-
MR-1**	B	C	B	B	-	-	-	-	-	-	-	-
MR-2**	C	C	C	C	C	-	-	-	-	-	-	-
HR-1-3**	C	C	C	C	B	B	-	-	-	-	-	-
Mixed-Use Districts												
MU-1	B	B	B	B	-	-	-	-	-	-	-	-
MU-2	C	B	B	B	B	-	-	-	-	-	-	-
MU-3	C	C	C	B	A	B	B	B	B	-	-	-
MU-4	C	C	C	B	A	B	B	B	B	-	-	-
MU-5	C	C	C	B	A	B	B	B	B	-	-	-
Nonresidential Districts												
OI	C	C	C	C	C	C	C	B	B	B	-	-
OIT	C	C	C	C	C	C	C	B	B	B	-	-
NS	C	C	C	C	C	C	C	A	A	A	-	-
C-1	C	C	C	C	C	C	C	B	B	B	-	-
OD	D	D	D	D	D	D	D	D	D	D	D	D
C-2	C	C	C	C	C	C	C	B	B	B	B	B
M	D	D	D	D	D	D	D	D	D	D	D	D
M-2	E	E	E	E	E	E	E	E	E	E	E	E

* R= RE, RLG, R-100, R-85, R-75, R-60 (except when R-60 use is single-family attached).

** Where the Mixed Residential District has single-family units along an adjacent residential (R) boundary, then a transitional buffer is not required.

Table 5.2(b). Transitional Buffer Minimum by Buffer Class

Transitional Buffer Minimum Width by Buffer Class	
Buffer Class	Width
A	20'
B	30'
C	50'
D	75'
E	100' with fence



Transitional Buffers Figure

(Ord. of 8-2-2017, § 1(5.4.5))

Sec. 5.4.6. Screening.

Trash and recycling areas, loading areas, mechanical and utility equipment, parking decks, detention facilities, and outdoor storage shall be surrounded by opaque fences, walls, or vegetation. Vegetative screening shall be at least 75 percent evergreen, with a minimum of two rows of plants, and shall grow to a height of six feet in two years.

A. *Loading areas.* All loading areas must be screened from view so as not to be visible from any public street or adjacent property.

B. *Trash and recycling areas.* All dumpsters must be screened from view on all four sides so as not to be visible from adjacent properties and the public street. The screen may incorporate access to the dumpster by using a wood fence or other opaque device to serve as a gate.

C. *Parking decks.* All parking decks and aboveground parking structures shall have a six-foot-wide landscape strip immediately contiguous to the facade of the parking deck or structure, unless otherwise screened from view by an intervening building.

D. *Mechanical and utility equipment.* All mechanical and utility equipment must be screened from view so as not to be visible from any public street.

E. *Detention facilities.* In addition to fencing requirements set forth in chapter 14 of the Code, detention facilities shall be planted with evergreen plant material consistent with buffer standards in section 5.4.5.C. No trees shall be allowed in the ten-foot maintenance shelf. However, detention facilities designed as open space amenities may be approved by the director of planning and in compliance with division 5 of this article. A detention facility located in an historic district that is subject to architectural design review shall require a certificate of appropriateness, for appearance only, from the City of Stonecrest Historic Preservation Commission.

F. *Outdoor storage.* See section 4.2.38 for screening regulations for outdoor storage of materials, supplies, equipment or vehicles regulations.

(Ord. of 8-2-2017, § 1(5.4.6))

Sec. 5.4.7. Walls, fences, and retaining walls.

A. General.

1. When this chapter requires a wall or fence to be constructed, the wall or fence shall be completed prior to the issuance of a certificate of occupancy for the principal structure.

2. No wall or fence shall be constructed in any public right-of-way.

3. See Table 5.3, Fence and Wall Standards for additional requirements.

B. Single-family residential standards.

1. Fences or free-standing walls constructed in a front yard shall not exceed four feet in height.

2. No freestanding wall or fence, other than a retaining wall, shall be more than eight feet high from finished grade.

3. Subdivision or project identification monuments at the entrance to a subdivision or residential development that incorporates a wall or fence shall only be located in a common area or private easement and shall not exceed six feet in height.

4. Retaining walls on lots developed with single-family dwellings shall abide by the following:

(1) The entire wall structure, including footer, shall not encroach on adjacent property;

(2) Drainage shall be properly conveyed on both sides of the wall in conformance with state and city codes; and

(3) A construction/maintenance easement shall be obtained from the adjoining property owner, if applicable.

Newly constructed retaining walls shall not be higher than four feet; however, existing retaining walls may be repaired and replaced so long as the height of the repaired or replaced wall is no greater than the original height of the wall.

a. If exceptional topographical restrictions exist that were not created by the owner or his agent on a lot, and it is established to the reasonable satisfaction of the director of planning that no practical alternative design of such wall is feasible, then the director of planning may, upon application therefor, grant an administrative variance allowing up to two additional feet in the applicable retaining wall maximum height limitation set forth in this subsection B.4 of this section. An applicant for a retaining wall administrative variance shall include with the application a certified field-run site plan or a topographical map certified by an engineer or landscape architect.

b. If exceptional topographical restrictions exist that were not created by the owner or his agent on the lot, and it is established to the satisfaction of the zoning board of appeals that no practical alternative design of such wall is feasible, the zoning board of appeals may, upon application therefor, grant a variance allowing newly constructed retaining walls to be greater than six feet. Notwithstanding any provision in this chapter to the contrary, no variance may be granted to allow the height of a retaining wall above eight feet. In addition to the materials otherwise required for a variance in division 5 of article 7 of this chapter, an applicant for a retaining wall variance shall provide a certified field-run site plan or a topographical map certified by an engineer or landscape architect with the application for the variance.

C. Height. The height of a wall or fence is measured along the adjacent finished grade. However, if located within 15 feet of any street, and if the street grade is above the adjacent finished grade, the fence or wall height may be measured from the street grade.

D. Material composition.

1. No freestanding walls, retaining walls or fences may be composed of exposed common concrete block, tires, junk, pallets, railroad ties, loose stone, vinyl and other discarded materials.

2. With the exception of M and M-2 zoning districts, fences, freestanding walls or retaining walls erected within the front yard shall be constructed of brick, stone, wood, wrought iron, or aluminum that looks like wrought iron. Any other material, including, but not limited to, chain link and other wire fences are prohibited in the front yards of all districts, with the exception of M and M-2 zoning districts.

E. Security gates. Entrance gates for vehicles shall be located at least 50 feet from the property line in order to ensure safe queuing, ingress to and egress from the property.

F. Temporary fencing may be erected during construction for security and public safety purposes.

G. Fences and walls in the M and M-2 zoning districts are exempt from regulations governing the height and materials of fences and walls.

H. No freestanding wall or fence in a multifamily, nonresidential or mixed use zoning district may be more than ten feet in height.

Table 5.3. Fence and Wall Standards

Use	Height	Setbacks	Variance Allowed
Single-family fences in the front yard	Up to four feet from finished or street grade.	Outside right-of-way	May apply for a variance from zoning board of appeals to increase height.
Single-family fences in side or rear yards	Up to eight feet.	Fences may be on property line; retaining walls, including footings, must not encroach over property line.	No variance can be approved to exceed eight feet in height.
Single-family retaining walls	Up to four feet from finished or street grade. Cannot exceed eight feet on side or rear property line.	Retaining walls, including footings, shall not encroach over property line.	Administrative variance allowed to increase wall from four to six feet based on topography.
Single-family and Multifamily identification monument walls	In front yard, cannot exceed ten feet in height.	Cannot be located in right-of-way. Setback varies, depends on sight visibility.	May apply for a variance from zoning board of appeals to increase height.
Nonresidential, multifamily and mixed-use zoning districts	Up to ten feet.	Cannot be located in right-of-way. Setback varies, depends on sight visibility.	May apply for a variance from zoning board of appeals to increase height.
Industrial	No limit.	No limit.	N/A

(Ord. of 8-2-2017, § 1(5.4.7))

DIVISION 5. OPEN SPACE STANDARDS

Sec. 5.5.1. Applicability.

A. All development that is required to have open space shall, upon application for a land disturbance permit, identify all open space by a functional category established pursuant to the requirements of this chapter. Further, in commercial and mixed-use developments, open space requirements of individual parcels may be met by open spaces that are owned, maintained, and held in common for use by multiple properties that are subject to legal agreement for maintenance and association approved by the director of planning.

B. The open space requirements in division 5 of this article do not apply to residential subdivisions with less than five acres or less than 36 residences.

C. The minimum quantity of open space for approved developments is established by zoning district and controlled by Table 5.4.

D. Open space shall be maintained as open space until such time that the entire existing development is proposed for redevelopment and shall be landscaped with trees, shrubs, flowers, grass, stones, rocks or other landscaping materials.

E. Open space may include hardscape elements depending on functional type as described in Table 5.6. If serving a conservation function, open space may be preserved in a natural state without enhancements.

(Ord. of 8-2-2017, § 1(5.5.1))

Sec. 5.5.2. Maintenance, management and ownership.

A. *Ownership and management of open space .* Open space shall be owned by one of the following entities, which shall be responsible for maintenance and management as described herein:

1. *City of Stonecrest.*

   a. Open space agreements may be made with the city to deed the required open space to the city. City of Stonecrest is under no obligation to accept any proposed dedication of open space used to meet the requirements of this division.

   b. Public access easement agreements may be made with the city for open space so dedicated by the owner for city trails, parks or other public recreational amenities, as agreed to by City of Stonecrest and whereby maintenance agreements shall be executed between the owner and city.

2. *Land conservancy or land trust.* The responsibility for maintaining the open space and any facilities located thereon may be transferred to a land conservancy or land trust, subject to prior approval by City of Stonecrest.

3. *Homeowners or property owners association.* A homeowners or property owners association representing residents or property owners of the subdivision may own and be responsible for maintenance and management of open space. Membership in the association shall be mandatory and automatic for all homeowners or property owners, and their successors. The homeowners/property owners association shall have lien authority to ensure the collection of dues from all members. The Homeowners or property owners association organizational documents must first be submitted to the director of planning for review to ensure compliance with this subsection. The homeowners or property owners association shall be formed and maintained in compliance with all applicable state law.

4. *Recording of open space.* Open space shall be shown on the final approved plat as a conservation easement, permanent restrictive covenant or equivalent legal document in a form approved by the City of Stonecrest, which shall include a provision rendering the covenant or document void when a property is being redeveloped or redesigned, in which case applicable zoning standards shall apply to ensure consistency with this chapter. At no time shall the development provide less than the required open space.

B. *Maintenance of open space.*

1. Undeveloped open space used to satisfy the requirements of this division shall be preserved in a natural state except for the removal of litter, dead trees, invasive species and plant materials that obstruct pedestrian movement, as well as other maintenance necessary to preserve the natural state

of the open space as approved by the director of planning. Natural water courses and stream channels shall be kept free of litter and obstructions and shall be maintained so as to not alter floodplain levels, and as required by stream buffer regulations in chapter 14 of the Code.

2. Open space shall be maintained so that there exist no hazards, nuisances or unhealthy conditions.
3. Permitted elements as described in Table 5.6 shall be maintained in good repair.
4. New landscaping in required open space shall be maintained such that planted materials that die within one year of the installation, shall be replaced within six months or the next appropriate planting season as determined by the city arborist.

(Ord. of 8-2-2017, § 1(5.5.2))

Sec. 5.5.3. Standards and design.



Open Space and Enhanced Open Space Calculations

A. Required open space shall meet the standards of Table 5.4, Enhanced Open Space: Minimum Requirements.

B. All deeded open space created shall be platted and provide a public access easement in a form approved by the City of Stonecrest.

C. Prior to issuance of a land disturbance permit or building permit:

1. For development projects with residential uses requiring enhanced open space, no lot or multifamily building shall be more than one-quarter mile distance from a designated enhanced open space. If site constraints limit access to the enhanced open space, the distance may exceed the minimum setback requirement of this subsection, subject to the approval of the director of planning. Measurement of distance shall be based on the distance of road and/or pathway providing connectivity to the enhanced open space.
2. A development project with residential uses not within one-half mile distance to a public park or recreation facility that is required to provide enhanced open space shall incorporate at least one enhanced open space type identified as clubhouse/pool amenity, neighborhood park with active recreation, and/or playground. If a development is intended for senior housing, a passive park with benches and paved paths, common patio, courtyard, barbecue/fire pit shall be considered an enhanced open space.
3. For development projects with residential uses within one-half mile of an existing or programmed public school, park, trail or library, the applicant for a land disturbance permit shall provide for pedestrian access to the school, park, trail or library. If an existing or future

pedestrian network and/or multi-use trail is identified by City of Stonecrest, the applicant may be required to provide a future reservation for such a connection. Where a programmed facility has no current concept design for potential alignment, an applicant for a land disturbance permit requiring connection to a park shall meet with the planning department to determine whether any reasonable spur connection would be possible.

a. For measurement of distance to a qualifying public amenity, measurement shall be taken along an improved walkway or sidewalk to the entrance of the public amenity.

b. For measurement to nearby existing or proposed public trail or greenway, measurement shall be taken from a point along the exterior boundary of the development directly to the nearest point of the trail or greenway.

D. *Enhanced open space.* Enhanced open space shall be required as set forth in Table 5.4. Standards for enhanced open space are found in Tables 5.5 and 5.6. In addition, each function may be designated as either public (subject to the approval of and acceptance by the City of Stonecrest) or private ownership.

E. *Open space and enhanced open space standards.*

1. Required open space shall conform to the zoning district requirements in article 2 of this chapter. Where Table 5.4 conflicts with article 2 of this chapter, article 2 shall prevail. Open space and enhanced open space design within an historic district that is subject to architectural design review shall require a certificate of appropriateness from the City of Stonecrest Historic Preservation Commission.

2. Lakes or ponds may be included as part of the open space requirements in a development, provided they are incorporated as part of enhanced open space design, subject to limitations of the riparian buffer as set forth in chapter 14 of the Code.

3. Dry detention basins shall be designed by a professional engineer and may not count toward open space area requirements unless designed as an amenity or aesthetic feature.

4. Enhanced open space may include hard space surface areas in accordance with the permitted elements identified in Table 5.6.

5. Below ground utilities or facilities may be located in the open space area.

6. Designated wetlands and dedicated conservation areas for native species and/or vegetation may count toward open space requirements in accordance with Table 5.5.

7. Open space adjacent to existing buildings that have historical or cultural significance may be counted toward the minimum required open space if made accessible for the common usage of the development. However, the enclosed building area may not be included in the minimum required open space requirement.

8. Stormwater facilities may be located within open space if the stormwater facility is designed and approved as an amenity and/or low impact stormwater management technique, and is in compliance with applicable regulation of chapter 14 of the Code, including approved best management practices. Such facilities may be exempt from fencing, provided that the public health safety and welfare is not jeopardized by the lack of fencing as determined by the director of planning.

F. *Residential lots and yards.* No residential lots shall be allowed to extend into the required open space nor shall individual residential yards count toward open space requirements.

Table 5.4. Enhanced Open Space: Minimum Requirements

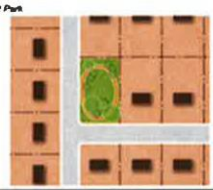
Total and Enhanced Open Space: Minimum Requirements									
	SF-RES Cottage	SF-RES Attached or Detached	Mobile Home Parks	Multifamily	Mixed-Use	Commercial/Retail	Large Retail	Office	Industrial
Open space minimum required percent of total square footage of the development	See section 5.7.5	20 percent	10 percent	See specific zoning district	See specific zoning district	15 percent	20 percent	15 percent	20 percent
Enhanced open space minimum required percent	3,000 sq. ft. minimum. See section 5.8.4.	Minimum 50 percent of total open space	Minimum 25 percent of total open space	See specific zoning district	Site plan specific	N/A	Minimum 50 percent of total open space	N/A	N/A

G. *Enhanced open space standards and types.*

1. Enhanced open space areas are areas readily accessible, practical, and generally acceptable for active or passive recreation uses. If able to meet these characteristics, enhanced open space areas may not include required setback areas, drainage easements required by the City of Stonecrest or DeKalb County, dedications with existing above ground facilities, or contain structures not intended for landscape or recreational purposes.
2. Maintenance of such areas is not the responsibility of the City of Stonecrest unless formally established and approved by the city through legal agreements. Maintenance shall be the responsibility of the owner or homeowner association in a form approved by the City of Stonecrest.
3. Total enhanced open space may be distributed throughout the project, but each individual enhanced open space type shall meet the enhanced open space dimensional standards of Table 5.5.
4. Elements shown under the Permitted Elements column in Table 5.6 are allowed for the various enhanced open space types. Other elements that are not listed may be allowed by the director of planning if they are consistent with the enhanced open space type.
5. Table 5.5 establishes enhanced open space types and minimum dimensional standards. The minimum size for any enhanced open space type shown in Table 5.5 may be reduced below the minimum amount if another enhanced open space type in the same development is increased by a corresponding amount above the minimum size shown in Table 5.5. Table 5.5 is supplemented further by Table 5.6 which provides design requirements for each type.
6. Table 5.6 establishes the requirements for each enhanced open space type and its associated design requirements. Elements may be required by specific development types according to Table 5.6.

Table 5.5. Enhanced Open Space Types with Minimum Size

Enhanced Open Space Dimensional Standards	
Enhanced Open Space Types	Minimum Size (sq. ft.)
Clubhouse*/pool amenity area	N/A
Greens/attached squares	500
Greenway	N/A
Pocket park	2,000
Neighborhood park	43,560
Plaza	3,000
Square	2,000
Playground	3,000
Detention facilities designed and approved to serve as aesthetic amenity	N/A

Enhanced Open Space Type	General Description	Permitted Elements	Design Requirements
Clubhouse/Pool or Tennis Amenity Area 	Clubhouses and swimming pools must meet all applicable building and health codes.	Clubhouse Pool Toilet facilities, public or private Ornamental water features and fountains Gazebo/Pavilion/Picnic Areas Accessory concession stands Benches Trash receptacles Tennis courts	Pedestrian connectivity to all residents Parking shall be adjacent to pool and clubhouse facilities and not interfere with pedestrian activity or movement
Green 	A Green is an urban open space that is natural in its details. Greens are small, civic, and surrounded by buildings. Tree plantings can be informal and the topography irregular. Greens may be used to protect specimen trees and provide for conservation functions.	Toilet facilities, public or private Ornamental water features and fountains Gazebo/Pavilion/Picnic Areas Benches Trash receptacles Paved walks/trails (not within stream buffer) Urban Garden (50% max of Green)	Landscaped with trees at the edges and lawns at the center No rear facing lots allowed adjacent to a Green
Greenway 	Greenways connect residences and recreational areas. Greenways incorporate natural settings, such as creeks and significant stands of trees within neighborhoods. Greenway details are natural (i.e., informally planted), except along rights-of-way, and may contain irregular topography.	Pedestrian trails Picnic tables Benches Trash receptacles Conservation areas for natural, archeological or historic resources Meadows, wetlands, wildlife corridors, game preserves, other	Shall have a minimum width of at least 50' Conserve existing tree canopy and landscape Protect existing natural drainage way and creeks Land shall not be cleared except for trails Water bodies are allowed provided that they do not count toward more than 50% of the required open space
Pocket Park 	A pocket park is a small outdoor space, usually no more than ¼ of an acre, most often located in an urban area that is surrounded by commercial buildings or houses on small lots.	Toilet facilities, public or private Hardscape materials Gazebo/Pavilion/Picnic areas Trash receptacles Ornamental water features and fountains Public art Recreational courts Urban Garden (25% max of Pocket Park)	Rear facing lots are allowed Attractive landscaping Minimize negative impacts on adjacent residents
Neighborhood Park 	A neighborhood park, by size, program, and location, provides space and recreation activities for the immediate neighborhood in which it is located. It is considered an extension of neighborhood residents' "out-of-yard" and outdoor use area.	Gazebo/Pavilion/Picnic areas Hardscape materials Toilet facilities, public or private Picnic tables Benches Trash receptacles Paved walks/trails Ornamental water features and fountains Recreational courts and fields Urban Garden (25% max of park) Playground (swings, slides) Dog parks	Shall be bounded by streets on at least 50% of its perimeter Active recreation areas (25% max)

Enhanced Open Space Type	General Description	Permitted Elements	Design Requirements
Community Park 	Community Parks are designed for active recreational use. Community Parks create a central open space that services an entire neighborhood or group of neighborhoods, or incorporates physical features that are an asset to the community (e.g., lake or river frontage, high ground, or significant stands of trees). Community Parks may be combined with parkways and greenways.	Gazebo/Pavilion Hardscape materials Toilet facilities, public or private Picnic tables Benches and other outdoor seating Trash receptacles Ornamental water features and fountains Public/private art Promenades and esplanades Playground (swings, slides) Recreational courts Urban Garden (25% max of Community Park)	Trees shall be planted parallel to all perimeter rights-of-way Trees shall be planted at the edge of active recreational use areas Tree spacing shall be a minimum of 15' to a maximum of 50' on center Interior portions of parks may be kept free of tree plantings Active recreation (25% max) Shall be bounded by streets on a minimum of 50% of their perimeter Golf courses shall be allowed but shall not count toward more than 50% of the required open space
Square 	A Square provides a means to emphasize important places, intersections, or centers. Squares are bordered on all sides by street(s).	Gazebo Hardscape materials Benches and other outdoor seating Trash receptacles Ornamental water features and fountains	Shall be bound by streets on a minimum of 3 sides or 75% May be bound by front facing lots on 1 side or 25% of their perimeter No rear facing lots allowed adjacent to a square Trees plantings are encouraged parallel to the street right-of-way
Plaza 	Plazas are areas for passive recreational use that are entirely bounded by streets and/or lanes. Buildings.	Hardscape materials Toilet facilities, public or private Benches and other outdoor seating Trash receptacles Ornamental water features and fountains Public art	Shall be square or rectangular with a length of not less than 1.5 of its width Shall be level, stepped or gently sloping
Playground 	A Playground provides space for parental supervised recreation of toddlers and young children within a neighborhood, or as part of a larger neighborhood or community park and urban center, including retail shopping areas.	Hardscape materials Active recreational, playground equipment Toilet facilities, public or private Benches and other outdoor seating Ornamental water features and fountains Trash receptacles	Shall be designed with commercial grade play equipment for two age groups, ages 1 to 5 and ages 6 to 10 Must have shock absorbing surface with a maximum 2% slope Shall meet all federal, state and local regulations and be compliant with the Americans with Disabilities Act

H. *Phasing provisions.* If a project's required open space is developed in phases, the amount of open space shall be computed separately for each phase, but may be combined with existing open space in earlier phases:

1. The first phase of development shall contain, at a minimum, its pro rata share of the total amount of required open space based on the size and type of the development; and

2. The total amount of open space set aside in each phase shall meet the open space standard as applied to the total area of the phase and previously approved phases.

I. *Conservation or water quality.*

1. No more than 50 percent of required open space may consist of floodplain, wetlands, steep slopes, streams and buffers.

2. Green roofs may contribute to open space minimum area requirements with documentation from a licensed professional that such feature serves a water quality or alternative stormwater function.

J. *Prohibited uses of open space.* The following shall not be considered when calculating open space:

1. Individual wastewater disposal systems, such as septic tanks, septic fields, etc.

2. Private yards that are not subject to an open space or conservation easement.

3. Public street rights-of-way or private street easements, including streetscapes located within those rights-of-way or easements.

(Ord. of 8-2-2017, § 1(5.5.3))

DIVISION 6. SUPPLEMENTAL SITE IMPROVEMENTS

Sec. 5.6.1. Outdoor lighting.

Lighting must provide adequate vehicular and pedestrian visibility and security of on-site areas, such as building entrances, parking, service delivery and pedestrian walkways. A professional outdoor lighting plan shall be required for all non-single-family residential developments of three acres or more and for community recreation that proposes to use outdoor lighting.

A. *Exceptions.* This section shall not apply to the following:

1. Lighting established by a governmental authority within public rights-of-way.
2. Lighting activated by motion sensor.
3. Construction or emergency lighting provided it is temporary and is discontinued immediately upon construction completion or emergency cessation.
4. Security lighting less than two average footcandles.
5. Sites requiring fewer than five lighting fixtures.
6. In subsections A. 1. through A.5. of this section, lighting in all zoning districts shall be established in such a way that no direct light is cast upon or adversely affects adjacent properties and roadways.

B. *All lighting fixtures.*

1. Lighting in all zoning districts shall be established in such a way that no direct light is cast upon or adversely affects adjacent properties and roadways.
2. Light fixtures shall include glare shields to limit direct rays onto adjacent residential properties.
3. All lighting fixtures (luminaries) shall be cutoff luminaries whose source is completely concealed with an opaque housing. Fixtures shall be recessed in the opaque housing. Drop dish refractors are prohibited.
4. Light source shall be light emitting diodes (LED), metal halide, or color corrected high-pressure sodium not exceeding an average of 4½ footcandles of light output throughout the parking area. A single light source type shall be used for any one site. Fixtures must be mounted in such a manner that the cone of the light is not directed at any property line of site.
5. The minimum mounting height for a pole is 12 feet. The maximum mounting height for a pole is 25 feet, excluding a three-foot base.

C. *Lighting plans.* Lighting plans shall include the following:

1. The location and mounting information for each light.
2. Illumination calculations showing light levels in footcandles at points located on a ten-foot center grid, including an illustration of the areas masked out per the requirements regarding points of measurements.
3. A schedule listing the fixture design, type of lamp, distribution and wattage of each fixture, and the number of lumens.
4. Manufacturer's photometric data for each type of light fixture, including initial lumens and mean depreciation values.

5. An illumination summary including the minimum average and maximum footcandle calculation (array values) and the total number of array points (points used on the ten-foot grid calculations).
6. Points of measure shall not include the area of the building or areas which do not lend themselves to pedestrian traffic.
7. Average level of illumination shall not exceed the calculated value, as derived using only the area of the site included to receive illumination.
8. An outdoor lighting plan required within a locally designated historical district that is subject to architectural design review shall require a certificate of appropriateness from the City of Stonecrest Historic Preservation Commission.

Table 5.7. Lighting Level Standards by Footcandle

Location or Type of Lighting	Minimum Level	Average Level	Maximum Level
Nonresidential parking lots	0.6	2.40	10.0
Multifamily residential parking Lots	0.2	1.50	10.0
Walkways, access drives and loading/unloading areas	0.2	2.00	10.0
Landscaped areas	0.0	0.50	5.0

(Ord. of 8-2-2017, § 1(5.6.1))

Sec. 5.6.2. Stormwater detention facilities.

Stormwater detention facilities shall be located on an individual parcel of land not meant for other improvements. A detention facility for a subdivision of fee simple single-family residences shall not be located on the same lot with a single-family home.

(Ord. of 8-2-2017, § 1(5.6.2))

DIVISION 7. BUILDING FORM AND CONFIGURATION STANDARDS

Sec. 5.7.1. Application of standards.

A. This division establishes standards for the form and configuration for the following building types:
   1. Detached and attached houses;
   2. Multifamily;
   3. Live/work; and
   4. Nonresidential except industrial use buildings.

B. Compliance review. Review of proposed development to ensure compliance with the standards of division 7 shall occur concurrent with any zoning compliance review conducted during the process of approving a rezoning, use permit, variance or modification of conditions, a sketch plat, a land disturbance permit, a development permit, or any other applicable permit or license.

C. These standards apply to new buildings as well as to the substantial redevelopment and renovation of such buildings, as applicable per article 8 of this chapter regarding nonconformities.

(Ord. of 8-2-2017, § 1(5.7.1))

Sec. 5.7.2. Exemptions and variances.

A. Historic structures and structures in historic districts that are subject to architectural design review and structures that are individually designated historic are exempt from the requirements of this division 7.

B. New residential infill.

1. Modification of building form. Article 7 of this chapter provides for an administrative procedure that allows an applicant to request a waiver from the building form or materials standards on a case-by-case basis during the compliance review process.

2. Where the architectural style of existing residential development building types on the same block as the proposed project conflicts with the building form standards herein, a land disturbance permit applicant may apply to the director of planning for an administrative waiver from the building form standards in accordance with article 7 of this chapter.

(Ord. of 8-2-2017, § 1(5.7.2))

Sec. 5.7.3. Conflict with other standards and review.

A. *Conflict with overlay standards.* In the event the standards of this division conflict with the overlay district standards in article 3 of this chapter, as determined by the director of planning, the standards in article 3 of this chapter shall prevail.

B. *Conflict with other provisions in the zoning code.* In the event the standards of this division conflict with any other provision of this chapter, the more restrictive provision, as determined by the director of planning, shall prevail.

C. *Conflict with other city standards.* In the event the standards in this division conflict with any city ordinance not included within this chapter, as determined by the director of planning, this division shall prevail.

(Ord. of 8-2-2017, § 1(5.7.3))

Sec. 5.7.4. Materials.

A. *Exterior building materials.*

1. Except for exempted buildings described in subsection A.5. of this section, exterior wall materials of primary buildings shall consist of any of the following types:

a. Brick masonry;

b. Stone masonry;

c. Cement wood or fiber cement siding, including simulated half-timbering;

d. Hard coat stucco;

e. Cedar shingles or fiber cement;

f. Textured face concrete block;

g. Architectural concrete;

h. Precast or tilt-up panel (for industrial buildings only);

i. Glass;

j. Material not listed in this section, which shall contribute to innovative design or green construction as determined by the director of planning on a case-by-case basis; and/or

k. Architectural accent materials as approved by the director of planning.

2. Exterior building material requirements do not preclude solar panel installation on building roofs.

3. The following materials may be used as secondary building material or siding, up to 40 percent of total facing:

a. Standing seam or corrugated metal siding;

b. Exterior insulation and finish system (EIFS). If within three feet of grade or within six feet of grade adjoining a public right-of-way or a parking area, the EIFS shall have ultra-high impact resistance in accordance with ASTM E2468. EIFS is prohibited for use on single-family, two-family, and three-family dwellings.

c. Vinyl siding and other polymeric siding provided the siding shall:

1. Be installed by a certified installer or an individual certified as trained through the VSI certified installer program sponsored by the Vinyl Siding Institute, Inc. (VSI) or an approved equivalent program;

2. Be certified and labeled as conforming to the requirements of ASTM D3679 Standard Specifications for Rigid Poly (Vinyl Chloride) (PVC) Siding by an approved quality control agency:

3. Have a minimum thickness of 0.046 inches;

4. Have panel projections of no less than five-eighths-inch for clapboard and Dutch lap styles;

5. Have double (rolled over) nail hem, up to 0.92-inch nominal thickness strength;

6. Meet or exceed the color retention requirement of ASTM D6864, 3679 or D7251;

7. Be installed in accordance with the manufacturers' instructions and in accordance with ASTM D4756. Polypropylene siding shall be certified and labeled as conforming to the requirements of ASTM D7254 Standard Specification for Polypropylene (PP) siding by an approved quality control agency. Insulated Vinyl Siding shall be certified and labeled as conforming to the requirements of ASTM D7793 Standard Specification for Insulated Vinyl Siding by an approved quality control agency.

4. The following exterior building materials shall be prohibited on all buildings:

a. Plywood;

b. Common concrete block;

c. Oriented strand board (OSB).

5. Universities, and structures located in M or M-2 zoned districts shall be exempt from the requirements of subsections A.1. and A.3. of this section, provided:

a. Such structures are located interior to the site with an intervening building facing the street.

b. If materials in subsection A.3. of this section are used as primary exterior building materials, at least 30 percent of total facade area shall be brick or stone masonry.

B. *Arrangement of materials.*

1. Where two or more materials are proposed to be combined on a facade, the heavier and more massive material shall be located below the lighter material.

2. Material changes on a facade shall occur along a continuous horizontal line or where two building forms meet. Secondary building materials may be used as trim, around windows, doors, cornices, at corners, or as a repetitive pattern within a wall covered in a primary building material.

3. Primary facade materials shall wrap around at outside building corners for at least four feet.

C. *Roof and accessory structure materials.*

1. Sloped roofs on primary buildings shall be clad in wood shingles, standing seam metal, clay or concrete tile, stone coated metal tile, painted metal tile, recycled rubber tile, slate, asphalt shingles or similar material or combination of materials. This regulation does not prohibit the application of solar panels, which shall not be considered an architectural material for the purposes of building form regulations.

2. The exterior of accessory buildings shall be constructed of materials that are similar to those used on the principal structures.

(Ord. of 8-2-2017, § 1(5.7.4))

Sec. 5.7.5. Detached houses.

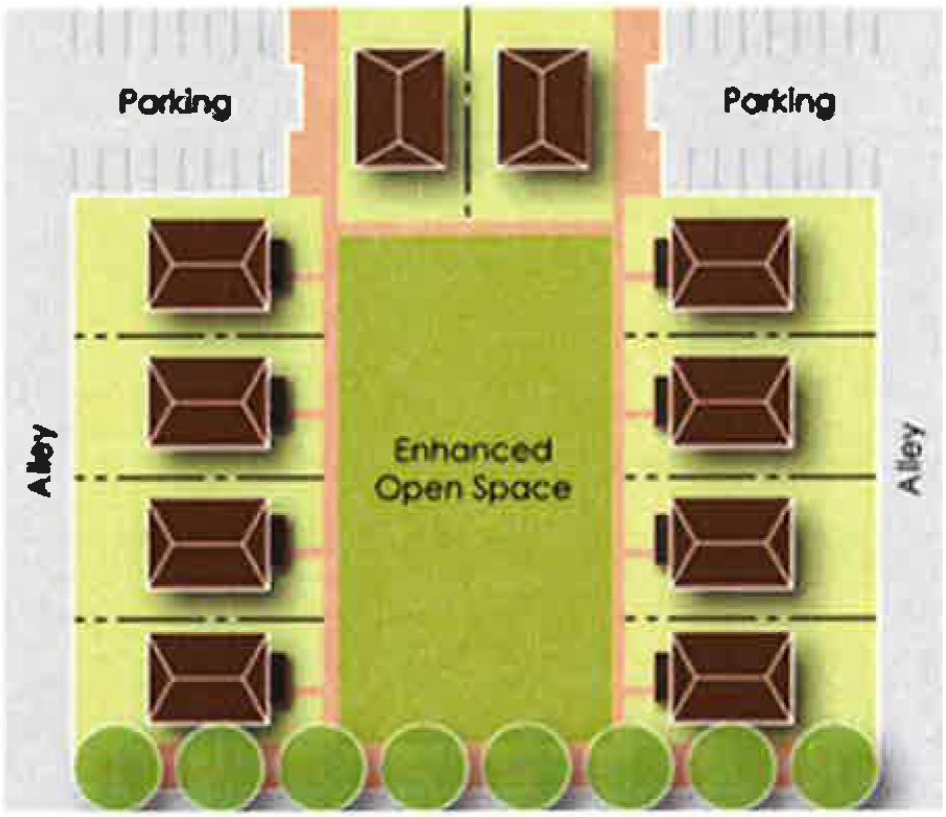
A. This section shall apply to the following housing types:

1. *Conventional single-family detached.* A development with one dwelling unit per lot of record with private yards on all four sides.

2. *Single-family cottage.* A development with one or 1½ story small detached dwelling units arranged whereby cluster around a commonly shared open space and each dwelling unit is located on a separate lot with private rear, side, and front yards.

3. *Urban single-family detached.* A development with single-family detached dwelling units located on small lots. Urban single-family (Urban-SF) residential buildings share similar configurations to townhouse developments; however, they are detached and may have lot lines that coincide with the building envelope, provided that a yard area is provided in the dimensions required by the zoning district.

B. Dimensional and use requirements. Minimum lot size, width, and setbacks shall meet the dimensional requirements set forth for the applicable base zoning district in article 2 of this chapter.



Cottage housing orientation

C. Orientation.

1. Lots along the perimeter of a development of single-family detached residences shall be oriented so that dwellings front internal local streets instead of a thoroughfare. Lots with rear yards abutting a thoroughfare shall provide a ten-foot no access easement and: a 20-foot landscape strip, a six-foot-high decorative fence, or a five-foot-high landscaped berm to screen the rear view of houses from the thoroughfare.

2. Single-family cottage lots shall be oriented toward the enhanced open space.

3. Street frontage requirements in chapter 14 of the Code shall not apply to individual lots within a cottage or urban type residential development, provided the overall site complies with minimum street frontage requirements and an alley or private drive provides access directly to a public street.

D. Each dwelling unit shall be metered for water individually.

E. An easement for water and sewer shall be required and subject to the approval of the director of planning.

F. Access driveway, internal private drive and alley standards.

1. Single-family cottage or urban residences shall have vehicular access from the rear of the property from an alley or similar private drive, or may have an off-street parking area located on the side or rear of the development. Such parking area may not occupy more than 30 feet of frontage and be located no more than 200 feet from the unit's entrance. The alley shall be at least 20 feet in width and meet the standards of International Fire Code (IFC) 503, unless another width is approved by the director for one-way direction only.

2. Single-family detached residences may share a driveway serving two lots, provided that the width of the driveway at the street shall not exceed the width requirements established in chapter 14 of the Code, and that the driveway width not increase for the first ten feet of drive.

G. Urban single-family dwellings may gain access through private drives that meet the standards of section 5.7.6C.4.

H. Driveways shall not exceed ten feet between garage door and sidewalk.

I. Maximum size.

1. Conventional single-family detached residences shall follow the requirements set forth in article 2 of this chapter.

2. Single-family cottages shall not exceed a building footprint of 800 square feet and gross floor area of 1,200 square feet.

J. Architectural variability.

1. Residential subdivisions of three or more lots intended for conventional single-family detached residences shall include distinctly different front facade designs within each phase of the development. The term "distinctly different" shall mean that each front facade must differ from adjacent buildings' front facades in at least four of the following six ways:

a. The use of different primary exterior materials;

b. Variation in the width or height of the front facade by four feet or more;

c. Variation of the type, placement or size of windows and doors on the front facades;

d. Variations in rooflines, including the use of dormers and changes in the orientation of rooflines;

e. Variation in the location and proportion of front porches; and

f. Variation in the location or proportion of garages and garage doors.

2. No conventional single-family detached residence shall be of the same front facade design as any other conventional single-family detached residence along the same block face within eight lots of the subject residence. Mirror images of the same configuration are not permitted on the same block face.

3. No single front facade design may be used for more than 25 percent of the total units of any single phase of a conventional single-family detached residence subdivision.

K. Porches and stoops. Any porch shall have minimum dimensions of four feet by eight feet for porches, and any stop shall have minimum dimensions of and four feet by four feet. Porches and stoops shall be no closer than two feet from a utility easement.

L. Facades. Any conventional single-family detached residence with a front facade width of 40 feet or more shall incorporate wall offsets in the form of projections or recesses in the front facade plane. Wall offsets shall have a minimum depth or projection of two feet so that no single wall plane exceeds 25 feet in width.

M. Roof and overhangs. Conventional single-family detached residences shall incorporate the following standards:

1. Roofs covering the main body of the structure shall be symmetrical gables, hip-style, or mono-pitch (shed) style.

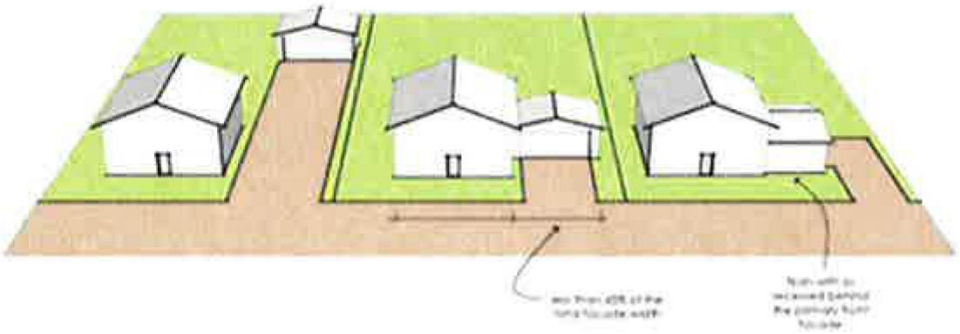
2. Mono-pitch roofs shall have a minimum pitch of 4:12, and all other roofs covering the main body of a detached house shall have a minimum roof pitch of 6:12.

3. Overhanging eaves shall extend at least 12 inches beyond the exterior wall.

4. To the maximum extent practicable, all roof vents, pipes, antennas, satellite dishes, and other roof penetrations and equipment (except chimneys) shall be located on the rear facades or configured to have a minimal visual impact as seen from an adjacent street.

N. Garages. The following standards shall apply:

1. Street-facing garage facades shall not comprise more than 45 percent of the total width of the conventional single-family detached residence's front facade. Street-facing garages shall be at least two feet behind the primary front facade plane of a conventional single-family detached residence.



Acceptable Garage Configurations

O. Enhanced open space.

1. Clubhouse/pool amenity areas, greens, playgrounds, pocket parks, neighborhood parks, or detention facilities designed to serve as amenities shall meet dimensional requirements in the base zoning district (article 2 of this chapter) and the standards of article 5, division 5 of this chapter, open space standards.

2. Cottage residential development enhanced open space.

a. Single-family cottages shall be clustered around an enhanced open space green that is a minimum of 3,000 square feet or 400 square feet per cottage served by the enhanced open space, whichever is greater.

b. The enhanced open space green shall have a minimum dimension of 20 feet on each side.

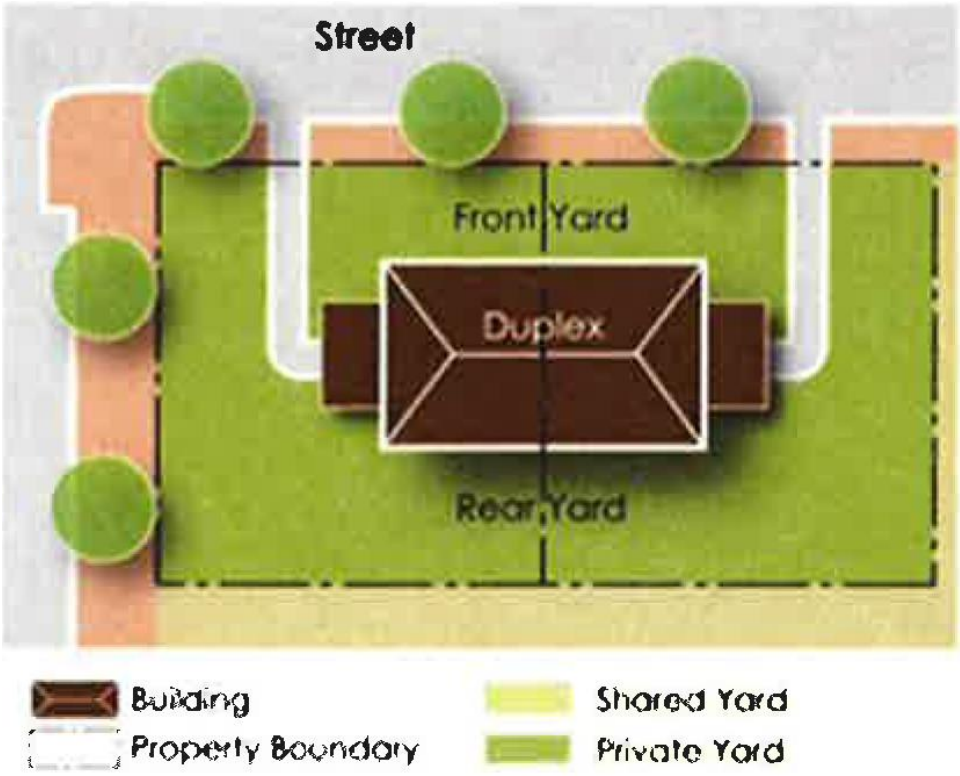
c. At least two sides of the enhanced open space green shall have cottages along its perimeter.

(Ord. of 8-2-2017, § 1(5.7.5))

Sec. 5.7.6. Single-family attached buildings.

Single-family attached residential buildings are buildings in which dwelling units are attached to one another in a variety of ways, each with its own external entrance. Fee simple condominiums share similar configurations to townhouse developments, and they have lot lines that coincide with the building footprint. This section applies to the following development types:

A. Single-family attached, two- or three-family attached (also called duplex or triplex). A house with two or three attached principal dwelling units located on a single lot. The units may be located on separate floors or side-by-side. A side-by-side, single-family attached duplex may also be permitted to be located on two lots, whereby each unit is located on its own lot.



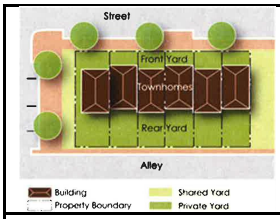
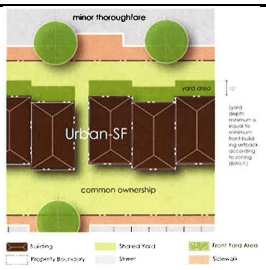
Single-Family Attached Housing on Two Lots

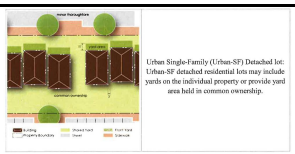
B. Fee simple condominium. One or more single-family attached buildings where the owner has fee simple title to the building and the land beneath the building. The building may or may not have a small yard in front of or behind the building. The remaining land is under common ownership.

C. Single-family attached, and townhouse developments shall meet the following standards.

1. The overall tract of land for townhouse or fee simple condominium development shall have frontage on a public or private street.

2. The overall tract of land for townhouse or fee simple condominium development must meet the dimensional requirements of the zoning district.

	Traditional Townhouse lot: Townhomes which include yards on the individual property.
Urban Single-Family (Urban-SF) Detached lot: Urban-SF lot lines may coincide with the building envelope. Yard area designated for each unit, however, must still be provided even if held in common ownership. Dimensions of yard areas shall equal the setback that is specified by the zoning district (or approved master plan).	

	Urban Single-Family (Urban-SF) Detached lot: Urban-SF detached residential lots may include yards on the individual property or provide yard area held in common ownership.

3. Private drives shall meet the requirements of section 14-189.1 of the Code, except as follows:
    a. Private drives shall provide a ten-foot unobstructed easement on both sides of the drive, measured from back of curb.
    b. Private drives shall have a minimum 22-foot road width measured from back of curb to back of curb.
    c. Private drives shall have the same base and paving specifications as required for public streets.
    d. Roadway shoulders for private drives shall consist of a combination of five-foot sidewalk, five-foot landscape strip for street trees, and may include parallel parking spaces.
    e. Private drives shall be maintained in accordance with chapter 14.
4. The development shall incorporate a pedestrian circulation plan that separates pedestrians from automobiles by providing rear access to the units or designing an alternative location for pedestrian paths or sidewalks.
5. Sidewalks and pedestrian ways shall provide a continuous network that connects each dwelling unit with adjacent public streets and all on-site amenities designed for use by residents of the development.
6. Sidewalks may go to back of curb when adjoining on-street parking space.
7. Street trees shall be planted on both sides of the street 50 feet on center or every other unit, whichever distance is less.
8. Buildings shall be no more than 200 feet in length.
9. Spacing of buildings shall be consistent with International Codes Council (ICC).
10. Alleys.
    a. Alleys shall be at least 12 feet wide, subject to the standards of IFC 503.
    b. Dead end alleys over 150 feet in length are prohibited.
11. Ownership.
    a. There shall be a mandatory property owners association clearly stating the residents' responsibility to share in the ownership and maintenance of common areas including roadways, alleys, parking, utilities, landscaping, and stormwater management facilities subject to chapter 14 of the Code. The city shall have no ownership or maintenance responsibility of any common areas unless expressly agreed otherwise.
    b. Individual ownership of the units shall comply with the Georgia Condominium Act or shall require membership in a property owners association in accordance with Georgia law.
    c. Upon approval of the development plans, a final plat shall be recorded before any units are sold.

D. Building orientation. The primary entrance and front facade of individual buildings within a townhouse development may be oriented toward streets, private drives or enhanced open space, and shall not be oriented toward off-street parking lots, garages, or carports.

E. Each dwelling unit shall be metered for water individually.

F. An easement for water and sewer shall be required with the location subject to approval of the City of Stonecrest, or its designee.

G. Roofs. Roofs of attached residential buildings shall comply with the following standards:

1. Roofs shall be symmetrical gables, flat with parapet, hip-style, or mono-pitch (shed) style, but alternative roof forms or pitches may be used over porches, entryways, and similar features. Overhangs allowed on principal structures shall be no less than 12 inches.

2. Mono-pitch roofs shall have a minimum pitch of 4:12.

3. Gable and hip-style roofs shall have a minimum roof pitch of 6:12.

4. Roof forms shall be designed to shelter building entrances.

H. Roof penetrations and equipment. To the maximum extent practicable, roof vents, pipes, antennas, satellite dishes, and other roof penetrations and equipment (except chimneys) shall be located on the rear facades or screened from view so as to have a minimal visual exposure as seen from an adjacent street.

I. Facades. For the purposes of this subsection, a building facade shall be considered the entire wall surface on a building side from grade level to underneath an overhanging eave or to the top of a cornice. All single-family attached buildings shall comply with the following facade standards:

1. Facades facing a street shall provide doors, porches, balconies, or windows in the following ratios:

a. A minimum of 60 percent of front facade; and

b. A minimum of 30 percent of side and rear building facades.

2. All front facades shall provide a minimum of three of the following design features for each residential unit:

a. Projections or recesses in the facade plane that contrast with an adjoining unit, with a minimum depth or projection of one foot;

b. Exterior building materials or colors different from the materials or colors of the other units;

c. Decorative patterns on exterior finish (e.g., shingles, wainscoting, window box, and similar ornamental features);

d. A dormer window, cupola, turret, tower, or canopy;

e. A recessed entrance;

f. A covered porch or balcony;

g. Pillars, posts, or pilasters;

h. A box or bay window with a minimum 12-inch projection from the facade plane;

i. Eaves with either exposed rafters or a cornice projecting a minimum 12 inches from the facade plane; or

j. A parapet wall with an articulated design that varies in height.

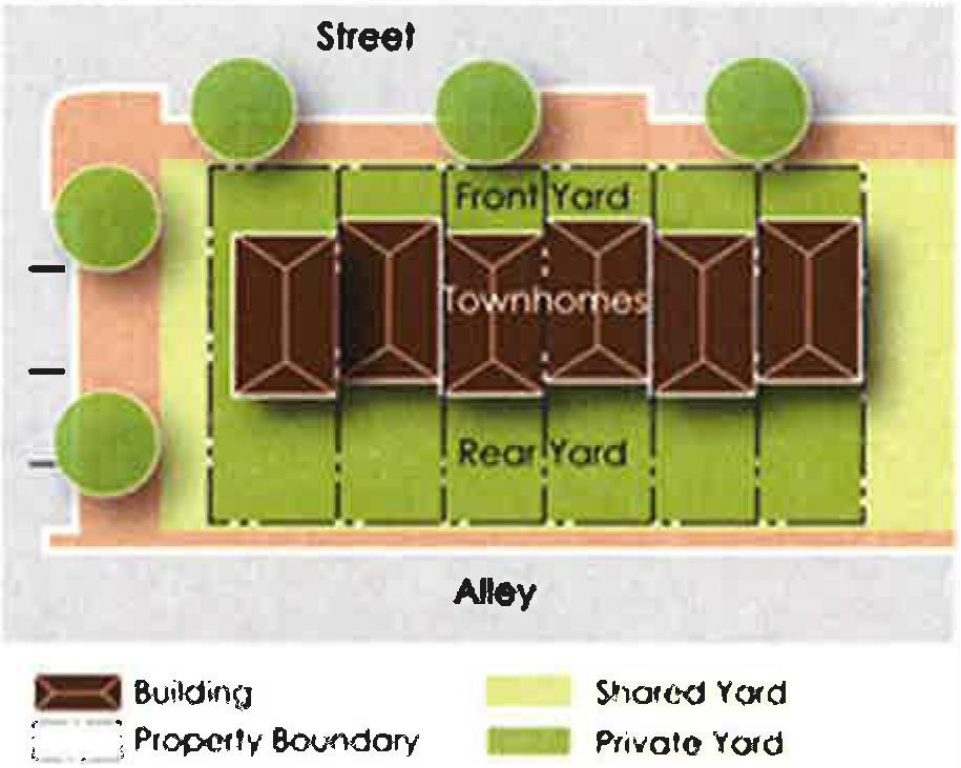
3. Front facades should be varied to avoid long, flat building fronts so that no more than 20 percent of the front facades of the units in the same building are substantially the same, unless designed as brick row houses.

J. Garages.

1. Garages for dwelling units shall not face public streets, and shall be accessed by alleys or private drives. Garages that face private drives must comply with subsection C.5 of this section for pedestrian and vehicle separation plan.
2. Parking spaces for dwelling units shall be located behind buildings, within individual units, on designated on-street spaces or off-street parking lots as provided in subsection K. of this section, off-street parking.
3. Garage entrances shall be set back between three and ten feet from adjacent streets and sidewalks.
4. Garage entrances shall be set back a minimum of three feet and a maximum of ten feet from alleys.

K. Off-street parking.

1. Off-street surface parking lots (including access and travel ways) located on the side of an attached residential building shall not occupy more than 30 percent of the primary street frontage for the attached residential building.



Off-Street Parking on the Side of Attached Residential Buildings

2. Off-street parking required for each attached residential unit is not required on the same lot as the dwelling unit, but the edge of the off-street parking lot shall be no more than 200 feet from the unit's entrance.

L. The architectural features of a parking deck or structure shall be compatible with the primary buildings.

M. Streetscape design. Single-family attached residential developments shall comply with the streetscape design standards in division 4 of this article.

(Ord. of 8-2-2017, § 1(5.7.6))

Sec. 5.7.7. Multifamily, nonresidential, live/work and mixed-use buildings.

A. Multifamily residential building and nonresidential buildings include the following building types: multifamily low rise (three stories and fewer); multifamily high rise (four stories and greater); live/work buildings; and large-scale retail.

1. Multifamily residential buildings contain four or more residential dwelling units consolidated into a single structure. Dwelling units within a building may be situated either wholly or partially over or under other dwelling units, and units share common walls. Structures appearing as townhouses but with internal units that are located one below the other (also known as "stacked townhouses") are also considered multifamily residential buildings.

2. Large-scale retail refers to freestanding buildings containing single-tenant retail sales uses that exceed 60,000 square feet in size.

3. Live/work units incorporate both living and working space in a single unit. A kitchen and a bathroom must be included in each unit. The residential portion may not be less than 33 percent of the unit's total floor area. Within two-story live/work buildings, nonresidential uses shall be located on the ground floor only. Within single story units, the nonresidential use shall be located in the front, with street access. Living space within the live/work unit shall have direct and internal access to work space. Each live/work unit may have a primary entrance from the sidewalk, enhanced open spaces, arcades or public spaces. See also section 4.2.33 for additional live/work use requirements. Multifamily residential orientation shall comply with section 5.7.6.

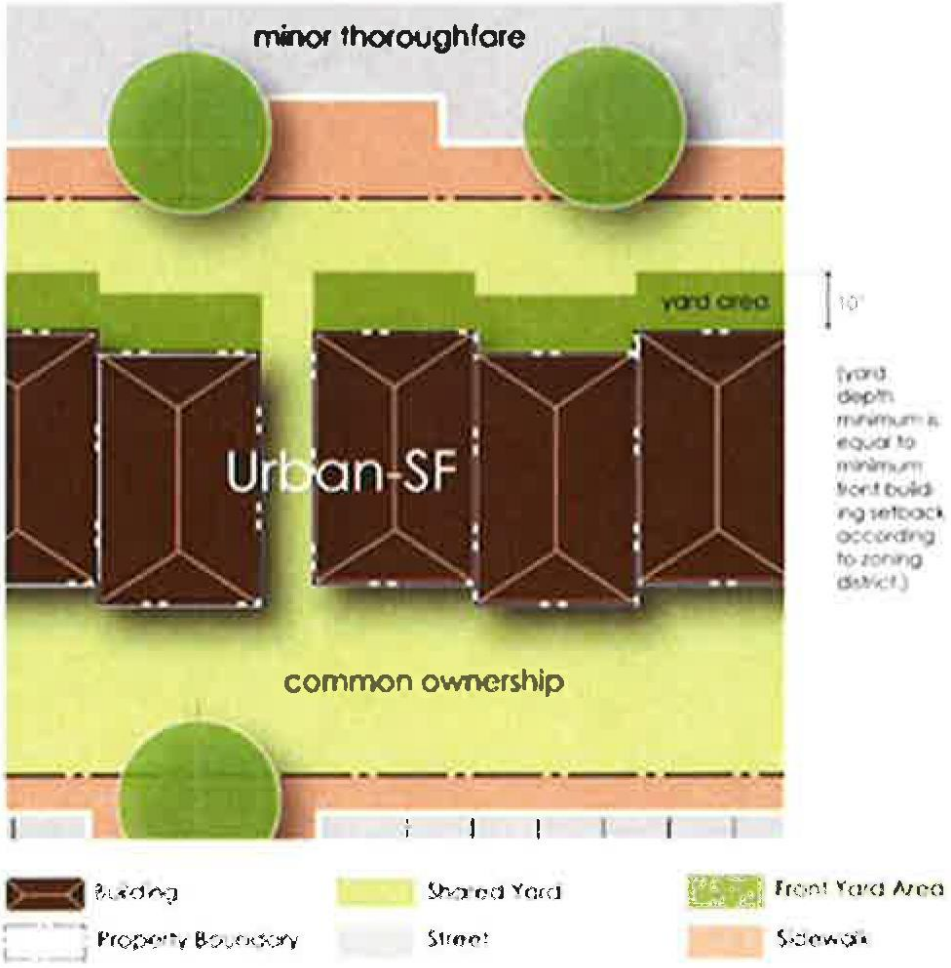
B. All development types other than single-family, shall comply with the following:

1. Dimensional and use requirements. Lot size, width, and setbacks shall meet the dimensional requirements set forth for the applicable base zoning district in article 2 of this chapter.

2. Building plane and scale.

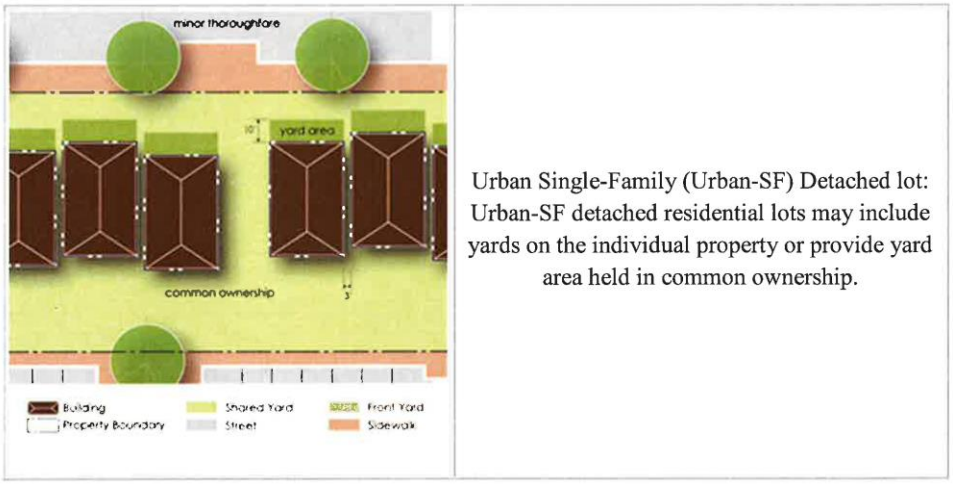
a. Building facades shall not exceed 40 feet in length without projections, recesses or other architectural features.

b. Windows and doorways. Structures built to the edge of the street right-of-way or located within mixed-use and nonresidential districts shall have windows and/or doorways that occupy at least 25 percent of the width of the first floor street-level front facade.



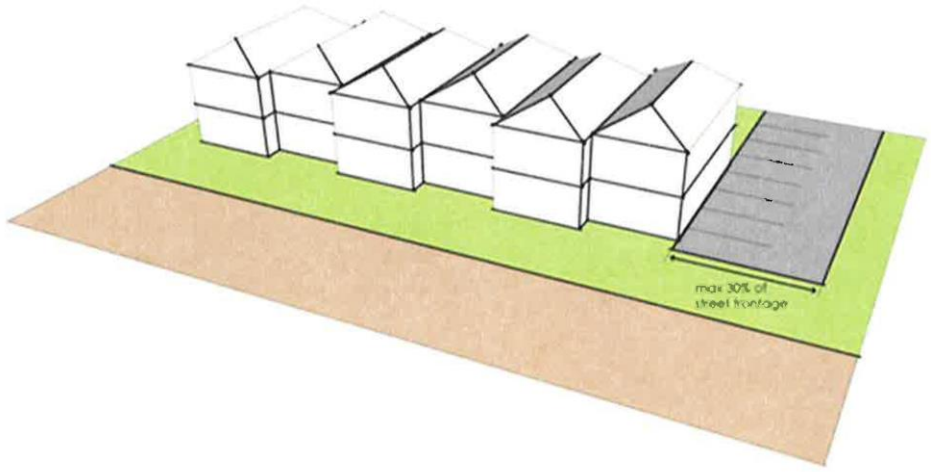
c. All buildings regulated by this section that are four stories or greater shall:

1. Clearly articulate the building base, middle and top through materials, architecture details and/or changes in the plane of the wall (projections and recessions).



Building Articulation: Clearly defined base, middle and top

2. Provide side step-backs at the fourth story when adjacent to the side of another building four stories or greater and along a private or public street.



Side step-backs between mid-and high rise buildings

C. Roofs.

1. Multifamily low-rise buildings regulated by this section shall have roof design and features that comply with section 5.7.6.G.

2. Multifamily buildings adjacent to a courtyard may be designed with a flat roof.

3. Rooflines of large-scale retail buildings shall be varied to add interest and variety to the large building form through the use of parapets, hips, gables, eaves, dormers or other similar features. These features shall be incorporated along a minimum of 50 percent of the length of the roofline facing a public street.

4. Flat roofs shall provide parapets to screen mechanical equipment from street view and from the primary drive facing the front facade.

D. Parking configuration. Nonresidential and mixed-use buildings shall:

1. Have no more than one double row of parking within the front yard where there is no intervening building between parking and the street; and

2. Be allowed to locate parking along the side or rear or as on-street parking dedicated as right-of-way by the applicant for a land disturbance permit or building permit.

E. Multifamily developments shall meet the building separation requirements provided in section 5.2.1.B.

F. Off-street surface parking lots (including access and travel ways) consisting of five or more spaces shall be located on the side or to the rear of a multifamily structure or development.

G. Multifamily housing developments shall provide and maintain outdoor play and recreation areas with a minimum area of five percent of the total area of the lot or 4,000 square feet, whichever is greater.

H. Low-rise multifamily building types. The following low-rise multifamily buildings shall be allowed, provided they meet the requirements set forth herein:

1. *Mansion.* The mansion style low-rise multifamily building shall have four to eight units within the structure, which shall be distinguished as a building designed to appear as a typical single-family detached home.

2. *Courtyard.* The courtyard building shall be oriented such that the courtyard faces the street or roadway and has buildings facing along the other three sides.
    a. Minimum width of the courtyard is 30 feet and depth is 15 feet.
    b. Building walls facing a courtyard may be separated by more than the maximum building separation requirements.
3. *All other.* To reduce massing and promote livability, all other low-rise multifamily building types shall provide:
    a. Functional balconies for all exterior units;
    b. Landscaping around each building within ten feet of building and along both sides of all internal sidewalks.

I. Multi-building nonresidential development, excluding industrial. Buildings in a nonresidential development composed of multiple buildings totaling 100,000 square feet or more for the whole development shall:
1. Be configured to break up the site into a series of smaller blocks defined by streets with pedestrian walkways forming an interconnected circulation route;
2. Face the corner of an existing street intersection or entry point to the development;
3. Frame and enclose:
    a. A main street pedestrian or vehicle access corridor entering the development site;
    b. At least three sides of parking areas, public spaces, or other site amenities; and
    c. Provide outdoor gathering spaces for pedestrians between buildings.

J. Outparcel development.
1. Outparcels and their buildings shall be aligned in order to define continuous street edges with well-defined entry points.
2. Spaces between buildings shall be improved to provide landscaped pedestrian amenities such as plazas, seating areas, arcades, pedestrian connections, and gathering spaces.

(Ord. of 8-2-2017, § 1(5.7.7))

Sec. 5.7.8. Large-scale retail; additional standards.

A. *Entrances.*
1. The primary entryway into a large-scale retail building shall be clearly articulated by greater architectural detail, incorporating no fewer than three of the following elements:
    a. Projecting or recessed, covered entrance;
    b. Distinct roof form above entrance shall include at least one of the following:
        1. Roof overhangs;
        2. Awnings, canopies or porticos;
        3. Raised corniced parapets;
        4. Gabled or peaked roof form;
        5. Arches;

c. Display windows directly adjacent to the entrance;

d. Architectural details and ornamentation emphasizing the building entrance;

e. Arcades connecting the entrance to adjacent pedestrian attractions;

f. Outdoor plaza with a minimum depth of 20 feet adjacent to the entrance and having seating and a water feature or landscaping; or

g. Landscape areas or seating areas.

B. *Off-street parking.*

1. Parking for large-scale retail development shall be distributed around the principal structure on at least two sides.

2. No more than 50 percent of parking may be located between the principal structure and primary street. If located within an activity node, no parking shall be allowed between the principal structure and the primary street, except required parking spaces.

C. *Pedestrian circulation.*

1. Continuous internal sidewalks and pedestrian walkways shall be provided to connect the public sidewalk or right-of-way with the principal building entrance of all principal buildings on the site. Such sidewalks shall also connect key pedestrian focal points such as transit stops, street crosswalks, and building entry points.

2. Internal pedestrian walkways and sidewalks shall be at least five feet in width.

3. Sidewalks shall be provided along all sides of the lot adjacent to a public street.

4. Sidewalks shall be provided for the principal building along any facade featuring a public entrance and along any facade leading to a public parking area.

5. Internal pedestrian walkways and sidewalks shall be differentiated from vehicular driveways and parking spaces through the application of colors and durable surface materials such as pavers, brick, or scored concrete, in order to enhance pedestrian safety and appearance of the pedestrian walkway or sidewalk.

D. *Landscaping.* In addition to the landscape and screening requirements of division 4 of this article, the following requirements shall also apply:

1. *Building frontage.* Beginning 15 feet from the principal customer entrance, along the building facade, a landscape area with trees shall be required for the entire length of the building. Each of the trees required herein shall be at least four and one-half-inch caliper and eight feet tall at installation. Trees required herein shall be spaced no more than 100 feet apart.

2. *Landscape strip.* A landscape strip at least 15 feet wide shall be required along any property line adjacent to a public street. When parking lot landscape strip requirements coincide with this location, the 15 feet shall not be required in addition to the parking lot landscaping, but shall serve as the parking lot dimensional requirement and planted according to parking lot landscaping standards in division 4 of this article.

3. *Walkways.* Pedestrian walkways connecting a public street adjacent to the lot on which the principal building is located and parking aisles shall be provided approximately every 120 feet perpendicular to street frontages.

E. *Open space and enhanced open space areas.*

1. An outdoor gathering space (plaza or square) shall be developed with requirements by open space functional category and enhanced open space types as specified in division 5 of this article.

2. Sites containing one or more large-scale retail building shall include an outdoor gathering space equal to at least three percent of the total square footage of the building.
3. Outdoor gathering spaces shall be connected to the sidewalk and pedestrian walkway network, and shall provide at least three of the following features per space:
    a. Lighted bollards;
    b. Tables and chairs;
    c. Fountains or other water features;
    d. Benches;
    e. Seat walls and/or raised landscape planters;
    f. Shade trees lining the gathering space;
    g. Pots or hanging baskets filled with seasonal plant material;
    h. Information kiosks;
    i. Sculptures or other public art features; or
    j. Other features as approved by the director of planning if the feature enhances the visual impact of the outdoor gathering space.

(Ord. of 8-2-2017, § 1(5.7.8))

ARTICLE 6. PARKING

Sec. 6.1.1. Introduction.

This chapter establishes the standards for the number, location, and development of motor vehicle parking facilities, standards for on-site loading areas, and standards for bicycle parking.

(Ord. of 8-2-2017, § 1(6.1.1))

Sec. 6.1.2. Interpretation.

A. *Fractions.* Where a fractional space results during the calculation of required parking, the required number of parking spaces shall be the next lowest whole number.

B. *Parking space requirement not specified.* Where the parking requirement for a particular use is not described in Table 6.2, and where no similar use is listed, the director of planning shall determine the number of spaces to be provided based on requirements for similar uses, location of the proposed use, the number of employees on the largest shift, total square footage, potential customer use, or other expected demand and traffic generated by the proposed use. If the director of planning reasonably determines that a parking generation study should be prepared by a qualified professional, the director of planning may require submission of such a study to aid the director of planning in making a determination with respect to the number of required parking spaces.

C. *Computations for multiple floor uses within a building.* In cases where a building contains some combination of residential use, office space, retail or wholesale sales area, or bulk storage area, the director of planning may determine on a proportional basis the parking and loading requirements based on separate computations for each use.

(Ord. of 8-2-2017, § 1(6.1.2))

Sec. 6.1.3. Parking regulations, off-street parking spaces.

Off-street parking spaces shall be provided in accordance with the following requirements:

A. Each application for a development permit or building permit, other than for a detached single-family residence, shall be accompanied by a parking plan showing all required off-street parking spaces, driveways, and the internal circulation system for each such parking lot.

B. All parking lots and spaces shall conform to the following requirements:

1. All vehicles shall be parked on a paved surface that is connected to and has continuous paved access to a public or private street, except as otherwise allowed in this section.

2. Each parking space, except those located on a single-family residential lot, shall comply with the minimum dimensions established in Table 6.1. Each parking lot shall have adequate space for each car to park and exit every parking space and space for internal circulation within said parking lot.

3. Each parking lot, except those parking spaces located on property used for single-family residential purposes, shall comply with section 5.4.4, site and parking area landscaping.

4. All parking lots and parking spaces, except those located on property used for single-family residential purposes, shall conform to the geometric design standards of the Institute of Traffic Engineers.

5. Parking and loading shall not be permitted within the front yard in any MR, HR, O-I, or O-I-T zoning district, except for required handicapped parking. Notwithstanding the previous sentence, parking and loading shall be permitted within the front yard where provision of adequate parking spaces within the rear is impractical and upon issuance of a variance pursuant to article 7 of this chapter.

6. Parking shall not be permitted within the front yard of any property used for single-family residential purposes, except within a driveway, or in a roofed carport or enclosed garage. Within any single-family residential district, not more than 35 percent of the total area between the street right-of-way line and the front of the principal building shall be paved.

7. No parking space, driveway or parking lot shall be used for the sale, repair, dismantling, servicing, or long-term storage of any vehicle or equipment, unless located within a zoning district which otherwise permits such use.

8. The parking of business vehicles on private property located within residential zoning districts is prohibited. This section shall not prohibit:

   (1) Typical passenger vehicles, with or without logos, including automobiles, pickup trucks, passenger vans, and dually trucks;

   (2) Vehicles engaged in active farming, construction activities or contractor services on the private property, or the temporary parking (12 hours or less) of vehicles for the purpose of loading/unloading within residential zoning districts; nor

   (3) The parking of vehicles on property located in residential zoning districts, where such property is used for an authorized nonresidential use such as a church.

   Vehicles used in law enforcement are exempt from the restrictions of this subsection.

9. All parking lots shall conform to the requirements of section 6.1.7.

Table 6.1. Minimum Parking Space Dimensions

Minimum Parking Space Dimensions			
Parking Angle	Minimum Stall Width	Minimum Stall Depth	Minimum Parking Aisle Width
Regular-sized vehicles			
90 degrees	9'	18'	24'
75 degrees	9'	19'	21'
60 degrees	9'	17'	14'
45 degrees	9'	15'	11'
Compact vehicles			
90 degrees	8.5'	15'	22'
75 degrees	8.5'	16	20'
60 degrees	8.5'	15'	14'
45 degrees	8.5'	14'	10'

10. Notwithstanding any other provisions of chapter 27 or chapter 14, parking areas and/or parking on unpaved surfaces for transportation equipment and storage or maintenance (vehicle) storage,

without services provided, shall be permitted as a principal use on parcels zoned M or M-2, provided that:

a. The parking area shall be screened from view of the public street with an opaque corrugated metal fence or wall minimum of ten feet in height. Chain link and wooden fences along street frontage are prohibited.

b. The parking area shall be at least 25 feet from the street right-of-way.

c. A ten-foot-wide evergreen landscape buffer shall be planted around the perimeter of the fence along the public street with at least two rows of trees. All trees shall be a least six feet in height and/or two inches caliper, and shall be regularly maintained and watered as necessary. Dead or dying trees shall be promptly replaced. All surfaces between trees shall be mulched.

d. The soil erosion, sedimentation and pollution requirements of chapter 14, article V of the Code of the City of Stonecrest, Georgia are met;

e. Minimum standards of the Georgia Stormwater Management Manual are met in terms of stormwater runoff and water quality; and

f. The parking lot has a minimum of one acre.

g. All parking areas and/or parking on unpaved surfaces for transportation equipment and storage or maintenance (vehicle) storage without services provided which are permitted as a principal use on parcels zoned M or M-2 shall be upgraded to the standards of this Sec. 6.1.3.B.10. no later than at the time of business license renewal in 2022.

11. Unpaved parking areas within the M and M-2 zones permitted under subsection B.10. of this section shall comply with the following specifications:

a. The parking area shall be at least 150 feet from the boundaries of a residentially zoned parcel;

b. The parking area subgrade must meet a minimum compaction of 95 percent as certified by a registered professional engineer;

c. The parking area surface shall be composed of at least eight inches of compacted Graded Aggregate Base;

d. The Graded Aggregate Base shall be stabilized and treated to control dust through approved means, which may include but is not limited to, the effective design and operation of the facility, the periodic application of dust suppressant materials such as calcium chloride, magnesium chloride, or lignin sulfonate, reduced operating speeds on unpaved surfaces, or the periodic replenishment of gravel surfaces;

e. Parking areas shall be inspected by the City of Stonecrest or a third-party inspector approved by the City of Stonecrest every year to ensure continued compliance with the above specifications. Proof of inspection and compliance with the Stonecrest Code of Ordinances is required at time of annual business license renewal, and this inspection report must be approved by the Building Department prior to issuance or renewal of a business license. Additional maintenance such as grading, Graded Aggregate Base, or surface treatment may be required;

(Ord. of 8-2-2017, § 1(6.1.3); Ord. No. 2018-07-02, § 1(6.1.3), 7-16-2018) [TMOD-21-012]

Sec. 6.1.4. Off-street parking ratios.

A. Minimum on-site parking requirements may be reduced through use of shared parking, in accordance with section 6.1.5.

B. In residential districts in which garage space is provided, the garage space may count for no more than one required space per 200 square feet of garage space.

C. Tandem parking is permitted in association with all single-family detached and single-family attached housing types.

D. Minimum and maximum parking ratios. Unless otherwise regulated elsewhere in this chapter, off-street parking spaces shall be provided for all uses listed are specified in Table 6.2. Unless otherwise noted, the parking requirement shall be based on the gross square footage of the building or buildings devoted to the particular use specified. Maximum parking standards shall not apply to existing uses so long as the building or parking lot is not expanded.

E. Phased development. Where a project is intended to be developed in phases, the director of planning may approve phased development of a parking lot intended to serve current and future development.

F. Reduction of minimum parking requirements. The minimum number of required spaces described in Table 6.2 for a particular use may be reduced by ten percent by the director of planning pursuant to an administrative variance in compliance with article 7 of this chapter. If the use is within 1,000 feet of a designated heavy rail, streetcar/light rail or bus rapid transit station, the minimum number of required spaces may be reduced by 25 percent in accordance with article 7 of this chapter.

G. Carpool/vanpool parking. For office, industrial, and institutional uses where there are more than 20 parking spaces on the site, the following standards shall be met:

1. At least five percent of the parking spaces on-site must be reserved for carpool use.

2. Except as otherwise provided by applicable law, parking lots shall be designed so as to provide the most convenient access to building entrances by persons arriving by vanpools and carpools. In the event of a conflict between the priority described in this subsection and section 6.1.16, this subsection shall prevail.

3. Signs shall be posted identifying spaces reserved for carpool use.

Table 6.2. Off-street Parking Ratios

Minimum and Maximum Parking Spaces		
Use	Minimum Parking Spaces Required	Maximum Parking Spaces Allowed
Residential		
Detached single-family dwelling	Two spaces per dwelling unit.	Four spaces per dwelling unit.
Two-family and three-family dwellings	One space per dwelling unit.	Four spaces per dwelling unit.
Detached single-family condominium	Two spaces per dwelling unit.	Four spaces per dwelling unit.
Attached single-family dwelling	1½ spaces per dwelling unit, plus one-quarter space per dwelling unit to accommodate guest parking.	Three spaces per dwelling unit, plus one-quarter space per dwelling unit to accommodate guest parking.

Minimum and Maximum Parking Spaces		
Use	Minimum Parking Spaces Required	Maximum Parking Spaces Allowed
Attached two-family and three-family dwellings	1½ spaces per dwelling unit, not including garage, plus one-quarter space per dwelling unit to accommodate guest parking.	Three spaces per dwelling unit, not including garage, plus one-quarter space per dwelling unit to accommodate guest parking.
Multifamily dwellings	1½ spaces for every dwelling unit.	Three spaces for every dwelling unit.
Mobile Homes	Two spaces per mobile home lot.	Four spaces per mobile home lot.
Multifamily dwellings, supportive living	One-half space per dwelling unit.	One space per dwelling unit.
Fraternity house or sorority house	One space per bed.	1¼ spaces per bed.
Rooming house or boarding house, shelter	One space per four beds.	One space per 1½ beds.
Senior housing	One-half space per dwelling unit, plus one-quarter space per dwelling unit to accommodate guest parking.	Two spaces per dwelling unit, plus one-quarter space per dwelling unit to accommodate guest parking.
Assisted Living	One-half space per dwelling unit.	One space per dwelling unit.
Personal care home, group	Two spaces.	Four spaces
Personal care home, community	One space for every 3 beds.	One space for every 2 beds.
Adult daycare facility	Two spaces.	Four spaces.
Child daycare facility	Two spaces.	Four spaces.
Child care institution, group	Two spaces.	Four spaces.
Child care institution, community	One-half space for each employee and resident.	Three-quarters space for each employee and resident.
Live Work dwelling	Two spaces per unit.	Four spaces per unit.
Institutional		
Ambulance service where accessory to a hospital, ambulance services, delivery services and other similar services	One parking space for each fleet vehicle plus one-half space for each administrative or service employee.	One parking space for each fleet vehicle plus three-quarter space for each administrative or service employee.
Child daycare center	One space for each 400 square feet of floor area.	One space for each 300 square feet of floor area.
Convent or monastery	One space for each 400 square feet of floor area.	One space for each 200 square feet of floor area.
Funeral home	One space for each 400 square feet of floor area	One space for each 200 square feet of floor area.
Hospital and similar institutional use	One space per three beds.	No maximum.
Nursing care facility, nursing or convalescent home, and similar institutional use	One-quarter space per bed	One-half space per bed
Kindergarten	One space per 300 square feet of floor area.	One space per 200 square feet of floor area.

Minimum and Maximum Parking Spaces		
Use	Minimum Parking Spaces Required	Maximum Parking Spaces Allowed
Places of assembly with fixed seating, including places of worship, movie theaters, stadiums, auditoriums, live performance theaters, conference centers and cultural facilities	One space for each four seats in the largest assembly room.	One space for each two seats in the largest assembly room.
Places of Assembly without fixed seating, including conference centers, gymnasiums, Place of Worship, libraries, museums, cultural facilities and art galleries	One space for each 40 square feet of floor space in the largest assembly room.	One space for each 20 square feet of floor space in the largest assembly room.
Private elementary and middle school	1½ spaces for each classroom.	Two spaces for each classroom, plus one space for each 50 square feet in largest assembly room.
Private high school	Three spaces for each classroom.	Five spaces for each classroom, plus one space for each 50 square feet in largest assembly room.
Colleges, including trade, vocational, and commercial vocational schools	Ten spaces per classroom, plus 2½ spaces for each 1,000 square feet of floor area in the library or assembly area.	No maximum.
Recreational		
Athletic Field	20 spaces per field.	60 spaces per field.
Bowling alley	Four spaces for each alley.	Five spaces for each alley.
Driving range	One space per tee	1½ spaces per tee
Miniature Golf	12 spaces	20 spaces
Noncommercial club, lodge, or fraternal or social organization (other than fraternity and sorority houses)	One space for each 200 square feet of floor area.	One space for each 100 square feet of floor area.
Public or private swimming pool, neighborhood recreation club/subdivision clubhouse and amenities (recreation and meeting rooms, swimming, and playground), or similar use	One space per 10 homes.	One space per five homes.
Public or private golf course	15 spaces per nine holes.	30 spaces per nine holes.
Indoor recreational facilities, not including bowling alley, swimming pool, tennis courts, or neighborhood recreation centers	One space for each 300 square feet of floor area.	One space for each 125 square feet of floor area.
Special events facilities	One space for each 200 square feet of space used for such activity.	One space for each 100 square feet of space used for such activity.
Temporary outdoor social, religious, seasonal, entertainment or recreation activity	One space for each 300 square feet of land devoted to such use; or where such use is conducted within	One space for each 200 square feet of land devoted to such use; or where such use is conducted

Minimum and Maximum Parking Spaces		
Use	Minimum Parking Spaces Required	Maximum Parking Spaces Allowed
	a tent one space for each 300 square feet of area within the tent enclosure.	within a tent one space for each 200 square feet of area within the tent enclosure.
Public or private tennis courts	Three spaces per court.	Four spaces per court.
Outdoor recreational uses, waterparks, amusement parks	One space for each 3,000 square feet of gross site area.	One space for each 1,000 square feet of gross site area.
Commercial		
Sexually Oriented Businesses	One parking space for each 400 square feet of floor area in the building.	One parking space for each 25 square feet of floor area in the building.
Automobile repair garage, minor repair, and maintenance establishments	One space for each 400 square feet of floor space.	One space for each 150 square feet of floor space.
Automobile service station	Two spaces for each service bay, with minimum of ten spaces required.	Three spaces for each service bay, with maximum of 15 spaces required.
Bed and breakfast establishment	One space for the owner-operator plus one per guest bedroom.	Two spaces for the owner-operator plus one per guest bedroom.
Car wash	Two stacking spaces for each car wash lane plus two drying spaces per lane.	Three stacking spaces for each car wash lane plus three drying spaces per lane.
Convenience Store without gas pumps	Three spaces for each 1,000 square feet of floor area.	Four spaces for each 1,000 square feet of floor area.
Convenience Store with gas pumps	One space per 500 square feet of floor area	One space per 150 square feet of floor area.
Grocery Store	One space per 500 square feet of floor area.	One space per 200 square feet of floor area.
Hotel or motel	One space per lodging unit, plus one space per each 150 square feet of banquet, assembly, or meeting area.	1 2/10spaces per lodging unit, plus one space per each 100 square feet of banquet, assembly, or meeting area.
Laboratory, research facility	One space for each 1,000 square feet of floor area	One space for each 300 square feet of floor area
Office, Professional	One space for each 500 square feet of floor area.	One space for each 250 square feet of floor area.
Offices, Doctor and Dentist	One space for each 500 square feet of floor area.	One space for each 200 square feet of floor area.
Restaurant with seating for patrons (with or without drive-through)	One space for each 150 square feet of floor area, but not less than ten spaces.	One space for each 75 square feet of floor area, but not less than ten spaces.
Late Night Establishment	One space for each 300 square feet of floor area with a minimum of ten spaces.	One space for each 150 square feet of floor area with a minimum of ten spaces.
Nightclub	One space for each 300 square feet of floor area, but not less than ten spaces.	One space for each 150 square feet of floor are, but not less than ten spaces.

Minimum and Maximum Parking Spaces		
Use	Minimum Parking Spaces Required	Maximum Parking Spaces Allowed
Restaurant, drive-through, without seating area for patrons	One space for each 250 square feet of floor area.	One space for each 150 square feet of floor area.
Restaurant where accessory to hotel or motel	One space for each 300 square feet of floor area, but not less than ten spaces.	One space for each 175 square feet of floor area, but not less than ten spaces.
Retail and personal service uses accessory to high-rise apartment building or high-rise office building	Three spaces for each 1,000 square feet of floor area.	Four spaces for each 1,000 square feet of floor area.
Retail uses, personal service uses, and other commercial and general business uses, but not including Convenience Stores or Grocery Stores or other uses described more particularly herein	One space for each 500 square feet of floor area.	One space for each 200 square feet of floor area.
Storage facilities (mini-warehouse)	One space for each 8,000 square feet of floor area	One space for each 5,000 square feet of floor area.
Industrial		
Heavy and light industrial, manufacturing, and commercial establishments not involving retail sales	One space for each 2,000 square feet of floor area.	One space for each 1,300 square feet of floor area.
Warehouse, distribution	One space for each 2,500 square feet of floor area.	One space for each 500 square feet of floor area.
Wholesale membership club	One space for each 500 square feet of floor area	One space for each 200 square feet of floor area.
Wholesale trade establishments, distribution establishments, offices in conjunction with showrooms, and similar uses	One space for each 200 square feet of floor area devoted to sales or display, plus one space for each 2,000 square feet of gross storage area.	One space for each 150 square feet of floor area devoted to sales or display, plus one space for each 1,500 square feet of gross storage area.

(Ord. of 8-2-2017, § 1(6.1.4)) [TMOD-22-001]

Sec. 6.1.5. Off-street parking reduction for shared parking.

Parking spaces for any existing or new mixed-use development may be based upon a shared parking formula as set forth in Table 6.3.

Shared parking may be utilized for any of the combinations of uses shown in Table 6.3. If shared parking is to be used to satisfy the requirements of this article, an application shall be submitted to the director of planning seeking approval of a shared parking plan. The applicant must submit a scaled site plan for each site that will participate in the shared parking showing zoning, use, and existing parking facilities. Shared parking agreements approved by the director of planning shall be executed prior to issuance of any certificates of occupancy for the development.

In any shared parking agreement, at least 50 percent of shared parking spaces must lie within 700 feet of the main entrance to the principal use for which the parking is provided, and all shared parking spaces must lie within

1,000 feet of the main entrance to the principal use for which the parking is provided. Shared spaces shall not be separated from the site by a roadway with more than four through-travel lanes, unless there is a well-marked, safe pedestrian crossing such as a pedestrian hybrid beacon, a signalized crosswalk, or a refuge median.

Any change in the use of a building, shop or leased area that relies on a shared parking agreement to meet its parking requirements shall require compliance with the parking standards in this article based on the new use in order to obtain a certificate of occupancy. No right to shared parking shall vest in a property where the use of the property changes. In the event that property on which the shared parking is located has a different owner than the owner of the principal development, a written shared parking agreement between all relevant property owners, approved by the director of planning and filed on the deed records in the office of the Clerk of Superior Court for DeKalb County, shall be provided prior to approval of a certificate of occupancy for the principal development. Expiration for any reason of a shared parking agreement, on which compliance with this article is based, shall automatically terminate the related certificates of occupancy and place the property owners in violation of this zoning ordinance.

The steps for determining parking requirements in a mixed use development are:

A. Determine the minimum amount of parking required for each separate use (Table 6.2).

B. Multiply each parking requirement by the corresponding percentage for each of the time periods given below.

C. Calculate the column total parking requirement for each time period.

D. The largest column total is the shared parking requirement.

E. Example of shared parking calculation:

If the following uses were proposed with the following example number of parking spaces in accordance with the individual use:

Office: 400 spaces;

Retail: 300 spaces; and

Restaurant uses: 100 spaces;

With a total parking for individual use on-site: 800 spaces.

Then these same land uses under the provisions for shared parking would require the number of parking spaces shown in the example Table 6.4 (by applying the percent reduction in Table 6.3):

Table 6.3. Shared Parking Reduction Table

Shared Parking Reduction Table					
Land Use Type	Weekdays		Overnight	Weekends	
	6:00 a.m.—5:00 p.m.	5:00 p.m.—1:00 a.m.	1:00 a.m.—6:00 a.m.	6:00 a.m.—5:00 p.m.	5:00 p.m.—1:00 a.m.
Office	100 percent	10 percent	5 percent	10 percent	5 percent
Retail	60 percent	90 percent	10 percent	100 percent	70 percent
Hotel	75 percent	90 percent	100 percent	75 percent	90 percent
Restaurant	50 percent	100 percent	100 percent	100 percent	100 percent
Entertainment/Recreational	40 percent	100 percent	10 percent	80 percent	100 percent
Church	25 percent	60 percent	10 percent	100 percent	100 percent

Table 6.4. Example of Shared Parking Reduction Calculation

Shared Parking Reduction Table EXAMPLE					
Land Use Type	Weekdays		Overnight	Weekends	
	6:00 a.m.—5:00 p.m.	5:00 p.m.—1:00 a.m.	1:00 a.m.—6:00 a.m.	6:00 a.m.—5:00 p.m.	5:00 p.m.—1:00 a.m.
Office	400	40	20	40	20
Retail	180	270	30	300	210
Hotel	0	0	0	0	0
Restaurant	50	100	10	100	100
Entertainment/Recreational	0	0	0	0	0
Church	0	0	0	0	0
Total	630	410	60	440	330

As shown in the weekdays 6:00 a.m.—5:00 p.m. column, 6:30 parking spaces would be needed for this example development. This is a reduction of 170 required spaces.

(Ord. of 8-2-2017, § 1(6.1.5))

Sec. 6.1.6. Shared driveways and interparcel access.

A. *Applicability.* This section shall apply to all new office, commercial, institutional, mixed use, and industrial developments and any building renovations and repaving projects of office, commercial, institutional, or industrial developments for which a land disturbance permit is required.

B. *Shared driveways.* Shared driveways between two parcels along a common property line may be required by the planning commission during subdivision plat review or by the director of planning during the land disturbance permitting process. In such cases, each property owner shall grant an access easement to facilitate the movement of motor vehicles and pedestrians across the site. The property owner's obligation to comply with this requirement shall be limited to the extent legal permission to construct and utilize the required shared drive can be obtained from the neighboring property owner.

C. *Interparcel access requirements.* Interparcel access for vehicles between abutting and nearby properties shall be provided so that access to individual properties can be achieved between abutting and nearby developments as an alternative to forcing all movement onto highways and public roads, unless the director of planning during the land disturbance permitting process determines that it is unnecessary to provide interparcel access due to the unlikelihood of patrons traveling among abutting or nearby sites, or due to inability after reasonable efforts by the property owner to obtain legal permission from the abutting property owners for such interparcel access.

(Ord. of 8-2-2017, § 1(6.1.6))

Sec. 6.1.7. Number of handicapped parking spaces required.

The minimum number of and dimensions for handicapped parking spaces shall comply with the requirements of the Americans with Disabilities Act (ADA) (Public Law 101—136), the State Building Code, and the American National Standards Institute, and any other applicable state or federal law.

(Ord. of 8-2-2017, § 1(6.1.7))

Sec. 6.1.8. On-street parking.

On-street parking spaces located immediately abutting the subject property, entirely within the extension of the side lot lines into the roadway and not within any required clear sight triangle, may be counted toward meeting the required parking ratios for all uses occurring on such abutting lots facing a local street or minor collector street. Where streets have been designated "no parking" by the city, no credit for on-street parking shall be available.

(Ord. of 8-2-2017, § 1(6.1.8))

Sec. 6.1.9. Parking structures.

The following requirements shall apply for parking structures:

A. *Minimum setbacks.* Parking structures shall comply with the setback requirements for accessory structures established for the zoning district in which they are located.

B. *Maximum height.* Parking structures shall comply with the maximum height requirements established in the zoning district in which they are located.

C. *Architectural features and facades.*

1. Parking structures shall utilize materials such as brick, glass, stone, cast stone, poured-in-place concrete, hard coat stucco or precast concrete with the appearance of brick or stone on facades facing public rights-of-way.

2. Architectural features and facades for parking structures shall be compatible with abutting structures.

D. *Orientation.* Parking structures shall be oriented to the interior of the parcel by adhering to the following:

1. Residential dwelling units, retail storefronts or office facades shall line the parking structure along all first floor facades adjacent to a street, excluding alleys and driveways.

2. Parking structures, when added to an existing residential development, shall not be located between the building front and the street.

(Ord. of 8-2-2017, § 1(6.1.9))

Sec. 6.1.10. Parking area landscaping.

See parking area landscaping requirements in section 5.4.4.

(Ord. of 8-2-2017, § 1(6.1.10))

Sec. 6.1.11. Paving surfaces.

A. Typical paving surfaces. The paving surface of required minimum on-site and off-site parking areas shall be a dust-free, all-weather material (e.g., asphalt, concrete, or pavers). The paving surface shall have the parking stalls, loading and unloading zones, fire lanes and any other applicable designations delineated in white or yellow paint.

B. Alternative paving surfaces may be used for the number of spaces that exceed 105 percent of the minimum required spaces subject to the confirmation by the director of planning of the pervious nature of the alternative paving material and the numerical calculations.

1. Alternative paving surfaces may include living turf grass or similar ground cover, pervious pavers or concrete, stabilized grass lawn, or other pervious parking surfaces.

2. Driveways, access aisles and parking spaces (excluding handicapped) may be surfaced with grass lawn or other pervious parking surface serving:

a. Uses within 50 feet of environmentally sensitive areas identified in the comprehensive plan;

b. Uses which require parking for less than five days per week during a typical month; and

c. Parks, playgrounds, and other similar outdoor recreation areas with less than 200 parking spaces.

(Ord. of 8-2-2017, § 1(6.1.11))

Sec. 6.1.12. Stacking spaces.

All driveway entrances, including stacking lane entrances, must be at least 50 feet from an intersection. The distance is measured along the street from the junction of the two street curb lines to the nearest edge of the entrance.

(Ord. of 8-2-2017, § 1(6.1.12))

Sec. 6.1.13. Valet parking requirements.

All valet parking services shall meet the following requirements:

A. Valet parking services shall only use off-street parking to park customer vehicles.

B. A valet parking service shall be allowed only where the business establishment being served possesses the minimum required parking spaces either on-site or through a shared off-site parking agreement.

(Ord. of 8-2-2017, § 1(6.1.13))

Sec. 6.1.14. Off-street loading requirements.

A. Off-street loading spaces shall be provided as indicated in Table 6.5.

Table 6.5. Off-street loading space requirements

Off-street loading requirements		
Type of Use	Gross Floor Area (Sq. Ft.)	Loading Spaces Required
Single retail establishment services	0 to 19,999	0
	20,000 to 49,999	1
	50,000 to 250,000	2
	Over 250,000	3
Shopping centers	0 to 9,999	1

	10,000 to 24,999	2
	25,000 to 39,999	3
	40,000 to 99,999	4
	Each additional 100,000	1 additional
Office buildings, multifamily residential over four stories, hospitals, health care establishments, hotels and motels	10,000 to 49,999	1
	50,000 to 99,999	2
	100,000 to 199,999	3
	200,000 to 999,999	4
	Each additional 1,000,000	1 additional
Manufacturing, warehousing, wholesaling, etc.	10,000 to 24,999	1
	25,000 to 39,999	2
	40,000 to 99,999	3
	Each additional 100,000	1 additional
Recycling centers		2

B. Design and arrangement of off-street loading areas. The following standards shall apply to off-street loading areas, which shall be comprised of loading spaces and maneuvering areas:

1. A loading space shall measure no less than 12 feet by 35 feet and have no less than 14 feet of vertical clearance.
2. For any use required to furnish three or more loading spaces, at least one in every three shall measure no less than 12 feet by 55 feet.
3. For manufacturing and warehousing uses, all loading spaces shall measure no less than 12 feet by 55 feet.
4. Maneuvering areas shall not include required parking spaces or any portion of a public right-of-way. No off-street maneuvering area shall require vehicles to back in from or out to a public street.

C. Off-street loading and maneuvering location limitations. Off-street loading spaces and maneuvering areas shall be located only in those portions of a lot where off-street parking areas are allowed with the following additional limitations:

1. Industrial zoning districts. If the off-street loading spaces and maneuvering areas are across from, or adjacent to, any non-industrial zoning district, a 50-foot landscaped strip shall be established between the nonindustrial zoning district and the off-street loading spaces and maneuvering area.

D. Screening of loading areas. Loading areas shall be paved with impervious materials and shall be screened so as not to be visible from any public plaza, ground-level or sidewalk-level outdoor dining area, public sidewalk, public right-of-way, private street or any adjacent residential use.

E. Enclosure of dumpsters and trash compactors. All external dumpsters and loading areas shall be enclosed with opaque fence or walls at least six feet in height.

(Ord. of 8-2-2017, § 1(6.1.14))

Sec. 6.1.15. Parking of trailers in residential districts.

A. In a residential zoning district, no trailer or recreational vehicle shall be parked in front of the principal structure; within the side yard setback or ten feet from side property line, whichever is less; or within ten feet of the rear lot line.

B. No recreational vehicle or trailer may be occupied for human habitation for more than 14 consecutive days while parked within a residential zoning district.

C. Recreational vehicles and trailers may be parked, for the limited purpose of storage between travel, on unpaved surfaces, including gravel or a similar material that prevents the vehicle's or trailer's tires from making direct contact with the earth, soil, sod or mud, so long as the unpaved surface prevents tracking of earth, soil, sod or mud onto public streets when the vehicle or trailer is moved from the property.

D. Within any residential zoning district, no recreational vehicle, trailer or storage container may be parked on a lot that does not contain a permanent dwelling unit or other structure intended for permanent human habitation as its principal use.

E. No portable storage container may be parked or stored in a residential zoning district for a period of a time exceeding 15 consecutive days, or a total of 30 days during any calendar year. A container used during active construction under a valid permit may remain for the duration of the active construction, counting toward the time restrictions of this subsection.

(Ord. of 8-2-2017, § 1(6.1.15))

Sec. 6.1.16. Alternative fuel vehicles parking.

A. *Where required.* Preferential parking for alternative fuel vehicles shall be provided for all new nonresidential parking areas containing 100 or more parking spaces, and for new parking areas of mixed-use projects where the nonresidential portion of the project requires 100 or more parking spaces. The parking spaces shall be striped with green paint to distinguish the spaces as preferential parking spaces, and in accordance with the Georgia Department of Transportation requirements.

B. *Required number of spaces.* At least two percent of all parking spaces in parking lots identified in subsection A. of this section shall be designated for preferential parking for alternative fuel vehicles.

C. *Location of parking spaces.* The required alternative fuel preferential parking spaces shall be located as close as possible to the primary entrance without conflicting with the Americans with Disability Act requirements, or other state or federal law. In the event the priority described in this subsection shall conflict with the priority described in section 6.1.4, section 6.1.4 shall prevail.

D. *Signage required.* Each alternative fuel preferential parking space shall be provided with a sign that identifies the parking space as designated for use by alternative fuel vehicles. The sign shall be in compliance with chapter 21, signs.

E. *Existing vehicle recharging stations.* Existing parking spaces with vehicle recharging stations may be used to meet the requirements of this section.

(Ord. of 8-2-2017, § 1(6.1.16))

Sec. 6.1.17. Bicycle/moped parking requirements.

A. A building, commercial establishment, recreation area, or other property, whether privately or publicly-owned or -operated, that is required to provide automobile parking facilities, whether free of charge or for a fee, to any employees, tenants, customers, clients, patrons, residents, or other members of the public shall provide at least one bicycle/moped parking space for every 20 required automobile parking spaces. No such building, commercial establishment or other property subject to the provisions of this section shall have fewer than three, nor be required to have more than 50 bicycle/moped parking spaces. The requirements of this section shall not apply to properties being operated primarily as commercial parking facilities, residences, or churches.

B. All bicycle/moped spaces shall be located within 250 feet of a regularly used building entrance and shall not interfere with pedestrian traffic. Each space shall include a metal anchor that will secure the frame and both wheels of a bicycle or moped in conjunction with a user-supplied lock. If bicycle/moped parking is not visible to the general visiting public, then a sign no larger than ten inches by 15 inches shall be displayed that directs cyclists to the bicycle/moped parking.

C. The provisions of this section shall apply to property owners, persons occupying the property pursuant to a leasehold interest, or other managers or operators of buildings, commercial establishments and property subject to the provisions of this section.

D. The provisions of this section shall apply to any building, commercial establishment or property for which a permit for new construction is issued following the effective date of this part, and to the alteration of existing buildings in all cases where sufficient space exists to provide such parking facilities.

(Ord. of 8-2-2017, § 1(6.1.17))

ARTICLE 7. ADMINISTRATION

DIVISION 1. GOVERNING BODIES AND AUTHORITY

Sec. 7.1.1. Purpose and intent; compliance with law.

A. This article is intended to provide certain procedures to govern.

1. Processing of various applications for rezoning, variances, comprehensive plan text amendments, comprehensive plan map amendments, special land use permits, administrative variances, and major and minor modifications to conditions of zoning.
2. The calling and conducting of public hearings pertaining to said applications.
3. Establishing criteria for making decisions on such applications.

B. The city council, planning commission, and zoning board of appeals shall comply with all applicable provisions of state law, now and as they may be amended hereafter, including, but not limited to, state law concerning open records, open meetings and records retention.

(Ord. of 8-2-2017, § 1(7.1.1))

Sec. 7.1.2. Governing bodies.

A. *Director of planning.*

1. The provisions of this zoning ordinance shall be administered by the director of planning or his designee, in conjunction with the planning commission, the zoning board of appeals and the city council as set forth herein. The specific duties of the director of planning shall include, but not be limited to, the following:
    a. Accepting and processing applications for zoning map amendments (rezonings), special land use permits, zoning certifications, continuances of nonconforming uses, text amendments to the zoning ordinance, modifications of zoning conditions, variances, residential lot divisions, amendments to the map and text of the comprehensive plan, or any other such business as may be scheduled for public hearing by the planning commission, zoning board of appeals, or city council.
    b. Researching facts and preparing recommendations for the planning commission and the city council for such applications.
    c. Researching facts and preparing recommendations regarding variances and appeals of error, or any other business as may be scheduled for public hearing by the zoning board of appeals.
    d. Maintenance of permanent records concerning the administration of this zoning ordinance and comprehensive plan, including all maps, amendments, records of public hearings, and any other business of the planning commission and zoning board of appeals.
    e. Review of applications for permits and licensing to ensure conformity with the requirements of this zoning ordinance and other relevant city ordinances.
    f. Upon written request by the property owner or owner's authorized agent and payment of a fee established by the city council, the director of planning may issue a certificate verifying the current zoning of a parcel of land, or a letter confirming a legal nonconforming status.

g. Administratively correct the official zoning map after a graphic or scrivener error has been identified.

h. Other duties as authorized in this zoning ordinance, including, but not limited to, the rendering of administrative decisions authorized by division 6 of this article.

B. Training and Education of Boards and Commissions

1. Members of the Planning Commission and Zoning Board of Appeals shall attend by the 365th day of their term of appointment or re-appointment one (1) or more courses, seminars, or other opportunities of training and education on matters pertaining to the operations, activities, or duties of their respective board or commission (Sec 2.6.17.b).

2. Education and training opportunities include, but are not limited to, any organized training or educational activities that in the opinion of the Planning and Zoning Director are relevant to the activities, operations, and duties of said board or commission. (Sec. 2.6.17.e)

C. *Reserved.*

D. *Planning Commission.*

1. There is hereby established a Planning Commission which shall consist of five members, all residents of the City of Stonecrest, who shall be appointed as follows:

a. The Mayor shall appoint one member from each district, subject to confirmation by the city council.

b. Each member shall serve a term of two years. However, the initial term of all initial planning commissioners first appointed after the effective date of the ordinance from which this section is derived shall expire on December 31, 2018.

2. A planning commissioner shall be removed at any time for failure to attend three consecutive meetings or for failure to attend 75 percent or more of the meetings within any calendar year without the excuse of the chairman of the commission. It shall be the duty of the secretary of the planning commission to keep a record of the attendance of members and to notify the city council when any planning commissioner is removed pursuant to the failure to attend meetings requirement of this section. Such removal shall be effective ten days following notification by the secretary of the planning commission to the city council. The Mayor shall have the authority to remove a planning commissioner for cause by providing written notice to the city council and the planning commissioner proposed to be removed, subject to the majority vote of the city council. Upon request of the planning commissioner proposed for removal for cause other than for failure to attend meetings, the city council shall hold a hearing on the removal prior to the city council's vote on the removal. Planning commissioners may be reappointed to successive terms without limitation. Any vacancy in the membership of the planning commission shall be filled for the unexpired term in the same manner as the initial appointment. Members of the planning commission shall hold no other city office or city compensated position. Members of the planning commission shall hold no elective office in DeKalb County. If a planning commission member moves outside the district from which he was originally appointed, or moves outside the City of Stonecrest, that action shall constitute a resignation from the planning commission, effective immediately.

3. No person shall serve or continue to serve as a member of the planning commission until they have been certified by the director as having completed a training session sponsored by the city or designated by the city.

4. No person shall serve as a member of the planning commission until they have executed and filed with the designated officer of the city an oath, administered by the mayor or a judicial officer authorized to administer an oath, in the following form:

"I do solemnly swear or affirm that I will faithfully execute the office of planning commissioner for the City of Stonecrest, and will to the best of my ability support and defend the Constitution of the United States, the Constitution of Georgia, and the Charter, ordinances, and regulations of the City of Stonecrest. I am not the holder of any unaccounted for public money due this state or any political subdivision or authority thereof. I am not the holder of any office of trust under the government of the United States, any other state, or any foreign state which I, by the laws of the State of Georgia am prohibited from holding. I am otherwise qualified to hold said office according to the municipal Charter, the Code of the City of Stonecrest, the Constitution and laws of Georgia. I am a resident of district _____ and the City of Stonecrest. I will perform the duties of my office in the best interests of the City of Stonecrest to the best of my ability without fear, favor, affection, reward, or expectation thereof."

5. The governing authority shall determine the amount of compensation, if any, to be paid to the members of the planning commission.

6. No amendment to the text of this chapter, the official zoning map, or the comprehensive plan text or maps shall become effective unless the subject matter of the amendment has been submitted to the planning commission for public hearing and recommendation pursuant to the requirements of this chapter.

7. The planning commission shall further adopt rules of procedure governing the conduct of its meetings; which rules shall be supplemental to and not conflict with this chapter. In any case where the rules do not address a procedural issue which arises before the planning commission, the most recent edition of Robert's Rules of Order shall govern. The planning commission may from time to time amend its rules by majority vote. A copy of the adopted rules of procedure and any subsequent amendment thereto shall be filed by the secretary of the planning commission with the city clerk, and copies of the rules shall be made available to the public by the secretary of the planning commission and the city clerk.

8. All meetings of the planning commission shall be open to the public, and the agenda for each board meeting shall be made available to the public. Notice of all meetings of the public commission shall be given in accordance with section 7.2.4.

9. A quorum of the planning commission shall consist of at least three members of the commission, except that a lesser amount shall be sufficient to recess or adjourn any meeting; but no official action shall be taken except upon the affirmative vote of at least three members of the planning commission. A roll call vote shall be taken upon the request of any member. If there is not a quorum present, all items shall be rescheduled and re-advertised for the next regular meeting.

10. At its first regular meeting and the first regular meeting in each January thereafter, the planning commission shall, by majority vote of its membership elect one of its members to serve as chairperson to preside over the commission's meetings and one member to serve as vice chairperson. The persons so elected shall serve in these capacities for terms of one year or until a replacement is elected. Vacancies may be filled for the unexpired terms only by majority vote of the planning commission membership. The chairperson and vice chairperson may take part in all deliberations and vote on all issues. The chairperson and the vice-chairperson may each be elected to successive terms without limitation.

11. At its first regular meeting and the first regular meeting in each January thereafter, the planning commission shall, by majority vote of its membership, appoint one person to serve as its secretary. The director of planning or his designee may serve as secretary of the planning commission. The planning department staff shall keep minutes of the proceedings of the planning commission, showing the vote of each member upon each item, or, if a member is absent or fails to vote, indicating such fact, and shall keep records of the planning commission official actions and evidence submitted, all of which shall be filed in the office of the planning department and shall be a public record.

E. *Zoning board of appeals.*

1. There is hereby established a zoning board of appeals which shall consist of five members, each of whom shall be a resident of the city. Each member shall serve a term of two years. The Mayor shall appoint one member from each district, subject to confirmation by the city council. A member of the zoning board of appeals shall be removed at any time for failure to attend three consecutive meetings or for failure to attend 75 percent or more of the meetings within any calendar year without the excuse of the chairman of the board. It shall be the duty of the secretary of the zoning board of appeals to keep a record of the attendance of members and to notify the city council when any zoning board of appeals member is removed pursuant to the failure to attend meetings requirement of this section. Such removal shall be effective ten days following notification by the secretary of the zoning board of appeals to the city council. The Mayor shall have the authority to remove a zoning board of appeals member for cause by providing written notice to the city council and the zoning board of appeals member proposed to be removed, subject to the majority vote of the city council. Upon request of the zoning board of appeals member proposed for removal for cause other than for failure to attend meetings, the city council shall hold a hearing on the removal prior to the city council's vote on the removal. Members of the zoning board of appeals may be reappointed to successive terms without limitation. Any vacancy in the membership of the zoning board of appeals shall be filled for the unexpired term in the same manner as the initial appointment. Members of the zoning board of appeals shall hold no other city office or city compensated position. Members of the zoning board of appeals shall hold no elective office in DeKalb County. If a member of the zoning board of appeals moves outside the district from which he was originally appointed or outside the City of Stonecrest, that action shall constitute a resignation from the zoning board of appeals, effective immediately.

2. No person shall serve or continue to serve as a member of the zoning board of appeals until they have been certified by the director as having completed a training session sponsored by the city.

3. No person shall serve as a member of the zoning board of appeals until they have executed and filed with the designated officer of the city an oath, administered by the mayor or a judicial officer authorized to administer an oath, in the following form:

   "I do solemnly swear or affirm that I will faithfully execute the office of planning commissioner for the City of Stonecrest, and will to the best of my ability support and defend the Constitution of the United States, the Constitution of Georgia, and the Charter, ordinances, and regulations of the City of Stonecrest. I am not the holder of any unaccounted for public money due this state or any political subdivision or authority thereof. I am not the holder of any office of trust under the government of the United States, any other state, or any foreign state which I, by the laws of the State of Georgia am prohibited from holding. I am otherwise qualified to hold said office according to the municipal Charter, the Code of the City of Stonecrest, the Constitution and laws of Georgia. I am a resident of district _____ and the City of Stonecrest. I will perform the duties of my office in the best interests of the City of Stonecrest to the best of my ability without fear, favor, affection, reward, or expectation thereof."

4. Each member shall serve a term of two years. However, the initial term of all initial members first appointed after the effective date of the ordinance from which this section is derived shall expire on December 31, 2018.

5. The governing authority shall determine the amount of compensation, if any, to be paid to the members of the zoning board of appeals.

6. The zoning board of appeals shall meet each month at a standard day and time to be determined by the board. The chairperson may, when necessary, call for special meetings of the board. A meeting may be canceled by the chairperson if there are no matters to be acted upon by the board.

7. The zoning board of appeals shall conduct its meetings in accordance with the procedures contained in this chapter. The board shall further adopt rules of procedure governing the conduct of its meetings, which rules shall be supplemental to and not conflict with this chapter. In any case where the rules do not address a procedural issue which arises before the board, the most recent edition of Robert's Rules of Order shall govern. The board may from time to time amend its rules by majority vote. A copy of the adopted rules of procedure and any subsequent amendment thereto shall be filed by the secretary of the zoning board of appeals with the city clerk, and copies of the rules shall be made available to the public by the secretary of the zoning board of appeals and the city clerk.
8. All meetings of the zoning board of appeals shall be open to the public, and the agenda for each board meeting shall be made available to the public. Notice of all meetings of the zoning board of appeals shall be given in accordance with section 7.2.4.
7. A quorum of the zoning board of appeals shall consist of at least three members of the board, except that a lesser amount shall be sufficient to recess or adjourn any meeting; but no official action shall be taken except upon the affirmative vote of at least three members of the zoning board of appeals. A roll call vote shall be taken upon the request of any member. If there is not a quorum present, all items shall be rescheduled and re-advertised for the next regular meeting.
8. At its first regular meeting first regular meeting each January thereafter, the zoning board of appeals shall, by majority vote of its membership elect one of its members to serve as chairperson to preside over the board's meetings and one member to serve as vice chairperson. The persons so elected shall serve in these capacities for terms of one year or until a replacement is elected. Vacancies may be filled for the unexpired terms only by majority vote of the board membership. The chairperson and vice chairperson may take part in all deliberations and vote on all issues. The chairperson and the vice-chairperson may each be elected to successive terms without limitation.
9. At its first regular meeting of each January, the zoning board of appeals shall, by majority vote, appoint a secretary. The director of planning or his designee may serve as secretary to the zoning board of appeals. The planning department staff shall keep minutes of the proceedings of the board, showing the vote of each member upon each item, or if absent or failing to vote, indicating such fact, and shall keep records of its official actions and evidence submitted, all of which shall be filed in the office of the planning department and shall be a public record.
10. The staff of the planning department shall conduct a site inspection of and shall prepare an analysis of each application for a variance applying the applicable criteria and standards set forth in this chapter to each such application.

(Ord. of 8-2-2017, § 1(7.1.2))

DIVISION 2. GENERAL PROCEDURES

Sec. 7.2.1. Applications and public hearing.

This division establishes procedures that apply to all application submittals and procedures for public hearings required by this zoning ordinance. Prior to the processing of any application for an amendment to the official zoning map, commonly referred to as a rezoning, variance, comprehensive plan text amendment, comprehensive plan map amendment, special land use permit, or modification to conditions of zoning, the applicant shall be required to file documentation and follow certain procedures as set forth in this article. Additional regulations that apply to specific application types may be found in subsequent sections of this chapter.

(Ord. of 8-2-2017, § 1(7.2.1))

Sec. 7.2.2. Applications.

A. *Applications for city action that require a public hearing.* Applications for city action that require a public hearing shall be filed with the director of planning, along with a fee as set by the city council and the campaign disclosure required by O.C.G.A. § 36-67A-3. Applications and procedures shall be made available to the public in the offices of the planning department.

B. *Processing of said applications.* The processing of said applications shall be based upon an annual calendar adopted by the city council. This calendar shall be made available to the public in the offices of the planning department.

1. The director of planning shall be authorized to establish application submittal requirements necessary to obtain sufficient information to allow for a compliance review of the application as well as forms and instructions for each application type or petition.

2. No application shall be processed by the planning and zoning director unless it complies with the procedural requirements of this division and is found to be a complete application.

3. A change to a site plan or proposed condition of zoning associated with an application, which change has been accepted and allowed to be part of the application by the director of planning, may be deferred by the city council for a full-cycle review if the city council determines such review is reasonably necessary as a result of the change. The amended application shall be treated as if it were a new application, for the purposes of publication, review, notice and hearings, as required under this article, including review by the planning commission. An amendment to an application shall not change the original filing date of that application. An amended application shall not require a new application fee. However, in the case of a deferral requested by the applicant, the applicant shall pay a required re-advertising fee.

C. *Application fees.* The application fees for special land use permits, amendments to the official zoning map and comprehensive plan map amendments shall be as established by the city council.

D. *Site plan preparation.* The director of planning shall publish a checklist of requirements for site plans submitted pursuant to this zoning ordinance. All site plans submitted pursuant to this zoning ordinance shall be submitted with the applications to which they apply and shall comply with the checklist requirements.

E. *Notice of applications filed.* The secretary of the planning commission shall provide the city council with a list of all applications and amendments filed. The listing of applications shall be reasonably made available to the public.

F. *Withdrawal of application by applicant.* Applications may not be withdrawn without permission of the city council after they have been filed for advertising for public hearing, except as otherwise provided herein.

G. *City clerk to provide signed copy of final actions taken by the city council to director of planning to be noted on official zoning maps.* The clerk shall, after any final action taken by the city council, provide to the director of planning a signed, certified copy of each such action. The director of planning shall cause all relevant documents to be amended accordingly to reflect the final action approved by the city council.

H. *Resubmittal of rejected or denied applications.*

1. *Rezoning.*

a. If an application for rezoning is denied or assigned a zoning classification other than the classification requested in the application, then no portion of the same property may again be considered for rezoning for a period of 24 months from the date of the city council's final decision.

b. Notwithstanding subsection H.1.a. of this section, the city council may by resolution reduce the 24-month time restriction between applications to a period no less than the minimum required by the O.C.G.A. § 36-66-1 et seq., as it now exists and may be amended hereafter, which currently is six months as of the date of adoption of the ordinance from which this division is derived.

c. An applicant may request that the city council allow withdrawal of an application without prejudice, in which case, if approved, no minimum time period need expire before a subsequent application for rezoning of the property may be accepted by the director of planning.

2. *Variance.*

a. An application for a variance affecting all or a portion of the same property for which an application for variance for the same regulation was denied shall not be submitted before 24 months have passed from the date of final decision by the zoning board of appeals on the previous variance.

b. The zoning board of appeals may reduce this 24-month time restriction by resolution, provided that the time restriction between the date of said denial and any subsequent application affecting the same property shall be no less than six months.

c. An applicant may request that the zoning board of appeals allow withdrawal of an application without prejudice, in which case, if approved, no minimum time period need expire before a subsequent application for rezoning of the property may be accepted by the director of planning.

3. *Special land use permit.*

a. An application for a special land use permit affecting all or a portion of the same property for which an application for the same special land use was denied shall not be submitted before 24 months have passed from the date of final decision by the city council on the previous special land use permit.

b. Notwithstanding section a. above, the city council may by resolution reduce the 24-month time restriction between applications to a period no less than the minimum required by the Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq., which is six months as of the date of adoption of the ordinance from which this division is derived.

c. An applicant may request that the city council allow withdrawal of an application without prejudice, in which case, if approved, no minimum time period need expire before a subsequent application for rezoning of the property may be accepted by the director of planning.

(Ord. of 8-2-2017, § 1(7.2.2))

Sec. 7.2.3. Reserved.

(Ord. of 8-2-2017, § 1(7.2.3))

Sec. 7.2.4. Public hearings.

A. *Zoning decisions.* The term "zoning decision" is defined in article 9 of this chapter by reference to the definition of "zoning decision" set forth in state law, O.C.G.A. § 36-66-3, as it now exists and may be amended hereafter.

B. *Zoning decisions initiated by the city.* For any zoning decision initiated by the city at least 15 but not more than 45 days prior to the date of the public hearing before the city council, the city shall cause to be

published within a newspaper of general circulation within the territorial boundaries of the city, a notice of the hearing. The notice shall state the time, place, and purpose of the hearing.

C. *Zoning decisions, appeals to the zoning board of appeals, variances, extensions of special land use permits, and major modifications of conditions initiated by a party other than the city.* For any zoning decision, appeal to the zoning board of appeals, variance, extension of special land use permits, or major modification of conditions initiated by a party other than the city, notice of the public hearing shall be provided as follows:

1. Written notice of each public hearing shall state the nature of the proposed change, and the date, time, and place of the public hearing before either the planning commission, zoning board of appeals or the city council and shall be mailed by first class mail by the director of planning to all owners of property within one thousand (1,000) feet of the boundaries adjoining the subject property, as such property owners are listed on the records of DeKalb tax commissioner, at least 15 days and not more than 45 days prior to said public hearing.

2. Signs shall be posted on the subject property at least 15 days and not more than 45 days prior to the public hearing before the city council, the planning commission or the zoning board of appeals. The required information on each sign shall be as provided in O.C.G.A. § 36-66-1 et seq., as it now exists and may be amended hereafter. At least one sign shall be posted on each street on which the subject property has frontage in a conspicuous location within ten feet of the right-of-way. One additional sign shall be posted for each additional 500 feet of frontage or fraction thereof in excess of 500 feet of frontage on each street on which the subject property has frontage. Signs shall be double-faced and posted so that the face of the sign may be read by the traveling public in both directions, and the applicant shall pay a sign fee, in an amount to be established by the city council, to the planning department.

3. One notice sign may serve both the application for an amendment to the official zoning map and/or the application for a special land use permit, as long as the sign states the relevant information for all hearings relating to those actions.

4. A dated photograph of each sign shall be submitted by the applicant to the director of planning as evidence of its proper posting.

5. The city shall cause a notice of each public hearing regarding a proposed zoning decision to be published in a newspaper of general circulation within the city at least 15 days and not more than 45 days prior to the public hearing. The notice shall include the date, time and place of the hearing before the planning commission, the city council, and/or the zoning board of appeals, the address of the property, the present zoning classification of the property, the proposed zoning classification of the property, the nature of the variance sought, and the proposed special land use, as applicable.

(Ord. of 8-2-2017, § 1(7.2.4))

Sec. 7.2.5 Community Impact Notification

A. Applicability

1. Any development or building project with an aggregate of 12,000 square feet or more of new buildings or a site consisting of two acres or more must meet the Community Impact Notification requirements.

2. This includes any development or building project with an aggregate of 12,000 square feet of construction, or other similar work requiring a building permit within the next 24 months.

B. Requirements

1. *Council notification.* The Chief Building Official shall provide notification to the pertinent district councilmember.

2. *Posted notice.* Applicant shall place one or more signs in a conspicuous location on the property. At least one sign shall be posted along each street on which the subject property has frontage. One additional sign shall be posted for each additional 500 feet of frontage. Each sign shall contain the location and nature of the proposed project and web address to access and view plans.

3. *Written notice.* Written notice shall be mailed by first class mail by the Applicant to all owners of property within 1,000 feet of the boundaries of the subject property. The notice shall state the location and nature of the proposed project.

DIVISION 3. ZONING AND COMPREHENSIVE PLAN AMENDMENTS AND PROCEDURES

Sec. 7.3.1. Initiation of proposals for text and map amendments.

A proposed amendment to the text of this chapter, the official zoning map, or the comprehensive plan may be introduced by the director of planning, one or more members of the city council or by the planning commission. In addition, amendments to the official zoning map (rezoning) and the comprehensive plan may be initiated upon application by the owners of the subject property or the authorized agent of the owners. Before enacting any amendment to this chapter, the official zoning map, or the comprehensive plan maps, the city council shall provide for the public notice and public hearings required by section 7.2.4 of this article.

(Ord. of 8-2-2017, § 1(7.3.1))

Sec. 7.3.2. Consistency with comprehensive plan.

Any applicant seeking to rezone property to a classification that is inconsistent with the comprehensive plan, as established in article 1 of this zoning ordinance, must first obtain approval of an amendment to the comprehensive plan land use map from the city council. The comprehensive plan maps shall be amended according to a schedule approved by the city council. However, exceptions may be granted by the city council in between the regular review cycle in cases of demonstrated hardship, or in cases of large-scale developments that may provide special economic benefits to the community. Requests for exceptions shall be subject to approval by the city council during a city council meeting.

(Ord. of 8-2-2017, § 1(7.3.2))

Sec. 7.3.3. Staff analysis, findings of fact, and recommendations.

A. The staff of the planning department shall conduct a site inspection on all applications for zoning map and comprehensive plan map amendments and shall investigate and prepare an analysis of each proposed text amendment to this chapter or to the comprehensive plan.

B. The findings and recommendations of the planning department staff shall be made based on each of the standards and factors contained in section 7.3.4 or section 7.3.5, below, as applicable. In an application for rezoning, the planning staff may recommend the imposition of conditions in accordance with section 7.3.9. The staff shall present its findings and recommendations to the planning commission and the city council.

C. Within a reasonable amount of time after acceptance of a complete application, the director of planning shall submit the application for review by city departments and external agencies, as may be appropriate. External agencies may include, but are not limited to, DeKalb County, DeKalb County School Board, Georgia

Regional Transportation Authority, Georgia Department of Transportation, and the Atlanta Regional Commission (ARC), and any municipality that abuts the property that is the subject of the application. Any written comments received prior to submittal of the report shall be submitted to the review bodies for consideration and such comments shall become an official public record.

(Ord. of 8-2-2017, § 1(7.3.3))

Sec. 7.3.4. Standards and factors governing review of proposed amendments to the comprehensive plan map.

The following standards and factors are found to be relevant for evaluating applications for amendments to the comprehensive plan map and shall govern the review of all proposed amendments to the comprehensive plan map:

A. Whether the proposed land use change will permit uses that are suitable in consideration of the use and development of adjacent and nearby property or properties.

B. Whether the proposed land use change will adversely affect the existing use or usability of adjacent or nearby property or properties.

C. Whether the proposed land use change will result in uses which will or could cause excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.

D. Whether the amendment is consistent with the written policies in the comprehensive plan text and any applicable small areas studies.

E. Whether there are potential impacts on property or properties in an adjoining governmental jurisdiction, in cases of proposed changes near municipal boundary lines.

F. Whether there are other existing or changing conditions affecting the use and development of the affected land areas which support either approval or denial of the proposed land use change.

G. Whether there will be an impact on historic buildings, sites, districts or archaeological resources resulting from the proposed change.

(Ord. of 8-2-2017, § 1(7.3.4))

Sec. 7.3.5. Standards and factors governing review of proposed amendments to the official zoning map.

The following standards and factors are found to be relevant to the exercise of the city's zoning powers and shall govern the review of all proposed amendments to the official zoning map:

A. Whether the zoning proposal is in conformity with the policy and intent of the comprehensive plan.

B. Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property or properties.

C. Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned.

D. Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property or properties.

E. Whether there are other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the zoning proposal.

F. Whether the zoning proposal will adversely affect historic buildings, sites, districts, or archaeological resources.

G. Whether the zoning proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.

H. Whether the zoning proposal adversely impacts the environment or surrounding natural resources.

(Ord. of 8-2-2017, § 1(7.3.5))

Sec. 7.3.6. Reserved.

(Ord. of 8-2-2017, § 1(7.3.6))

Sec. 7.3.7. Action by the planning commission.

The secretary of the planning commission shall provide the members of the planning commission complete information on each proposed application requiring a public hearing by the planning commission, including a copy of the application and all supporting materials. The planning commission, after conducting a public hearing with prior public notice as required by this article, shall consider the proposal and vote on its recommendation to the city council. Any recommendation by the planning commission shall not be binding on the city council. The planning commission may recommend approval of the application, recommend approval to a less intense zoning district or land use category than that requested by the applicant, recommend approval of the application with conditions, recommend denial of the application, recommend deferral of the application, or, upon request of the applicant, recommend withdrawal of the application without prejudice. In its recommendation of any application, the planning commission may recommend the imposition of conditions in accordance with section 7.3.9. All findings and recommendations of the planning commission relating to amendments to the official zoning map shall be made based on each of the standards and factors contained in section 7.3.5. All recommendations of the planning commission relating to amendments to the comprehensive plan maps shall be made based on each of the standards and factors contained in section 7.3.4. The secretary of the planning commission shall make and maintain a written record of the planning commission's consideration and recommendations, which shall be public record.

(Ord. of 8-2-2017, § 1(7.3.7)) [TMOD-21-014]

Sec. 7.3.8. Action by the city council.

At the next scheduled city council meeting pursuant to the applicant zoning calendar following the appearance of the matter on the planning commission agenda, the city council, after conduct of a public hearing with public notice as required by this article, shall vote to approve the proposed amendment pursuant to this division, approve with conditions, approve to a less intense zoning district or land use category than that requested by the applicant, deny the proposed amendment, defer the proposed amendment, or, upon request of the applicant, permit withdrawal without prejudice. In the approval of any proposed amendment to the official zoning map, the city council may impose conditions in accordance with section 7.3.9. For each proposed zoning decision, the analysis submitted by the applicant, if any, the analysis prepared by the planning department, and the record prepared by the planning commission shall be presented to each member of the city council. All decisions of the city council relating to each proposed amendment to the official zoning map shall be made based on each of the standards and factors contained in sections 7.3.4 and 7.5.3 or 7.5.4, as appropriate. All decisions of the city council relating to amendments to the comprehensive plan maps shall be made based on each of the standards and factors contained in section 7.3.4. Any proposed amendment or any proposed substitute ordinance considered by the city council shall be presented in written form prior to being voted on by the city council, or made a part of the motion.

(Ord. of 8-2-2017, § 1(7.3.8))

Sec. 7.3.9. Conditions of zoning.

Conditions of zoning may be requested by an applicant, recommended by the planning department or planning commission, or imposed by the city council, as a part of any proposed change to the official zoning map, in accordance with the following requirements:

A. Conditions of zoning may be imposed so as to ameliorate the effects of the proposed developmental change for the protection or benefit of neighboring persons or properties consistent with the purpose and intent of the zoning districts involved, and the goals and objectives of the comprehensive plan and state law. No condition shall be imposed which reduces the requirements of the zoning districts involved, except as stipulated in section 8.1.12 of this chapter. All conditions shall be of sufficient specificity to allow lawful and consistent application and enforcement. All conditions shall be supported by a record that evidences the relationship between the condition and the impact of the developmental change. No condition in the form of a development exaction for other than a project improvement shall be imposed within the meaning of the Georgia Development Impact Fee Act, as amended.

B. Once imposed, conditions of zoning shall become an integral part of the approved amendment and shall be enforced as such. Changes to approved conditions shall be authorized only pursuant to section 7.3.10.

C. Site plans referenced in the conditions of zoning are conceptual only unless specific aspects of the site plan or the site plan itself are approved as a separate zoning condition. Development shall meet or exceed the imposed zoning conditions and all other applicable law, standards and regulations of the City. Compliance with the conditions of zoning shall be demonstrated prior to the issuance of a land disturbance permit or building permit and conditional improvements shall be in place prior to the issuance of the first certificate of occupancy.

(Ord. of 8-2-2017, § 1(7.3.9))

Sec. 7.3.10. Modifications and changes to approved conditions of zoning.

A. The director of planning shall have sole authority to approve minor changes to conditions attached to an approved zoning amendment. Minor changes are those that implement only slight alterations to the approved conditions made necessary by actual field conditions at the time of development, and that do not alter the impact of the development on nearby properties nor the intent or integrity of the conditions as originally imposed. Any request for minor changes to conditions shall be filed with the director of planning or his designee on a written form which shall include a full description of the documents and/or information necessary for the application to be considered complete. At a minimum, if an approved site plan exists, the request for minor changes shall be accompanied by four copies of the proposed revised site plan. The director of planning shall decide whether to grant or deny the request for minor changes to conditions within 30 calendar days of receipt of a complete application for such minor changes. If the director of planning does not decide within 30 days the request for minor change shall be deemed denied as of the 31st day after receipt of a complete application. After making a decision, the director of planning shall have ten calendar days to post a sign on the subject property which reflects the decision of the director and includes the deadline for taking an appeal of the decision. Persons identified in section 7.5.2.B. shall have 15 calendar days from the posting of the sign to appeal the director of planning's decision by filing an application for appeal with the secretary of the zoning board of appeals. Any major changes to conditions attached to an approved zoning amendment shall require an application and public hearings before the planning commission and the city council, as required in section 7.2.4 of this article for amendments to the official

zoning map without limiting the meaning of the phrase, the following shall be deemed to constitute major changes:

1. The movement of any building or structure adjacent to an exterior boundary line, closer to the boundary line of the property;
2. Any increase in the number of dwelling units or any increase in the total amount of floor space of any nonresidential building;
3. Any decrease in the size of residential units imposed in the original conditional zoning amendment;
4. Any change in any buffer requirements imposed in the original conditional zoning amendment;
5. Any increase in the height of any building or structure;
6. Any change in the proportion of floor space devoted to different authorized uses; or
7. Any change to conditions, except minor changes, as defined in subsection A. of this section, imposed by the city council when approving any change to the official zoning map, commonly referred to as a rezoning or a zoning amendment.

(Ord. of 8-2-2017, § 1(7.3.10)

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DIVISION 4. SPECIAL LAND USE PERMITS

Sec. 7.4.1. Special land use permits generally.

A. A special land use permit is a means by which the city council gives special consideration, pursuant to a clear set of standards and criteria, to those types of uses which may or may not be compatible with uses and structures authorized as a matter of right within a particular zoning district. Special land use permits are required for uses that have operational characteristics and/or impacts that are significantly different from the zoning district's principal authorized uses and therefore require individual review pursuant to the standards and criteria set forth in this division and article.

B. Special land use permit applications shall be authorized only for those uses specifically listed in the applicable zoning district regulations, as permitted by special land use permit, and in compliance with any applicable supplemental regulations, according to article 4 of this chapter or section 7.4.7.

C. An applicant desiring to apply for a special land use permit authorized within a zoning district described in this chapter shall file an application with the planning department in accordance with this division. The city council, following consideration by the planning commission, shall determine whether the proposed use, in the particular location contemplated, meets the standards and criteria set forth in this division and chapter.

D. Such uses may further require, and the city council shall be authorized to impose, special conditions in order to ensure their compatibility with surrounding uses and to minimize adverse impacts on the use of surrounding property.

(Ord. of 8-2-2017, § 1(7.4.1))

Sec. 7.4.2. Initiation of applications and public hearing requirements.

A. Procedures for applications shall comply with section 7.2.2.

B. Applications for special land use permits require a public hearing, as provided for in section 7.2.4.

(Ord. of 8-2-2017, § 1(7.4.2))

Sec. 7.4.3. Initiation of ordinance for application for special land use permit.

Upon receipt of a complete application for a special land use permit, the secretary of the planning commission shall prepare a proposed ordinance to grant the proposed special land use permit, and said proposed ordinance shall be referred to the planning commission for public hearing and consideration pursuant to the requirements of this chapter and presented to the city council at their next scheduled zoning meeting after appearance on the planning commission agenda.

(Ord. of 8-2-2017, § 1(7.4.3))

Sec. 7.4.4. Reserved.

(Ord. of 8-2-2017, § 1(7.4.4))

Sec. 7.4.5. Staff analysis, findings of fact, and recommendation on each application.

An application for a special land use permit shall be filed on forms provided by the planning department and shall not be considered an authorized application unless complete in all respects. Upon receipt of a complete application, the staff of the planning department shall conduct a site inspection and shall prepare an analysis of each application for a special land use permit and shall present its findings and recommendations in written form to the planning commission. Staff analysis and recommendations on each application for special land use permit shall be based on the criteria contained in section 7.4.6 and, in addition, where applicable to the use proposed, on the criteria contained in section 7.4.7.

(Ord. of 8-2-2017, § 1(7.4.5))

Sec. 7.4.6. Special land use permit; criteria to be considered.

The following criteria shall be considered by the planning department, the planning commission, and the city council in evaluating and deciding any application for a special land use permit. No application for a special land use permit shall be granted by the city council unless satisfactory provisions and arrangements have been made concerning each of the following factors, all of which are applicable to each application, and the application is in compliance with all applicable regulations in article 4 of this chapter:

A. Adequacy of the size of the site for the use contemplated and whether or not adequate land area is available for the proposed use including provision of all required yards, open space, off-street parking, and all other applicable requirements of the zoning district in which the use is proposed to be located.

B. Compatibility of the proposed use with adjacent properties and land uses and with other properties and land uses in the district.

C. Adequacy of public services, public facilities, and utilities to serve the proposed use.

D. Adequacy of the public street on which the use is proposed to be located and whether or not there is sufficient traffic-carrying capacity for the use proposed so as not to unduly increase traffic and create congestion in the area.

E. Whether or not existing land uses located along access routes to the site will be adversely affected by the character of the vehicles or the volume of traffic generated by the proposed use.

F. Adequacy of ingress and egress to the subject property and to all proposed buildings, structures, and uses thereon, with particular reference to pedestrian and automotive safety and convenience, traffic flow and control, and access in the event of fire or other emergency.

G. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of noise, smoke, odor, dust, or vibration generated by the proposed use.

H. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of the hours of operation of the proposed use.

I. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of the manner of operation of the proposed use.

J. Whether the proposed use is otherwise consistent with the requirements of the zoning district classification in which the use is proposed to be located.

K. Whether the proposed use is consistent with the policies of the comprehensive plan.

L. Whether the proposed use provides for all required buffer zones and transitional buffer zones where required by the regulations of the zoning district in which the use is proposed to be located.

M. Whether there is adequate provision of refuse and service areas.

N. Whether the length of time for which the special land use permit is granted should be limited in duration.

O. Whether the size, scale and massing of proposed buildings are appropriate in relation to the size of the subject property and in relation to the size, scale and massing of adjacent and nearby lots and buildings.

P. Whether the proposed use will adversely affect historic buildings, sites, districts, or archaeological resources.

Q. Whether the proposed use satisfies the requirements contained within the supplemental regulations for such special land use permit.

R. Whether the proposed use will create a negative shadow impact on any adjoining lot or building as a result of the proposed building height.

S. Whether the proposed use would be consistent with the needs of the neighborhood or the community as a whole, be compatible with the neighborhood, and would not be in conflict with the overall objective of the comprehensive plan.

(Ord. of 8-2-2017, § 1(7.4.6))

Sec. 7.4.7. Additional criteria for specified uses.

In addition to the criteria contained in section 7.4.6 above for which each applicant for a special land use permit is required to provide information, the following additional criteria shall apply to specific uses as specified below. No application for a special land use permit for the uses specified below shall be granted by the city council unless it is determined that, in addition to meeting the requirements contained within the zoning district in which such property is located and the criteria contained in section 7.4.6 above, and complying with applicable regulations in article 4 of this chapter, satisfactory provisions and arrangements have been made concerning each of the following criteria:

A. *Telecommunications towers and antennas.* In determining whether to authorize a special land use permit for a telecommunication tower or antenna, the city council shall comply with and apply the requirements of section 4.2.57.

B. *Reserved.*

C. *Child daycare facility.* In determining whether to authorize a special land use permit for a child daycare facility, the city council shall also consider each of the following criteria:

1. Whether there is adequate off-street parking for all staff members and for visitors to the child daycare facility.

2. Whether the proposed off-street parking areas and the proposed outdoor play areas can be adequately screened from adjoining properties so as not to adversely impact any adjoining land use.

3. Whether there is an adequate and safe location for the dropping off and picking up of children at the child daycare facility.

4. Whether the character of the exterior of the proposed structure will be compatible with the residential character of the buildings in the zoning district in which the child daycare facility is proposed to be located, if proposed for a residential zoned district.

(Ord. of 8-2-2017, § 1(7.4.7))

[TMOD-22-001]

Sec. 7.4.8. Action by the planning commission.

A. Planning staff shall provide the members of the planning commission complete information on each proposed application for a special land use permit that the commission considers, including a copy of the application and all supporting materials. The planning commission, after conducting a public hearing with public notice, as required by this article, shall vote on its recommendation to be provided to the city council.

B. The planning commission may recommend approval of the application, approval of the application with conditions, denial of the application, or deferral of the application.

C. The planning commission may recommend the imposition of conditions based upon the facts of a particular application in accordance with section 7.3.9.

D. The planning commission recommendation on each application shall be based on a determination as to whether or not the applicant has met the criteria contained in section 7.4.6, the criteria contained in section 7.4.7 where applicable to the use proposed, and the requirements of the zoning district in which such use is proposed to be located.

(Ord. of 8-2-2017, § 1(7.4.8))

Sec. 7.4.9. Action by the city council.

A. The city council, after conducting the public hearing with public notice as required by this chapter, shall vote to approve the application, approve the application with conditions, deny the application, defer the application, or, upon request of the applicant, to permit withdrawal of the application without prejudice.

B. The city council may impose conditions based upon the facts of a particular application in accordance with section 7.4.9.

C. The decision of the city council on each application for special land use permit shall be based on a determination as to whether or not the application satisfies the criteria contained in section 7.4.6, the criteria contained in section 7.4.7 where applicable to the use proposed, and the requirements of the zoning district in which such use is proposed to be located.

D. The city council may specify the duration of each such special land use permit approved.

(Ord. of 8-2-2017, § 1(7.4.9))

Sec. 7.4.10. Appeals of decisions of the city council.

All appeals of all final decisions of the city council under the provisions of this division shall be as follows:

A. Any person aggrieved by a final decision of the city council on an amendment to the zoning ordinance which rezones property from one zoning classification to another or which changes zoning conditions, or which denies any such ordinances may seek review of such decision by petitioning the Superior Court of DeKalb County via direct appeal, setting forth plainly the alleged errors. Such petition shall be filed within 30 days after the final decision of the city council is rendered.

B. Any person aggrieved by a final decision of the city council on a special land use permit may seek review of such decision by petitioning the Superior Court of DeKalb County via a writ of certiorari plainly setting forth the alleged errors. Such petition shall be filed within 30 days after the final decision of the city council is rendered.

(Ord. of 8-2-2017, § 1(7.4.10))

Sec. 7.4.11. Limitations of special land use permits.

A. *Development of an approved special use.* The issuance of a special land use permit shall only constitute approval of the proposed use, and development of the use shall not be carried out until the applicant has secured all other permits and approvals required by any applicable law or regulation.

B. *Expiration of a special land use permit.* Unless a building permit or other required approvals is applied for within 12 months of the city council's approval, and construction pursuant to such building permit is promptly begun and diligently pursued thereafter, the special land use permit shall expire automatically, unless the permit is extended upon application to the city council in accordance with subsection C. of this section.

C. *Time extension of a special land use permit.* A time limitation imposed on special land use permits by the city council and the expiration date established pursuant to subsection B. of this section may be extended once for 12 consecutive months upon written request by the applicant and approval by the planning director. Any further time extensions shall be by the city council upon written request by the applicant and approval of the city council after compliance with the public notice provisions of section 7.2.4.C. In considering a request to extend, the planning director and the city council shall consider the criteria described in section 7.4.6.

D. *Limitations on approvals for special land use permits.* A special land use permit shall expire automatically and cease to be of any force or effect if such use shall, for any reason, be discontinued for a period of 12 consecutive months.

E. *Modifications to a special land use permit.* Changes to an approved special land use permit, including changes to approved conditions, expansion of the approved use, or expansion of building square footage, shall be subject to the same application, review and approval process as a new application, including the payment of relevant fees.

(Ord. of 8-2-2017, § 1(7.4.11))

Sec. 7.4.12. Transfer of special land use permits.

A special land use permit, including the site plan and any conditions imposed at the time of the grant of the special land use permit by the city council, is granted to the person, corporation or other legal entity that applied for the permit. A special land use permit expires automatically upon change in ownership of the subject property, unless the special land use permit is transferred as authorized in this section. A special land use permit may only be transferred from one person, corporation, or other legal entity to another person, corporation, or other legal entity upon application to the director of planning. Any such application by any person, corporation, or other legal entity to transfer a special land use permit shall be accompanied by an affidavit of the proposed transferee certifying that the new owner or operator is familiar with and will abide by the approved site plan and all of the conditions, if any, imposed by the city council at the time of the grant of the special land use permit.

If an application to the city council for a special land use permit is submitted due to an existing violation of this chapter and such application for special land use permit is denied, the violation shall be required to be corrected within 30 days of such denial. Notwithstanding the foregoing, the director of planning may extend the deadline for correction of the violation for a period up to 90 days following the denial of the special land use permit application upon a showing that the violation cannot reasonably be corrected within 30 days.

(Ord. of 8-2-2017, § 1(7.4.12))

DIVISION 5. VARIANCES AND APPEALS TO THE ZONING BOARD OF APPEALS

Sec. 7.5.1. Testimony and burden of proof.

The chairperson of the zoning board of appeals, or, in his absence, the acting chairperson, may administer oaths and compel the attendance of witnesses by subpoena.

A. *Requirements.* The standards and requirements of this zoning ordinance and decisions made by public officials are presumed to be valid and just. It shall be the responsibility of an applicant seeking relief to assume the burden of proof and rebut this presumption by presenting sufficient facts and evidence to explain how the proposed appeal or variance is consistent with the general spirit and intent of this zoning ordinance and the comprehensive plan.

B. *Review.* It is the duty of the zoning board of appeals to review such facts and evidence in light of the intent of the zoning ordinance to balance the public health, safety and general welfare against the injury to a specific applicant that would result from the strict application of the provisions of this zoning ordinance to the applicant's property.

(Ord. of 8-2-2017, § 1(7.5.1))

Sec. 7.5.2. Appeals of decisions of administrative officials.

A. *General power.* The zoning board of appeals shall have the power and duty to hear and decide appeals where it is alleged by the appellant that there is error in any final order, requirement, or decision made by an administrative official based on or made in the enforcement of this zoning ordinance or as otherwise authorized by local law or the Code of the City of Stonecrest. Administrative officials must make final decisions covered by this section within 180 days of receipt of all necessary information to make such decision. A failure to act prior to the passage of 180 days shall not be construed to be a final order, requirement or decision within the meaning of this division. If a decision is not made by the 181st day, the requested decision is deemed denied, and becomes appealable. All such appeals shall be heard and decided

following the notice requirements of section 7.2.4, and pursuant to the following criteria and procedural requirements.

B. *Appeals of decisions of administrative officials.* Appeals of decisions of administrative officials may be filed by:

(1) Any person aggrieved by; or

(2) An owner of property within 250 feet of the nearest property line of the property that is the subject of any final order, requirement, or decision of an administrative official, based on or made in the enforcement of this zoning ordinance, or as otherwise authorized by local law or the Code of the City of Stonecrest.

By filing with the secretary of the zoning board of appeals an application for appeal, specifying the grounds thereof, within 15 days after the action was taken by the official that is the subject of the appeal.

C. *Appeal stays all legal proceedings.* An appeal of a decision of an administrative official stays all legal proceedings in furtherance of the action or decision appealed from unless the official from whom the appeal is taken certifies to the zoning board of appeals, after notice of appeal has been filed, that by reason of facts stated in the certificate, a stay would, in that official's opinion, cause imminent peril to life or property. In such a case, legal proceedings shall be stayed only pursuant to a restraining order granted by a court of competent jurisdiction directed to the officer from whom the appeal is taken and on due cause shown.

D. *Appeal stays land disturbance or construction activity in certain situations.* If the action or decision appealed from permits land disturbance or construction activity to commence or continue on residentially zoned property, the appeal stays the land disturbance or construction activity until the zoning board of appeals issues a decision on the appeal. Thereafter, land disturbance or construction activity in such cases shall only be stayed by an order from a court of competent jurisdiction. In all cases involving nonresidentially zoned property, the appeal to the zoning board of appeals does not stay land disturbance or construction activity; such activity shall only be stayed by an order from a court of competent jurisdiction.

E. *Order granted by court.* Thereafter, in such situations land disturbance or construction activity shall only be stayed by an order granted by a court of competent jurisdiction.

F. *Time of hearing.* The zoning board of appeals shall fix a reasonable time for the hearing of the appeal and give notice thereof pursuant to the requirements of section 7.2.4 as well as written notice to the appellant. Any party may appear at the hearing in person, by an agent, by an attorney, or by the submission of written documentation.

G. *Decision of the zoning board of appeals.* Following the consideration of all testimony, documentary evidence, and matters of record, the zoning board of appeals shall make a determination on each appeal. The zoning board of appeals shall decide the appeal within a reasonable time, but in no event more than 60 days from the date of the hearing. An appeal shall be sustained only upon an expressed finding by the zoning board of appeals that the administrative official's action was based on an erroneous finding of a material fact, erroneously applied the zoning ordinance to the facts, or that the administrative official acted in an arbitrary manner. In exercising its powers, the zoning board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and to that end shall have all the powers of the administrative official from whom the appeal was taken and may issue or direct the issuance of a permit, provided all requirements imposed by any applicable laws are met.

(Ord. of 8-2-2017, § 1(7.5.2))

Sec. 7.5.3. Applications for variances; and criteria to be used by the zoning board of appeals in deciding applications for variances.

The zoning board of appeals shall hear and decide applications for variances from the strict application of the regulations of this chapter and chapter 21 where the strict application of any regulation enacted under said chapters would result in exceptional and undue hardship upon the owner of such property. In determining whether or not to grant a variance, the board shall apply the criteria specified in this section to the facts of each case. The board may attach reasonable conditions to any approved variance in accordance with section 7.3.9. Once imposed, conditions shall become an integral part of the approved variance and shall be enforced as such. No changes to an approved condition attached to a variance shall be authorized except by re-application to the zoning board of appeals in full compliance with the applicable provisions of this division. No relief may be granted or action taken under the terms of this division unless such relief can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of this chapter and the comprehensive plan. The zoning board of appeals shall apply the following criteria to the types of applications specified below as follows:

A. Variances from the provisions or requirements of this chapter other than variances described in section 7.5.4 shall be authorized only upon making all of the following findings:

   1. By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic and other site conditions (such as, but not limited to, floodplain, major stand of trees, steep slope), which were not created by the owner or applicant, the strict application of the requirements of this chapter would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district.

   2. The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located.

   3. The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located.

   4. The literal interpretation and strict application of the applicable provisions or requirements of this chapter would cause undue and unnecessary hardship.

   5. The requested variance would be consistent with the spirit and purpose of this chapter and the Comprehensive Plan text.

B. Appeals of decisions regarding building architectural design standards shall be evaluated using the same criteria as section 7.6.7.B.

C. Appeals to the height standards, but not to add stories, shall be evaluated using the criteria as follows:

   1. Adequacy of the size of the site for the use contemplated and whether or not adequate land area is available for the proposed use including provision of all required yards, open space, off-street parking, and all other applicable requirements of the zoning district in which the use is proposed to be located.

   2. Compatibility of the proposed use with adjacent properties and land uses and with other properties and land uses in the district.

   3. Adequacy of public services, public facilities, and utilities to serve the proposed use.

   4. Whether or not the proposed use provides for all required buffer zones and transitional buffer zones where required by the regulations of the zoning district in which the use is proposed to be located.

5. Whether or not the size, scale and massing of proposed buildings are appropriate in relation to the size of the subject property and in relation to the size, scale and massing of adjacent and nearby lots and buildings.

6. Whether or not the proposed use will create a negative shadow impact on any adjoining lot or building as a result of the proposed building height.

(Ord. of 8-2-2017, § 1(7.5.3))

Sec. 7.5.4. Applications for variances to reduce or waive off-street parking or loading space requirements.

The zoning board of appeals shall hear and decide applications for variances to reduce or waive required off-street parking or loading spaces in accordance with the provisions and standards of this section. All such applications shall be heard and decided based on the notice requirements of section 7.2.4. The zoning board of appeals may waive or reduce the required number of parking or loading spaces in any district only upon an expressed finding that:

A. The character of the use of the buildings is such as to make unnecessary the full provision of parking or loading spaces;

B. Reserved;

C. The provision of the full number of parking spaces would have a deleterious effect on an historic building, site, district or archaeological resource;

D. The use has a characteristic that differentiates it from the typical use example used in the formulation of this zoning ordinance;

E. The location of the proposed development is relatively isolated where the opportunity for diversity of use, pedestrian access, and alternative modes is not available; or

F. The developer is providing the additional spaces for general public parking (for hourly or daily parking charges) to serve surrounding development.

(Ord. of 8-2-2017, § 1(7.5.4))

Sec. 7.5.5. Limitations of authority of the zoning board of appeals.

No variance shall be granted by the zoning board of appeals to:

A. Allow a structure or use not listed as a permitted use or a special use in the applicable zoning district or a density of development that is not authorized within such district. This prohibition does not apply to any variance from the supplemental regulations of article 4 of this zoning ordinance or from any other accessory feature or characteristic of a permitted or special use, unless said variance is otherwise prohibited by the regulations of this chapter.

B. Allow any variance which conflicts with or changes any requirement enacted as a condition of zoning or of a special land use permit by the city council.

C. Reduce, waive or modify in any manner the minimum lot width unless the purpose is to reverse a lot merger.

D. Reduce, waive or modify in any manner the minimum lot area established by this chapter.

E. Extend the time period for a temporary outdoor social, religious, entertainment or recreation activity approved by the director of planning.

F. Permit the expansion or enlargement of any nonconforming use of land, nonconforming use of land and buildings in combination, nonconforming use of land and structures in combination, or nonconforming use requiring special land use permit.

G. Permit the reestablishment of any nonconforming use of land, nonconforming use of land and buildings in combination, nonconforming use of land and structures in combination, or nonconforming use requiring special land use permit where such use has lapsed pursuant to the requirements and limitations of article 8 of this chapter.

H. Permit customer contact for a home occupation authorized by this chapter.

I. Allow any variance to increase the height of a building which will result in adding a story.

(Ord. of 8-2-2017, § 1(7.5.5))

Sec. 7.5.6. Decision by the zoning board of appeals.

Each application presented to the zoning board of appeals regarding a variance shall be scheduled for a public hearing within 60 days of the filing of a complete application and shall be supported by findings and conclusions which shall be a part of the record established by the zoning board of appeals for each application. The zoning board of appeals shall grant or deny the variance. In its variance decision, the zoning board of appeals must include findings of fact citing evidence of compliance with all applicable criteria imposed by this chapter or other applicable provisions of law. The zoning board of appeals may adopt the findings of fact of the staff or the applicant, they may adopt the findings of fact of the staff or applicant with modifications, or they may adopt a separate set of facts developed by the zoning board of appeals.

(Ord. of 8-2-2017, § 1(7.5.6))

Sec. 7.5.7. Compliance with standards upon denial.

In such case that an application to the zoning board of appeals is initiated due to an existing violation of this chapter and such application is denied, the violation shall be required to be corrected within 30 days of such denial or as specified by the zoning board of appeals if a greater time period is required. The maximum extension of time the board may grant for correction shall be 90 days.

(Ord. of 8-2-2017, § 1(7.5.7))

Sec. 7.5.8. Appeals of decisions of the zoning board of appeals.

All appeals of all final decisions of the zoning board of appeals under the provisions of this chapter shall be as follows:

Only persons aggrieved by a final decision of the zoning board of appeals may seek review of such decision by petitioning the Superior Court of DeKalb County by writ of certiorari, setting forth plainly the alleged errors. Such petition shall be filed within 30 days after the final decision of the zoning board of appeals is rendered.

(Ord. of 8-2-2017, § 1(7.5.8))

Sec. 7.5.9. Fair Housing Act accommodation variance.

Notwithstanding any other provisions in this chapter to the contrary, the zoning board of appeals may grant a variance to the limitations of this chapter that might have a discriminatory impact on a handicapped person, as

that term is defined in the Federal Fair Housing Act, including, but not limited to, sections 4.2.41 and 4.2.28 as well as the terms defined therein. A Fair Housing Act accommodation variance shall be issued if the applicant for such a variance shows a documented need for accommodation based on medical or scientific studies, that the requested accommodation is the minimum necessary variance from the restrictions of the Code, that the requested accommodation does not impose an undue burden or expense on the city or its citizens, and that the requested accommodation does not effectively create a fundamental alteration of the existing zoning scheme. An application for a Fair Housing Act accommodation variance shall comply with all other procedural requirements for consideration and approval of variances in this division.

(Ord. of 8-2-2017, § 1(7.5.9))

DIVISION 6. SPECIAL ADMINISTRATIVE PERMITS; WAIVERS AND VARIANCES

Sec. 7.6.1. Special administrative permits generally.

The director of planning is hereby authorized to consider and decide requests for special administrative permits specifically authorized in this zoning ordinance. All such requests for special administrative permits shall be filed in writing on forms promulgated by the director of planning.

(Ord. of 8-2-2017, § 1(7.6.1))

Sec. 7.6.2. Standards for special administrative permits, criteria to be applied.

All applications filed for special administrative permit with the director of planning shall be considered and decided pursuant to the standards contained in sections 7.4.6 and 7.4.7 of this chapter, and any supplemental regulations, as applicable, in article 4 of this chapter. All special administrative permits approved by the director of planning shall specify the length of time of the duration of each such special administrative permit.

(Ord. of 8-2-2017, § 1(7.6.2))

Sec. 7.6.3. Time limitations.

All applications for special administrative permits shall be considered and decided by the director of planning no later than 30 days from the receipt of a complete application for such special administrative permit, unless an extension of time is agreed to by the applicant and the director of planning. If the director of planning does not render a decision on the application within 30 days the application shall be deemed denied as of the 31st day after receipt of a complete application.

(Ord. of 8-2-2017, § 1(7.6.3))

Sec. 7.6.4. Reserved.

(Ord. of 8-2-2017, § 1(7.6.4))

Sec. 7.6.5. Administrative variances, administrative waivers; authority.

A. The director of planning is hereby authorized to consider and grant or deny, pursuant to the procedures and standards contained in this division, an administrative variance or an administrative waiver from the following regulations and subject to the standard limitations:

1. Reduce by variance any front, side or rear yard setback by an amount not to exceed ten percent of the district requirement, but not including any transitional buffer zone or any setback which is a condition of zoning or special land use permit, pursuant to the standards specified in section 7.5.3.
2. Reduce by variance the required spacing between buildings in districts where multiple buildings are authorized on a single lot in an amount not to exceed ten percent of the requirement, pursuant to the standards specified in section 7.5.3.
3. Reduce by variance the off-street parking or loading requirements imposed by this chapter in an amount not to exceed ten percent of the district requirement, pursuant to the standards specified in section 7.5.4.
4. Reserved.
5. Increase by variance the retaining wall height as set forth in article 5, division 4 of this chapter by an amount not to exceed two feet, but no such variance is allowed for property located in an historic district.
6. Increase by variance the distancing requirements for retaining walls set forth in article 5, division 4 of this chapter by an amount not to exceed two feet.
7. Increase by variance the elevation of residential thresholds as set forth in article 5, division 2 of this chapter by two feet.
8. Reduce by variance, as follows, if necessary to allow reasonable use following a public road right-of-way donation or acquisition:
    a. To reduce required minimum lot size by up to 50 percent only to maintain the pre-determined yield.
    b. To reduce required setbacks for a permitted or existing structure on a lot in the event of public road right-of-way donations or acquisition that would otherwise cause the lot to be nonconforming with respect to the minimum setback standards.
    c. To reduce the number of parking spaces for any existing or permitted structure below the minimum required parking spaces applicable to the use.
9. Waive architectural building standards and designs provided in article 5 of this chapter, building form standards. The planning director shall notify the city council in writing within ten days of granting said waiver.
10. No administrative variance or waiver shall be authorized to delete, modify, or change in any manner any condition imposed by the city council or the zoning board of appeals.

(Ord. of 8-2-2017, § 1(7.6.5))

Sec. 7.6.6. Procedures for applications for administrative variances and administrative waivers.

A. An application for administrative variance or administrative waiver shall be submitted to the director of planning on forms approved by the director of planning, along with any such fees as may be established by the city council.

1. The director of planning shall review and decide upon each complete application pursuant to the applicable standards referred to in section 7.6.7. A written decision on each such application shall be issued no later than 30 days from the date a complete application was filed, unless an extension is agreed to by the applicant and director of planning. If the director of planning does not render a decision on the application within 30 days the application shall be deemed denied as of the 31st day after receipt of a complete application.

2. The application for an administrative variance or administrative waiver shall state the specific regulation from which exception is sought and the reasons the exception is needed. The application shall contain such information as the director of planning deems necessary to evaluate the request.

3. It shall be the applicant's burden to provide sufficient justification for granting the variance or waiver.

4. The director of planning and staff shall prepare an evaluation statement concerning each application showing the impact of the applicable criteria as set forth in this division.

5. No later than ten calendar days after making a decision, the director of planning shall post a sign on the subject property which reflects the decision of the director of planning and the deadline for taking an appeal of the decision to the zoning board of appeals.

(Ord. of 8-2-2017, § 1(7.6.6))

Sec. 7.6.7. Criteria used by the director of planning in deciding administrative variances and administrative waivers.

A. The director of planning shall grant or deny applications for administrative variances from the strict application of the regulations identified in section 7.6.5.A., where the strict application of the associated regulations would result in exceptional and undue hardship upon the owner of such property. In determining whether or not to grant a variance, the director shall apply the criteria specified in sections 7.5.3 and 7.5.4 to the facts of each application.

B. The director of planning shall consider administrative waivers to amend, reduce, or waive architectural, design, or building material standards found in article 5 of this chapter, building form standards using the following criteria:

1. Whether the proposed changes in appearance will have a substantial adverse effect on the design standards set out in article 5 of this chapter.

2. The extent to which the proposed project complies with the design standard in terms of architectural style, general design arrangement, texture and color (non-painted surfaces) material of architectural features, and other site features.

3. The extent to which the proposal is compatible with other structures in the area.

C. When issuing a written decision on an administrative waiver request, the director of planning may make a decision to approve the waiver, approve with conditions, or deny the waiver, and shall cite the grounds relied upon in reaching the decision.

(Ord. of 8-2-2017, § 1(7.6.7))

Sec. 7.6.8. Persons entitled to appeal to the zoning board of appeals.

Any person identified in section 7.5.2.B. shall have the right to appeal by a decision of the director of planning related to administrative permits, variances or waivers to the zoning board of appeals. Such petition shall be filed within 30 days after the decision of the director is rendered.

(Ord. of 8-2-2017, § 1(7.6.8))

DIVISION 7. ENFORCEMENT, VIOLATIONS, AND PENALTIES

Sec. 7.7.1. Administration and enforcement; granting of permits.

The director of planning shall be responsible for the interpretation, administration and enforcement of the provisions of this chapter. The director of planning shall have the duty to issue development permits as required with respect to this chapter.

(Ord. of 8-2-2017, § 1(7.7.1))

Sec. 7.7.2. Development permits.

Unless otherwise exempted by this article, a development permit shall be required for any proposed use of land or buildings in order to ensure compliance with all provisions of this chapter and all other city ordinances and regulations before any building permit is issued or any improvement, grading, or alteration of land or buildings commences.

(Ord. of 8-2-2017, § 1(7.7.2))

Sec. 7.7.3. Building permits and certificates of occupancy required.

A building permit and a certificate of occupancy shall be obtained from the director of planning prior to occupancy of any building or structure. Such permit and certificate of occupancy shall be approved by the director of planning.

(Ord. of 8-2-2017, § 1(7.7.3))

Sec. 7.7.4. Applications for permits and certificates of occupancy.

A. All applications for development permits shall be made to the director of planning.

B. All applications for building permits and certificates of occupancy shall be made to the director of planning.

C. Prior to the release of a development permit, compliance with zoning shall be reviewed and verified by the director of planning.

D. All applications for development permits, building permits and development permits shall require a certificate of appropriateness from the Historic Preservation Commission if the project is located in an historic district or on an historic property.

(Ord. of 8-2-2017, § 1(7.7.4))

Sec. 7.7.5. Development and building permits; plans required.

A. *Plans required.* All applications for development permits shall be accompanied by complete plans, which shall be drawn to scale, filed in duplicate, and which shall contain the following information:

1. The name and signature of the author, and the author's address and telephone number;
2. Plans shall show the actual shape and dimensions of the lot to be built upon, based on an actual survey by a professional engineer or land surveyor registered in the State of Georgia;
3. Plans shall show all required building setback lines, buffer zones, and open space required by this chapter;
4. Plans shall show the exact sizes and locations on the lot of the buildings and accessory buildings then existing and the lines within which the proposed building or structure shall be erected or altered;
5. Plans shall show the current zoning classification of the property including zoning conditions and zoning variances, if any;
6. Plans shall show the existing or intended use of each building or part of building, and the number of families or housekeeping units the building is designed to accommodate;
7. Plans shall show such other information as may be required by the director of planning with regard to the lot and neighboring lots as may be necessary to determine and provide for the application of and enforcement of the requirements of this chapter.

B. Plans shall be returned to the owner when the plans have been approved by the director of planning.

C. Approval of the preliminary subdivision plat and compliance with all applicable provisions of the subdivision regulations contained in chapter 14 and in this chapter shall constitute approval of the development permit for a subdivision.

D. Development permits for individual structures within approved residential subdivisions or developments shall not be required.

(Ord. of 8-2-2017, § 1(7.7.5))

Sec. 7.7.6. Issuance of development permits.

All development permits shall be issued by the director of planning, which shall in no case grant any development permit for the use, construction or alteration of any land or building if the land or building as proposed to be used, constructed or altered would be in violation of any of the provisions of this chapter or any other ordinances and laws of the city or the state, except as provided herein. Development permits issued on properties for which any variance or special exception has been approved by the board of zoning appeals shall be in compliance with all of the terms and conditions of such approval. Development permits issued on properties for which any special land use permit has been approved by the city council shall be in compliance with all of the terms, conditions, and site plans related to such approval. Development permits issued on properties in an R-SM. MR-1, MR-2, HR-1, HR-2, HR-3, MU-1, MU-2, MU-3, MU-4 or MU-5 district (or prior classifications of retired districts of CH, TND, or any PC district) shall be in compliance with the final plans approved by the director of planning. Development permits issued on properties for which conditional zoning is approved shall be in compliance with the approved statement of zoning conditions for such application. Minor alterations of conditions shall be authorized only in accordance with the provisions of this chapter.

(Ord. of 8-2-2017, § 1(7.7.6))

Sec. 7.7.7. Duration of validity of development permits.

A development permit shall be valid for two years from its issuance subject to the following provisions:

A. If the work authorized in any development permit has not begun within six months from the date of issuance thereof, the permit shall expire.

B. If the work described in any development permit has not been substantially completed within two years of the date of issuance thereof, the permit shall expire.

(Ord. of 8-2-2017, § 1(7.7.7))

Sec. 7.7.8. Building inspection.

The building inspection duties of the director of planning with respect to this chapter shall include, but not be limited to:

A. Issuance of building permits in accordance with all provisions of this chapter and only after the director of planning has issued a development permit.

B. Making field inspections to determine that the building or structure being constructed, reconstructed or structurally altered or used is being constructed or modified in accordance with the site plan for which a development permit and building permit have been issued. When a violation is found to exist, the director of planning shall immediately initiate appropriate legal action to ensure compliance.

C. Ensuring that all construction has been completed in accordance with all applicable requirements of the Code of the City of Stonecrest prior to allowing occupancy.

(Ord. of 8-2-2017, § 1(7.7.8))

Sec. 7.7.9. Records.

The director of planning shall maintain records of all official administrative actions taken by their department pursuant to their duties as set forth in this division. The director of planning shall further maintain records of all complaints filed with their department pursuant to the requirements of this chapter and of all actions taken with regard to such complaints, and of all violations discovered by whatever means, with remedial action taken and disposition of cases. All such records shall be public records and shall be retained in accordance with Georgia's Records Act, O.C.G.A. § 50-18-90 et seq., and pertinent record retention schedules.

(Ord. of 8-2-2017, § 1(7.7.9))

Sec. 7.7.10. Inspection; right of entry.

Upon presentation of city identification to the developer, contractor, owner, owner's agent, operator or occupant, city employees authorized by the director of planning may enter during all reasonable hours any property for the purpose of making inspections to determine compliance with the provisions of this chapter. Should access to the property be denied, an inspection warrant may be obtained as authorized in section 7.7.11 below.

(Ord. of 8-2-2017, § 1(7.7.10))

Sec. 7.7.11. Inspection; warrants.

The director of planning, in addition to other procedures provided, may obtain an inspection warrant under the conditions specified in this division. The warrant shall authorize the director of planning or his designee to conduct a search or inspection of property, either with or without the consent of the person whose property is to be searched or inspected, under the conditions set out in this section.

A. Inspection warrants may be issued by the municipal court when the issuing judge is satisfied that all of the following conditions are met:

   1. The person seeking the warrant must establish under oath or affirmation that the property to be inspected is to be inspected as a part of a legally authorized program of inspection which includes that property or that there is probable cause for believing that there is a condition, object, activity, or circumstance which legally justifies such an inspection of that property.

   2. The issuing judge determines that the issuance of the warrant is authorized by this section and applicable state and federal law.

B. An inspection warrant shall be validly issued only if it meets all of the following requirements:

   1. The warrant is attached to the affidavit required to be made in order to obtain the warrant.

   2. The warrant describes, either directly or by reference to the affidavit, the property upon which the inspection is to occur and is sufficiently accurate that the executor of the warrant and the owner or possessor of the property can reasonably determine from it the property for which the warrant authorizes an inspection.

   3. The warrant indicates the conditions, objects, activities, or circumstances which the inspection is intended to check or reveal.

   4. The warrant refers, in general terms, to the ordinance provisions sought to be enforced.

(Ord. of 8-2-2017, § 1(7.7.11))

Sec. 7.7.12. Remedies.

In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered, converted or maintained, or any building, structure or land is or is proposed to be used in violation of any provision of this chapter, the city may, in addition to other remedies, and after due notice to the owner of the violation, issue a citation for violation of this chapter requiring the presence of the violator in the municipal court. The city may also in such cases institute injunction or other appropriate action or proceeding to prevent an unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use or to correct or abate the violation or to prevent the occupancy of the building, structure or land. Where a violation of this chapter exists with respect to a structure or land, the director of planning may, in addition to other remedies, require that public utility service be withheld therefrom until such time as the structure or premises is no longer in violation of this chapter.

(Ord. of 8-2-2017, § 1(7.7.12))

Sec. 7.7.13. Notice to stop work; revocation of permits.

Whenever any building or premises is being constructed, used, or occupied contrary to the provisions of this chapter or chapter 7, the director of planning may order the work stopped in accordance with the provisions of chapter 7. The director of planning may revoke any building permit or certificate of occupancy for any land,

building or this chapter in order to protect the health, safety and general structure being constructed, used or occupied in violation of welfare of the residents of the city.

(Ord. of 8-2-2017, § 1(7.7.13))

Sec. 7.7.14. Fees.

Fees and charges for permits and inspections shall be as established by official action of the governing authority.

(Ord. of 8-2-2017, § 1(7.7.14))

Sec. 7.7.15. Certificates of occupancy.

Certificates of occupancy are required as follows and shall be issued by the director of planning only after all requirements of this chapter and other applicable parts of the Code of the City of Stonecrest have been met:

A. *For new or altered structures and uses.* No person shall use or permit the use of any building, structure, or premises or part thereof hereafter created, erected, changed, converted, enlarged or moved, wholly or partly, in use or structure, until a certificate of occupancy reflecting the extent and location of the use shall have been issued to the owner or tenant by the director of planning. Where a building permit is involved, such certificate of occupancy shall show that the structure or use, or both, to the affected part thereof, is in conformance with the requirements of this chapter. It shall be the duty of the director of planning to issue such certificate of occupancy if the director of planning finds that all of the requirements of this chapter have been met, and to withhold such certificate of occupancy if the director finds that all of the requirements of this chapter have not been met.

B. *Temporary certificates of occupancy.* A temporary certificate of occupancy for a part of a building or premises may be issued in accordance with the requirements of chapter 7, and the director of planning may impose such additional conditions and safeguards as are necessary in the circumstances of the case to protect the safety of the occupants and of the general public.

C. *Certificates of occupancy for existing uses or structures.* An owner may request a new certificate of occupancy for existing uses or structures. Said requests shall be in the form required by the director of planning and shall require all professional surveys or certifications required by the director of planning to adequately comply with said request. The director of planning shall require as a part of said request, fees to process said requests as are established by the city council. Upon review of the application and other relevant investigation by the director of planning, if in conformance with the requirements of this chapter, the director of planning shall issue a certificate of occupancy for any buildings, premises or use, certifying that the building, premises or use is in conformance with the requirements of this chapter.

(Ord. of 8-2-2017, § 1(7.7.15))

Sec. 7.7.16. Violations of this chapter.

It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure or use any land in the city, or cause the same to be done, contrary to or in violation of any of the provisions of this chapter.

(Ord. of 8-2-2017, § 1(7.7.16))

Sec. 7.7.17. Penalties.

Any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of an offense and upon conviction in municipal court shall be punished as is provided in section 1-11 of the Code. Where any violation continues, each day's continuance of a violation shall be considered a separate offense. The owner of any buildings or premises or parts thereof, where anything in violation of this chapter exists, and any architect, builder, contractor or any other agent of the owner, or any tenant, who commits or assists in the commission of any violation, shall be guilty of a separate offense. In addition, the city may revoke the business license of any entity found guilty of violating this chapter in accordance with the procedures of this subsection for a period of time not to exceed five years, except to the extent prohibited by law.

(Ord. of 8-2-2017, § 1(7.7.17))

Sec. 7.7.18. Repeal of conflicting ordinances; validity of prior approvals and actions.

Nothing herein shall be construed as repealing the conditions of use, operation, or site development accompanying zoning approvals or permits legally and validly issued under previous zoning ordinances or resolutions in DeKalb County; provided, further, that modification or repeal of these past conditions of approval may be accomplished as authorized and provided by this chapter. All variances and exceptions heretofore granted by the zoning board of appeals shall remain in full force and effect, and all terms, conditions and obligations imposed by the zoning board of appeals shall remain in effect insofar as required for the initiation of any proceedings against these violations and for the prosecution of any violations heretofore commenced.

(Ord. of 8-2-2017, § 1(7.7.18))

Sec. 7.7.19. Reserved.

ARTICLE 8. NONCONFORMITIES

Sec. 8.1.1. Statement of intent and purpose.

Within the zoning districts established by this chapter, or by amendments that may later be adopted, there exist lots, uses of land, uses of land and buildings, uses of land and structures, and characteristics of buildings, structures and sites which were lawful before the effective date of the ordinance from which this chapter is derived's adoption or amendment, but that are now prohibited under the terms of this chapter or due to future amendments, collectively referred to as nonconforming situations. Such nonconforming situations are hereby declared to be incompatible with authorized and permitted uses in the zoning districts involved. It is the intent of the city council to require the cessation of certain nonconforming situations and to permit others to continue until they are otherwise removed or cease. It is further the intent of the city council that nonconforming situations not be used as grounds for adding other buildings, structures, or uses of land prohibited by this chapter, and that no such nonconforming building, structure, or use of land be enlarged, expanded, moved, or otherwise altered in a manner that increases the degree of nonconformity, except where expressly authorized in this zoning ordinance.

(Ord. of 8-2-2017, § 1(8.1.1))

Sec. 8.1.2. Applicability.

A. *Applicability.* Nonconforming regulations apply only to those nonconforming situations that were legally authorized when established or that were subsequently approved through procedures in effect at the time the approval was obtained. Additionally, except as provided in section 8.1.5.B., nonconforming situations must have been maintained continuously and without interruption since the initial existence or subsequent approval of the nonconforming situation. Nonconforming situations which were not authorized when established or have not been continuously maintained over time in accordance with this subsection have no legal right to continue and must terminate as set forth herein.

B. *Documentation.* An owner or applicant may request from the director of planning a determination of nonconforming status. The owner or applicant must provide documentation sufficient to show that the situation was authorized when established and was continuously maintained over time. Upon receipt of the owner or applicant's evidence, the director of planning will determine if the evidence is satisfactory and, if so, shall issue a written determination that the lot, building, structure and/or use is a legal nonconforming situation. The burden of establishing the nonconforming status of a particular lot, building, structure or use is on the applicant or owner of the property or use.

C. *Evidence that a nonconforming situation was authorized when established.* Standard evidence that the proposed nonconforming situation was authorized, or legal, when established, includes, but is not limited to, the following:

1. Building or land disturbance permits;
2. Business licenses;
3. Adopted zoning ordinances or maps in force at the time of permitting;
4. Conditions of zoning;
5. Other appropriate evidence as determined by the director of planning or designee.

D. *Evidence that a nonconforming situation has been continuously maintained since inception.* Standard evidence that the proposed nonconforming use has been continuously maintained without interruption since inception, includes, but is not limited to:

1. Utility bills;
2. Tax records;
3. Business licenses;
4. Advertisements in dated publications;
5. Insurance policies;
6. Leases;
7. Receipts; and
8. Other appropriate evidence as determined by the director of planning or designee.

E. *Evidence of discontinuance or abandonment.* When considering whether a nonconforming situation has been continuously maintained without interruption since inception, the director of planning may consider evidence of the following:

1. Failure to maintain regular business hours, typical or normal for the use;
2. Failure to maintain equipment, supplies or stock-in-trade that would be used for the active operation of the use;
3. Failure to maintain utilities that would be used for the active operation of the use;
4. Failure to pay taxes, including, but not limited to, sales tax, workers' compensation taxes, corporate taxes that would be required for the active operation of the use;
5. Failure to maintain required local, state or federal licenses or other approvals that would be required for the active operation of the use;
6. Failure to maintain applicable business licenses; and
7. Other appropriate evidence as determined by the director of planning.

F. *Change to a conforming situation.* A nonconforming situation may be changed to a conforming situation by right. Once a conforming situation occupies a site that was previously nonconforming, the nonconforming rights are lost, and a nonconforming situation shall not be re-established.

G. *Maintenance.* Normal maintenance and repair of nonconforming situations is allowed and does not alter legal conformity status.

H. *Strengthening and restoring to safe condition.* Nothing in this article shall prevent the strengthening or restoration to a safe condition of any part of a building or structure declared unsafe by the director of planning, and such strengthening or restoration shall not cause the loss of nonconforming status, provided such strengthening or restoration would not constitute a violation of the regulation of section 8.1.15 regarding reconstruction of damaged or destroyed nonconforming structures.

(Ord. of 8-2-2017, § 1(8.1.2))

Sec. 8.1.3. Legal nonconforming lot.

A lot of record that at the effective date of this zoning ordinance does not conform to the applicable minimum road frontage requirement, minimum lot area, or lot width requirements for the zoning district in which it is located may still be used as a building site, provided that the height, buffer, setback, and other dimensional requirements of the zoning district in which the lot of record is located are complied with, or a variance therefrom is obtained.

(Ord. of 8-2-2017, § 1(8.1.3))

Sec. 8.1.4. Legal nonconforming single-family lots; lot merger requirements.

A. In any zoning district in which single-family dwelling units are allowed, a single-family dwelling unit and allowed accessory structures may be erected on any single nonconforming lot of record so long as such single nonconforming lot of record is not in common ownership with any other contiguous lot or lots. A property owner shall not be permitted to erect a structure on a nonconforming lot of record if he could have used his contiguous land to avoid the nonconformity.

B. Two or more contiguous lots of record that are held in common ownership on the effective date of the ordinance from which this section is derived or come into common ownership after the effective date of this section shall be governed by this subsection B. or subsection C. of this section. If any contiguous lots of record held in common ownership do not meet the requirements established in this Code for street frontage, access requirements, lot width or lot size, then all of the contiguous lots of record held in common ownership shall be considered to be an undivided lot for the purpose of compliance with the provisions of this Code. No portion of the resulting undivided lot shall then be considered a separate lot, a nonconforming lot of record or used or conveyed in a manner which is not in compliance with the existing street frontage, access, lot width or lot area requirements established by this Code and/or any amendments thereto. No division of any hereby merged nonconforming lots of record held in common ownership shall be made which creates a substandard lot. If two or more contiguous nonconforming lots of record are in common ownership and, as merged, the property is compliant for development with a single-family dwelling without violating the provisions of this Code, then none of the former nonconforming lots of record may be considered nonconforming and authorized for single-family development. A property owner shall not be permitted to create a nonconforming lot of record if he could have used his contiguous lots to avoid the nonconformity.

C. Two or more nonconforming contiguous lots of record that are held in common ownership as of the effective date of this section, or that come into common ownership after the effective date of this section shall be governed by the requirements of subsection B. of this section unless the owner obtains a variance from the Zoning Board of appeals pursuant to the provisions and the criteria set forth in article 7 of this chapter.

D. Whenever a variance from the strict application of subsection B. of this section is sought with respect to properties located within an historic district, as defined in section 14-410, the variance applicant shall first obtain a certificate of appropriateness from the historic preservation commission finding that the proposed variance allowing the subject lot to retain its legal nonconforming status will not have a substantial adverse effect on the aesthetic, historic, or architectural significance and value of the historic property or the historic district. In approving such a certificate of appropriateness, the historic preservation commission may include a finding that merger of lots pursuant to the strict application of subsection B. would have a substantial adverse effect on the aesthetic, historic, or architectural significance and value of the historic property or the historic district.

(Ord. of 8-2-2017, § 1(8.1.4))

Sec. 8.1.5. Nonconforming use.

A legal use in existence on the effective date of this zoning ordinance or any amendment thereto may be continued even though such use does not conform with the use provisions of the zoning district in which said use is located, except as otherwise provided in this section.

A. Change of use. A nonconforming use shall not be changed to another nonconforming use. A change in tenancy or ownership shall not constitute termination or abandonment of the nonconforming use, provided that the use itself remains unchanged and is continuously maintained.

B. Discontinuance or abandonment. A nonconforming use shall not be re-established after discontinuance or abandonment for six consecutive months, unless the cessation of the nonconforming use is a direct

result of governmental action impeding access to the property. Vacancy or non-use of a building for six continuous months, regardless of the intent of the owner or tenant, shall constitute discontinuance or abandonment under this subsection.

C. A nonconforming use of land shall not be enlarged, expanded, moved, or otherwise altered in any manner that increases the degree of nonconformity.

(Ord. of 8-2-2017, § 1(8.1.5))

Sec. 8.1.6. Nonconforming structures.

A. A legal structure in existence on the effective date of this zoning ordinance or any amendment thereto that could not presently be built under the provisions of this chapter because of restrictions on building area, lot coverage, height, minimum yard setbacks, or other characteristics of the structure or its location on the lot shall be deemed a legal nonconforming structure subject to this article 8 of this chapter.

B. No legal nonconforming structure shall be enlarged, or structurally altered, in a way that increases its degree of nonconformity, except as expressly permitted in this article 8 of this chapter.

C. Alteration of legal nonconforming structures occupied by permitted, conforming uses may be allowed for improvement or modification, provided that the structure may not be enlarged and the alterations must either comply with this chapter or result in a reduction in site or structure nonconformity. See also section 8.1.16.

(Ord. of 8-2-2017, § 1(8.1.6))

Sec. 8.1.7. Landscaping and screening requirements for new or additional parking, service or storage areas.

New or additional automobile parking, service, or storage areas may be added to a legal nonconforming structure or site that contains a conforming use, provided that all required landscaping, lighting, and screening requirements are met in the new or additional parking, service or storage area.

(Ord. of 8-2-2017, § 1(8.1.7))

Sec. 8.1.8. Nonconforming parking.

On an existing structure, no new permitted use may be substituted, nor shall an existing permitted use be expanded unless the requirements for off-street parking and loading shall be met for the proposed use and for any expansion, unless a variance is granted, pursuant to article 7 of this chapter.

(Ord. of 8-2-2017, § 1(8.1.8))

Sec. 8.1.9. Prior nonconformities.

The adoption of this chapter shall not extend the six-month time period of discontinuance or abandonment set forth in section 8.1.5.B. for a legal nonconforming use that was nonconforming prior to the time this chapter was adopted.

A use, lot, building, or structure that was previously legally nonconforming shall become conforming if, as a result of amendments to this chapter, such use, lot, building, or structure complies with the requirements of this chapter.

(Ord. of 8-2-2017, § 1(8.1.9))

Sec. 8.1.10. Nonconforming signs.

See chapter 21, signs for provisions regarding nonconforming signs.

(Ord. of 8-2-2017, § 1(8.1.10))

Sec. 8.1.11. Nonconformities caused by government action.

If a property is required by a federal, state or local government to provide right-of-way or easements that cause an existing structure to have nonconforming yards or setbacks, the property and structure shall be deemed to be legal nonconforming, and, from that time forward, the owner may not expand any existing building in a way to increase the degree of nonconformity or to build new structures that are nonconforming.

(Ord. of 8-2-2017, § 1(8.1.11))

Sec. 8.1.12. Rezoning that results in nonconforming structures.

For structures or lots that become nonconforming due to rezoning, the structure or lot shall be considered legal nonconforming, subject to the requirements of this article.

(Ord. of 8-2-2017, § 1(8.1.12))

Sec. 8.1.13. Nonconforming uses requiring a special administrative permit or special land use permit.

No use, building or structure that was authorized as of right prior to the effective date of the ordinance from which this chapter is derived but would require a special administrative permit or special land use permit upon the effective date of the ordinance from which this chapter is derived, shall be enlarged, expanded, moved, or otherwise altered in any manner except after application for and approval of the required special administrative permit or special land use permit. Normal repair and maintenance of legal nonconforming buildings and structures is authorized without the need for special permits. If the use of a legal nonconforming building or structure is discontinued for a continuous period of six months, it may not be reestablished unless such discontinuance was a direct result of governmental action as provided by section 8.1.11.

(Ord. of 8-2-2017, § 1(8.1.13))

Sec. 8.1.14. Buildings and structures where construction has begun.

To avoid undue hardship, nothing in this chapter shall be deemed to require a change in the plans, construction, or designated use of any legal nonconforming building or structure for which land disturbance or building permits were lawfully applied for or issued, or for which preliminary or final subdivision plats were lawfully submitted, prior to the effective date of the ordinance from which this chapter is derived or amendment thereto, provided:

(i) Any application on which reliance is placed for the existence of nonconforming rights must have been complete as that term is defined in article 9 of this chapter;

(ii) Such permit or approval has not by its own terms expired; and

(iii) Actual building construction is carried on pursuant to said permit or approval and limited to and in strict accordance with said permit or approval.

Notwithstanding any other provisions to the contrary, no renewals or extensions of such permit or approval shall be authorized.

(Ord. of 8-2-2017, § 1(8.1.14))

Sec. 8.1.15. Reconstruction of damaged or destroyed nonconforming structures.

A legal nonconforming building or structure that has been damaged by fire, flood or other natural cause to an extent that the estimated cost of reconstruction does not exceed 60 percent of its fair market value according to the DeKalb County Tax Assessor's valuation for the tax year in which the damage occurred, as determined by the director of planning, may be reconstructed and used as it was prior to being damaged if a complete permit application is submitted for said re-construction within two years of the date of the damage and the work progresses continuously upon issuance of the permit therefor. If said building or structure has been determined by the director of planning to have been damaged to an extent that the estimated cost of reconstruction exceeds 60 percent of its fair market value according to the DeKalb County Tax Assessor's valuation for the tax year in which the damage occurred, then any repair, reconstruction or new construction shall conform to the then existing requirements of the zoning district in which said building or structure is located.

(Ord. of 8-2-2017, § 1(8.1.15))

Sec. 8.1.16. Expansion, redevelopment or improvement of legal nonconforming buildings, structures and/or sites.

A. Major redevelopment. Expansion, alteration or redevelopment of a legal nonconforming building or structure to an extent that the estimated cost of the expansion, alteration or redevelopment exceeds 60 percent of its fair market value prior to expansion, alteration or redevelopment according to the DeKalb County Tax Assessor's valuation of the improvements for the tax year in which the first permit for expansion, alteration or redevelopment is applied for shall require the entire building or structure to conform to Code in every respect, except as approved by variance or special administrative permit as applicable.

B. Minor redevelopment. Expansion, alteration or redevelopment of a legal nonconforming building or structure to an extent that the estimated cost of the expansion, alteration or redevelopment is no greater than 60 percent of its fair market value prior to expansion, alteration or redevelopment according to the DeKalb County Tax Assessor's valuation of the improvements for the tax year in which the first permit for expansion, alteration or redevelopment is applied for shall require the portion of the building or structure comprising the expansion, alteration or redevelopment to conform to all codes that are relevant to the nature of the expansion, alteration or redevelopment.

C. Proposed improvements to access, parking, landscaping, pedestrian systems, lighting, utilities, and stormwater facilities, shall conform in every respect, except as approved by variance or special administrative permit as applicable.

D. Notwithstanding subsections A., B., and C. of this section, no building or structure on property on which a nonconforming use is located shall be expanded, altered, or redeveloped in any way.

(Ord. of 8-2-2017, § 1(8.1.16))

Sec. 8.1.17. Prior variances, special exceptions, and special permits authorized.

Variances and special permits lawfully authorized and granted prior to the effective date of this zoning ordinance shall continue in effect, provided the terms and conditions of said authorization are followed.

(Ord. of 8-2-2017, § 1(8.1.17))

ARTICLE 9. DEFINITIONS

Sec. 9.1.1. Statement of intent and purpose.

The definitions contained herein shall apply to this chapter. Any word or phrase not defined below but otherwise defined in the Code shall be given that meaning. All other words or phrases shall be given their common ordinary meaning unless the context clearly indicates otherwise.

(Ord. of 8-2-2017, § 1(9.1.1))

Sec. 9.1.2. Interpretation.

For the purpose of this chapter, words and terms are to be interpreted as follows:

A. Unless the obvious construction of the terming indicates otherwise, words used in the present tense include the future; words used in the masculine gender include the feminine and neuter; words used in the singular number include the plural; and words used in the plural include the singular. An abbreviated word shall have the same meaning as the unabbreviated word.

B. The term "shall" means "must" or "is mandatory."

C. Unless otherwise specified, all distances shall be measured horizontally and at right angles or radially to the line in relation to which the distance is specified.

D. The term "lot" shall be deemed also to mean "plot"; the term "used" shall be deemed also to include "designed," "intended," or "arranged to be used"; the term "erected" shall be deemed also to include "constructed," "reconstructed," "altered," "placed," "relocated" or "removed."

E. The terms "land use" and "use of land" shall be deemed also to include "building use" and "use of building."

F. Where words are not herein defined, those words, terms and phrases, when used in this article, shall have the meanings ascribed to them as directed above, except where the text clearly indicates a different meaning.

(Ord. of 8-2-2017, § 1(9.1.2))

Sec. 9.1.3. Defined terms.

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:

ADA means the Americans with Disabilities Act.

A-weighted sound level means the sound level reported in units of dB(A) approximating the response of human hearing when measuring sounds of low to moderate intensity as measured using the A-weighting network with a sound level meter meeting the standards set forth in ANSI S1.4-1983 or its successors.

Abandonment means the relinquishment, discontinuance and cessation of a use, other than as a result of government action, for any continuous period of time as may be provided in this chapter.

Abutting means having property or district lines in common. This does not include property separated by a road or right-of way.

Accessory building means a building detached from the principal building located on the same lot and customarily incidental and subordinate in area, extent, and purpose to the principal building or use.

Accessory dwelling unit. See *Dwelling unit, accessory.*

Accessory equipment. See section 4.2.57.B.

Accessory structure means a structure detached from the principal building and located on the same lot and customarily incidental and subordinate in area, extent, and purpose to the principal building or use. Compare with *Building, primary.*

Accessory use means a use of land or building or structure or portion thereof customarily incidental and subordinate to the principal use of the land or building and located on the same lot with the principal use. See article 4 of this chapter for supplemental regulations.

Active recreation means leisure activities, usually performed with others, often requiring equipment and taking place at prescribed places, sites, or fields. The term "active recreation" includes, but is not limited to, swimming, tennis, and other court games, baseball and other field sports, golf and playground activities.

Activity center means a character area designed by the Comprehensive Plan.

Adaptive reuse means buildings and sites constructed and developed originally for one use but converted to or repurposed for a use not traditionally occupying the building or development form. For example, the conversion of former hospital or school buildings to residential use, or the conversion of an historic single-family home to office use.

Adjoining property means a property that touches or is directly across a street, easement or right-of-way (other than an interstate, principal arterial, urban freeway/expressway or urban principal arterial) from the subject property.

Adult bookstore or *adult video store* means a commercial establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration any one or more of the following means books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videocassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas. A "principal business activity" exists where the commercial establishment meets any one or more of the following criteria:

(1) At least 35 percent of the establishment's displayed merchandise consists of the items;

(2) At least 35 percent of the retail value (defined as the price charged to customers) of the establishment's displayed merchandise consists of the items;

(3) At least 35 percent of the establishment's revenues derive from the sale or rental, for any form of consideration, of said items;

(4) The establishment maintains at least 35 percent of its floor space for the display, sale, or rental of the items (aisles and walkways used to access the items shall be included in the term "floor space" maintained for the display, sale, or rental of the items);

(5) The establishment maintains at least 500 square feet of its floor space for the display, sale, and/or rental of the items (aisles and walkways used to access the items shall be included in the term "floor space" maintained for the display, sale, or rental of the items);

(6) The establishment regularly offers for sale or rental at least 2,000 of the items;

(7) The establishment regularly features the items and regularly advertises itself or holds itself out, in any medium, by using the terms "adult," "adults-only," "XXX," "sex," "erotic," or substantially similar language, as an establishment that caters to adult sexual interests; or

(8) The establishment maintains an adult arcade, which means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting specified sexual activities or specified anatomical areas.

Adult cabaret means a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment that regularly features live conduct characterized by semi-nudity. No establishment shall avoid classification as an adult cabaret by offering or featuring nudity.

Adult day care means the provision of a comprehensive plan of services that meets the needs of aging adults, under a social model. This term shall not include programs which provide day habilitation and treatment services exclusively for individuals with developmental disabilities.

Adult day center means a facility serving aging adults that provides adult day care or adult day health services for compensation, to three or more persons. This term shall not include a respite care services program.

~~*Adult daycare center* means an establishment operated by any person with or without compensation for providing for the care, supervision, and oversight only during day-time hours of seven or more adults who are elderly, physically ill or infirm, physically handicapped, or mentally handicapped. The term "adult daycare center" may also include recreational and social activities for said persons.~~

~~*Adult daycare facility* means an establishment operated by any person with or without compensation for providing for the care, supervision, and oversight only during day-time hours of six or fewer adults who are elderly, physically ill or infirm, physically handicapped, or mentally handicapped. The term "adult daycare facility" may also include recreational, cultural and social activities for said persons.~~

Adult day health services means the provision of a comprehensive plan of services that meets the needs of aging adults under a medical model. This term shall not include programs which provide day habilitation and treatment services exclusively for individuals with developmental disabilities.

Adult motion picture theater means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas are regularly shown to more than five persons for any form of consideration.

Affordable housing means housing that has a sale price or rental amount that is within the means of a household that may occupy middle, moderate, or low-income housing. In the case of dwelling units for sale, housing that is affordable means housing in which mortgage, amortization, taxes, insurance, and condominium or association fees, if any, together constitute no more than 28 percent of such gross annual household income for a household of the size which may occupy the unit in question. In the case of dwelling units for rent, housing that is affordable means housing for which the rent and utilities constitute no more than 30 percent of such gross annual income for a household of the size that may occupy the unit in question.

Aggrieved person means a person who either:

(a) Is the applicant or the owner of property that is the subject of an application or a decision by an administrative official; or

(b) Has a substantial interest in an action appealed from and that is in danger of suffering special damage or injury not common to all property owners similarly situated.

Aging adults means persons 60 years of age or older or mature adults below the age of 60 whose needs and interests are substantially similar to persons 60 years of age or older who have physical or mental limitations that restrict their abilities to perform the normal activities of daily living and impede independent living.

Agricultural activities means activities performed in order to cultivate the soil, produce crops, or raise livestock.

Agricultural produce stand means a temporary building or structure used for the retail sales of fresh fruits, vegetables, flowers, herbs, or plants and may include accessory sales of other unprocessed foodstuffs, home processed food products such as jams, jellies, pickles, sauces, or baked goods, and home-made handicrafts.

Alcohol outlet means a retail establishment that sells beer, malt beverages, hard cider, and/or wine for off-site consumption. This includes grocery stores and retail stores, less than 12,000 square feet, that may sell beer, malt beverages, hard cider and/or wine for off-site consumption, as well as other products.

All-weather material means a hard surface, dust-free material, capable of withstanding normal weather conditions during ordinary use without substantial deterioration. Gravel, rock, or screenings alone, without use of a petroleum or cement binder, does not meet the definition of an all-weather material.

Alley means a minor way, which is used primarily for vehicular service access to the back or side of properties otherwise fronting on a street.

Alternative energy production means an energy production site or facility that is dedicated to the commercial production of electricity by means of wind, solar, biomass, grease, oil, or other non-petroleum energy source.

Alternative fuel vehicle means a vehicle that runs on a fuel other than traditional petroleum fuels (petrol or diesel) including means biodiesel, denatured alcohol, electricity, hydrogen, methanol, mixtures containing up to 85 percent methanol or denatured ethanol, natural gas, and propane (liquefied petroleum gas).

Amateur radio service means radio communication services, including amateur satellite service and amateur service, which are for the purpose of self-training, intercommunication, and technical investigations carried out by duly licensed amateur radio operators solely for personal aims and without pecuniary interest, as defined in title 47, Code of Federal Regulations, Part 97 and regulated thereunder.

Amateur radio service antenna structure means a tower and antenna for radio transmission and reception which is maintained by a licensed amateur radio operator as an accessory structure.

Ambulance service facility means a privately-owned facility for the dispatch, storage, and maintenance of emergency care vehicles.

Amenity means a natural or manmade feature that enhances a particular property, increasing aesthetics and desirability to the owner or community.

Amplified sound reproduction device means any device capable of producing, reproducing or emitting sounds by means of any loudspeaker or amplifier.

Amusement park means an outdoor recreation facility, which may include structures and buildings, where there are various devices for entertainment, including rides, booths for the conduct of games or sale of items, and buildings for shows and entertainment.

Animal means any vertebrate member of the animal kingdom, excluding humans.

Animal hospital means a place where animals or pets are given medical or surgical treatment and are cared for during the time of such treatment. Use of an animal hospital as a kennel shall be limited to short-term boarding and shall be only incidental to such hospital use.

Animal shelter/rescue center means a facility used to house or contain stray, homeless, abandoned, or unwanted animals and that is owned, operated, or maintained by a public organization or by an established humane society, animal welfare society, society for the prevention of cruelty to animals, or other non-profit organization devoted to the welfare, protection, and humane treatment of animals.

ANSI means the American National Standards Institute.

Antenna. See section 4.2.57.B.

Antique shop means a place offering antiques for sale. An antique, for the purposes of this chapter, shall be a work of art, piece of furniture, decorative object, or the like, of or belonging to the past, at least 30 years old.

Apartment. See *Dwelling, multifamily.*

Apartment unit means One or more rooms with a private bath and kitchen facilities comprising an independent, self-contained dwelling unit in a building containing four or more dwelling units.

Apiary means a place where beehives of honey bees are kept.

Apiculture. See *Beekeeping.*

Apparel store means a retail store where clothing is sold, such as department stores, dry goods and shoe stores, and dress, hosiery, and millinery shops.

Appeal means a review authorized by this chapter of any final order, requirement, or decision of the planning director or designee that is based on or made in the enforcement of this chapter.

Applicant means a person who acts in his own behalf or as the agent of a property owner, who seeks a zoning decision, or who seeks a decision regarding a permit or approval by the director of planning.

Arcade means an area contiguous to a street or plaza that is open and unobstructed to a height of not less than 12 feet and that is accessible to the public at all times.

Archaeological resource means any material remains of past human culture or activities which are of archaeological interest, including, but not limited to, the following means basketry, bottles, carvings, graves, human skeletal materials, pit houses, pottery, rock intaglios, rock paintings, soapstone quarries, structures or portions of structures, tools, weapons, weapon projectiles, or any portion or piece of any of the foregoing items. Non-fossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources under the regulations of this chapter, unless found in archaeological context. No item shall be deemed to be an archaeological resource under the regulations of this chapter unless such item is at least 200 years of age.

Art, private, means a work or collection, usually displayed in a gallery or curated space, that is owned by a private individual or entity.

Art, public, means any visual work of art located so as to be visible in a public, city-owned area; on the exterior of any city-owned facility; within any city-owned facility in areas designated as public areas, lobbies, or public assembly areas; or on non-city property if the work of art is installed or financed, either wholly or in part, with city funds or grants procured by the city. Such public art shall not contain characteristics of an advertising sign.

Art gallery means an establishment engaged in the sale, loan, or display of art books, paintings, sculpture, or other works of art. The term "art gallery" does not include libraries, museums, or noncommercial art galleries.

Articulated facade means a building elevation that faces a street and that is constructed with a variety of surfaces, materials, colors, projections, recesses, or similar features.

Asphalt manufacturing means an industrial facility used for the production of asphalt, concrete, or asphalt or concrete products that are used in building or construction, and that includes facilities for the administration or management of the business, the stockpiling of bulk materials used in the production process or of finished products manufactured on the premises, or the storage and maintenance of required equipment, but does not include the retail sale of finished asphalt or concrete products.

Assembly hall means a meeting place at which civic, educational, political, religious, or social groups assemble regularly or occasionally, including, but not limited to, schools, churches, theaters, auditoriums, funeral homes, stadiums, and similar places of assembly.

Assisted living facility means a multifamily structure whose occupants are 55 years of age or older, or where each unit is occupied by at least one person who is 55 years of age, and where occupants receive assistance with daily living activities.

Atrium means an open hall lighted from above, into which rooms open at one or more levels.

Attic means an open space at the top of a house just below the roof; often used for storage.

Authorized (permitted) use means any use allowed by right in a zoning district and subject to the restrictions applicable to that zoning district.

Automobile means a self-propelled, free-moving vehicle, which is licensed by the appropriate state agency as a passenger vehicle. For the purpose of this chapter, the term "automobile" shall include motorcycles, scooters, small trucks used for daily passenger trips, sports utility vehicles (SUVs), and similar passenger vehicles or any vehicle classified by the Georgia Department of Driving Services as a Class "C" vehicle.

Automobile and truck rental and leasing means a business that rents or leases automobile or light trucks, and may store the automobiles and trucks on the same site as the business office.

Automobile brokerage means the business of providing services for the purchase or leasing of a vehicle, whether noncommercial or commercial and including trailers and RVs. The brokered vehicles are not stored on the same lot as that on which the business office is located. A vehicle brokerage may find the desired vehicle, negotiate the price or lease contract, manage paperwork associated with the sale or lease, or secure financing for the sale or lease of the vehicle.

Automobile dealership. See *Automobile sales.*

Automobile mall means a single location that provides sales space and centralized services for a number of automobile dealers and may include related services as auto insurance dealers and credit institutions that provide financing opportunities.

Automobile manufacture means a facility engaged in the manufacture of passenger cars, light trucks, and/or light commercial vehicles.

Automobile parts or tire store means a building that is used for the retail sale of new or used parts or tires for noncommercial vehicles. The term "automobile parts or tire store" does not include outdoor storage yards.

Automobile recovery and storage means a facility that provides temporary outdoor storage of Class "C" passenger vehicles and motorcycles that are intended to be claimed by the titleholders or their agents. Such storage includes vehicles that have been towed, or that will be transported to a repair shop or will be subject to an insurance adjustment after an accident. See *Vehicle storage* and *Tow service.*

Automobile rental and leasing means a business that rents or leases automobiles.

Automobile repair, major, means a business that services passenger vehicles, including the dismantling and repair of engines, transmissions, carburetors, drive shafts, and similar major vehicle parts, the provision of collision repair services including body frame straightening and body part replacement, or the painting or repainting of passenger vehicles and motorcycles. Major automobile repair establishments may also perform minor automobile repairs.

Automobile repair, minor, means a business that repairs, replaces, or services tires, ignitions, hoses, spark plugs, and other minor vehicle parts as part of the regular upkeep of passenger vehicles and motorcycles, and may perform regular maintenance such as brake repair and replacement, lubrication, or replacement of small or incidental automobile parts. Minor automobile repair and maintenance may also, as an accessory function, include automobile detailing, including the application of paint protectors, the cleaning or polishing of a vehicles interior, exteriors, or engine, and the installation of aftermarket parts and accessories such as tinting, alarms, sound systems, spoilers, sunroofs or headlight covers. Minor automobile repair and maintenance does not include the dismantling and repair of engines, transmissions, or drive shafts, the provision of collision repair services including body frame straightening and body part replacement, or the painting or repainting of passenger vehicles. Minor automobile repair does not include automobile car washes where vehicles are washed and/or waxed either by hand or by mechanical equipment.

Automobile sales means a business establishment that engages in the retail sale or the leasing of new or used automobiles, small passenger trucks, motorcycles, or other passenger vehicles. Such merchandise may be stored on the same lot as that on which the business office is located. An automobile sales dealership may be located in an automobile mall. See *Automobile mall*, *Automobile brokerage.*

Automobile service station means a building, structure, or land used primarily for the sale of automotive fuels such as gasoline. This term includes the following accessory uses means convenience stores; the sale of incidental vehicle parts and fluids such as motor oil, coolant, windshield wipers, seat or floor pads; and minor automobile repair, as defined in this chapter.

Automobile upholstery shop means a building in which automobile seats are re-covered or re-upholstered. For the purposes of regulating home occupations, an automobile upholstery shop shall be considered to be major automobile repair.

Automobile wash/wax service means a building, structure, or land that is used for the washing, waxing, cleaning, or detailing of automobiles, as defined in this article. The service may be enclosed in a building or conducted outdoors, includes mobile wash/wax service, and may be a principal or accessory use.

Automobile wrecking yard. See *Salvage yard.*

Awning means a roof-like cover, usually of canvas or plastic, which can fold, collapse and retract, extended over or before places like storefront, window, door or deck as a shelter from the sun, rain, or wind.

Balcony means a horizontal flat surface that projects from the wall of a building, is enclosed by a parapet or railing, and is entirely supported by the building.

Bank, credit unions or other similar financial institutions means any building, property or activity of which the principal use or purpose is for federally insured depository purposes and including the provision of financial services such as loans and automated teller machines, but does not include cash advance, check cashing establishments, short-term loan, and pay day lending.

Barber shop means an establishment or place of business within which the practice of barbering is engaged in or carried on by one or more barbers.

Basement means a space having one-half or more of its floor-to-ceiling height below the average finished grade of the adjoining ground and with a floor-to-ceiling height of not less than 6½ feet.

Beauty salon means a commercial building, residence, or other building or place where hair cutting or styling or cosmetology is offered or practiced on a regular basis for compensation. This term includes the training of apprentices under the regulation of such training by the appropriate licensing board.

Bed and breakfast establishment means accessory use of a single-family detached dwelling by the homeowner who resides in the dwelling, to provide sleeping accommodations to customers. Breakfast may also be provided to the customers at no extra cost. For the purpose of this definition, the term "customer" means a person who pays for the sleeping accommodations for fewer than 30 consecutive days.

Bedroom means a private room planned and intended for sleeping, separated from other rooms by a door, accessible to a bathroom without crossing another bedroom, and having a closet.

Beekeeping means the maintenance of honey bee colonies, commonly in hives, by humans.

Beer growler means an alcohol outlet that pours beers from a tap into reusable containers for off-site consumption. The term "beer growler" does not include distilled liquor sales.

Beer or *malt beverage* means any alcoholic beverage obtained by fermentation of any infusion or decoction of barley, malt, hops or any other similar product, or any combination of such products in water, containing up to 14 percent alcohol by volume, and including ale, porter, brown, stout, lager beer, small beer and strong beer. The term "malt beverage" does not include sake, known as Japanese rice wine.

Best management practices (BMP) means activities, procedures, structures or devices, systems of regulations and activities, or other measures that prevent or reduce pollution of the waters of the United States. BMPs are intended to:

a) Control soil loss, protect natural features such as trees, and reduce water quality degradation;

b) Control drainage from outside storage of materials;

c) Minimize adverse impacts to surface and groundwater flow and circulation patterns, and to the chemical, physical, and biological characteristics of streams and wetlands; and

d) control industrial plant site runoff, spillage, leaks, sludge or waste disposal.

Blight means a state or result of being blighted or deteriorated; dilapidation or decay. A structure is blighted when it exhibits objectively determinable signs of deterioration sufficient to constitute a threat to human health, safety, and public welfare such as inadequate public or community services, vacant land with debris, litter, lack of utilities, accumulation of trash and junk or general disrepair, including, but not limited to, peeling paint, broken windows, deteriorating wood. Also see chapter 18, article IV of the Code.

Block means an area of land bounded by a street, or by a combination of streets and public parks, cemeteries, railroad right-of-way, exterior boundaries of a subdivision, shorelines of waterways, or corporate boundaries. In cases where the platting is incomplete or disconnected, the director of planning may delineate the outline of the block.

Blockface means that portion of a block or tract of land facing the same side of a single street and lying between the closest intersecting streets.

Boarding house means a building containing one or more lodging units but not more than 20 lodging units, all of which offer non-transient lodging accommodations, available only at weekly or longer rental rates to the general public. Meals may only be provided from a single central kitchen and compensation for such meals, if provided, shall be included in the weekly or longer rental rate. No restaurant, meeting, reception, or banquet facilities shall be provided.

Borrow pit means a pit from which sand, gravel or other construction material is taken for use as fill in at another location.

Brewery, Craft (also known as micro-brewery) means a building or group of buildings where beer is brewed, bottled, packaged, and distributed for wholesale and/or retail distribution, and that produces small amounts of beer or malt beverage, less than 12,000 barrels in a calendar year. Much smaller than large-scale corporate breweries, these businesses are typically independently owned. Such breweries are generally characterized by their emphasis on quality, flavor and brewing technique.

Brewery, Large Scale means a building or group of buildings where beer is brewed, bottled, packaged, and distributed for wholesale and/or retail distribution, and that produces more than 12,000 barrels in a calendar year.

Brewpub means any eating establishment which derives at least 50 percent of its total annual gross food and beverage revenue from the sale of prepared meals and food and in which beer or malt beverages are manufactured or brewed subject to the barrel production limits and regulations under state law. *[TMOD-21-016]*

Broker means a party that mediates between a buyer and a seller.

Buffer means that portion of a lot set aside for open space and/or visual screening purposes, pursuant to a condition or conditions imposed in the enactment of a conditional zoning ordinance or special land use permit or by the zoning board of appeals in the grant of a variance, to separate different use districts, or to separate uses on one property from uses on another property of the same use district or a different use district. Any such buffer shall not be graded or otherwise disturbed, and all trees and other vegetation shall remain, provided that additional trees and other plant material may be added to such landscaped buffer.

Buildable area means the area of a lot remaining after all setback requirements, including buffers, have been met.

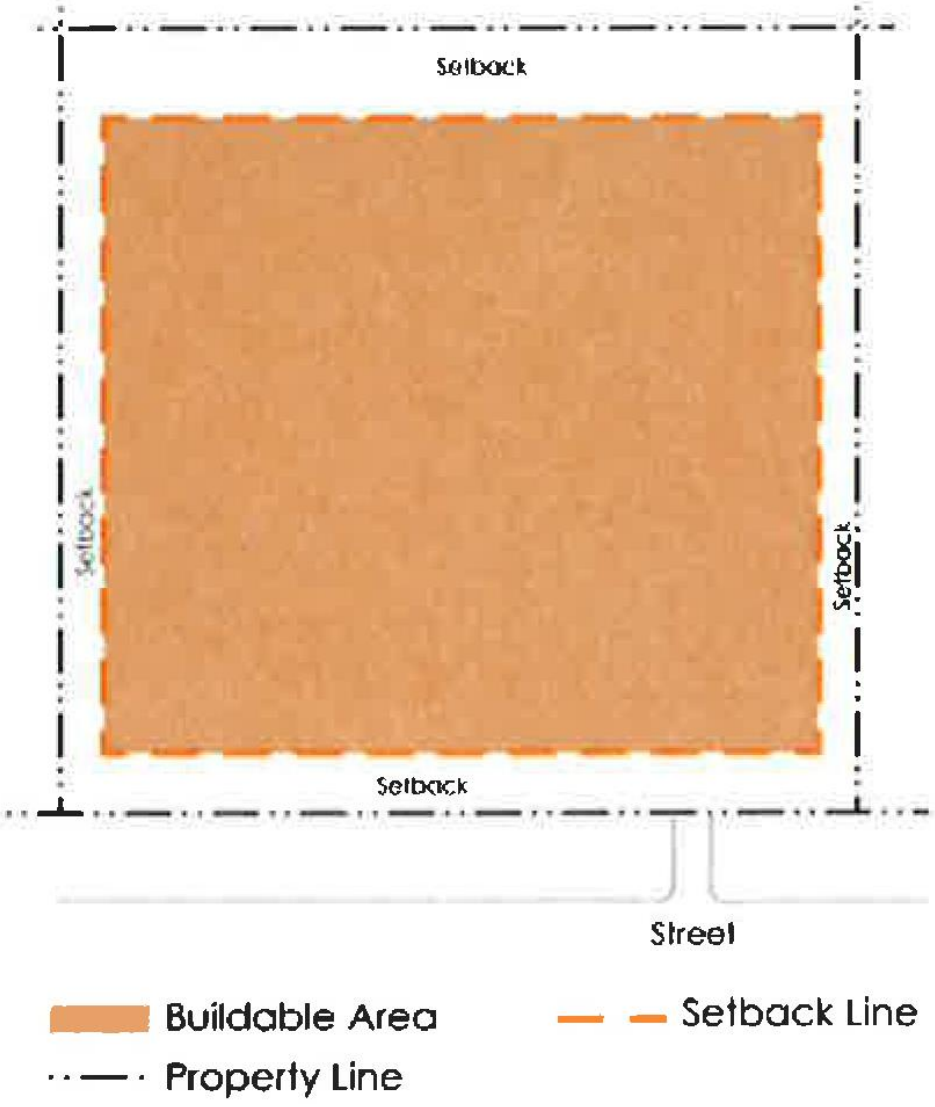


Figure 9.1 Buildable Area

Building means any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or materials of any kind.

Building, accessory. See *Accessory building.*

Building coverage means the maximum area of the lot that is permitted to be covered by buildings, including principal structures, structured parking and roofed accessory structures. The term "building coverage" does not include wooden decks, stone walkway and patios set without grout, and pervious, permeable, or porous pavements.

Building entrance feature means an architecturally designed element for entrances and exits of the building.

Building footprint means the outline of the total area covered by a building's perimeter at the ground level.

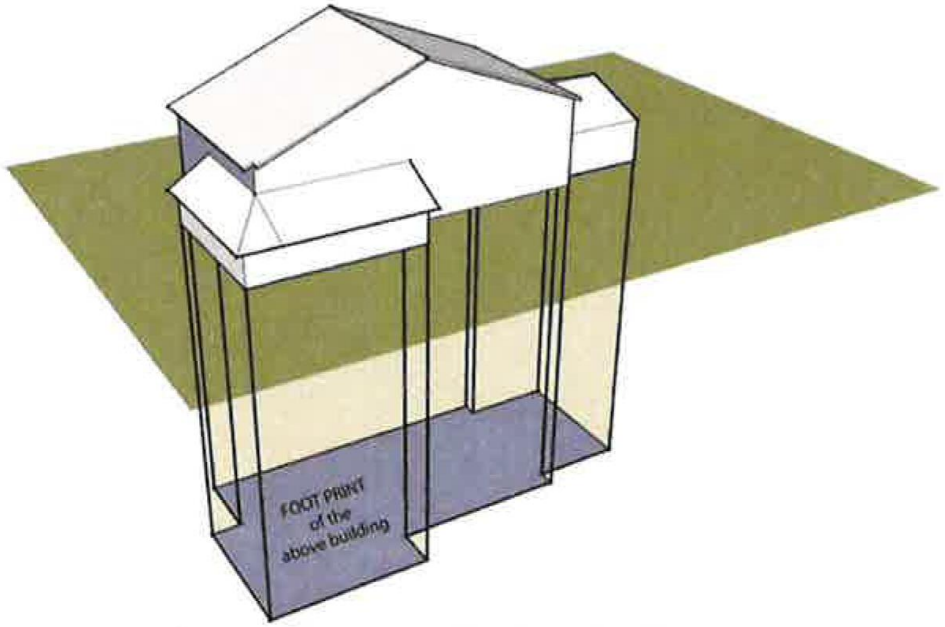


Figure 9.2 Illustration of Building Footprint

Figure 9.2 Illustration of Building Footprint

Building form means a design term that refers to the shape and/or configuration of a building and the space created by the building. Attributes of building form may include means the building relationship to the street, sidewalk, and/or other buildings and uses; the general usage of floors (office, residential, retail) which influence form; height, and/or; physical elements of the building (such as stoops, porches, entrances, materials, window coverage).

Building frontage means the maximum width of a building measured in a straight line parallel with the abutting street or fronts upon a public street, a customer parking area, or pedestrian mall, and has one or more entrances to the main part of the building or store.

Building height (as to all structures with the exception of single-family detached dwellings) means the vertical distance from the average finished grade to the top of the highest roof beams on a flat or shed roof, the deck level on a mansard roof, and the average distance between the eaves and the ridge level for gable, hip, and gambrel roofs. See article 5 of this chapter.

Building height (as to single-family detached dwellings) means the vertical distance from the front-door threshold of the proposed residential structure to the highest point of the roof of the structure. See article 5 of this chapter.

Building mass means the overall visual impact of a structure's volume; a combination of height and width, and the relationship of the heights and widths of the building's components.

Building materials supply establishment means a facility for the sales of materials used in the construction of a building such as cement, brick, steel, etc.

Building, primary or principal, means a structure in which is conducted the principal use of the lot on which it is located.

Building scale means the relationships of the size of the parts of a structure to one another and to humans.

Building width means the distance from the exterior face of the building siding as measured from side to side.

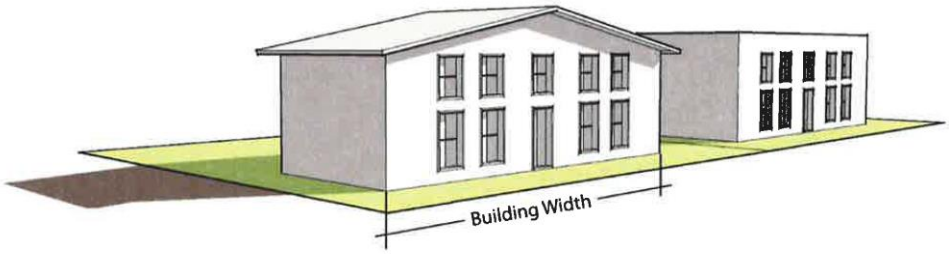


Figure 9.3 Illustration of Building Width

Figure 9.3 Illustration of Building Width

Bulkhead means a structural panel just below display windows on storefronts. Bulkheads can be both supportive and decorative in design. Bulkheads from the 19th century are often of wood construction with rectangular raised panels while those of the 20th century may be of wood, brick, tile, or marble construction.

Bury pit means a place where construction waste or refuse caused by the dismantling of a building or structure is dumped and covered with soil.

Bus or rail station or terminal means a designated place where a bus or train temporarily stops to embark or disembark passengers. A terminal is the location where the bus or train starts or ends its scheduled route.

Bus rapid transit (BRT) means a permanent, integrated transit system that uses buses or specialized vehicles on roadways or dedicated lanes to transport passengers to their destinations.

Business service establishment means an entity primarily engaged in rendering services to businesses on a fee or contract basis, including the following and similar services means advertising and mailing; building maintenance; employment services; management and consulting services; protective services; commercial research; development and testing; photo finishing; and personal supply services.

Business vehicle means vehicle, or heavy construction equipment, or trailer used to transport passengers or property in furtherance of a commercial enterprise. The term "business vehicle" may include, but is not limited to, pick-up trucks with exterior equipment storage, passenger vans, passenger vehicles with or without logos or advertisements identifying the commercial enterprise, ambulances, limousines, taxi cabs, tow trucks, earthmoving machinery such as bobcats and bulldozers, dump trucks, flatbed trucks, box vans, any vehicle with a trailer attached to it, tractors, "dually" trucks (pick-up trucks with four wheels on the rear axle), heavy construction equipment, and semi-tractor cabs whether or not a trailer is attached.

C-weighted sound level means the sound level reported in units of dB(C) as measured using the C-weighting network with a sound level meter meeting the standards set forth in ANSI S1.4-1983 or its successors.

Campus style development means a development type which is primarily characterized by having several separate buildings on one site, unified through design and landscape elements.

Canopy means a protective roof-like covering, often of canvas, mounted on a frame over a walkway or door.

Canopy tree means a deciduous tree whose mature height and branch structure provide foliage primarily on the upper half of the tree. The purpose of a canopy tree is to provide shade to adjacent ground areas.

Car wash means a facility for washing, waxing, and cleaning of passenger vehicles, recreational vehicles, or other light-duty equipment.

Car wash, self-service, means a car wash wherein operating functions are performed entirely by an operator owner with the use of washing, waxing, and drying equipment supplemented with manual detailing by the operator owner.

Cat means a feline that has reached the age of six months.

Catering establishment means an establishment in which the principal use is the preparation of food and meals on the premises, and where such food and meals are delivered to another location for consumption.

Cellar means a space having less than one-half or more of its floor-to-ceiling height below the average finished grade of the adjoining ground or with a floor-to-ceiling height of less than 6½ feet.

Cemetery means property used for the interring of the dead. See *Georgia cemetery regulations.*

Chapel. See *Place of worship.*

Characterized by in the definition of a sexually oriented business means describing the essential character or quality of an item. No business shall be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

Check cashing facility means a person, business or establishment licensed by the State of Georgia pursuant to O.C.G.A. § 7-1-700 et seq. that for compensation engages, as a principal use, in the business of cashing checks, warrants, drafts, money orders, or other commercial paper serving the same purpose. The term "check cashing facility" does not include a state or federally chartered bank, savings association, credit union, or industrial loan company.

Child care facility means a building(s) in which housing, meals, and twenty-four hour continuous watchful oversight of six (6) or more children under the age of eighteen (18) are provided and which facility is licensed or permitted as a child caring institution by the State of Georgia..

Child care home means a building(s) in which housing, meals, and twenty-four-hour continuous watchful oversight for up to five (5) children under the age of eighteen (18) are provided.

Child day care center means an establishment operated by any person with or without compensation providing for the care, supervision, and protection of seven (7) or more children who are under the age of eighteen (18) years for less than twenty-four (24) hours per day, without transfer of legal custody

Church. See *Place of worship.*

Cistern means an underground reservoir or tank for storing rainwater.

City means the City of Stonecrest, Georgia, a political subdivision of the State of Georgia. When appropriate to the context, the term "city" also includes authorized officers, employees and agents thereof.

Clinic, health services, means a facility or institution, whether public or private, principally engaged in providing services for health maintenance, diagnosis or treatment of human diseases, pain, injury, deformity or physical condition, including, but not limited to, a general hospital, diagnostic center, treatment center, rehabilitation center, extended care center, nursing home, intermediate care facility, outpatient laboratory, or central services facility serving one or more such institutions.

Club, private, means a group of people organized for a common purpose to pursue common goals, interests, or activities and characterized by definite membership qualifications, payment of fees and dues, regular meetings, and a constitution and bylaws, such as country clubs and golf clubs, but excluding places of worship, personal service facilities, and sexually oriented businesses which shall be defined and regulated as otherwise provided

herein. The term "private club" shall also mean, where the context requires, the premises and structures owned or occupied by members of such group within which the activities of the private club are conducted.

Clubhouse means a structure in which the activities of a private club are conducted.

Cluster housing development means a development that permits a reduction in lot area provided there is no increase in overall density of development, and in which all remaining land area is perpetually and properly protected, maintained and preserved as undivided open space or recreational or environmentally sensitive areas.

Coin Laundry means an establishment with coin-operated clothing washing machines and dryers for public use.

Coliseum means a large building with tiers of seats for spectators at sporting or other recreational events.

Collector street means a street or road designated as a collector street in the DeKalb County Transportation and Thoroughfare Plan.

College means a post-secondary institution for higher learning that grants associate or bachelor's degrees and may also have research facilities and/or professional schools that grant master and doctoral degrees. The term "college" shall also include community colleges that grant associate or bachelor's degrees or certificates of completion in business or technical fields.

Collocation. See section 4.2.57.B.

Colonnade means a series of columns placed at regular intervals, usually supporting a roof.

Columbarium means a structure with niches for the placement of cinerary urns.

Commercial district means any parcel of land which is zoned for any commercial use including regional commercial centers, neighborhood and community oriented stores, shopping centers and other developed centers where commercial land uses predominate. Such districts would include O-I, O-I-T, C-2, NS, and C-1.

Commercial entertainment means places of amusement or assembly including but not limited to motion picture theaters or cinemas, live theater, comedy clubs, bowling alleys, dance halls, skating rinks, etc. This definition does not include night clubs, party houses or brewpubs.

Commercial parking garage/structure means a covered or sheltered structure of one or more stories designed, constructed and used for the parking of motor vehicles for profit.

Commercial parking lot means an uncovered or unsheltered structure of one or more stories designed, constructed and used for the parking of motor vehicles for profit.

Commercial solid waste means all types of solid waste generated by stores, offices, restaurants, warehouses, and other non-manufacturing activities, excluding residential and industrial wastes.

Common open space means open space designed for common use by all property owners in the development.

Common ownership means ownership as recognized by law of real property by one or more persons, their parents, brothers, sisters, children over the age of 18, spouses or any association, firm, corporation or partnership in which such person or spouse is a corporate officer, partner or is a stockholder with an ownership interest of ten or more percent.

Community garden. See *Urban garden.*

Community living arrangement. See *Personal care home.*

Compact design means the design of a structure and or development that encourages efficient land use and the preservation of open space, usually via building more vertically, and by minimizing surface parking.

Compatible (as used in article 2 of this chapter, purpose and intent for each established district) means land development that is consistent with existing, identified physical elements in proximity to that land development, such as architectural style, building mass, building scale, land uses, and landscape architecture.

Complainant means any person who has registered a noise or code complaint with an authorized enforcement agency that he is the recipient of noise or nuisance on a protected property category. A complainant must have an interest in the protected property as an owner, tenant, or employee.

Complete or*complete application* means When used in conjunction with an application under this zoning ordinance, the term "complete" or "complete application" shall mean containing all of the required elements, information, fees, approvals or other materials as set forth in this zoning ordinance, other applicable provisions of the Code, state law, and in the most recent checklist previously issued by the director of planning.

Composting means the controlled biological decomposition of organic matter into a stable, odor-free humus.

Comprehensive plan means the DeKalb County Comprehensive Plan adopted by the board of commissioners, as adopted by the City of Stonecrest, as it may be amended from time to time, which divides the incorporated areas of the city into land use categories and which constitutes the official policy of the city regarding long-term planning and use of land.

Concert hall means an open, partially enclosed, or fully enclosed facility used or intended to be used primarily for concerts, spectator sports, entertainment events, expositions, and other public gatherings. Typical uses and structures include concerts, conventions, exhibition halls, sports arenas, and amphitheaters.

Conditional approval means the imposition of special requirements, whether expressed in written form or as a site plan or other graphic representation, made a requirement of development permission associated with a particular parcel or parcels of land and imposed in accordance with the terms of this chapter.

Condominium means a building, or group of buildings, in which dwelling units, offices, or floor area are owned individually, and the structure, common areas, and facilities are owned by all the owners on a proportional, undivided basis in compliance with Georgia Law.

Condominium unit means a unit intended for any type of use with individual ownership, as defined in the Georgia Condominium Act, together with the undivided interest in the common elements appertaining to that unit.

Connectivity ratio means a ratio of links to nodes in any subdivision.

1. The connectivity ratio shall be the number of street links divided by the number of nodes or end links, including cul-de-sac heads.
2. A link shall be any portion of a street, other than an alley, defined by a node at either end. Stub-outs to adjacent property shall be considered links. For the purpose of determining the number of links in a development, boulevards, median-divided roadways, and divided entrances shall be treated the same as conventional two-way roadways.
3. A node shall be the terminus of a street or the intersection of two or more streets. Any curve or bend of a street that exceeds 75 degrees shall receive credit as a node. Any curve or bend of a street that does not exceed 75 degrees shall not be considered a node. A divided entrance shall only count once.

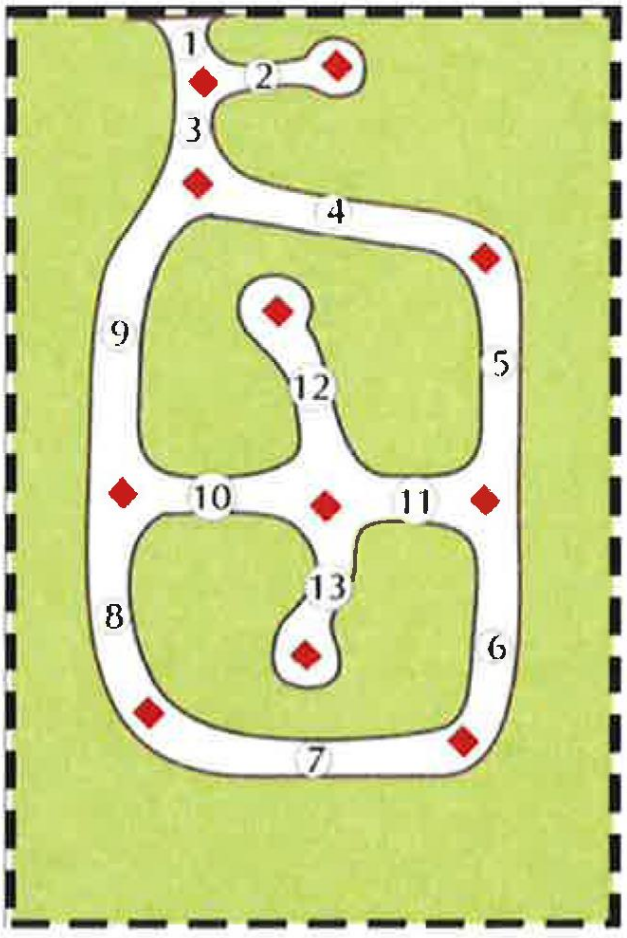


Figure 9.4 Example 1: Does not meet ratio

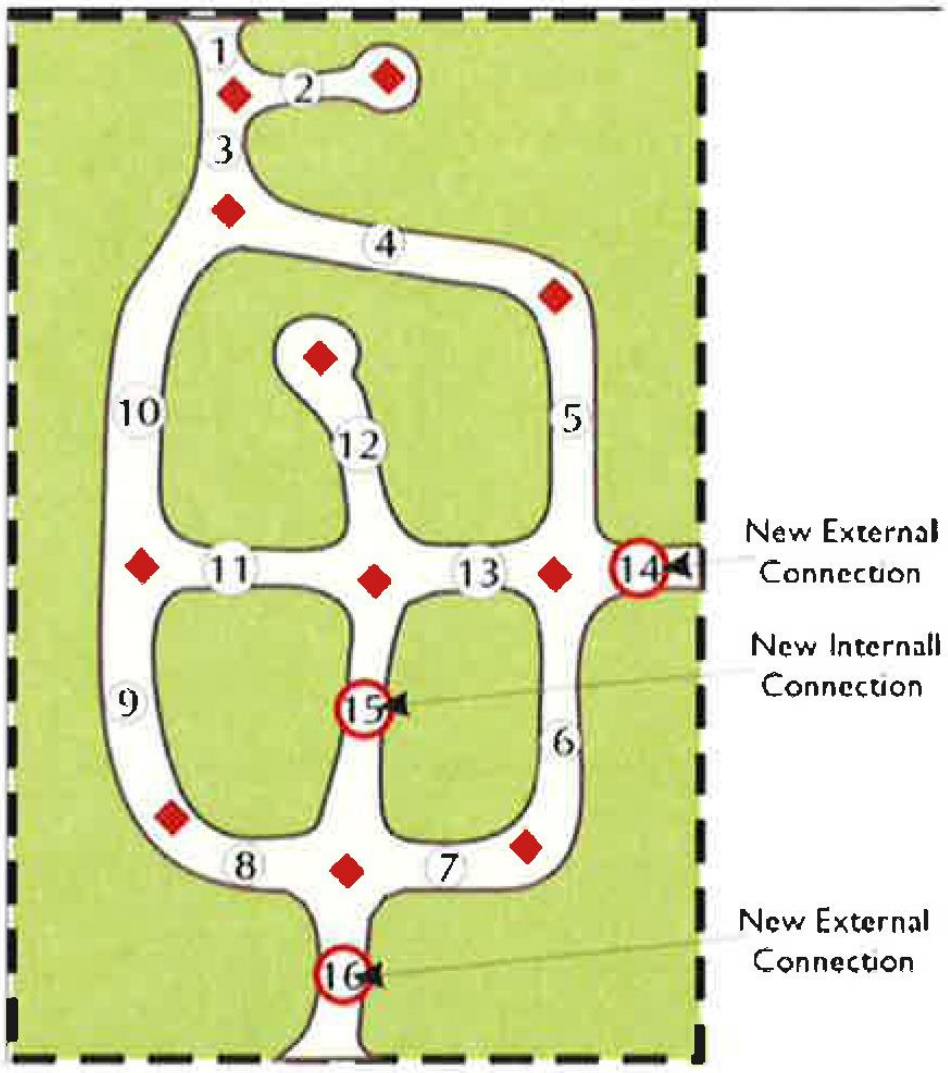


Figure 9.5 Example 2: Modified to meet ratio

Conservation area means any area designated as containing physical features of natural, historical, social, cultural, architectural, or aesthetic significance to be restored to or retained in its original state or enhanced to promote existing natural habitat.

Conservation easement means a restriction or limitation on the use of real property which is expressly recited in any deed or other instrument of grant or conveyance executed by or on behalf of the owner of the land described therein and whose purpose is to preserve land or water areas predominantly in their natural scenic landscape or open condition or in an agricultural farming, forest or open space use.

Construction means any site preparation, assembly, erection, repair, alteration or similar action, including demolition of buildings or structures.

Continuing care retirement community means a residential facility providing multiple, comprehensive services to older adults. Such facility normally contains a combination of independent living units, assisted living, and skilled nursing care units, as defined herein. Such facilities generally provide support services, such as meals, laundry, housekeeping, transportation, and social and recreational activities.

Continuous sound means any sound with duration of more than one second, as measured with a sound level meter set to the slow meter response.

Contractor, general, means a contractor or builder engaged in the construction of buildings like residences or commercial structures.

Contractor, heavy construction, means a contractor or builder engaged in the heavy construction activities such as paving, highway construction, landscaping, and utility construction.

Contractor, special trade, means Industries in the special trade contractors subsector engage in specialized construction activities, such as plumbing, painting, and electrical work.

Convalescent home means a nursing care facility.

Convenience store means any retail establishment offering for sale items such as household items, newspapers and magazines, prepackaged food products, sandwiches and other freshly prepared foods, and beverages, for off-site consumption. When a convenience store sells unopened alcoholic beverages, it is also considered to be an alcohol outlet. The term "convenience store" may also include accessory fuel pumps.

Convent means a building or buildings used as both a place of worship and as a residence, operated as a single housekeeping unit, solely by and for a group of women who have professed vows in a religious order and who live together as a community under the direction of a local supervisor designated by the order.

Cornice means any horizontal member, structural or nonstructural, of any building, projecting outward from the exterior walls at the roof line, including eaves and other roof overhang.

Corridor means a broad geographical band that follows a general directional flow connecting major sources of trips that may contain a number of streets, highways, and transit route alignments.

County or city solid waste means any solid waste derived from households, including garbage, trash, and sanitary waste in septic tanks and means solid waste from single-family, duplex, and multifamily residences, hotel and motels, picnic grounds and day use recreation areas. The term "county or city solid waste" includes yard trimmings and commercial solid waste but does not include solid waste from mining, agricultural, or silvicultural operations or industrial processes or operations.

County or city solid waste disposal facility means any facility or location where the final deposition of any amount of county or city solid waste occurs, whether or not mixed with or including commercial or industrial solid waste, and, includes, but is not limited to, county or city solid waste landfills and county or city solid waste thermal treatment technology facilities.

Craft brewery (also known as micro-brewery) means a building or group of buildings where beer is brewed, bottled, packaged, and distributed for wholesale and/or retail distribution, and that produces small amounts of beer or malt beverage, less than 12,000 gallons in a calendar year. Much smaller than large-scale corporate breweries, these businesses are typically independently owned. Such breweries are generally characterized by their emphasis on quality, flavor and brewing technique. [TMOD-21-016]

Craft distillery (also known as micro-distillery) means a building or group of buildings where distilled spirits are manufactured (distilled, rectified or blended), bottled, packaged, and distributed for wholesale and/or retail distribution in small quantity, less than 12,000 gallons per calendar year and in which such manufactured distilled spirits may be sold for consumption on the premises and consumption off premises, subject to the limitations prescribed in O.C.G.A. § 3-5-24.2. [TMOD-21-016]

County or city solid waste landfill means a disposal facility where any amount of county or city solid waste, whether or not mixed with or including commercial waste, industrial waste, nonhazardous sludge, or small quantity generator hazardous waste, is disposed of by means of placing an approved cover thereon.

Cremation means the reduction of a dead human body or a dead animal body to residue by intense heat.

Crematorium means a location containing properly installed, certified apparatus intended for use in the act of cremation. Crematoriums do not include establishments where incinerators are used to dispose of toxic or hazardous materials, infectious materials or narcotics.

Cultural facility means a building or structure that is primarily used for meetings, classes, exhibits, individual study, referral services, informational and entertainment presentations, and other similar programs oriented around the customs and interests of a specific group of people, including, but not limited to, an immigrant, ethnic, or national minority group, or the heritage of defined geographic region. Movies, theater performances and similar entertainment may occur in a cultural facility, but the purpose of the cultural facility is not to provide a venue solely for such entertainment. A cultural facility may be programmed, managed, or operated by a public, private, or non-profit entity.

Curb cut means a curb break, or a place or way provided for the purpose of gaining vehicular access between a street and abutting property.

Dairy means a commercial establishment for the manufacture, processing, or sale of dairy products.

Dance school means a school where classes in dance are taught to four or more persons at a time.

Day means, unless otherwise stated, calendar days.

Day spa. See *Health spa.*

Decay resistant wood means wood harvested from tree species that are known to have extractives in the heartwood which are toxic to fungi.

Decibel (dB) means the unit for the measurement of sound pressure based upon a reference pressure of 20 micropascals (zero decibels), i.e., the average threshold of hearing for a person with very good hearing.

Deciduous tree means a tree that loses all of its leaves for part of the year.

Deficiencies means exterior conditions or signs of neglect within a conservation subdivision and within the Stonecrest Area Overlay District that contributes to nuisances, hazards, or unkempt appearances, such as, but not limited to, uncut or overgrown grass or weeds, peeling paint, severe corrosion, or wood rot; accumulation of trash or debris; fallen, dead, dying, damaged, or diseased trees or shrubbery; severe erosion; stagnant pools of water; broken inoperable, or severely damaged benches, seating, paving, walls, fences, gates, signs, fountains or other structures, furnishings or equipment which is intended for decoration or use by the public. The term "deficiencies" shall only be applicable to the Stonecrest Area Overlay District regulations and the conservation subdivision regulations.

DeKalb County Transportation and Thoroughfare Plan means the DeKalb County Transportation and Thoroughfare Plan, as adopted by the board of commissioners and by the City of Stonecrest, as amended from time to time.

Demolition means any dismantling, destruction or removal of buildings, structures, or roadways whether manmade or natural occurring both above and below ground.

Demolition of an infill building means the destruction and removal of an existing building or structure in whole or in part whether such destruction and removal involves removal of all or part of the prior foundation.

Density means the number of dwelling units per gross acreage of land.

Dental clinic. See *Office, dental.*

Department of community affairs (DCA) means the state department that provides a variety of community development programs to help the state's communities realize their growth and development goals.

Department store means a business which is conducted under a single owner's name wherein a variety of unrelated merchandise and services are housed enclosed and are exhibited, and sold directly to the customer for whom the goods and services are furnished.

Deterioration means a condition of a building or a portion of a building characterized by holes, breaks, rot, crumbling, cracking, peeling, rusting, or other evidence of physical decay, neglect, lack of maintenance, or excessive use.

Development permit means any permit that authorizes land disturbance for the use, construction thereon or alteration of any real property within the incorporated limits of the city.

Development of regional impact (DRI) means a large-scale development that is likely to have regional effects beyond the local government jurisdiction in which it is located and meets the DCA requirements for review.

Director of Planning means the Director of the Department of Planning and Zoning, or the City Manager designee.

Dispatch office means an office used exclusively for the communication and dispatch of taxis, ambulances, limousines and similar vehicles, with no fleet parking or storage allowed.

Disposal facility means any facility or location where the final deposition of solid waste occurs, including, but is not limited to, landfills and solid waste thermal treatment technology facilities.

Distillery, Craft (also known as micro-distillery) means a building or group of buildings where distilled spirits are manufactured (distilled, rectified or blended), bottled, packaged, and distributed for wholesale and/or retail distribution in small quantity, less than 12,000 barrels per calendar year and in which such manufactured distilled spirits may be sold for consumption on the premises and consumption off premises, subject to the limitations prescribed in O.C.G.A. § 3-5-24.2.

Distillery, Large-scale means a building or group of buildings where distilled spirits are manufactured (distilled, rectified or blended), bottled, packaged, and distributed for wholesale and/or retail distribution in large quantity, more than 12,000 barrels per calendar year.

District, authorized zoning – a zoning district other than the base or underlying zoning district that is called out in the provisions of an overlay zoning district to described what uses are permitted or authorized to be developed within that overlay zoning district.

District, base zoning– see Underlying District

District, governing zoning – an underlying or authorized zoning district within an overlay zoning district by which the design and dimensional standards of any existing or proposed development must adhere to. Also used to determine site requirements on adjacent properties, such as buffers.

District, overlay zoning – a zoning district where certain additional requirements are superimposed upon an underlying or base zoning district and where the requirements of the underlying or base district may or may not be altered.

District, underlying zoning – Any zoning district that lies within or under the boundaries of an overlay zoning district, also known as base zoning district.

District, Zoning – Any district delineated on the official zoning map under the terms and provisions of this ordinance, or which may be created after the enactment of this ordinance for which regulations governing the area, height, use of buildings, or use of land, and other regulations related to development or maintenance of uses or structures are uniform. [TMOD-21-015]

Dog means a canine that has reached the age of six months.

Dog daycare means any premises containing four or more dogs, where dogs are dropped off and picked up daily between the hours of 7:00 a.m. and 7:00 p.m. for temporary care on-site and where they may be groomed, trained, exercised, and socialized, but are not kept or boarded overnight, bred, sold, or let for hire. Use as a kennel shall be limited to short-term boarding and shall be only incidental to such dog daycare. See *Kennel, commercial.*

Dog grooming means the hygienic care and cleaning of a dog, as well as enhancement of a dog's physical appearance.

Dormitory means a building intended or used principally for sleeping accommodations where such building is related to an educational or public institution, including religious institutions, and located on the campus of that institution.

Dripline means a vertical line extending from the outermost edge of the tree canopy or shrub branch to the ground.

Drive-in theater means an open lot or part thereof, with its appurtenant facilities, devoted primarily to the showing of moving pictures on a paid admission basis to patrons seated in automobiles.

Drive-through facility means a business establishment so developed that its retail or service character includes a driveway approach or parking spaces for motor vehicles so as to serve patrons while in the motor vehicle rather than within a building or structure.

Drive-through restaurant means a retail establishment where food and/or drinks are prepared and may be consumed by customers within the principal building, or may be ordered and picked up from an exterior service window that serves customers while in their automobiles. The term "drive-through restaurant" includes restaurants that serve customers at an exterior walk-up service window.

Driveway means a private roadway providing access for vehicles to an individual lot, parking space, garage, dwelling, or other structure.

Dry cleaning agency means an establishment or agency maintained for the pickup and delivery of dry cleaning and/or laundry without the maintenance or operation of any laundry or dry-cleaning equipment or machinery on the premises.

Durable materials means Materials that can resist wear, tear and decay from use, time and other conditions like weather.

Dwelling, cottage home means small detached dwelling units arranged on a single site whereby the dwelling units are arranged so that each unit faces a common open space.

Dwelling, mobile home. See *Mobile home.*

Dwelling, multifamily. See *Dwelling unit, multifamily.*

Dwelling, single-family, means a building designed for and containing one dwelling unit.

Dwelling, single-family attached, means a dwelling unit located in a building in which multiple units are attached by a common party wall.

Dwelling, single-family detached,, means a dwelling unit on an individual lot unattached to another dwelling unit.

Dwelling, single-family detached condominiums in the Residential Neighborhood Conservation District, means single-family detached dwelling units which are owned under the condominium form of ownership such that there are no individual lots associated with the units and the common areas are held in common ownership by a condominium association.

Dwelling, three-family or triplex, means a building designed for and containing three dwelling units.

Dwelling, two-family or duplex, means a building designed for and containing two dwelling units.

Dwelling, urban single-family, means residential buildings that share similar configuration to townhouse developments; however, they may be attached or detached and may have lot lines that coincide with the building envelope.

Dwelling unit means one or more rooms, designed, occupied, or intended for occupancy as a separate living quarters, with cooking, sleeping, and bathroom facilities provided within the dwelling unit for the exclusive use of a single family maintaining a household.

Dwelling unit, accessory, means a dwelling unit located on the same lot as a single-family dwelling, either within or attached to the single-family dwelling, or detached, and is a separate, complete housekeeping unit with a separate entrance, kitchen, sleeping area, and full bathroom facilities.

Dwelling unit, efficiency or studio, means a self-contained residential unit consisting of not more than one room together with a private bath and kitchen facilities.

Dwelling unit, multifamily, means one or more rooms with a private bath and kitchen facilities comprising an independent, self-contained residential unit in a building containing four or more dwelling units.

Dyeworks means a facility or workshop where the process of applying a comparatively permanent color to fiber, yarn or fabric takes place.

Eating and drinking establishments, mean those establishments whose primary purpose is to derive income from the sale of food and drink, including malt beverages, wine and/or distilled spirits consumed primarily within the principal building, and without a drive-in or drive-thru component where such establishment is open for use by patrons between 12:30 a.m. Entertainment shall be incidental thereto.

Edifice means a building or a structure, especially one of imposing appearance or size, which has a roof and walls and stands permanently in one place.

Elevation means an architectural term referring to the view of a building seen from one side; it is a flat representation of one facade. This is the most common view used to describe the external appearance of a building. Each elevation is labeled in relation to the yard it faces (front, rear or side).

Elevation height means above sea level or ground level. See *Grade, existing.*

Emergency work means any work or action necessary to deliver essential services, including, but not limited to, repairing water, gas, electricity, telephone, sewer facilities, or public transportation facilities, removing fallen trees on public rights-of-way, dredging navigational waterways, or abating life-threatening conditions.

Enclosed area means an area surrounded by a fence or walls, sheltered by a structure with a roof and no side walls, but not located within a building.

Encroachment means a building or some portion of it, or a wall or fence, which extends beyond the land of the owner and illegally intrudes upon land of an adjoining owner, a street or an alley.

Environmental contamination means a presence of hazardous substances in the environment. From the public health perspective, environmental contamination is addressed when it potentially affects the health and quality of people living or working nearby.

Essential services means the erection, construction, alteration, or maintenance by public utilities or City departments of overhead, surface or underground gas, electrical steam, or water, distribution or transmission systems, collection, communication, supply or disposal systems, including mains, drains, sewers, pipes, conduits, tunnels, wires, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, poles, electrical substation, gas regulator stations and other similar equipment and accessories in connection therewith, reasonably necessary for the furnishing of adequate service by such utility or City department or for the public health, safety, or general welfare, shall be exempt from the regulations of this code. The installation shall conform to Federal Communications Commission and Federal Aviation Agency rules and regulations, and those of other authorities having jurisdiction.

Exceptional topographical restrictions means the physical condition of a lot or parcel, determined by the contours of the land itself, which may inhibit or alter the compliant status of an existing or proposed structure.

Explosive manufacture or storage means the manufacture or storage of any chemical compound mixture or device, the primary and common purpose of which is to function by explosion with substantially simultaneous release of gas and heat, the resulting pressure being capable of producing destructive effects.

Exterior insulation and finishing system (EIFS) means a type of building exterior wall cladding system that provides exterior walls with an insulated finished surface and waterproofing in an integrated composite material system.

Extraneous sound means a sound of high intensity and relatively short duration which is neither part of the neighborhood residual sound, nor comes from the sound source under investigation.

Facade means One exterior side of a building, usually, but not always, the front. In this chapter and the design standards, it may be synonymous with architectural elevation. In architecture, the facade of a building is often the most important from a design standpoint, as the facade elements of wall face, parapet, fascia, fenestration, and canopy establish the architectural aesthetic of a building creating the public realm.

Facade, primary, means refers to the exterior building wall considered the front and features the main entrance to the building. The term "facade, primary," is synonymous with front facade.

Fair market value means the price a property would likely bring if offered for sale in the marketplace.

Fairgrounds means an area of land use, including, but not limited to, agricultural related office buildings, animal shows and judging, carnivals, circuses, community meeting or recreational buildings and uses, concerts, food booths and stands, games, rides, rodeos, sales and auctions, storage, and theaters. The term "fairgrounds" do not include racetracks or motorized contests of speed.

Family means one or more individuals related by blood, marriage, adoption, or legal guardianship, or not more than three unrelated individuals, who live together in a single dwelling unit and who function as a single housekeeping unit, have established ties and familiarity with each other, jointly use common areas, interact with each other, and share meals, household activities, expenses and responsibilities. The term "family" shall include three or fewer mentally handicapped, developmentally disabled persons, and other handicapped persons, as defined in the Fair Housing Act, 42 USC 3601 et seq., living as a housekeeping unit and otherwise meeting the definition of "family" herein. For the purposes of calculating the number of persons who live in a dwelling, family members who are related by blood or legal status shall count as one person.

Family daycare home means a private residence in which a business, registered by the State of Georgia, is operated by any person who receives pay for supervision and care for fewer than 24 hours per day, not more than six persons who are not residents in the same private residence. For the purposes of this zoning ordinance, a family daycare home may be operated as a home occupation, subject to the requirements of this chapter.

Family-oriented entertainment venues means places of entertainment intended to serve families.

Farm equipment and supplies sales establishment means establishments selling, renting, or repairing agricultural machinery, equipment, and supplies for use in soil preparation and maintenance, the planting and harvesting of crops, and other operations and processes pertaining to farming and ranching.

Farmer's market means a market, usually held out-of-doors, in public spaces, where farmers and other vendors can sell produce or value added products.

Farming, active, means the growing of crops, plants, and trees. The term "farming, active," also includes the maintaining of horses, livestock, or poultry for the residents' needs or use, and the sale of agricultural products grown on the premises.

Fascia means a type of roof trim mounted on exposed rafter ends or top of exterior walls to create a layer between the edge of the roof and the outside.

Fat rendering means any processing of animal byproducts into more useful materials, or more narrowly to the rendering of whole animal fatty tissue into purified fats like lard or tallow.

Feature, in the definition of a sexually oriented business, means to give special prominence to.

Fee simple ownership means absolute title to land, free of any other claims against the title, which one can sell or pass to another by will or inheritance. The term "fee simple ownership" includes the land immediately underneath a unit, and may or may not include land in front of and behind a building.

Fee simple condominium declaration means an official affidavit filed attesting to the fact that the owner of a condominium development that was the subject of a site development plan approved prior to August 31, 2012, no longer intends to sell units in the subject development as condominiums and will offer for sale such units as fee simple condominium units and that otherwise the development shall conform to a previously approved condominium development plan consisting of the same units along with the same related facilities on the same tract of land as the previously approved condominium development.

Fee simple condominium development means a development where the owner of a unit possesses fee simple interest to the exterior walls and roof of the unit, as well as fee simple interest to the land lying immediately beneath the unit and coincident with the external walls of such unit as depicted on a recorded final plat. A fee simple condominium unit must be a part of an approved development in which all other land consists of privately-owned common areas, utilities, streets, parking, stormwater management, landscaping and other facilities that are owned by all unit owners on a proportional, undivided basis in compliance with Georgia law and subject to a mandatory property owners association organized in accordance with Georgia law.

Fence means a structure designed to provide separation and security constructed of materials including chain link, wire, metal, artistic wrought iron, vinyl, plastic and other such materials as may be approved by the director of planning.

Fenestration means the arrangement, proportioning, and design of windows and doors in a building.

Fertilizer manufacture means the manufacture and storage of organic and chemical fertilizer, including manure and sludge processing.

Fitness center means building or portion of a building designed and equipped for the conduct of sports, exercise, leisure time activities, or other customary and usual recreational activities, operated for profit or not-for-profit and which can be open only to bona fide members and guests of the organization or open to the public for a fee but specifically excluding sexually oriented businesses. Accessory uses which support the principal use can include therapy treatments such as massage, mediation and other healing arts. The term "fitness center" shall not include hospitals or other professional health care establishments separately licensed as such by the State of Georgia.

Flea market means an occasional or periodic market held in an open area or structure where groups of individual sellers offer goods for sale to the public.

Floodplain means land within the special flood hazard area (SFHA) or covered by the future conditions flood, as defined in chapter 14 of the Code.

Floodway means the channel of a stream, river, or other watercourse and the adjacent areas that must be reserved in order to discharge the special flood hazard area (SFHA) flood without cumulatively increasing the water surface elevation more than a designated height.

Floor area means the gross heated horizontal areas of the floors of a building, exclusive of open porches and garages, measured from the interior face of the exterior walls of the building. For nonresidential construction, net floor area is measured as the usable, heated floor space and gross floor area is measured as the total floor space.

Floor area of accessory building means the gross horizontal areas of the floors of an accessory building, measured from the exterior faces of the exterior walls of the accessory building.

Floor area ratio (FAR) means the relationship between the amount of gross floor area permitted in a building (or buildings) and the area of the lot on which the building stands. FAR is computed by dividing the gross floor area

of a building or buildings by the total area of the lot. For the purposes of this calculation, parking areas or structures shall not be included in floor area.

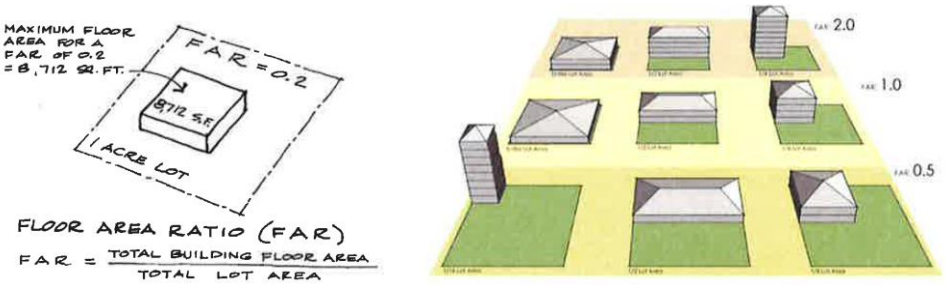


Figure 9.6 Illustration of Floor Area Ratio (FAR)

Floor space, as referenced in the definition of the terms "adult bookstore" or "adult video store," means the floor area inside an establishment that is visible or accessible to patrons for any reason, excluding restrooms.

Florist means an enclosed retail business whose principal activity is the selling of plants which were grown off-site.

Forestry means establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, the gathering of forest products, or in performing forest services.

Fortunetelling means and includes all forms of foretelling, including, but not limited to, palm reading, casting of horoscopes, and tea leaf reading.

Fraternal organization means a group of people formally organized for a common interest, usually cultural, religious, or entertainment, with regular meetings and formal written membership requirements. See also *Club.*

Fraternity house means a building containing sleeping rooms, bathrooms, common rooms, and a central kitchen and dining room maintained exclusively for fraternity members and their guests or visitors and affiliated with an institution of higher learning.

Freestanding wall means a wall or an upright structure of masonry, wood, plaster, or other building material standing on its own foundation and not attached to any part of a building.

Freeway means a multiple-lane roadway carrying local, regional, and interstate traffic of relatively high volumes which permits access only at designated interchanges and is so designated in the comprehensive plan.

Freight service means an establishment primarily engaged in undertaking the transportation of goods and people for the compensation, and which may, in turn, make use of other transportation establishments in effecting delivery. The term "freight service" includes parking lots for overnight truck storage, and such establishments as commercial distribution services, freight forwarding services, and freight agencies.

Frequency means the time rate of repetition of sound waves in cycles per second, reported as Hertz (Hz), also referred to as "pitch."

Frontage, lot, means the horizontal distance for which the boundary line of a lot and a street right-of-way line are coincident.

Front facade. See *Facade, primary.*

Fuel and ice dealer, manufacturer and wholesaler means an establishment primarily engaged in the sale to consumers of ice, bottled water, fuel oil, butane, propane and liquefied petroleum gas, bottled or in bulk, as a principal use.

Funeral home means a building used for the preparation of deceased humans for burial or cremation and display of the deceased and rituals connected therewith before burial or cremation, including the storage of

caskets, funeral urns, funeral vehicles, and other funeral supplies, and where allowed by use standards, crematoriums. See *Crematorium.*

Furniture sales and showroom means a retail trade establishment primarily engaged in the sale and exhibition of furniture or home decoration items.

Garage means a part of a residential building or a separate structure on the same lot as the residence designed to be used for the parking and storage of vehicles that belong to the residents or visitors of the building.

Garage, parking. See *Parking garage* or *Parking structure.*

Gas regulator station means an assemblage of equipment which reduces, regulates, and meters natural gas pressure in the transmission line, holder, main, pressure vessel, or the compressor station piping. The term "gas regulator station" may include auxiliary equipment such as valves, control instruments, or control lines as well as piping.

General business office, see Office, professional.

Gift shop means a retail store where items such as art, antiques, jewelry, books, and notions are sold.

Glue manufacture means the manufacturing of glue, epoxy, sealant or other adhesives.

Go-cart means a small low motor vehicle, with four wheels and an open framework, used for racing.

Go-cart concession means a place, usually sheltered, where patrons can purchase snacks or food accessory to go-cart racing.

Go-cart track means a track or network of tracks used for the racing of go-carts.

Golf course means a tract of land laid out with at least nine holes for playing a game of golf and improved with tees, green, fairways, and hazards. A golf course may include a clubhouse, restrooms, driving range and shelters as accessory uses.

Government facilities means buildings or office space utilized for the provision of services by the City of Stonecrest, DeKalb County, the State of Georgia, or the Federal Government including outdoor activities and parking. Such uses include, but are not limited to, the municipal building, fire stations, police stations, government offices, public parks and recreation related facilities and other similar use*s*

Grade, average finished, means the average level of the finished surface of the ground adjacent to the exterior walls of the building determined by dividing the sum of the elevation of the highest point and the elevation of the lowest point by two.

Grade, existing, means the elevation of the ground surface before development.

Grade, finished, means the final grade of the ground surface after development.

Grassed playing fields means reasonably flat and undeveloped recreation areas intended for a variety of informal recreational uses, including, but not limited to, walking, kite-flying, flying disc-throwing, and recreational games of soccer, softball, or cricket. In the creation of grassed playing fields, minimal grading may be used; however, specimen trees may not be damaged or removed. Grassed playing fields may not include recreation areas with amenities for a particular sport, such as baseball diamonds or golf courses.

Gravel pit means an open land area where sand, gravel, and rock fragment are mined or excavated for sale or off-site use. Gravel pit includes sifting, crushing, and washing as part of the primary operation. To excavate the rock, blasting also may be necessary.

Grazing land, pasture land means any open land area used to pasture livestock in which suitable forage is maintained over 80 percent of the area at all times of the year.

Greenhouse, commercial, means a retail or wholesale business whose principal activity is the selling of plants grown on the site and having outside storage, growing, or display.

Greenspace means undeveloped land that has been designated, dedicated, reserved, or restricted in perpetuity from further development, which is not a part of an individual residential lot.

Grid pattern means a continuous web of streets in which most streets terminate at other streets to form multiple vehicular and pedestrian connections. Streets are to be laid out with primarily linear features, but the grid may be broken by circles, ovals, diagonals, and natural curves to add visual interest.

Grocery store means a store where most of the floor area is devoted to the sale of food products for home preparation and consumption, which typically also offers other home care and personal care products, and which is substantially larger and carries a broader range of merchandise than convenience stores.

Ground cover means small plants such as salal, ivy, ferns, mosses, grasses, or other types of vegetation, that normally cover the ground and include trees of less than six-inch caliper.

Group homes. See *Child care institution*, *Personal care homes*, *Transitional housing facility.*

Growler means a professionally sanitized reusable container not exceeding 64 ounces in volume used to transport draft beer for off-premises consumption. [TMOD-21-016]

Growler Store means a retail store that sales growlers. [TMOD-21-016]

Gym. See *Fitness center.*

Hardscape means the inanimate elements of landscaping, especially any masonry work or woodwork. For instance, stone walls, concrete or brick patios, tile paths, wooden decks and wooden arbors would all be considered part of the hardscape.

Hardship means a condition of significant practical difficulty in developing a lot because of physical problems relating solely to the size, shape or topography of the lot in question, which are not economic difficulties and which are not self-imposed.

Hardware store means a facility of 30,000 or less square feet gross floor area, primarily engaged in the retail sale of various basic hardware lines, such as tools, builders' hardware, plumbing and electrical supplies, paint and glass, house wares and household appliances, garden supplies, and cutlery.

Health spa means a nurturing, safe, clean commercial or not-for-profit establishment, which employs professional, licensed therapists whose services include massage and body or facial treatments. Private treatment rooms are provided for each client receiving a personal service. Massage treatments may include body packs and wraps, exfoliation, cellulite and heat treatments, body toning, waxing, aromatherapy, cleansing facials, medical facials, nonsurgical face lifts, electrical toning, and electrolysis. Hydrotherapy and steam and sauna facilities, nutrition and weight management, spa cuisine, and exercise facilities and instruction may be provided in addition to the massage and therapeutic treatment services. Full-service hair salons, make-up consultation and application and manicure and pedicure services may be provided as additional services. This specifically excludes sexually oriented businesses.

Heavy equipment repair, service or trade means a building or lot used for the repair, servicing, lease or sale of heavy equipment.

Heavy industrial. See *Industrial, heavy.*

Heavy manufacturing. See *Industrial, heavy.*

Heavy vehicle repair means major or minor repair of non-passenger vehicles that are classified by the Georgia Department of Driving Services as a Class E, F, or Commercial vehicle.

Heliport means an area, either at ground level or elevated on a structure, licensed by the federal government or an appropriate state agency and approved for the loading, landing, and takeoff of helicopters and including auxiliary facilities, such as parking, waiting room, fueling, and maintenance equipment.

High-rise building or structure means a building of any type of construction or occupancy having floors used for human occupancy located more than 55 feet above the lowest floor level having building access of three stories or greater unless otherwise defined by individual zoning or overlay district.

High-rise in the I-20 Corridor Overlay District means a building in the I-20 Corridor Overlay District that is nine or more stories in height.

High-rise in the Stonecrest Area Overlay District means a building in the Stonecrest Area Overlay District that is 11 or more stories in height.

Historic means a building, structure, site, property or district identified as historic by the Stonecrest City Historic Preservation Commission, by listing on the Georgia or National Register of Historic Places, by listing as a National Historic Landmark, or determined potentially eligible for listing in the National Register of Historic Places as a result of review under section 106 of the National Historic Preservation Act, as amended.

Hobby, toy and game store means a retail establishment for sale and exhibition of items related to hobbies such as arts and crafts materials, toys, or items related to games.

Home improvement center means a facility greater than 30,000 square feet gross floor area, primarily engaged in the retail sale of various basic hardware lines, such as tools, builders' hardware, plumbing and electrical supplies, paint and glass, house wares and household appliances, garden supplies, and cutlery.

Home occupation means an occupation carried on by an occupant of a dwelling unit as a secondary use of the dwelling that is incidental to the primary use of the dwelling unit for residential purposes and is operated in accordance with the provisions of this chapter. The term "home occupation" does not include private educational use, as defined in this chapter.

Hospice means any facility that provides coordinated program of home care with provision for inpatient care for terminally ill patients and their families. This care is provided by a medically directed interdisciplinary team, directly or through an agreement under the direction of an identifiable hospice administration. A hospice program of care provides palliative and supportive medical and other health services to meet the physical, psychological, social, spiritual, and special needs of patients and their families, which are experienced during the final stages of terminal illness and during dying and bereavement.

Hospital means an institution, licensed by the state department of health, providing primary health services and medical or surgical care to persons, primarily inpatients, suffering from illness, disease, injury, deformity, and other abnormal physical or mental conditions, and including as an integral part of the institution, related facilities such as laboratories, outpatient facilities, or training facilities.

Hotel/motel means an establishment providing, for a fee, sleeping accommodations and customary lodging services, including maid service, the furnishing and upkeep of furniture and bed linens, and telephone and desk service. Related ancillary uses may include, but shall not be limited to, conference and meeting rooms, restaurants, bars, and recreational facilities.

Hotel/motel, extended stay, means any building containing six or more guest rooms rented or leased for sleeping purposes for periods less than one month, but in excess of one week, and that contain kitchen facilities for food preparation, including, but not limited to, refrigerators, stoves, and ovens.

Household pet means a domestic animal that is customarily kept for pleasure rather than utility or profit and that is normally kept within a residence for personal use and enjoyment, including domestic dogs, domestic cats, domestic potbellied pigs, canaries, parrots, parakeets, domestic tropical birds, hamsters, guinea pigs, lizards and turtles. Household pet does not include livestock, poultry, and snakes, nor does it include hybrids of animals normally found in the wild.

INCE means the Institute of Noise Control Engineering.

Impervious surface means a surface that either prevents or retards the entry of surface water into the soil mantle and causes surface water to run off in greater quantities or at an increased flow rate when compared to

natural, undeveloped soil mantle. Common impervious surfaces include, but are not limited to, roofs, walkways, patios, driveways, parking lots, storage areas, paved areas, pavement graveled areas, packed or oiled earthen materials or other surfaces which similarly impede the natural infiltration of surface waters. Open uncovered flow control or water quality treatment facilities shall not be considered as impervious surfaces. See *Lot coverage* for exemptions.

Impulsive sound means a single pressure peak or a single burst (multiple pressure peaks) that has a duration of less than one second characterized with an abrupt onset and rapid decay.

Industrial district means any parcel of land which is zoned for industrial use including property used for light and heavy distribution, warehouses, assembly, manufacturing, quarrying, and truck terminals. Such districts include M and M-2 districts.

Industrial, heavy, means the building or premises where the following or similar operations are conducted means processing, creating, repairing, renovating, painting, cleaning, or assembly of goods, merchandise, or equipment, including the wholesale or distribution of said goods, merchandise, or equipment when not conducted wholly within a building or other enclosed structure or when such operations generate measurable dust, vibrations, odor, glare or emissions beyond the property on which said building or structure is located.

Industrial, light, means the following or similar operations means processing, creating, repairing, renovating, painting, cleaning, or assembly of goods, merchandise, or equipment, other than light malt beverages, including the wholesale or distribution of said goods, merchandise, or equipment, when conducted wholly within a building or other enclosed structure, and when such operations generate no measurable dust, vibrations, odor, glare or emissions beyond the property on which said building or structure is located.

Industrial solid waste means solid waste generated by manufacturing or industrial processes or operations that is not a hazardous waste, as defined herein. Such wastes include, but are not limited to, waste resulting from the following manufacturing processes means electric power generation; fertilizer and agricultural chemicals; food and related products and by-products; inorganic chemicals; iron and steel products; leather and leather products; nonferrous metal and foundry products; organic chemicals; plastics and resins; pulp and paper; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textiles; transportation equipment; and water treatment. The term "industrial solid waste" does not include mining waste or oil and gas waste.

Industrialized building means any structure or component thereof which is wholly or in substantial part made, fabricated, formed, or assembled in manufacturing facilities for installation or assembly and installation on a building site and has been manufactured in such a manner that all parts or processes cannot be inspected at the installation-site without disassembly, damage to, or destruction thereof.

Infill building means any building built or proposed to be built on an infill lot.

Infill development means a development surrounded by or in close proximity to areas that are substantially or fully developed.

Intermediate care home means a facility which admits residents on medical referral; it maintains the services and facilities for institutional care and has an agreement with a physician or dentist who will provide continuing supervision including emergencies; it complies with rules and regulations of the Georgia Department of Human Resources or state agency as may have jurisdiction. The term "intermediate care" means the provision of food, including special diets when required, shelter, laundry and personal care services, such as help with dressing, getting in and out of bed, bathing, feeding, medications and similar assistance, such services being under appropriate licensed supervision. Intermediate care does not normally include providing care for bed-ridden patients except on an emergency or temporary basis.

Intermodal freight terminal means an industrial establishment in which freight is transferred in containers from truck to railroad cars for transportation.

Interparcel access means a physical way or means to facilitate movement of pedestrians and/or vehicles between adjacent lots (that is, "lot-to-lot access") without generating additional turning movements on a public street.

Jewelry repair shop means Establishment primarily engaged in the provision of jewelry repair services to individuals.

Junk vehicle means any vehicle that is in such a state of disrepair as to be inoperable and does not bear a current license plate.

Junkyard means any lot or lot and buildings in combination which is utilized for the parking, storage or disassembling of junk vehicles; storage, bailing or otherwise dealing in bones, animal hides, scrap iron and other metals, used paper, used cloth, used plumbing fixtures, old refrigerators and other old household appliances, and used brick, wood or other building materials. These uses shall be considered junkyards whether or not all or parts of these operations are conducted inside a building or in conjunction with, in addition to or accessory to other uses of the premises.

Keeping of chickens means the breeding, boarding, and caring of chickens for personal or agriculture use, or raised for sale and profit.

Keeping of livestock means the breeding, boarding and caring of livestock for personal or agricultural use, or raised for sale and profit.

Keeping of pigeons means the breeding, boarding, and caring of pigeons for personal or agriculture use, or raised for sale and profit.

Kennel, breeding, means a kennel where no more than ten dogs, registered with a nationally recognized registration organization, over the age of six months are owned, kept or harbored for the purpose of breeding purebred or pedigreed dogs; provided, however, this definition shall not apply to zoos or to animal hospitals operated by a veterinarian, duly licensed under the law.

Kennel, commercial, means an establishment for the boarding, caring for and keeping of dogs over the age of six months other than a breeding kennel or a noncommercial kennel.

Kennel, noncommercial, means an establishment for the boarding, caring for and keeping of more than three but not more than ten dogs over the age of six months, not for commercial purposes.

Kidney dialysis center means an establishment where a process of dialysis, an artificial process of getting rid of waste and unwanted water from blood, is carried out for the patients whose kidneys have been damaged or lost kidney function.

Kindergarten means an establishment operated by any person wherein compensation is paid for providing for the care, supervision, instruction, and protection of seven or more children who are under the age of seven years for less than 24 hours per day, without transfer of legal custody. For the purpose of this zoning ordinance, a kindergarten school is considered to be a child daycare center or facility.

Kiosk means a freestanding structure upon which temporary information and/or posters, notices, and announcements are posted.

Kitchenette means a small, compact apartment kitchen, often part of another room utilized for different activities.

Kitchen facilities means a room used to prepare food containing, at a minimum, a sink and a stove or oven.

Laboratories (medical/dental) means a facility offering diagnostic or pathological testing and analysis of diagnostic tests related to medical or dental care industry.

Land use means a description of how land is occupied or utilized.

Landfill means an area of land on which or an excavation in which solid waste is placed for permanent disposal and which is not a land application unit, surface impoundment, injection well, or compost pile.

Landscape area means an area set aside from structures and parking which is developed with natural materials (i.e., lawns, trees, shrubs, vines, hedges, bedding plants, rock) and decorative features, including paving materials, walls, fences, and street furniture.

Landscape business means a business whose primary operation is the sale and installation of organic and inorganic material, plants, pine straw and other limited accessory products for the landscape industry and the storage and use of associated landscape vehicles and equipment.

Landscape strip means a strip intended to be planted with trees, shrubs, or other vegetation. Same as landscape zone.

Landscaped space means the areas of a parking lot which are planted with trees, shrubs and ground cover, plazas, fountains and other hardscape elements and similar features which are located within such parking lot and which are generally accessible to patrons or the general public during normal business hours.

Large-scale brewery means a building or group of buildings where beer is brewed, bottled, packaged, and distributed for wholesale and/or retail distribution, and that produces more than 12,000 gallons in a calendar year. [TMOD-21-016]

Large-scale distillery means a building or group of buildings where distilled spirits are manufactured (distilled, rectified or blended), bottled, packaged, and distributed for wholesale and/or retail distribution in large quantity, more than 12,000 gallons per calendar year. [TMOD-21-016]

Large-scale retail means a singular retail or wholesale user who occupies no less than 60,000 square feet of gross floor area.

Late-night establishment means any establishment licensed to dispense alcoholic beverages for consumption on the premises where such establishment is open for use by patrons beyond 12:30 a.m.

Laundry means a facility used or intended to use for washing and drying of clothes and fabrics.

Laundry, coin operated, means a self-service laundry facility where clothes are washed and dried by washing and drying machines that require coins to operate.

Laundry pick-up station means a facility where clothes and linens are dropped off for laundry or dry cleaning and where clothes and linen are picked up once they are cleaned. These facilities do not perform dry cleaning on-site. See *Dry cleaning agency.*

Leachate collection system means a system at a landfill for collection of the leachate which may percolate through the waste and into the soils surrounding the landfill.

Leasing office means a facility where commercial or residential spaces available for renting are exhibited, or where documents related to the lease agreements are prepared. This facility may also be used to collect rent or used by occupants to report needs of services or other support.

Library means a public facility, a room or building, for the exhibition and use, but not sale of literary, scientific, historical, musical, artistic or reference materials.

Light industrial. See *Light manufacturing establishment.*

Light malt beverage manufacturer means a malt beverage manufacturer licensed as a brewpub per O.C.G.A. § 3-5-36 or licensed as a brewery per O.C.G.A. § 3-5-24. All state and federal licensing and regulatory requirements shall be met prior to the approval of a certificate of occupancy for this use. See also *Brewpub.*

Light manufacturing. See *Industrial, light.*

Liner building means a specialized building, parallel to the street, which is designed to conceal areas like a parking lot, parking deck or loading docks.

Liquor store. See *Alcohol outlet.*

Live-work unit means a structure or portion of a structure that combines residential living space with an integrated work space used principally by the occupant of the unit.

Livestock means domestic animals and fowl customarily kept on a farm, including horses, mules, donkeys, cows, cattle, sheep, goats, ducks, geese and turkeys.

Livestock sales pavilion means any place or establishment conducted or operated for compensation or profit consisting of pens, or other enclosures, in which house horses, cattle, mules, burros, swine, sheep, goats and poultry are temporarily received, held, assembled and/or slaughtered for either public or private sale.*Lodge* means a membership organization that holds regular meetings and that may, subject to other regulations controlling such uses, maintain dining facilities, serve alcohol, or engage professional entertainment for the enjoyment of dues paying members and their guests. There are no sleeping facilities. The term "lodge" shall not include fraternities or sororities. (See also *Fraternal organization.*)

Lodging unit means one or more rooms, designed, occupied, or intended for occupancy as a separate living quarter, with sleeping, and bathroom facilities provided within the lodging unit for the exclusive use of a single family maintaining a household.

Lot means a portion or parcel of land intended as a unit for transfer of ownership or for development or both, intended to be devoted to a common use or occupied by a building or group of buildings devoted to a common use, and having principal frontage on a public road or an approved private road or drive.

Lot area means the total area within the lot lines of a lot, excluding any street rights-of-way.

Lot area, net means the total area of a proposed subdivision on an approved subdivision plat dedicated to individual lots, excluding any area dedicated to public or private street rights-of-way or utility easements.

Lot, buildable area of. See *Buildable area.*

Lot, conforming, means a designated parcel, tract, or area of land which meets the lot area, lot width and street frontage requirements of this chapter.

Lot, contiguous, (as used in section 8.1.4) means lots adjoining the rear or either side of the lots.

Lot, corner, means a lot abutting upon two or more streets at their intersection or upon two parts of the same street.

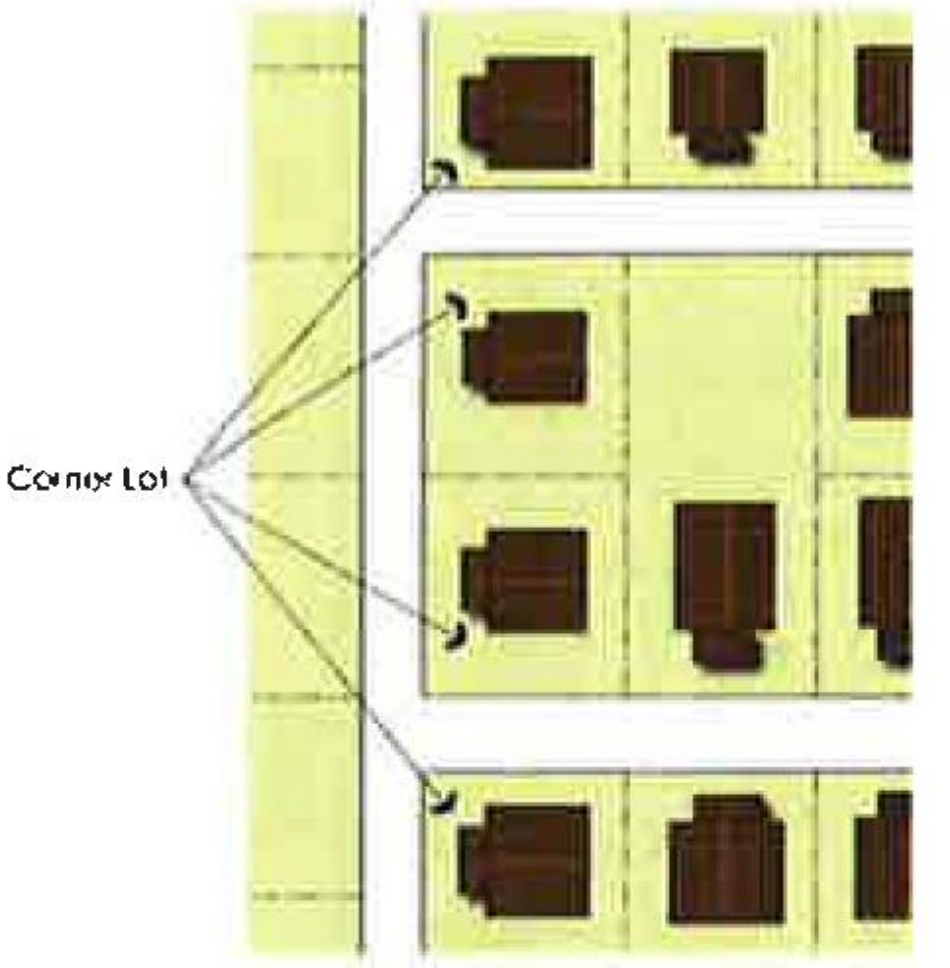


Figure 9.7 Corner Lots

Lot coverage means that portion of a lot that is covered by buildings, structures, driveways or parking areas, and any other impervious surface. For the purposes of calculating lot coverage, wooden decks, stone walkways and patios set without grout, or pervious, permeable, or porous pavements shall be considered pervious.

Lot, double-frontage, means a lot that abuts two parallel streets or that abuts two streets that do not intersect at the boundaries of the lot. A double-frontage lot may also be referred to as a through lot.

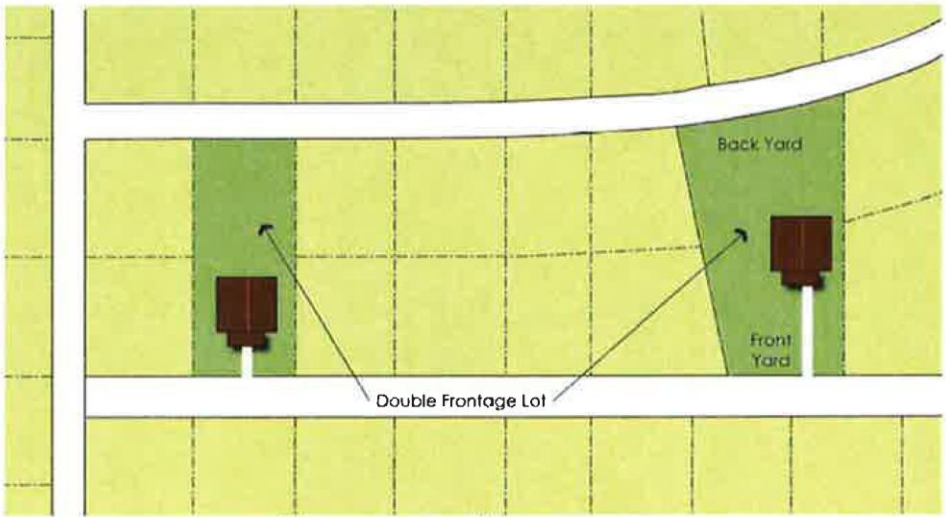


Figure 9.8 Double Frontage Lots

Lot, flag, means a tract or lot of land of uneven dimensions in which the portion fronting on a street is less than the required minimum width required for construction of a building or structure on that lot. A flag lot may also be referred to as a panhandle lot.

Lot, interior, means a lot, other than a corner lot, abutting only one street.

Lot, irregular, means a lot of such a shape or configuration that technically meets the area, frontage, and width to depth requirements of this article but meets these requirements by incorporating unusual elongations, angles, curvilinear lines unrelated to topography or other natural land features.

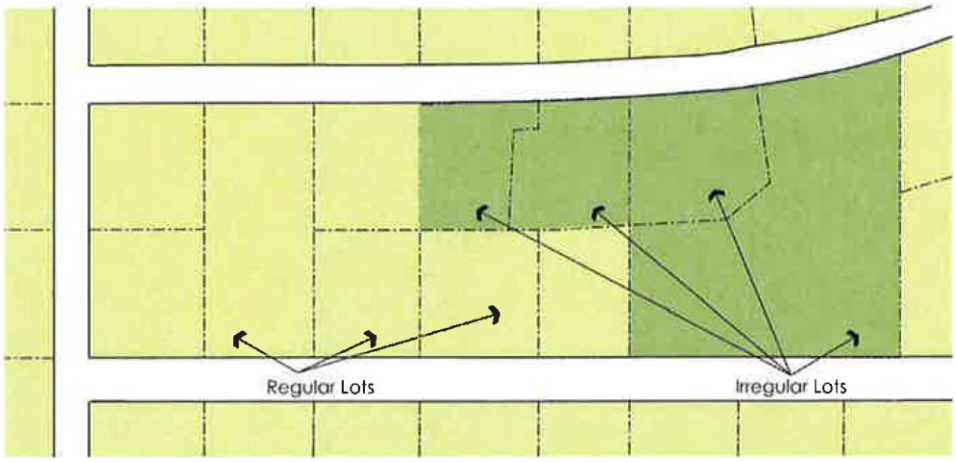


Figure 9.9 Irregular lots

Lot of record means a lot which is part of a subdivision, a plat of which has been recorded in the Office of the Clerk of Superior Court of DeKalb County, Georgia, or a parcel of land described by metes and bounds, the plat or description of which has been recorded in said office.

Lot of record, nonconforming, means a designated parcel, tract, or area of land legally existing at the time of the enactment of this chapter or amendment of this chapter which does not meet the lot area, lot width, or public or private street frontage and access requirements of this chapter.

Lot remnant means any portion or portions of a lot not suitable for building because of its size and remaining after the transfer of other portions of said lot to adjoining lots.

Lot, substandard, means a designated parcel, tract, or area of land created after the time of enactment of this chapter or amendment of this chapter which does not meet the lot area, lot width, or public or private street frontage and access requirements of this chapter. Such a lot is illegal except where created by governmental action in which case such lot shall have the status of a nonconforming lot of record.

Lot width means the horizontal distance measured at the building line between the side lines of a lot, measured at right angles along a straight line parallel to the street, or in case of a curvilinear street, parallel to the chord of the arc.

Low-rise in the I-20 Corridor Overlay District means a building in the I-20 Corridor Overlay district that is one to four stories in height.

Low-rise in the Stonecrest Area Overlay District means a building in the Stonecrest Area Overlay district that is one to three stories in height.

Lumber supply establishment means a facility for manufacturing, processing, and sales uses involving the milling of forest products to produce rough and finished lumber and other wood materials for use in other manufacturing, craft, or construction processes.

Mail room means a room in an office which mail and package shipments are prepared and deliveries accepted.

Major automobile repair and maintenance shop. See *Automobile repair, major.*

Major intersection means the intersection of a major arterial striate with a major or minor arterial street.

Major modification. See section 4.2.57.B.

Major modification to zoning conditions. See article 7 of this chapter.

Major thoroughfare means a street, road or highway shown as a major thoroughfare in the DeKalb County Transportation and Thoroughfare Plan.

Manufactured home, Class I, means a single-family dwelling unit that is constructed in accordance with the Federal Manufactured Home Construction and Safety Standards and bears an insignia issued by the U.S. Department of Housing and Urban Development, or a single-family dwelling unit that, if constructed prior to applicability of such standards and insignia requirements, was constructed in conformity with the Georgia State Standards in effect on the date of manufacture.

Manufactured home, Class II, means a single-family dwelling unit meeting the requirements of a Manufactured Home Class I and, in addition, bears the insignia of the Southern Standard Building Code Congress International.

Manufacturing, heavy. See *Industrial, heavy.*

Manufacturing, light. See *Industrial, light.*

Massage establishment means any business properly licensed under chapter 15, article VIII that is established for profit and employs one or more massage therapists, operates or maintains for profit one or more massage apparatus, and which, for good or valuable consideration, offers to the public facilities and personnel for the administration of massages, within the meaning of said chapter 15, article VIII. The term "massage establishment" shall not include hospitals or other professional health care establishments separately licensed as such by the State of Georgia.

Materials recovery facility means a handling facility that provides for the extraction of recoverable materials, materials suitable for use as a fuel or soil amendment, or any combination of such materials.

Mausoleum means a building containing aboveground tombs.

Meat processing means a building where live animals are killed and processed; and/or a building where meat, poultry, or eggs are cooked, smoked, or otherwise processed or packed but does not include a butcher shop or rendering plant.

Medical model means a comprehensive program that provides aging adults with the basic social, rehabilitative, health, and personal care services needed to sustain essential activities of daily living and to restore or maintain optimal capacity for self-care. Such program of care shall be based on individual plans of care and shall be provided for less than 24 hours per day.

Medium and high density residential zoning districts. Any of the following zoning districts means r-SM, MR-1, MR-2, HR-1, HR-2, and HR-3.

Microbrewery, see Craft Brewery. [TMOD-21-016]

Mid-rise in the I-20 Corridor Overlay District means a building in the I-20 Corridor Overlay district that is five to eight stories in height.

Mid-rise in the Stonecrest Area Overlay District means a building in the Stonecrest Area Overlay district that is four to ten stories in height.

Mine:

1. A cavity in the earth from which minerals and ores are extracted; and
2. The act of removing minerals and ores from the earth.

Mineral extraction and processing means extraction and processing of metallic and nonmetallic minerals or materials, including rock crushing, screening, and the accessory storage of explosives.

Mini-warehouse means a building or group of buildings in a controlled-access and secured compound that contains varying sizes of individual, compartmentalized and controlled-access stalls or lockers for the storage of customers' goods or wares, and may include climate control.

Miniature golf course means a novelty version of golf played with a putter and a golf ball on a miniature course, typically with artificial playing surfaces, and including obstacles such as bridges and tunnels.

Mining means extraction of minerals, including solids, such as coal and ores; liquids, such as crude petroleum; and gases, such as natural gases. The term "mining" includes quarrying; ground-water diversion; soil removal; milling, such as crushing, screening, washing, and floatation; and other preparation customarily done at the mine site as part of a mining activity.

Minor automobile repair and maintenance shop. See *Automobile repair, minor.*

Minor modification to zoning conditions. See article 7 of this chapter.

Minor thoroughfare means a street, road or highway shown as a minor thoroughfare in the DeKalb County Transportation and Thoroughfare Plan.

Mixed-use building or development means a development which incorporates a variety (two or more) of land uses, buildings or structures, that can include both primary residential uses and primary nonresidential uses which are part of the same development. Such uses may include, but not be limited to, residential, office, commercial, institutional, recreational or public open space, in a compact urban setting that encourages pedestrian oriented development that can result in measurable reductions in traffic impacts. Such a development would have interconnecting pedestrian and vehicular access and circulation.

Mixed-use zoning districts means any of the following zoning districts: MU-1, MU-2, MU-3, MU-4, and MU-5.

Mobile home means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, when erected on-site, is 320 or more square feet in floor area, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; and manufactured prior to June 15, 1976.

Mobile home lot means a parcel of land, approved pursuant to the subdivision requirements of chapter 14 of the Code, in a mobile home park which is intended and used for the placement of a single mobile home and for the exclusive use of its occupants.

Mobile home park means a parcel of land which has been planned and improved pursuant to the requirement of this chapter and chapter 14 of the Code for the placement of mobile homes for non-transient use.

Mobile home sales means Exhibition and sale of mobile homes.

Mobile home stand means that part of a mobile home lot which has been reserved for the placement of a mobile home for non-transient use.

Modular home means a factory-manufactured single-family dwelling which is constructed in one or more sections and complies with the definition of "industrialized building."

Monastery means a building or buildings used as both a place of worship and as a residence, operated as a single housekeeping unit, solely by and for a group of men who have professed vows in a religious order and who live together as a community under the direction of a local supervisor designated by the order.

Monopole. See section 4.2.57.B.

Mortuary means an establishment in which the deceased are prepared for burial or cremation. The facility may include a crematory, a chapel for the conduct of funeral services and spaces for funeral services and informal gatherings or display of funeral equipment.

Mosque. See *Place of worship.*

Motel. See *Hotel.*

Muffler means a sound-dissipative device or system for lessening the sound of the exhaust of an internal combustion machine where such a device is part of the normal configuration of the equipment.

Multifamily dwelling. See *Dwelling unit, multifamily.*

Multifamily dwelling, supportive living, means Four or more dwelling units in a single building or group of buildings which are designed for independent living for persons with disabilities of any kind and in which are provided supportive services to the residents of the complex but which supportive services do not constitute continuous 24-hour watchful oversight, and which does not require licensure as a personal care home by the Office of Regulatory Services of the State of Georgia Department of Human Resources.

Multi-use property means any distinct parcel of land that is being used for more than one land use purpose.

Museum means a building or structure that is primarily used as a repository for a collection of art or natural, scientific, or literary objects, and is intended and designed so that members of the public may view the collection, with or without an admission charge, and which may include as an accessory use the sale of goods to the public or educational activities.

Natural state means that condition that arises from or is found in nature and not modified by human intervention; not to include artificial or manufactured conditions.

Nature preserve means an area or a site with environmental resources intended to be preserved and remain in a predominately natural or undeveloped state to provide resource protection and possible opportunities for passive recreation and environmental education for present and future generations in their natural state.

Neighborhood means an area of the city within which residents share a commonality of interests including distinct physical design and street layout patterns, a shared developmental history, distinct housing types, or boundaries defined by physical barriers such as major roads and railroads or natural features such as creeks or rivers.

Neighborhood residual sound level means that measured value that represents the summation of the sound from all of the discrete sources affecting a given site at a given time, exclusive of extraneous sounds, and those from the source under investigation. The term "neighborhood residual sound level" is synonymous with background sound level. Neighborhood residual sounds are differentiated from extraneous sounds by the fact that the former are not of a relatively short duration, although they are not necessarily continuous.

Net lot area, see Lot area, net.

New construction on an infill lot means the replacement of an existing residential building or structure with a new building, structure or an addition that increases the usable square footage in the building, structure or addition.

News dealer means a person who sells newspapers and magazines as a retailer.

News stand means a temporary structure, manned by a vendor that sells newspapers, magazines, and other periodicals.

Nightclub means a place of entertainment open at night serving food and/or liquor with all booths and tables unobstructed and open to view, dispensing alcoholic beverages and in which music, dancing or entertainment is conducted with or without a floor show. The principal business of a nightclub shall be entertaining, and the serving of alcoholic beverages shall be incidental thereto.

Node means a concentration of population, retail, and employment within a well-defined area that has a diverse mix of land uses and a pedestrian and transit orientation.

Noise control officer means a city employee or agent who has received noise enforcement training and is currently certified in noise enforcement.

Noise sensitive facility means any facility whose operations may be detrimentally impacted by excessive sound levels. Such facilities include, but are not limited to, schools, hospitals, and places of worship.

Nonconforming characteristics of building or structure means a building or structure, legally existing on the effective date of the ordinance from which this chapter is derived, but which fails to comply with one or more of the district or general non-use development regulations adopted under the terms of this chapter which are applicable to said building or structure, including, but not limited to, setbacks, lot frontage, lot area, building height limitations, off-street parking or loading, buffers, landscaping or any other applicable development regulation.

Nonconforming use of land means a use of land, legally existing on the effective date of the ordinance from which this chapter is derived, but which is not an authorized use under the terms of this chapter in the district in which such land is located.

Nonconforming use of land and buildings, or nonconforming use of land and structures means a use of land and buildings or land and structures, in combination, legally existing on the effective date of the ordinance from which this chapter is derived, but which is not an authorized use of land and buildings or land and structures, in combination, under the terms of this chapter in the district in which such use is located.

Nonconforming use requiring special exception or special land use permit means a use of land, or land and buildings or structures in combination, legally existing on the effective date of the ordinance from which this chapter is derived, but which is not an authorized use under the terms of this chapter in the district in which such use is located but is permitted only upon approval of a special exception or special land use permit by the appropriate body.

Nonresidential development means all commercial, office, institutional, industrial and similar lands and uses.

Nonresidential zoning district means any of the following zoning districts means NS, C-1, C-2, O-I-T, O-I, O-D, M and M-2.

Non-transient lodging accommodations means long-term or permanent sleeping accommodations offered to persons as a residence, domicile, or settled place of abode.

Nudity means the showing of the human male or female genitals, pubic area, vulva, or anus with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

Nursery, plant, means an establishment for the growth, display, and/or sale of plants, shrubs, trees, and materials used in indoor or outdoor planting, conducted within or without an enclosed building.

Nursing care facility means an establishment providing inpatient nursing and rehabilitative services to patients who require health care but not hospital services, where such services have been ordered by and under the direction of a physician and the staff includes a licensed nurse on duty continuously with a minimum of one full-time registered nurse on duty during each day shift. Included are establishments certified to deliver skilled nursing care under the Medicare and Medicaid programs. The term "nursing care facility" includes convalescent homes with continuous nursing care, extended care facilities, skilled nursing homes and intermediate care nursing homes.

Nursing home means a facility which admits patients on medical referral only and for whom arrangements have been made for continuous medical supervision; maintains the services and facilities for skilled nursing care, rehabilitative nursing care, and has an agreement with a physician and dentist who will be available for any medical and/or dental emergency and who will be responsible for the general medical and dental supervision of the patients; and complies with rules and regulations of the Georgia Department of Human Resources or state agency with jurisdiction as may be reorganized.

Office, building or construction means a temporary structure used as an office or storage for construction operations and is located at the construction site.

Office, dental, means a building used exclusively by dentists and similar personnel for the treatment and examination of patients solely on an outpatient basis, provided that no overnight patients shall be kept on the premises.

Office, medical, means a building or floor used exclusively by physicians, dentists, and similar personnel for the treatment and examination of patients solely on an outpatient basis, provided that no overnight patients shall be kept on the premises.

Office, professional, means an office for the use of a person or persons generally classified as professionals, such as architects, engineers, attorneys, accountants, doctors, dentists, chiropractors, psychiatrists, psychologists, and the like.

Office park means a large tract of land that has been planned, developed, and operated as an integrated facility for a number of separate office buildings and supporting ancillary uses with special attention to circulation, parking, utility needs, aesthetics, and compatibility.

Office supply store means a facility established where office supplies, furniture and technology regularly used in offices are exhibited and sold.

Official zoning map or maps means the zoning maps of the City of Stonecrest which are adopted with and incorporated by reference as a part of this chapter and amendments to the official zoning map are synonymous with and commonly referred to as rezonings.

One-part commercial block style means a single-story building that has a flat roof, a facade that is rectangular in shape, and in which the fenestration in the facade is equal to 75 percent of the width of the front facade of the building.

Open space means a portion of a development project or lot that is intended to be free of buildings or parking lots. Open space may be in its natural state or improved with recreation amenities.

Open space, clubhouse or pool amenity area, means an open space that can be found in a neighborhood park, mini-park or alone as an amenity area for the residents of a developed community. Clubhouse/pool areas can include swimming pools, group activity rooms, outdoor eating areas, and/or exercise stations, and must meet all applicable building and health codes.

Open space, enhanced, means a planned open area suitable for relaxation, recreation or landscaping which may be held in common or private ownership, provided that all residents of the development in which the open space is located shall have a right to enter and use the open space. Such enhanced open spaces may include walkways, patios, recreational amenities, picnic pavilions, gazebos and water features. See article 5 of this chapter for types of open space functions considered enhanced.

Open space, green, means an informal area for passive use bound by streets or front facing lots, typically between 500 square feet and one acre, which is small, civic, surrounded by buildings, natural in its details, and may be used to protect specimen trees and provide for conservation functions.

Open space, greenway, means an open space that typically follows natural or constructed features such as streams or roads and is designed to incorporate natural settings such as creeks and significant stands of trees, and is used for transportation, recreation, and environmental protection. Greenways are natural (i.e., informally planted) in their details except along rights-of-way, and may contain irregular topography.

Open space, neighborhood park, means an open space designed for active or passive recreation use.

Open space, playground or tot lot, means an open space that provides play areas for toddlers and children as well as open shelter and benches, which is located in a neighborhood, or as part of a larger neighborhood or community park and urban center, including retail shopping areas.

Open space, plaza, means an open space paved in brick or another type of impervious surface that provides passive recreation use adjacent to a civic or commercial building.

Open space, pocket park, means an open space that provides active recreational facilities, most often in an urban area that is surrounded by commercial buildings or houses on small lots, and is typically less than one-quarter of an acre.

Open space, square, means an open space used to emphasize important places, intersections, or centers, bounded by streets or front-facing lots, typically between 500 square feet and one acre.

Operator means a person who conducts a home occupation, has majority ownership interest in the home occupation, lives full-time in the dwelling on the subject property, and is responsible for strategic decision and day to day operation of the home occupation.

Ordinary maintenance. See section 4.2.57.B.

Ornamental metal means any metalwork that serves as adornment and/or non-structural purposes during construction of a building.

Outdoor advertising service means a service to provide advertisements visible in the outdoors such as billboards.

Outdoor amusement enterprise means any outdoor place that is maintained or operated for provision of entertainment or games of skill to the general public for a fee where any portion of the activity takes place outside of a building, including, but not limited to, a golf driving range, archery range, or miniature golf course. This use does not include a stadium or coliseum.

Outdoor amusement service facility, in the Stonecrest Area Overlay District, means any outdoor place that is maintained or operated for a fee to the general public where one or more of the following activities take place means miniature golf, paint ball, vehicle racing, vehicle performances, skeet range, shooting range, rides, carnival, water park, circus, rodeo, bull riding, go-carts, or zoo.

Outdoor display means an outdoor arrangement of items or products for sale, typically not in a fixed location capable of rearrangement, designed for advertising or identifying a business, product or service.

Outdoor manufacturing means a facility established for manufacturing activities that takes place outside an enclosed building.

Outdoor storage means the keeping, in an unenclosed area, of any goods, material, or merchandise associated with a land use. Storage does not include the parking of any vehicles or outdoor display of merchandise. The term "outdoor storage" includes outdoor work areas. See *Vehicle storage yard.*

Outdoor storage, commercial means the keeping, in an unenclosed area, of any goods, materials, or merchandise associated for a daily, monthly or annual fee. This term does not include the parking of any vehicles or outdoor display of merchandise.

Outdoor theater means an outdoor open space where dramatic, operatic, motion picture, or other performance, for admission to which entrance money is required takes place.

Overstory tree means any self-supporting woody plant of a species that normally achieves an overall height at maturity of 30 feet or more.

Package store means a retail establishment that sells distilled spirits for off-site consumption.

Parapet means that portion of a wall that extends above the roof line.

Parcel. See *Lot.*

Parking or *park* means the standing of a vehicle, whether occupied or not, other than temporarily for the purpose of and while actually engaged in loading or unloading of property or passengers.

Parking, valet, means Parking of vehicles by an attendant provided by the establishment for which the parking is provided.

Parking aisle means an area within a parking facility intended to provide ingress and egress to parking spaces.

Parking bay means the clear space containing one or two rows of parking stalls and a parking aisle.

Parking garage means a covered or sheltered structure designed, constructed and used for the parking of motor vehicles.

Parking garage/structure, commercial means a covered or sheltered structure of one or more stories designed, constructed and used for the parking of motor vehicles for profit.

Parking lot, commercial means any area designed for temporary storage of motor vehicles by the motoring public in normal operating condition, for profit.

Parking lot means any area designed for temporary storage of motor vehicles by the motoring public in normal operating condition.

Parking space means a paved area of not less than 120 square feet (small car space) or not less than 153 square feet (large car space) space with dimensions of not less than eight feet wide by 15 feet deep (small cars) or eight feet six inches wide by 18 feet deep (large cars), the exclusive purpose of which is for the parking of a vehicle.

Parking structure means a structure or portion thereof composed of one or more levels or floors used exclusively for the parking or storage of motor vehicles. A parking structure may be totally below grade (as in an

underground parking garage) or either partially or totally above grade with those levels being either open or enclosed.

Party House: A single-family detached dwelling unit, including all accessory structures, which is used for the purpose of hosting a commercial event. For this definition, commercial event includes parties, ceremonies, receptions or similar-scale gatherings where the attendees are charged entry to the event, either in cash money or other remuneration, or the structure and its curtilage otherwise functions as a commercial recreation facility. An event produced by an owner-occupier of the property, or a long-term lessee residing on the property for a period not less than one year, where no remuneration is charged to guests shall not qualify under this definition.

[TMOD-19-005]

Pasture land. See *Grazing land.*

Path means a paved or structurally improved walkway that provides access to areas within a development.

Paved means a structurally improved surface supporting the intended or allowed uses of traffic. An area may be covered by asphalt, concrete, permeable pavement or permeable pavement system that is acceptable to the director of planning. For the purposes of a driveway for the parking of automobiles, two paved tire tracks with an unpaved area between them shall be considered paved.

Pavement, permeable, means pavement materials including pervious asphalt and concrete, interlocking pavers, modular pavers, and open-celled paving or similar materials that allow the infiltration of water below the pavement surface. Pavement must support the expected loading and traffic.

Pawn shop means any entity engaged in whole or in part in the business of lending money on the security of pledged goods (as that term is defined in O.C.G.A. § 44-12-130(5)), or in the business of purchasing tangible personal property on a condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time, or in the business of purchasing tangible personal property from persons or sources other than manufacturers or licensed dealers as part of or in conjunction with the business activities described in this section. The term "pawn shop" includes title pawn.

Pedestrian oriented means a density, layout and infrastructure that encourages walking and biking within a subdivision or development, including short setbacks, front porches, sidewalks, and bike paths.

Permitted use means any use which can be undertaken without approval by the designated authority of a special land use permit, special exception, or special administrative permit which is required by the terms of this chapter.

Personal assistance services means assistance to an individual with, or supervision of self-administration of, medication, ambulation, and transfer from location to location, and/or essential activities of daily living, such as eating, bathing, grooming, dressing, and toileting.

Personal care home means a building(s) in which housing, meals, personal assistance services, and twenty-four-hour continuous watchful oversight to seven (7) or more persons are provided and which facility is licensed or permitted as a personal care home by the State of Georgia. The term "personal care home" shall not include a "transitional housing," a "rehabilitation housing facility," a "rooming house," or a "boarding house." "Personal care home" includes a "community living arrangement," which is an establishment licensed by the State of Georgia and providing a residence for adults receiving care for mental health, development disabilities, and/or addictive diseases.

Personal care home, group, means a personal care home that offers care to up to six (6) persons.

Personal services establishment means an establishment primarily engaged in providing services involving the care of a person or providing personal goods where the sale at retail of such goods, merchandise, or articles is only accessory to the provision of such services, including barber shops, beauty shops, tailor shops, laundry shops, dry cleaning shops, shoe repair shops, and similar uses, but specifically excluding sexually oriented businesses.

Pervious area means an area maintained in its natural condition, or covered by a material that permits infiltration or percolation of water into the ground.

Pervious pavers means a range of sustainable materials and techniques for permeable pavements with a base and sub-base that allow the movement of stormwater through the surface.

Pet. See *Household pet.*

Pet cemetery means property used for the interring of dead domestic animals.

Pet shop means a retail sales establishment primarily involved in the sale of domestic animals, such as dogs, cats, fish, birds, and reptiles, excluding exotic animals and livestock.

Pharmacy (retail) means a place where drugs and medicines are legally prepared and dispensed and which is licensed by the state.

Phased development means a development project that is constructed in increments, each stage being capable of meeting the regulations of this chapter independently of the other stages.

Physical therapy facility means a facility where service of developing, maintaining, and restoring maximum movement and functional ability is provided to individuals.

Pitch of roof lines means the ratio of the rise to the run of a roof.

Place of worship means a lot or building wherein persons assemble for religious worship and which is maintained and controlled by a religious body organized to sustain public worship. The term "place of worship" shall also include any of the following accessory uses and buildings means schools, religious education, social gathering rooms, food service facilities, indoor and outdoor recreation facilities, child daycare center, kindergarten, parsonage, rectory or convent and columbarium.

Plainly audible means any sound that can be detected by a person using his unaided hearing faculties.

Planned industrial center means an industrial development planned with multiple buildings for industrial users.

Planning director. See *Director of planning.*

Plant material means material derived from plants.

Planting strip means a strip of land intended to contain plant materials for the purpose of creating visual and physical separation between uses or activities.

Plat:

1. A map representing a tract of land, showing the boundaries and location of individual properties and streets;
2. A map of a subdivision or a site plan.

Pervious surface means an area that allows water to enter the soil mantle at a natural rate of flow. Compare with *Impervious surface.*

Porch, enclosed, means a porch attached to the main building, which is covered by a roof.

Porch, open, means a porch that is not covered by a roof.

Portable storage container means any non-motorized vehicle, trailer or fully enclosed container intended for the temporary storage of items until relocated to another location or a long-term storage facility. Storage containers include, but are not limited to, PODS, Pack-Rats and similar containers.

Porte-cochere means a porch or a structure attached to a residence and erected over a driveway, not exceeding one story in height and open on two or more sides.

Post office means a public facility that contains service windows for mailing packages and letters, post office boxes, offices, vehicle storage areas, and sorting and distribution facilities for mail.

Poultry means domestic fowl including chickens, duck, turkeys and geese raised for food (either meat or eggs) or profit.

Premises means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a sexually oriented business license.

Primary building. See *Building, primary or principal.* Compare with *Accessory structure.*

Primary conservation area means that portion of a site in the R-NC (Neighborhood Conservation) District for which application is made for cluster housing development which consists of areas that are unbuildable due to the presence of wetlands, floodplains, steep slopes, or other similar environmental conditions.

Primary material means the building material comprising the acceptable, dominant portion of a building exterior facade, as defined by standards within this article. Compare with *Secondary material.*

Primary street means a street with access control, channelized intersections, and restricted parking that collects and distributes traffic to and from minor arterials.

Principal structure means the building in which the principal use of the lot is located.

Principal use means the primary or predominant use of any lot.

Printing and publishing establishment means an establishment providing printing, blueprinting, photocopying, engraving, binding, or related services.

Printing and publishing establishment (limited) means a printing establishment providing convenience mailing, photocopying and accessory retail-oriented services, not exceeding 5,000 square feet of floor area.

Private ambulance service means a privately-owned facility for the dispatch, storage and maintenance of emergency medical care vehicles; transportation via ambulance; the provision of out-of-hospital emergency medical care to a patient from or in an ambulance; the trip to the site of a patient for the purpose of providing transport or out-of-hospital emergency medical care; the trip to or from any point in response to a medical emergency dispatch from the 9-1-1 Center.

Private club. See *Club, private.*

Private drive means a drive or road on privately-owned property, by an individual or a group of owners who share the use and maintain the road without assistance from a government agency. A private drive has not been transferred to a governing entity. An easement of use on the private drive or road shall permit use by the public. A private drive is allowed to be exempt from the public street regulations of chapter 14 of the Code, but shall meet dimensional requirements established in article 5 of this chapter.

Private educational use means the instruction, teaching or tutoring of students by an occupant of a residential dwelling as a secondary use of the dwelling that is incidental to the primary use of the dwelling unit for residential purposes. No articles or products shall be sold on the premises other than by telephone. Such instruction, teaching or tutoring shall be limited to a maximum of three students at a time, excluding children residing in the dwelling, and shall be limited to the hours of 9:00 a.m. to 9:00 p.m. Such private educational use shall be allowed as a permitted use in all districts where home occupations are allowed but private educational uses shall be subject to the supplemental regulations in article 4 of this chapter.

Private industry solid waste disposal facility means a disposal facility which is operated exclusively by and for a private solid waste generator for the purpose of accepting solid waste generated exclusively by said private solid waste generator.

Private restrictive covenants means private restrictions on the use of land or structures imposed by private contract, such as subdivision covenants.

Private right-of-way means any street, avenue, boulevard, road, highway, sidewalk, alley or easement that is not owned, leased, or controlled by a governmental entity.

Private road. See *Private drive*.

Private street means an access way similar to and having the same function as a public street, providing access to more than one property but held in private ownership. Private streets, when authorized, shall be developed in accordance with the specifications for public streets established in the Code.

Produce means products from farms and gardens such as fruits, vegetables, mushrooms, herbs, grains, legumes, nuts, shell eggs, honey or other bee products, flowers, nursery stock, livestock food products (including meat, milk, yogurt, cheese and other dairy products), and seafood.

Production, field crops, means establishment for commercial agricultural field and orchard uses including production of field crops; may also include associated crop preparation services and harvesting activities, such as mechanical soil preparation, irrigation system construction, spraying, crop processing, and sales in the field not involving a permanent structure.

Production, fruits, tree nuts, and vegetables, means establishment for commercial agricultural field and orchard uses including production of fruits, tree nuts and vegetables.

Prohibited uses means anything not expressly permitted within this zoning ordinance or by resolution. Examples may include structures, land uses, materials, or development control parameters.

Public art. See *Art, public.*

Public right-of-way means any street, avenue, boulevard, road, highway, sidewalk, alley or easement that is owned, leased, or controlled by a governmental entity.

Public space in the I-20 Corridor Overlay District means space located on the exterior of buildings in the I-20 Corridor Overlay District that is available and accessible to the general public. Public space may include, but is not limited to, natural areas, green space, open space, riparian zones, lakes and pools, paths, multipurpose trails, outdoor recreation areas, lawns, landscape strips and other improved landscaped areas, common areas, plazas, terraces, patios, observation decks, fountains, sidewalks, transitional buffer zones and other outdoor public amenities. Space provided as result of the pedestrian circulation requirement shall be credited to the requirement for public space. Such public space is required at ground level, and buildings may not occupy such public space above a height of one story. Exterior public spaces shall not include areas used for vehicles, except for incidental service, maintenance or appropriate emergency access only.

Public space in the Stonecrest Area Overlay District means space located on the exterior of buildings in the Stonecrest Area Overlay District that is available and accessible to the general public. Public space may include, but is not limited to, natural areas, greenspace, open space, riparian zones, lakes and ponds, paths, multipurpose trails, outdoor recreation areas, lawns, landscape strips and other improved landscaped areas, common areas, plazas, terraces, patios, observation decks, fountains, sidewalks, transitional buffer zones and other outdoor public amenities. Space provided as a result of the pedestrian circulation requirement shall be credited to the requirement for public space. Such public space is required at ground level, and buildings may occupy such space above a height of one story. Exterior spaces shall not include areas used for vehicles, except for incidental service, maintenance or appropriate emergency access only.

Public uses means land or structures owned by a federal, state or local government, including, but not limited to, a board of education, and used by said government for a necessary governmental function.

Quarry means a mine where rock, ore, stone, or similar materials are excavated for sale or for off-site use. Quarry includes rock crushing, asphalt plants, the production of dimension stone, and similar activities.

Quick copy and printing store means a facility established for the reproduction and printing of written or graphic materials on a custom order basis for individuals or businesses.

Radio or television broadcasting studio means an establishment primarily engaged in the provision of broadcasting and other information relay services accomplished through the use of electronic, fiber optic, satellite, and telephonic mechanisms, including film and sound recording, a radio station, television studio or a telegraphic service office.

Radio or television broadcasting transmission facility means an installation or facility used for transmitting terrestrial radio frequency and video signals for radio, television, wireless communication, broadcasting, microwave link, mobile telephone or other similar purposes.

Railroad car classification yard or team truck yard means an area used to separate rail cars onto one of several tracks or reconfigure team trucks into different configurations.

Rainwater harvesting means gathering, or accumulating and storing, of rainwater from roof, ground or other catchments in order to reduce or avoid use of water from mains or from water sources like lakes and rivers.

Recovered materials means those materials which have a known use, reuse, or recycling potential; can be feasibly used, reused, or recycled; and have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not requiring subsequent separation and processing.

Recovered materials center means a facility in which materials that would otherwise become solid waste are collected, separated, or processed and reused or returned to use in the form of raw materials or products.

Recovered materials processing means activity of preparing source-separated recoverable materials, such as newspapers, glassware, and metal cans, including collecting, storing, flattening, crushing, or bundling prior to shipment to others who will use those materials to manufacture new products. The materials are stored on-site in bins or trailers for shipment to market. The term "processing" shall mean the preparation of material for efficient shipment by such means as baling, compacting, flattening, grinding, crushing, mechanical sorting, or cleaning.

Recreation means the refreshment of body and mind through forms of play, amusement, or relaxation. The recreational experience may be active, such as boating, fishing, and swimming, or may be passive, such as enjoying the natural beauty of the shoreline or its wildlife.

Recreation, active. See *Active recreation.*

Recreation, indoor, means a commercial recreational land use conducted entirely within a building, including arcade, arena, art gallery and studio, art center, assembly hall, athletic and health clubs, auditorium, bowling alley, club or lounge, community center, conference center, exhibit hall, gymnasium, library, movie theater, museum, performance theater, pool or billiard hall, skating rink, swimming pool, tennis court.

Recreation, outdoor, means a recreational land use conducted outside of a building, including athletic fields; miniature golf, skateboard park; swimming, bathing, wading and other therapeutic facilities; tennis, handball, basketball courts, batting cages, trampoline facilities.

Recreation, passive, means recreation that involves existing natural resources and has a minimal impact on the existing condition of the resources.

Recreation club means a not-for-profit association of people organized for the purpose of providing recreation facilities and programs and characterized by certain membership qualifications, payment of fees and dues, and a charter or bylaws. Recreation club shall also mean, where the context requires, the premises and structures owned or occupied by members of such association within which the activities of the recreation club are conducted.

Recreational vehicle means any vehicle, whether or not motorized, that is intended for personal recreational use and not intended for daily transportation. Such vehicles may include, but are not limited to, Class A and C motor homes, campervans, bus conversions, boats, military surplus vehicle, all-terrain vehicles (ATVs), and similar

vehicles intended for recreational purposes. Pick-up trucks with a fully enclosed bed that are used for daily transportation do not qualify as recreational vehicles.

Recreational vehicle park means a commercial use providing space and facilities for motor homes or other recreational vehicles for recreational use or transient lodging. Uses where unoccupied recreational vehicles are offered for sale or lease, or are stored, are not included.

Recreational vehicle/boat and trailer sales and service means a facility established for the exhibition, sale, and repair of recreational vehicles/boats and personal use trailers.

Recycling collection point means a neighborhood drop-off point for the temporary storage of recyclables.

Recycling plant. See *Recovered materials center* or *Recovered materials processing.*

Regularly means the consistent and repeated doing of an act on an ongoing basis.

Rehabilitation housing facility means an establishment primarily engaged in inpatient care of a specialized nature with staff to provide diagnosis and/or treatment.

Repair, small household appliance, means a business established to provide a service of repairing small household appliances like microwaves, etc.

Replacement. See section 4.2.57.B.

Research and training facility means any facility owned by a private party, institution or government where research and training activities related to various fields like science, arts, etc. are conducted.

Residence hall. See *Dormitory.*

Residential component means the primarily residential portion of a development that may contain a mix of single-family detached, single-family attached and multifamily dwelling units and may include small scale, nonresidential uses.

Residential zoning district means any of the following zoning districts: RE, R-LG, R-100, R-85, R-75, R-60, MHP, R-NC, R-SM, MR-1, MR-2, HR-1, HR-2, HR-3, MU-1, MU-2, MU-3, MU-4, and MU-5.

Residential use means the occupation of a building and land for human habitation.

Restaurant means an eating and drinking establishment where food and drink are prepared, served, and consumed primarily within the principal building.

Restaurant, drive-through, means an establishment where food and drink are prepared which may be consumed within the principal building or which may be ordered and picked up from a service window for off-site consumption.

Retail means the sale of goods, wares or merchandises directly to the end-consumer.

Retail warehouse/wholesale means an establishment exceeding 70,000 square feet of gross floor area and offering a full range of general merchandise to the public, and may include gasoline.

Retaining wall means a structure constructed and erected between lands of different elevations to protect structures and/or to prevent erosion.

Riding academies or stable means a building where horses and ponies are sheltered, fed, or kept and where riding lessons may be provided.

Right-of-way line means the limit of publicly-owned land or easement encompassing a street or alley.

Rooming house. See *Boarding house.*

Salvage yard means land and/or buildings used for the dismantling, cutting up, compressing or other processing of waste items or materials, such as scrap, paper, metal, tires, large household appliances, such as

washing machines or refrigerators, automobiles or other vehicles, or inoperable machinery. Salvaged materials may be stored outdoors or in a building and may be sold wholesale or retail. Typical uses include paper and metal salvage yards, used tire storage yards, or retail and/or wholesale sales of used automobile parts and supplies. This term includes junkyards.

Sand pit means a surface mine or excavation used for the removal of sand, gravel, or fill dirt for sale or for use off-site.

Satellite television antenna means an apparatus capable of receiving but not transmitting television, radio, or cable communications from a central device transmitting said communications.

Sawmill means a facility where logs or cants are sawn, split, shaved, stripped, chipped, or otherwise processed to produce wood products, not including the processing of timber for use on the same lot by the owner or resident of that lot.

Sawmill, temporary or portable, means a facility where sawing related machines are installed on the site temporarily to run as sawmill, but which can be moved by removing and reinstalling the machines to some other site.

School, elementary, means public, private or parochial school offering education for first through fifth grade.

School, high, means public, private or parochial school for the ninth through 12th grades.

School, middle, means public, private or parochial school offering education for sixth through eighth grade.

School, parochial, means school run by a church or parish and engages in religious education in addition to the conventional education.

School, private, means any building or group of buildings, the use of which meets state requirements for elementary, middle, or high school education and which use does not secure the major part of its funding from any governmental agency.

School, public, means a building or group of buildings used for educational purposes, which meets state requirements for elementary, middle, or high school education, and that is funded by a government agency.

School, specialty, means a school specializing in teaching martial arts, dance, music, visual arts and similar fields.

School, vocational, means a specialized instructional establishment that provides on-site training of business, commercial, and/or trade skills or specialized curriculum for special needs individuals or the arts. This classification excludes establishments providing training in an activity that is not otherwise permitted in the zone.

Screening fence means an opaque structure designed to provide a visual barrier constructed of materials, including wood, chain link with wood or plastic inserts, metal, vinyl, plastic and other such materials as may be approved by the director of planning.

Secondary conservation area means that portion of a site for which application is made for cluster housing development which consists of those areas of land which are outside the primary conservation area but which are environmentally sensitive, historically or culturally significant, scenic, or which possess other unusual attributes that merit conservation.

Secondary material means complimentary building material allowed by zoning standards. Compare with *Primary material.*

Secondhand store means a facility for retail or consignment sales of previously used merchandise, such as clothing, household furnishings or appliances, sports/recreational equipment. This classification does not include secondhand motor vehicles, parts, or accessories.

Self-service car wash. See *Car wash, self-service.*

Semi-nude or *semi-nudity* means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. The term "semi-nude" or "semi-nudity" shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

Semi-nude model studio means a place where persons regularly appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. The term "semi-nude model studio" does not apply to any place where persons appearing in a state of semi-nudity did so in a class operated:

1. By a college, junior college, or university supported entirely or partly by taxation;
2. By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
3. In a structure:
    a. Which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; and
    b. Where, in order to participate in a class a student must enroll at least three days in advance of the class.

Senior housing means a multiple-family building or detached dwelling unit, or a combination of both housing types, which is occupied by at least one person who is 55 years of age or older per dwelling unit. Also called *Senior Living.*

Senior living. See *Senior housing.*

Service area means an outdoor work area associated with a commercial use, including work areas where goods and products are assembled, constructed, or repaired but not permanently stored.

Service organization means a voluntary non-profit service club or organization where members meet regularly to perform charitable works or raise money for charitable works.

Setback means the minimum horizontal distance required between the property line and the principal building or structure on a lot or any projection thereof except the projections allowed pursuant to article 5 of this chapter.

Sexual device means any three dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

Sexual device shop means a commercial establishment that regularly features sexual devices. The term "sexual device shop" shall not be construed to include any pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing medical or healthcare products or services,

Sexually oriented business means an adult bookstore or adult video store, an adult cabaret, an adult motion picture theater, a semi-nude model studio, or a sexual device shop.

Sexually oriented business employee means only such employees, agents, independent contractors, or other persons, whatever the employment relationship to the business, whose job function includes posing in a state of nudity, or semi-nudity, or exposing to view within the business the specified anatomical areas, as defined by this section.

Shared parking means parking shared by two or more lots or uses for which the peak parking demands are not at the same time, and parking that can reasonably be shared by such lots or uses. The number of parking spaces in a shared parking facility is less than the combined total of the required minimum number of spaces for each individual use.

Shelter for homeless persons means a building or buildings in which is provided overnight housing and sleeping accommodations for one or more persons who have no permanent residence and are in need of temporary, short-term housing assistance, and in which may also be provided meals and social services including counseling services. Compare with *Transitional housing facility.*

Shoe repair means an establishment where shoes and boots are repaired remodeled or rebuilt by skilled shoe repairers. The establishment may also mend items like handbags and luggage.

Shopping center means a group of at least two commercial establishments typically planned, constructed, and managed as a single entity, with on-site parking for customers and employees, and with delivery of goods separate from customer access.

Short-term vacation rental means any dwelling unit, single-family dwelling, multifamily dwelling unit, two-family dwelling, three-family dwelling, duplex, triplex, urban single-family dwelling, condominium, townhouse, cottage development, dwelling unit, and structure used for residential dwelling that permits any portion of the premises or dwelling unit to be used for the accommodation of transient guests, for a fee, for less than 30 consecutive days. This is also identified as "STVR."

Shrub means a woody plant, smaller than a tree, consisting of several small stems from the ground or small branches near the ground. It may be deciduous or evergreen.

Sidewalk means a hard surface, ADA compliant, clear pathway that does not include any street furniture.

Sight triangle means a triangular area of visibility required on a corner of a roadway intersection to allow for the safe operation of vehicles, trains, pedestrians, and cyclists in the proximity of intersecting streets, rail lines, sidewalks, and bicycle paths.

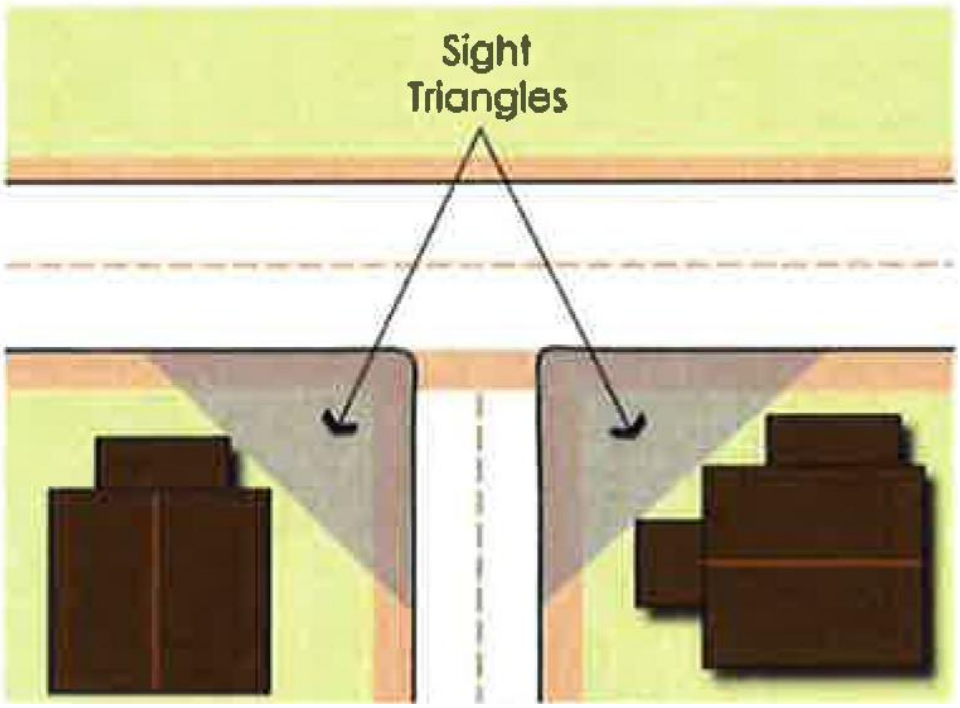


Figure 9.10 Sight Triangles

Single-family attached. See *Dwelling unit, single-family attached.*

Single-family zoning district means any of the following zoning districts means RE, R-LG, R-100, R-85, R-75, R-60, MHP, and R-N(c).

Site means the lot, area of a lot, or assemblage of lots subject to development.

Site plan means that plan required to acquire a development, construction or building permit which shows the means by which the developer will conform to applicable provisions of this chapter and other applicable ordinances.

Small Box Discount Store: A retail establishment with a floor area less than 12,000 square feet that offers for sale a combination and variety of convenience shopping goods and consumer shopping goods, and continuously offers a majority *of the items in their inventory for sale at a price per item of $5.00 or less. This definition shall control any use that fits into same despite otherwise being termed "Grocery Store," "Retail, 5000 sf or less," "Retail, over 5000 sf," or "Variety Store" under the provisions of the City of Stonecrest Zoning Ordinance and Use Table. Small Box Discount Stores shall be a prohibited use in every zoning district of the City of Stonecrest. [TMOD-19-006]*

Smoking Lounge means an establishment which sells tobacco and/or promotes the smoking of tobacco products or any other substance on its premises. The term “smoking lounge” includes but, is not limited to cigar lounges, hookah cafes, tobacco lounges, tobacco clubs, or tobacco bars.

Social model means a program that addresses primarily the basic social and recreational activities needed to be provided to aging adults, but also provides, as required, limited personal care assistance, supervision, or assistance essential for sustaining the activities of daily living. Such programs of care shall be based on individual plans of care and shall be provided for less than 24 hours per day.

Soldier course means a course of upright bricks with their narrow faces showing on the wall surface.

Solid waste means any garbage or refuse; sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility; and other discarded material, including solid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations and community activities, but does not include recovered materials; solid or dissolved materials in domestic sewage; solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 USC 1342; or source, special nuclear, or byproduct material, as defined by the Federal Atomic Energy Act of 1954, as amended (68 State 923).

Solid waste handling means the storage, collection, transportation, treatment, utilization, processing, or disposal of solid waste or any combination of such activities.

Solid waste handling facility means a facility primarily used for the storage, collection, transportation, treatment, utilization, processing, or disposal, or any combination thereof, of solid waste.

Solid waste thermal treatment technology facility means any solid waste handling facility, the purpose of which is to reduce the amount of solid waste to be disposed of through a process of combustion, with or without the process of waste to energy.

Solid waste transfer facility means a facility or site at which temporary storage and transfer of solid waste from one vehicle or container to another, generally of larger capacity, occurs prior to transportation to a point of processing or disposal. A solid waste transfer facility is an intermediary point between the locations of waste generation (e.g., households, businesses, industries) and the sites of ultimate processing or disposal.

Sorority house means a building containing sleeping rooms, bathrooms, common rooms, and a central kitchen and dining room maintained exclusively for sorority members and their guests or visitors and affiliated with an institution of higher learning.

Sound level meter means an instrument that conforms to ANSI S1.4-1983 or its successors.

Special administrative permit means a written authorization granted by the director of planning for a use of land pursuant to an application which that official is authorized to decide, in cases where a permit is required, pursuant to the procedures and criteria contained in article 7 of this chapter.

Special events facility means a building and/or premises used as a customary meeting or gathering place for personal social engagements or activities, where people assemble for parties, weddings, wedding receptions, reunions, birthday celebrations, other business purposes, or similar such uses for profit, in which food and beverages may be served to guests.

1. The term "special events facility" shall not include places of worship.
2. Small Special Event Facility shall mean assembly and entertainment uses with a seating or occupant capacity of no more than 100 persons.
3. Large Special Event Facility shall mean assembly and entertainment uses with a seating or occupant capacity of more than 100 persons

Special exception means the approval by the zoning board of appeals of an application which that board is authorized to decide as specified within a zoning district pursuant to the procedures and criteria contained in article 7 of this chapter.

Special land use permit means the approval of a use of land that the city council is authorized to decide as specified within a zoning district pursuant to the procedures and criteria contained in article 7 of this chapter.

Special permit means a special administrative permit, special exception, or special land use permit.

Specialty store means a store, usually retail, that exhibits and sells specific or specialized types of items or brand. For example, a specialty store may sell cellular phones or organic food, or video games exclusively.

Specified anatomical areas means and includes:

1. Less than completely and opaquely covered means human genitals, pubic region; buttock; and female breast below a point immediately above the top of the areola; and
2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Sporting goods store means a store that exclusively exhibits and sells items related to sports, including, but not limited to, instruments, gears, shoes, and clothes.

Stadium means a structure with tiers of seats rising around a field or court, intended to be used primarily for the viewing of athletic events. The structure may also be used for entertainment and other public gathering purposes, such as conventions, circuses, or concerts.

State means the State of Georgia.

Steady tonal quality means sound emissions comprised of a single frequency or a narrow cluster of frequencies, which may be referred to as a whine, hum or buzz, with measured sound levels not fluctuating by more than plus or minus three dBA.

Stealth telecommunications facility. See section 4.2.57.B.

Stepback means a step-like recession in the profile of a building, whereby the exterior wall surface of each successive story is located farther towards the interior of the building than the exterior wall of the story below it. Stepbacks may result from the transitional height plane requirement. See *Transitional height plane.*

Stoop means a small porch, platform, or staircase leading to the entrance of a house or building.

Storage building means any structure that is used for storage and does not have a door or other entranceway into a dwelling unit and that does not have water fixtures within its confines, the use of which is limited solely to storage of inanimate objects.

Stormwater management facility means those structures and facilities that are designed for the collection, conveyance, storage, treatment and disposal of stormwater runoff into and through the drainage system.

Story means that portion of a building, other than a basement, included between the surface of any floor and the surface of the floor next above or, if there is no floor above, the space between the floor and the ceiling next above. Each floor or level in a multistory building used for parking, excluding a basement, shall be classified as a story.

Street, public, means any right-of-way set aside for public travel deeded to the county or city and any right-of-way which has been accepted for maintenance as a street by the county or city.

Street right-of-way line means the dividing line between a lot, tract or parcel of land and a street right-of-way.

Structure means anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on or in the ground. This does not include telephone poles and utility boxes.

Structure, accessory. See *Accessory structure.*

Subdivision means as defined in chapter 14 of the Code.

Subdivision, major, means all subdivisions not classified as minor subdivisions, including, but not limited to, subdivisions of five or more lots, or any size subdivision requiring any new street, public or private.

Subdivision, minor, means a division of land into not more than four lots, provided:

1. A minor subdivision does not require the construction of any public improvements including street, sidewalks, sewer or water lines and street trees.
2. All lots and any remaining tract shall be consistent with all applicable requirements of this zoning ordinance, including lot size, setbacks, frontage on a public road, width to depth ratio, and lot width.
3. At the time of filing of a subdivision plat, the property owner shall be required to show all possible lots which are permitted to be created through minor subdivision provisions of this zoning ordinance.

Supplemental zone means the additional sidewalk area other than the required sidewalk used to support outdoor dining or other amenities.

Support structures. See section 4.2.57.B.

Supportive living means a non-institutional, independent group living environment that integrates shelter and service needs of functionally impaired and/or socially isolated elders who do not need institutional supervision and/or intensive health care.

Sustainable development means a development that maintains or enhances economic opportunity and community well-being while protecting and restoring the natural environment upon which people and economies depend. Sustainable development meets the needs of the present without compromising the ability of future generations to meet their own needs.

Swimming pools, commercial means any indoor or outdoor structure, chamber, or tank containing a body of water for swimming, diving, or bathing that is intended to be used for such purposes and is operated for profit through a membership or daily fee.

Synagogue. See *Place of worship.*

Tandem parking means a parking space within a group of two or more parking spaces arranged one behind the other such that the space nearest the street serves as the only means of access to the other spaces.

Taproom means an establishment operated by a brewpub or microbrewery for the promotion of a brewpub or microbrewery's malt beverages by providing complimentary samples of malt beverages to the public and for the sale of such malt beverages. Samples of malt beverages can be given free of charge or for a fee.

Tasting room means an outlet operated by a farm winery or microdistillery for the promotion of wine or distilled spirits by providing complimentary samples of wine or distilled spirits to the public and for the sale of such wine or distilled spirits. Samples of wine or distilled spirits can be given free of charge or for a fee.

Tattoo parlors and piercing studios means an establishment whose principal business activity, is the practice of one or more of the following:

(1) Placing of designs, letters, figures, symbols, or other marks upon or under the skin of any person, using ink or other substances that result in the permanent coloration of the skin by means of the use of needles or other instruments designed to contact or puncture the skin;

(2) Creation of an opening in the body of a person for the purpose of inserting jewelry or other decoration.

Taxi stand means a reserved area where taxis or cabs are parked.

Telecommunications antenna. See section 4.2.57.B.

Telecommunications facility/tower. See section 4.2.57.B.

Telecommunications tower. See section 4.2.57.B.

Telecommunications tower or antenna height. See section 4.2.57.B.

Telephone exchange building means a building used exclusively for the transmission and exchange of telephone messages. The term "telephone exchange building" shall not include wireless telecommunication towers or antennas.

Temple. See *Place of worship.*

Temporary outdoor sales or event, seasonal, means outdoor sales of products associated with seasons, holidays and agricultural seasons.

Temporary produce stand means a temporary vending structure used for the sale and/or display of seasonal produce.

Temporary trailer means an enclosed or unenclosed structure, on wheels, that is used for temporary storage purposes.

Tennis courts, play and recreation areas, community, means a public or private facility for the playing of tennis, swimming, or other type of outdoor recreation, including related retail sales and an accessory restaurant. The term "tennis courts, play and recreation areas, community," does not include amenities for a subdivision or other form of housing.

Theater means a structure used for dramatic, operatic, dance, or music performances, or the rehearsal and presentation of other similar performing arts events, or for motion pictures, for which an admission fee is charged. Such establishments may include related services such as food and beverage sales and other concessions.

Threshold means the top of the subfloor in the opening that is designated as the front door of a dwelling.

Thrift store means a for-profit or non-profit business or organization that engages or specializes in the sale or resale of previously-owned or used goods. The term "thrift store" includes antique shops, consignment stores, and secondhand stores.

Tire retreading and recapping means businesses that primarily repair and retread automotive tires.

Total sound level means that measured level which represents the summation of the sounds from the sound source under investigation and the neighborhood residual sounds which affect a given place at a given time, exclusive of extraneous sound sources.

Towing or wreckage service means a business engaged in the transport or conveyance of vehicles from one point to another, for a fee, by use of a flatbed truck, tow truck or wrecker truck but does not include disposal, permanent disassembly, salvage, or accessory storage of inoperable vehicles.

Townhouse means one of a group of three or more single-family dwelling units, attached side-by-side by a common wall. See *Dwelling, single-family.*

Townhouse, stacked, means multifamily building with the appearance of a townhouse (side-by-side attached), but which has multiple dwelling units whereby a unit is located above or below another.

Trade shops means a building designed and equipped for carrying on the trades of metal working, woodworking, welding, plumbing, HVAC, machine work, electrical work, roofing or siding and glasswork and includes contracting in these trades.

Trailer means any non-motorized vehicle or wheeled attachment designed to be towable, including, but not limited to, landscape utility trailers, horse trailers, storage trailers, campers, recreational vehicle trailers designed for temporary living quarters while traveling or camping, fifth-wheel trailers, pop-up campers, transport trailers, and boat trailers.

Transit means the conveyance of persons or goods from one place to another by means of a local, public transportation system.

Transit oriented development (TOD) means moderate and high-density mixed-use development which is located along transit routes and encourages pedestrian use of public transportation.

Transitional buffer zone means a natural or planted buffer area between two different land uses which is intended to provide protection between said land uses and which meets the criteria for said buffer specified in article 5 of this chapter.

Transitional height plane means a geometric plane that establishes the maximum permitted height of a building in a district that allows a greater density than that of an adjoining lower-density residential district. The transitional height plane shall begin at a point 35 feet above setback or transitional buffer line, whichever is furthest from the property line, then extend at an upward angle of 45 degrees over the lot of the building.

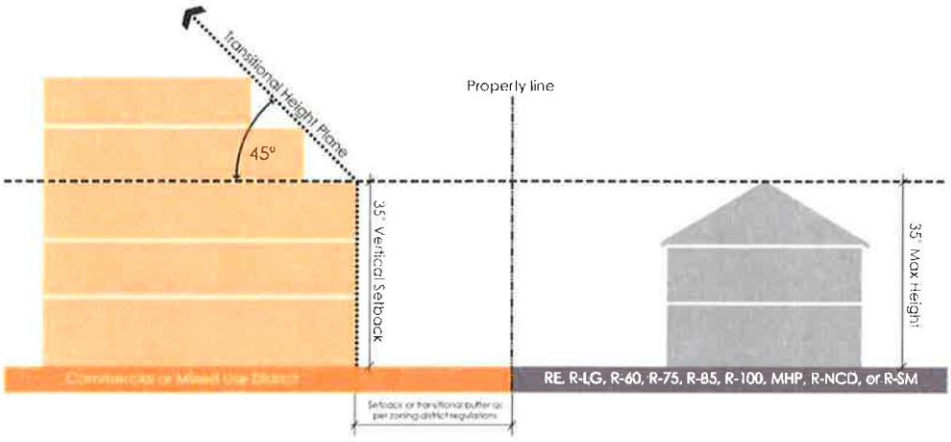


Figure 9.11 Transitional Height Plane

Transitional housing facility means a building or buildings in which is provided long-term but no permanent living accommodations for more than six persons who have no permanent residence and are in need of long-term housing assistance. Compare with *Homeless shelter.*

Transparent material means any material which allows light to be transmitted and objects to be seen clearly and with definition.

Transportation equipment and storage or maintenance (vehicle) means any building, premises or land in which or upon which is the storage or maintenance of motor freight vehicles or equipment, without services provided, such as those provided by a truck stop. Compare with *Truck terminal.*

Tree means any living, self-supporting, woody perennial plant which has a trunk caliper of two inches or more measured at a point six inches above the ground and which normally attains a height of at least ten feet at maturity usually with one main stem or trunk and many branches.

Tree canopy means the area directly beneath the crown and within the outermost edges of the branches and leaves of a tree.

Truck stop means any building, premises, or land in which or upon which a business, service, or industry involving the maintenance, servicing, storage, or repair of commercial vehicles is conducted or rendered, including the dispensing of motor fuel or other petroleum products directly into such commercial vehicles and the sale of accessories or equipment for trucks and similar commercial vehicles. A truck stop may also include overnight accommodations and restaurant facilities primarily for the use of truck crews.

Truck terminal means a building, structure or place at an industrial facility where trucks load and unload cargo and freight and where the cargo and freight may be broken down or aggregated into smaller or larger loads for transfer to other trucks or modes of transportation. This is not intended for long term warehousing or storage of inventory or for retail sales, but to serve solely as a transfer facility. [TMOD-21-001]*Turnaround* means a space, as in a driveway, permitting the turning around of a vehicle.

Two-part commercial block style means a building of two stories or greater in height that has a flat roof and is characterized by a horizontal division of the building facade into two distinct zones. These zones may be similar in design but shall be clearly separated from one another. The ground floor level of the building shall contain fenestration equal to 75 percent of the width of the front facade of the building.

Universal barrier means a type of root barrier for street trees.

Understory tree means a deciduous or evergreen tree which attains a mature height of no greater than 30 feet.

University. See *College.*

Urban garden means a lot, or any portion thereof, managed and maintained by a person or group of persons, for growing and harvesting, farming, community gardening, community-supported agriculture, or any other use, which contributes to the production of agricultural, floricultural, or horticultural products for beautification, education, recreation, community or personal use, consumption, sale, or donation. An urban garden may be a principal or accessory use on lots, including, but not limited to, those owned by individuals, non-profit organizations, and public or private institutions like universities, colleges, school districts, hospitals, and faith communities. The term "urban garden" excludes gardens accessory to an individual's residence.

Usable satellite signals means satellite signals from all major communications satellites that, when viewed on a conventional television set, are at least equal in picture quality to those received from local commercial television stations by way of cable television.

Usable open space. See *Open space, usable.*

Use means the purpose or activity for which land or buildings are designed, arranged, or intended or for which land or buildings are occupied or maintained.

Utility means any public or private agency that provides for the generation, transmission or distribution of electricity, gas, water, stormwater, wastewater, communication, transportation, or other similar service, excluding those utilities that are public uses.

Valet. See *Parking, valet.*

Value added products means prepared farm products such as baked goods, jams and jellies, canned vegetables, dried fruit, syrups, salsas, salad dressings, flours, coffee, smoked or canned meats or fish, sausages, or other prepared foods.

Van service means a commercial or not-for-profit service in which the provider offers transportation service to clients from their home to another destination, such as a medical service facility or other destination.

Variance means permission to depart from the requirements of this chapter pursuant to the requirements of article 7 of this chapter.

Vehicle storage yard means a building or land that is used principally for long-term parking of any class of passenger or non-passenger vehicles, including, but not limited to, automobile fleets associated with commercial business, delivery trucks or other commercial vehicles, or associated with government operations such as school buses, postal delivery trucks, or sanitation trucks. The term "vehicle storage yard" includes off-site parking of commercial vehicles such as those used in light or heavy landscaping or construction, but does not include transportation vehicle such as semi-tractor trailers. A vehicle storage yard may include minor repair of the vehicles as an accessory use. Compare with *Auto recovery and storage.*

Vehicle trip means a vehicular movement either to or from the subject property by any vehicle used in a home occupation, any vehicle associated with a home occupation, or any customer or client vehicle.

Vehicular use area means any portion of a site or a property, paved or unpaved, designed to receive or accommodate vehicular traffic, including the driving, parking, temporary storage, loading, or unloading of any vehicle.

Veterinary clinic. See *Animal hospital.*

Videotape sales and rental store means an establishment primarily engaged in the retail rental or lease of video tapes, films, CD-ROMs, laser discs, electronic games, cassettes, or other electronic media. Sales of film, video tapes, laser discs, CD-ROMs, and electronic merchandise associated with VCRs, video cameras and electronic games are permitted accessory uses.

Viewshed means the total visible area from an identified observation position.

Village center means the central shopping or gathering place within a traditional neighborhood which contains commercial uses and open space and which may contain public space.

Wall means a structure used as a solid retaining, screening, or security barrier constructed of materials including brick, stone, concrete, concrete block, ceramic tile or other aggregate materials and other such materials.

Wall plane means an area of a wall between a wall offset and another wall offset or a corner.

Warehousing or storage means a business establishment primarily engaged in the indoor or enclosed storage of merchandise, goods, and materials, not including “mini-warehouses”, “self-storage facilities”, and “truck terminals.”

Waste to energy facility means a solid waste handling facility that provides for the extraction and utilization of energy from county or city solid waste through a process of combustion.

Weekday means the time period of the week that begins at 7:00 a.m. on each Monday and ends at 6:00 p.m. on each Friday.

Weekend means the time period of each week that begins at 6:00 p.m. on each Friday and ends at 7:00 a.m. on each Monday.

Wetlands means an area of land meeting the definition of "wetlands" set forth in 33 CFR Part 328.3(b) of the Code of Federal Regulations, as amended, and that is subject to federal, state or local regulations governing land meeting that definition.

Wind turbine means a turbine, a rotating machine which mounted on a tower, is used to capture energy from the wind to produce electricity.

Wireless Telecommunication Facilities – See Sub-section 4.2.57.B. – Supplemental Uses, Wireless telecommunications for the meaning of terms used in that section, including the following:

1. *Accessory-equipment (or Equipment)*
2. *Administrative approval*
3. *Administrative review*
4. *Alternative Telecommunication Support Structure*
5. *Antenna*
6. *Applicant*
7. *Application*
8. *Attached wireless telecommunications facility*
9. *Carrier on wheels or cell on wheels (COW)*
10. *Collocate or collocation*
11. *Commission*
12. *Distributed antenna systems (DAS)*
13. *Equipment compound*
14. *FAA*
15. *FCC*
16. *Geographic search area (GSA)*
17. *Grantee*
18. *Guyed Structure*
19. *Height*
20. *Modification*
21. *Ordinary maintenance*
22. *Provider*
23. *Public Right(s)-of-Way*
24. *Public Street*
25. *Small Cell or Small-Cell Installation*
26. *Substantial increase in size*
27. *Telecommunications Facility*
28. *Telecommunications Service(s)*
29. *Telecommunications Support Structure*
30. *Utility*
31. *Visual Quality*

Workforce housing means for-sale housing that is affordable to those households earning 80 percent of median household income for the Atlanta Metropolitan Statistical Area (MSA) as determined by the current fiscal year HUD income limit table at the time the building is built.

Xeriscape means a landscape designed and maintained with the principles that promote good horticultural practices and efficient use of water and is characterized by the use of vegetation that is drought-tolerant or of low water use in character.

Yard means that area of a lot between the principal building and adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided herein.

Yard sale means the temporary residential sale of tangible personal property, such as, but not limited to, household items, clothing, tools, toys, recreational equipment, or other used or secondhand items normally found in and about the home. The term "yard sale" includes the term estate sale, if held outside, garage sale, basement sale, carport sale, moving sale, or rummage sale. This temporary use may be conducted by an individual, multiple persons, churches, social civic or charitable organizations, a neighborhood group, church or civic association.

Yard, corner side, means an open-space area of a corner lot between the exterior side lot line and the required exterior side building setback line, extending between the front building setback line and the rear building setback line.

Yard, front, means an area extending across the total width of a lot between the front lot line and the building. With respect to limitations within the front yard, there can only be one Front yard:

Yard, interior side, means a yard extending between the front and rear yards and being that area between the side lot line, where the side lot line is coincidental with the side or rear lot line of an adjacent lot, and those lines established by the side walls of the principal structure.

Yard, rear, means a yard extending across the total width of a lot between side lot lines and being that area between the rear lot line and those lines established by the rear walls of the principal structure projected to intersect the side lot lines.

Yard, side, means a yard extending between the front and rear yards and being that area between the side lot lines and the principal structure.

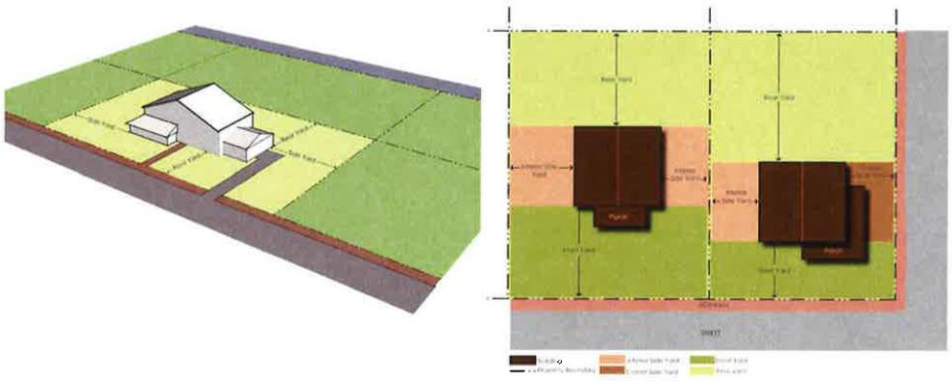


Figure 9.12 Illustration of Yard

Zero lot line means when location of a building in such manner that one or more of building's exterior wall is allowed to rest directly on the lot line or property boundary.

Zoning decision means final legislative action by a local government which results in:

1. The adoption of a zoning ordinance;
2. The adoption of an amendment to a zoning ordinance which changes the text of the zoning ordinance;

3. The adoption of any amendment to a zoning ordinance which rezones the property from one zoning classification to another;
4. The adoption of an amendment to a zoning ordinance by a municipal local government which zones property to be annexed into the municipality;
5. The grant of a permit relating to a special use of property, as defined in O.C.G.A. § 36-66-3, and as may hereafter be amended by Georgia law; or
6. Denial of the aforementioned ordinances or permits.

(Ord. of 8-2-2017, § 1(9.1.3); Ord. No. 2018-07-04, § 1, 7-16-2018) [TMOD-19-004. TMOD-19-005, TMOD-19-006, TMOD-21-002, TMOD-21-003, TMOD-21-009, TMOD-015, TMOD-22-001]

Sec. 9.2. Official zoning maps.

Now, therefore, be it ordained by the Mayor and Council of the City of Stonecrest, Georgia, the Code of the City of Stonecrest, Georgia, is hereby amended by adding the official zoning maps entitled "Official Zoning Map, Stonecrest, Georgia" (the "official zoning maps"). The official zoning maps, adopted contemporaneously with chapter 27, together with all explanatory information contained or referenced thereon, in digital format and contained on a compact disk to be maintained in its original, unedited and unaltered form by the clerk to the city council, attached as Exhibit A. A printed copy of the compact disk's contents depicting the official zoning maps on the date of its initial adoption shall also be maintained in its original, unedited and unaltered form by the clerk to the city council.

(Ord. of 8-2-2017, § 2)

Sec. 9.3. Stonecrest overlay maps.

Now, therefore, be it ordained by the Mayor and Council of the City of Stonecrest, Georgia, the Code of the City of Stonecrest, Georgia, is hereby amended by adding the official zoning maps entitled "Official Zoning Map, Stonecrest, Georgia, Stonecrest Area Overlay District")(the Stonecrest overlay maps). The Official Zoning Map, Stonecrest, Georgia, Stonecrest Area Overlay District, to be adopted contemporaneously with chapter 27, together with all explanatory information contained or referenced thereon, is hereby adopted by reference and declared to be a part of this chapter. The Stonecrest overlay maps shall be adopted contemporaneously with this chapter in digital format and contained on a compact disk to be maintained in its original, unedited and unaltered form by the clerk to the city council, attached as Exhibit B. A printed copy of the compact disk's contents depicting the official zoning maps on the date of its initial adoption shall also be maintained in its original, unedited and unaltered form by the clerk to the city council.

(Ord. of 8-2-2017, § 3)

Sec. 9.4. I-20 Corridor overlay maps.

Now, therefore, be it ordained by the Mayor and Council of the City of Stonecrest, Georgia, the Code of the City of Stonecrest, Georgia, is hereby amended by adding the official zoning maps entitled "Official Zoning Map, Stonecrest, Georgia, I-20 Corridor Overlay District")(the I-20 Corridor overlay maps). The Official Zoning Map, Stonecrest, Georgia, I-20 Corridor Overlay District, to be adopted contemporaneously with this chapter, together with all explanatory information contained or referenced thereon, is hereby adopted by reference and declared to be a part of this chapter. The I-20 Corridor overlay maps shall be adopted contemporaneously with this chapter in digital format and contained on a compact disk to be maintained in its original, unedited and unaltered form by the clerk to the city council, attached as Exhibit C. A printed copy of the compact disk's contents depicting the

official zoning maps on the date of its initial adoption shall also be maintained in its original, unedited and unaltered form by the clerk to the city council.

(Ord. of 8-2-2017, § 4)

Sec. 9.5. Transition period.

During the transition period, any department, employee, or official referenced in the Comprehensive Plan which has not yet been established or appointed shall refer to the City Manager or his designee. During and after the transition period, any reference to the director or planning director shall also refer to the Planning & Zoning Director. During and after the transition period, any reference to the planning department shall refer to the Planning & Zoning department or the similar department created by the City Council during the transition period.

(Ord. of 8-2-2017, § 5)

CITY COUNCIL AGENDA ITEM

SUBJECT: SPD22-000011 Stonecrest Estates Preliminary Plat

AGENDA SECTION: (*check all that apply*)

☐ **PRESENTATION** ☐ **PUBLIC HEARING** ☐ **CONSENT AGENDA** ☐ **OLD BUSINESS**

☒ **NEW BUSINESS** ☐ **OTHER, PLEASE STATE:** Click or tap here to enter text.

CATEGORY: (*check all that apply*)

☐ **ORDINANCE** ☐ **RESOLUTION** ☐ **CONTRACT** ☐ **POLICY** ☐ **STATUS REPORT**

☒ **OTHER, PLEASE STATE: Not a public hearing, but a decision is to be rendered**

ACTION REQUESTED: ☒ **DECISION** ☐ **DISCUSSION,** ☐ **REVIEW, or** ☐ **UPDATE ONLY**

Previously Heard Date(s): Click or tap to enter a date. & Click or tap to enter a date.

Current Work Session: Click or tap to enter a date.

Current Council Meeting: Monday, July 25, 2022

SUBMITTED BY: Keedra T. Jackson, Senior Planner

PRESENTER: Ray White, Director of Planning & Zoning

PURPOSE: The applicant proposes a Preliminary Plat for a 330 single-family home development.

FACTS: The applicant is seeking an approval for the Preliminary Plat of a 330 single-family home development.

OPTIONS: Choose an item. Click or tap here to enter text.

RECOMMENDED ACTION: Approval

ATTACHMENTS:

(1) Attachment 1 - Staff Report
(2) Attachment 2 - Preliminary Plat
(3) Attachment 3 - Click or tap here to enter text.
(4) Attachment 4 - Click or tap here to enter text.
(5) Attachment 5 - Click or tap here to enter text.

FOR USE BY CITY OF STONECREST:

MAYOR _____ DATE _____ PLANNING DIRECTOR _____ DATE _____

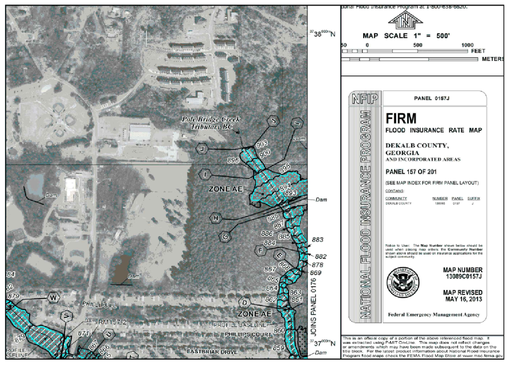
COUNTY NOTES:

1. SANITARY SEWER AND WATER SERVICE TO BE PROVIDED BY DEKALB COUNTY
2. A 75' TRIBUTARY BUFFER WILL BE MAINTAINED ON ALL STATE WATERS THAT ARE NOT APPROVED FOR A BUFFER ENCROACHMENT VARIANCE BY DEKALB COUNTY OR GA. E.P.D.
3. SKETCH PLAT APPROVAL DOES NOT CONSTITUTE APPROVAL OF THE STORM DRAINAGE AND SANITARY SEWER SYSTEMS. NO CONSTRUCTION SHALL BEGIN BEFORE CONSTRUCTION PLANS ARE APPROVED AND A DEVELOPMENT PERMIT IS OBTAINED.
4. THE OWNER OF THE PROPERTY IS RESPONSIBLE FOR COMPLIANCE WITH THE CORPS OF ENGINEERS REQUIREMENTS REGARDING WETLANDS.
5. NECESSARY BARRICADES, SUFFICIENT LIGHTS, SIGNS AND OTHER TRAFFIC CONTROL METHODS AS MAY B50' R/W (PUBLIC)E NECESSARY FOR THE PROTECTION AND SAFETY OF THE PUBLIC SHALL BE PROVIDED AND MAINTAINED THROUGHOUT THE WIDENING OF AND CONSTRUCTION OF DEKALB COUNTY ROADS.
6. EXISTING SEPTIC TANK(S) WILL BE REMOVED AS PER DEKALB COUNTY ENVIRONMENTAL HEALTH DEPARTMENT REQUIREMENTS.
7. TO THE BEST OF OUR KNOWLEDGE, NO INERT WASTE BURY PITS EXIST ON SITE.
8. A HYDROLOGY REPORT WILL BE SUBMITTED WITH THE LAND DISTURBANCE PERMIT PROOVING DETENTION IS NOT REQUIRED AS PER DEKALB COUNTY REQUIREMENTS.
9. WATER QUALITY WILL BE TREATED ON SITE BY SNOUT RETROFITS IN THE STORM DRAINAGE SYSTEM AND INDIVIDUAL WATER QUALITY TRENCHES WILL BE PROVIDED ON A LOT PER LOT BASIS.
10. SITE DISCHARGES TO CLARKS CREEK (±300') AND THEN TO SOUTH RIVER.
11. ALL CUL-DE-SACS REQUIRE A ISLAND WITH MOUNTABLE CURB.
12. ALL INTERSECTIONS REQUIRE ADA HANDICAP WHEELCHAIR RAMPS.
13. ADDRESSES OR NUMBERS MUST BE LOCATED ON STRUCTURE PLAINLY VISIBLE FROM THE STREET OR ROADWAY.
14. TO THE BEST OF OUR KNOWLEDGE, THERE ARE NO HISTORIC RESOURCES LOCATED ON SITE.
15. TOPOGRAPHIC INFORMATION PROVIDED BY US
16. ELECTRICAL SERVICE WILL BE UNDERGROUND.
17. A FENCE WILL BE REQUIRED IF PROPOSED PONDS ARE IN EQUAL OR GREATER THAN 4' DEEP.
18. BOUNDARY SURVEY PREPARED BY PRIME ENGINEERING, DATED 5-27-03.
19. NATURAL FEATURES INCLUDE THE EXISTING LAKE WITH ASSOCIATED BUFFERS, STATE WATERS WITH ASSOCIATED BUFFERS AND EXISTING STRUCTURES AS SHOWN ON PLAN. TO THE BEST OF OUR KNOWLEDGE; THERE ARE NO CEMETARIES, WETLANDS, ARCHEOLOGICAL RESOURCES OR ROCK OUTCROPPINGS LOCATED ON SITE.
20. ALL WORK SHALL COMPLY WITH APPLICABLE STATE, FEDERAL AND LOCAL CODES.
21. ALL MATERIALS AND CONSTRUCTION METHODS TO BE IN ACCORDANCE WITH THE DEKALB COUNTY STANDARDS AND THE GEORGIA DEPARTMENT OF TRANSPORTATION, AS APPLICABLE.
22. DEVIATION FROM THESE PLANS AND SPECIFICATIONS WITHOUT THE PRIOR WRITTEN CONSENT OF THE ENGINEER MAY CAUSE THE WORK TO BE UNACCEPTABLE.
23. THERE MAY BE ADDITIONAL UTILITIES OTHER THAN THOSE SHOWN ON THESE PLANS. THE ENGINEER ASSUMES NO RESPONSIBILITY FOR LOCATIONS SHOWN AND IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO VERIFY THE LOCATIONS AND NECESSARY INVERTS OF ALL UTILITIES WITHIN THE LIMITS OF CONSTRUCTION.
24. PRIOR TO ANY CONSTRUCTION, THE CONTRACTOR SHALL NOTIFY THE APPROPRIATE DEPARTMENT OF THE UTILITY COMPANIES. THE CONTRACTOR IS RESPONSIBLE FOR THE NOTIFICATIONS AND LIAISON WITH UTILITY COMPANIES IN THE PROCESS OF LOCATING, RELOCATING AND TIE-IN TO THE PUBLIC UTILITIES.
25. IF CONTRACTOR DAMAGES ANY EXISTING UTILITIES DURING CONSTRUCTION, HE SHALL, AT HIS OWN EXPENSE, REPLACE OR REPAIR THE UTILITIES TO ORIGINAL CONDITION AND QUALITY, AS APPROVED BY THE ENGINEER AND REPRESENTATIVE OF THE APPROPRIATE UTILITY COMPANY.
26. THE CONTRACTOR SHALL TELEPHONE TOLL FREE 1-800-282-7411 A MINIMUM OF 48 HOURS PRIOR TO THE START OF ANY EXCAVATION AS SHOWN AND NOTED ON THE PLANS FOR A UTILITY LOCATION SERVICE. IN THE CASE OF UNFORESEEN CONSTRUCTION COMPLICATIONS OR DISCREPANCIES, THE CONTRACTOR IS TO NOTIFY THE OWNER'S REPRESENTATIVE AND ENGINEER. LAND DISTURBANCE PERMIT TO BE DISPLAYED ON SITE AT ALL TIMES DURING CONSTRUCTION.
27. CONSTRUCTION EQUIPMENT SHALL NOT BE PARKED IN RIGHT-OF-WAY AND MUST BE STORED WITHIN SITE. THE CONTRACTOR SHALL BE RESPONSIBLE FOR MAINTAINING A MARKED-UP SET OF DESIGN DRAWINGS SHOWNG ALL "AS-BUILT" CONDITIONS.
28. THESE "RECORD DRAWINGS" SHALL BE MADE AVAILABLE TO THE DESIGNER AND/OR THE COUNTY INSPECTOR UPON REQUEST.
29. THE MARKUPS SHALL BE AT THE SITE AT ALL TIMES AND SHALL BE UTILIZED BY THE CONTRACTOR TO DEVELOP FINAL RECORD DRAWINGS.
30. STUMPS AND CONSTRUCTION DEBRIS SHALL BE DEPOSITED IN A PROPERLY PERMITTED LANDFILL.
31. NO BURY PITS ALLOWED ON THIS SITE.
32. ALL DIMENSIONS ARE TO THE FACE OF CURB UNLESS OTHERWISE NOTED. ALL SPOT ELEVATIONS ARE TO THE BOTTOM FACE CURB AND/OR PAVEMENT. A FINAL INSPECTION WILL BE MADE BASED ON THE APPROVED PLANS.
33. ALL CHANGES TO THE APPROVED PLANS MUST BE MADE IN WRITING SO THAT THESE CHANGES MAY BE REVIEWED BEFORE APPROVAL.
34. THE OWNER OF THE PROPERTY IS RESPONSIBLE FOR COMPLIANCE WITH THE CORPS OF ENGINEERS REQUIREMENTS REGARDING WETLANDS. EXISTING SEPTIC TANK(S) WILL BE REMOVED AS PER DEKALB COUNTY ENVIRONMENTAL HEALTH DEPARTMENT REQUIREMENTS. TO THE BEST OF OUR KNOWLEDGE,
35. NO INERT WASTE BURY PITS EXIST ON SITE.
36. WATER QUALITY WILL BE TREATED ON SITE BY SNOUT RETROFITS IN THE STORM DRAINAGE SYSTEM AND INDIVIDUAL WATER QUALITY TRENCHES WILL BE PROVIDED ON EACH LOT.
37. ALL STREET INTERSECTIONS REQUIRE ADA HANDICAP WHEELCHAIR RAMPS.
38. SUBDIVISION WILL BE SUBJECT TO PRIVATE COVENANTS AND A MANDATORY HOMEOWNER'S ASSOCIATION.
39. NECESSARY BARRICADES, SUFFICIENT LIGHTS, SIGNS AND OTHER TRAFFIC CONTROL METHODS AS MAY BE NECESSARY FOR THE PROTECTION AND SAFETY OF THE PUBLIC SHALL BE PROVIDED AND MAINTAINED THROUGHOUT THE WIDENING OF AND CONSTRUCTION OF DEKALB COUNTY ROADS.

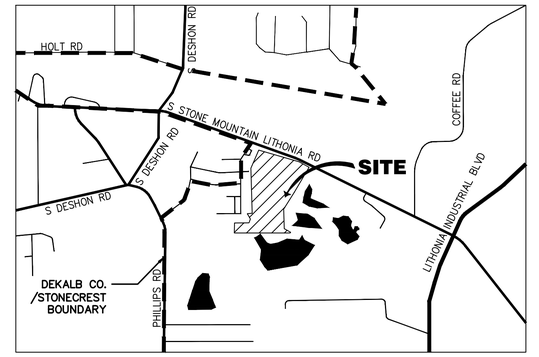
PRELIMINARY PLAT
FOR
STONECREST ESTATES SUBDIVISION
PHASE 1
LAND LOT 101 & 124, 16th DISTRICT
CITY OF STONECREST
TAX PARCEL ID: 16 124 02 001

CITY ZONING: C-1 AND MR-1 (COND.)

(CASE# CZ07-13333; PREVIOUS COUNTY ZONED C-1 AND RM-100 (COND.) CASE# CZ04056)



FLOOD NOTE:
BY GRAPHIC PLOTTING ONLY, A PORTION OF THIS SITE IS WITHIN THE LIMITS OF A 100 YEAR FLOOD HAZARD AREA AS PER F.I.R.M. DEKALB COUNTY, GEORGIA (UNICORPORATED AREAS), COMMUNITY PANEL NO'S. 13089C0157J DATED 5-16-2013 AND 13089C0176K DATED 12-8-2016



VICINITY MAP
1" = 400'

KEY SHEET
SHEET 1: COVER
SHEET 2: ZONING CASE
SHEET 3, 4 & 5: PRELIMINARY PLAT
SHEET 6: PARCEL ACREAGE
SHEET 7: TREE SURVEY
SHEET 8: LOT CALLS

MR-1 SETBACKS
SETBACKS REQUIREMENTS BELOW ARE FROM STONECREST ZONING ORDINANCE SECTION 2.11.2 TABLE 2.4.

SINGLE-FAMILY DETACHED/ATTACHED ON INTERNAL LOTS:
FRONT = 15- TO 25-FEET
SIDE = 3-FEET WITH MINIMUM 10-FEET BETWEEN BUILDINGS
REAR = 20-FEET

MR-1 TRANSITIONAL BUFFERS
BUFFER REQUIREMENTS BELOW ARE FROM STONECREST ZONING ORDINANCE SECTION 5.D TABLE 5.2(a) & (B) AND SECTION 2.2.1 TABLE 2.2
TO THOROUGHFARE = 50-FEET
TO MR-1 = 30-FEET (B)
TO R-100(R) = 30-FEET (B)
TO C-1 & M = N/A

THE UNDERSIGNED, UPON OATH, STATES THAT THE INFORMATION PROVIDED HEREON IS TRUE AND CORRECT. NO LOTS PLATTED ARE NONCONFORMING OR WILL RESULT IN ANY NONCONFORMING LOTS.

OWNER _____ DATE _____

OWNER/ DEVELOPER:
ACE HOMES, LLC

ADDRESS:
5945 PEACHTREE CORNERS EAST
NORCROSS, GA, 30071
CONTACT:
MEHBS OMAR
678-249-8971

CIVIL ENGINEER & SURVEYOR:

PRIME ENGINEERING, INC.
3715 NORTHSIDE PARKWAY
300 NORTHCREEK, SUITE 200
ATLANTA, GEORGIA 30318
CONTACT: ROBERT R. MACPHERSON
PHONE: (404) 425-7100

SURVEY REFERENCES:

1. DEEDS AND PLATS AS SHOWN HEREON DEKALB COUNTY, GEORGIA TAX RECORDS.
2. PLAT OF SURVEY BY SOUTHEASTERN ENGINEERING, INC. FOR JOSHUA LANDING, LLC
3. DEED BOOK 24732 PAGE 268

DATES OF FIELD WORK:
THE FIELD WORK USED TO RESOLVE AND PRODUCE THIS SURVEY WAS OBTAINED IN THE FIELD BETWEEN THE DATES OF JUNE 8TH. AND JUNE 19TH. 2020

CLOSURE NOTE:
THE FIELD DATA UPON WHICH THIS PLAT IS BASED HAS A CLOSURE PRECISION OF ONE FOOT IN 29,217 FEET AND AN ANGULAR ERROR OF 03" PER ANGLE POINT AND WAS NOT ADJUSTED. A TRIMBLE S-6 WAS USED TO OBTAIN THE LINEAR AND ANGULAR MEASUREMENTS USED IN THE PREPARATION OF THIS PLAT. THIS PLAT HAS BEEN CALCULATED FOR CLOSURE AND IS FOUND TO BE ACCURATE TO WITHIN ONE FOOT IN 124,342 FEET.

DEPARTMENT OF PLANNING

THIS SKETCH PLAT HAS BEEN SUBMITTED TO AND APPROVED BY THE PLANNING COMMISSION OF DEKALB COUNTY, ON THIS_____DAY OF_____2021

(DIRECTOR) PLANNING COMMISSION CHAIRMAN
DEKALB COUNTY, GEORGIA

AREA SUMMARY
TOTAL AREA PHASE 1= 1,409,995 SQ. FT. OR 32.37 ACRES
TOTAL OPEN SPACES AREA PHASE 1= 14.09 ACRES

SURVEYORS CERTIFICATION

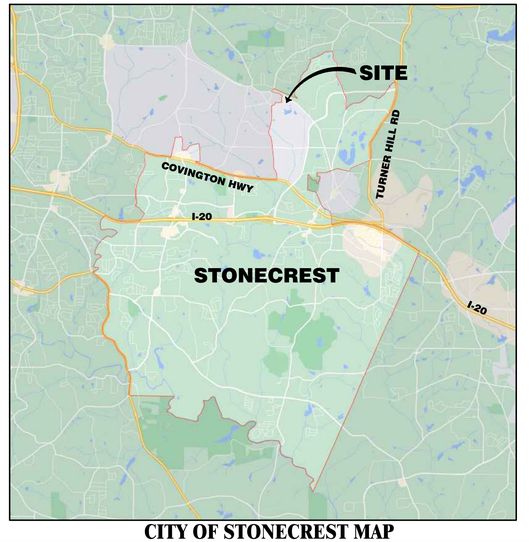
As required by subsection (d) of O.C.G.A. Section 15-6-67, this plat has been prepared by a land surveyor and approved by all applicable local jurisdictions for recording as evidenced by approval certificates, signatures, stamps, or statements heron. Such approvals or affirmations should be confirmed with the appropriate governmental bodies by any purchaser or user of this plat as to intended use of any parcel. Furthermore, the undersigned land surveyor certifies that this plat complies with the minimum technical standards for property surveys in Georgia as set forth in the rules and regulations of the Georgia Board of Registration for Professional Engineers and Land Surveyors as set forth in O.C.G.A. section 15-6-67.

GEORGIA REGISTERED NO. 2958 LAND SURVEYOR MICHAEL J. BARGER

07/18/2022
GA. REG. L.S. LIC. NO. 2958 DATED:

SITE NOTES

TOTAL AREA OF PROPERTY	70.03 ACRES
TOTAL AREA OF EXISTING COMMERCIAL	3.73 ACRES
TOTAL AREA OF PROPOSED COMMERCIAL	2.35 ACRES
TOTAL AREA OF EXISTING RESIDENTIAL	66.30 ACRES
TOTAL AREA OF PROPOSED RESIDENTIAL	67.68 ACRES
# OF SINGLE FAMILY - ATTACHED (20'x48')	57
# OF SINGLE FAMILY - ATTACHED (25'x48')	74
# OF SINGLE FAMILY - DETACHED	198
TOTAL # OF UNITS	330
SIZE OF SINGLE FAMILY - DETACHED	30' x 48' - 1440sf
LOT SIZE - SINGLE FAMILY - DETACHED	40' x 88'-100'
FRONT SETBACK	20'
SIDE SETBACK	5'
BACKYARD	20'
DENSITY	4.93 UNITS/ ACRE
OPEN SPACE	20.86 ACRES
OPEN SPACE %	29.8%



CITY OF STONECREST MAP

PRIME ENGINEERING® INCORPORATED
3715 NORTHSIDE PARKWAY NW
300 NORTHCREEK, SUITE 200
404-425-7100

PROJECT: STONECREST ESTATES PHASE 1

PREPARED FOR: CRAFT HOMES, LLC

SEAL: GEORGIA REGISTERED NO. 2958 LAND SURVEYOR MICHAEL J. BARGER

DATE: 9/07/21

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DRAWING TITLE
PRELIMINARY PLAT FOR STONECREST ESTATES PHASE 1
LOCATED IN: LAND LOT 101 & 1024, 16TH DISTRICT CITY OF STONECREST DEKALB COUNTY GA.

DRAWING DATE 09/07/2021	DRAWN BY JMK		
DRAWING SCALE 1" = 40'	DESIGNED BY MB	CHECKED BY MB	
PROJECT NUMBER 1445-0002	DRAWING NUMBER SHEET 1 OF 8		

NOT ISSUED FOR CONSTRUCTION

R:\1445-0002 Craft HB-300 Unit Subdivision\2 SURVEY\PRELIM PLAT-30-2 1445-0002.dwg Thu, 07/21/22 11:22 AM

DeKalb County Planning & Development Department
330 Ponce De Leon Avenue, Suite 500
Decatur, GA 30030
(404)371-2155 or (404)371-2813 (Fax)

The Honorable Vernon Jones, Chief Executive Officer — Patrick Ejike, Director

ZONING ANALYSIS

Case No: Z-07-13333 — Agenda #: N-27

Location / Address: On the south side of Stone Mountain Lithonia Road east of its intersection with South DeShon Road. — Commission District: 5 Super District: 7

Parcel - ID: 16-124-02-001

Request: To modify conditions of zoning from RM-100 (cond) to RM-100 (cond.) to allow the development of the property with a new site plan.

Property Owner: Benchmark Group C/O The Battle Law Group

Applicant / Agent: Benchmark Group C/O The Battle Law Group

Acreage: 70.71

Existing Land Use: The subject property is undeveloped and supports a stand of hardwood and pine forest.

Surrounding Properties: The subject property is bounded on the north by commercial uses that include a gas station/convenience store; the south and west by single family residential uses;and on the east by industrial and commercial land uses.

Adjacent Zoning: North: C-2 South: R-100 East: M West: R-A8
North-East: M North-West: South-East: South-West: R-100

Comprehensive Plan: LMR [X] Consistent [ ] Inconsistent

Proposed Density / Acre: 5 units /acre	Existing Density / Acre: NA
Proposed Units / Square ft: 335 units	Existing Units / Square ft: NA

Zoning History
The subject parcel was included in zoning application CZ-04056. The applicant applied for a change in the zoning map from R-100 & C-1 (conditional) to RM-100 (conditional) PD-Approval with conditions P.C. Approval with conditions; BOC-Nov 22, 2004- Approval with Conditions

Planning and Development Department Recommendation:
DENIAL: Based on the submitted plan and information, the proposed modification does not meet the requirements of the DeKalb County Zoning. Zoning case #CZ-04056 was presented to the Planning Department, Community Council, Planning Commission and the Board of Commissioners during 2004. After the required public review and input process, the Board of Commissioners, on November 22, 2004, approved the zoning petition with four conditions. The decision to approve the zoning petition was based on the site plan that was presented to during the zoning review cycle. The applicant now seeks to make major revisions to the approved site plan. Additionally, the applicant is introducing a residential building type that is not currently addressed in our Code of Ordinance. The applicant proposes to develop single family detached condominium units. The Zoning Ordinance does not allow for such a residential product type. The Condominium Act states that local government

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cannot treat condo's any different from fee simple products. It should be noted that in DeKalb County, single family detached dwelling units are located on an individual lot that meets the minimum lot area and width, with an individual driveways, accessed from a public street.
To allow for single family detached residential units in a condo's, product on the project site access via a privated drive, would contrary to the Condominium Act, the Zoning Ordinance, and would be treating the proposed project (multi-family project containing single family detached condo's) differently than we do single family residential dwelling units located on individual lots accessed via public street, and has to go through the sketch plat process. This type of development would be treated as a multi-family development project on a large tract of land, and would not have to go through the Sketch Plat process. Therefore, it is the recommendation of the Planning and Development Department that the modification be Denied.

SITE ANALYSIS:
The project site is located in an area of unincorporated DeKalb County that has a mix of zoning districts and land uses. The surrounding area has witnessed an increase in housing types. Single family detached and multi-family residential on both large and small lots predominate in this area. The surrounding area appears to be transitioning from commercial and industrial uses to residential uses.

PROJECT ANALYSIS
The project applicant is requesting an Amendment to Official Zoning Map pursuant to Section 27-821 of the DeKalb County Zoning Ordinance, to amend the Official Zoning Map designation from the RM-100 conditional (Multi-Family Residential) District to the RM-100 conditional (Multi-Family Residential) District in order to remove the condition of zoning imposed by the Board of Commissioners on November 22, 2004. Zoning case File CZ-04056 was approved based upon a site plan entitled "Joshua's Landing" prepared by Martin Riley Associates, Architects, PC dated August 27, 2004 and marked received October 5, 2004. The applicant for this petition seeks to have this condition of zoning removed in order to develop the property under a new site plan. The applicant seeks to develop the property for use as a multi-family residential community with a total of 335 residential units at a density of 4.88 units per acre. The approved site plan proposed a total number of 489 units at a density of 7.13 units per acre. The applicant is proposing that the entire development be a condominium community with both detached and attached units. The applicant states that the approved site plan was not drawn to scale and illustrated a configuration that was unachievable based on site conditions. According to the applicant, the new site plan is based on the site conditions and offers a more marketable product type and mix.

CONDITIONS REQUESTED BY APPLICANT
The applicant is seeking the removal of conditions which were imposed in zoning case CZ-04

ZONING ANALYSIS
The project applicant is requesting to modify the existing site plan containing townhomes, single family detached residential dwellings on individual lots, and a senior living facility, to allow for a single family detached condominium form of ownership. The Condominium Act states that local government cannot treat condo's any different than fee simple products. It should be noted that in DeKalb County, single family detached dwelling unit are located on an individual lot that meets the minimum lot area and width, with an individual driveways, accessed from a public street.

To allow for single family detached residential units in a condo's, product on the project site access via a privated drive, would contrary to the Condominium Act, the Zoning Ordinance, and would be treating the proposed multi-family project (single family detached condo's) differently than we do single family residential dwelling units located on the individual lots and located on a public street, and has to go through the sketch plat process.

LAND USE PLAN CONSISTENCY

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DEKALB COUNTY PUBLIC WORKS DEPARTMENT

TRAFFIC:
Category:
Street Name:
Trips Generated: Existing Zoning: TPD Proposed Zoning: TPD

WATER:
Size of main serving property:

SEWER:
Outfall Serving Project:
Is Sewer adjacent to this property
Treatment Plant:

WASTE GENERATION IF RESIDENTIAL:
Capacity: MGPD Current Flow: MGPD

DRAINAGE:

COUNTY DEPARTMENT DIVISION COMMENTS OR RECOMMENDATIONS
DIVISION OF ENVIRONMENTAL HEALTH:
No information was submitted at the writing of the staff analysis.

DEKALB COUNTY BOARD OF EDUCATION
SCHOOL:
High School Middle School Elementary School
Name of School:

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Section 27-832 of the Zoning Ordinance, "Standards and factors governing review of proposed amendments to official zoning map" states that the following standards and factors are found to be relevant to the exercise of the county's zoning powers and shall govern the review of all proposed amendments to the zoning maps:

A. Whether the zoning proposal is in conformity with the policy and intent of the comprehensive plan.
Based on the submitted information, it appears that the zoning proposal would be in conformity with the policy and intent of the comprehensive plan.

B. Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby properties:
Based on the submitted information, it appears that the zoning proposal would permit a use that is suitable in view of the uses and development of adjacent and nearby properties.

C. Whether the property to be affected by zoning proposal has a reasonable economics use as currently zoned:
Based on the submitted information, it does not appear possible for the zoning analysis staff to determine whether the property has a reasonable economics use as currently zoned.

D. Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property:
Based on the submitted information it does not appear that the zoning proposal would adversely affect the existing use or usability of adjacent or nearby property. The proposed change in the conditions of case CZ-04056 would reduce the number of units and the proposed density than the site plan that was approved in 2004.

E. Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned.
See "C" above.

F. Whether there are other existing or changing conditions affecting the use and development of the property, which give supporting grounds for either approval or disapproval of the zoning proposal
There does not appear to be other existing or changing conditions affecting the use and development of the property, which give supporting grounds for approval of the zoning proposal.

G. Whether the zoning proposal will adversely affect historic building, sites, districts, or archaeological resources
Based on the submitted information it does not appear that the project proposal would adversely affect historic buildings, sites, or archaeological resources.

H. Whether the zoning proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.
Based on the submitted information, it does not appear that the zoning proposal could result in a use which would cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools.

PLANNING AND DEVELOPMENT DEPARTMENT RECOMMENDATION
DENIAL: Based on the submitted plan and information, the proposed modification does not meet the requirements of the DeKalb County Zoning. Zoning case #CZ-04056 was presented to the Planning Department, Community Council, Planning Commission and the Board of Commissioners during 2004. After the required public review and input process, the Board of

05/22/2007 Prepared By Page 5 Z-07-13333 / N-27

Commissioners, on November 22, 2004, approved the zoning petition with four conditions. The decision to approve the zoning petition was based on the site plan that was presented to during the zoning review cycle. The applicant now seeks to make major revisions to the approved site plan. Additionally, the applicant is introducing a residential building type that is not currently addressed in our Code of Ordinance. The applicant proposes to develop single family detached condominium units. The Zoning Ordinance does not allow for such a residential product type. The Condominium Act states that local government cannot treat condo's any different than fee simple products. It should be noted that in DeKalb County, single family detached dwelling units are located on an individual lot that meets the minimum lot areas and width, with an individual driveways, accessed from a public street.
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ATTACHMENTS:
Zoning Analysis
Letter of Intent
Site Plan
Zoning Map
Land Use Map
Pictometry

09/22/2007 Prepared By Page 6 Z-07-13333 / N-27

DeKalb County Planning & Development Department
Vernon Jones, Chief Executive Officer — Patrick Ejike, Director

Z-07-13333

APPLICATION TO AMEND OFFICIAL ZONING MAP OF DEKALB COUNTY, GEORGIA

Z/C2 No. _____ Filing Fee: _____
Date Received: _____ Application No.: _____
Applicant: Benchmark Group E-Mail: _____
(Applicant Name Address)
c/o The Battle Law Group, PC
68 N. Avondale Road, Suite D, Avondale Estates, Ga 30002
Applicant Phone: 404.299.6960 Fax: 404.299.6114
Owner(s): See Exhibit A E-Mail: battlelaw@aol.com
(If more than one owner, attach as Exhibit "A")
Owner's Mailing Address: _____
Owner(s) Phone: _____ Fax: _____
Address/Location of Subject Property: 2261 Stone Mountain Lithonia Road & Phillips Road
District(s): 16 Land Lot(s): 124, 101 Block: ~~02,03~~ Parcel(s): 16 124 02 101 ~~16 101 03 011~~
Acreage: ~~70.71~~ 70.71 Commission District(s): 5,7
Present Zoning Category: RM-100(cond.) Proposed Zoning Category: RM-100(cond.)
Present Land Use Category: MDR

PLEASE READ THE FOLLOWING BEFORE SIGNING

This form must be completed in its entirety before the Planning Department accepts it. It must include the attachments and filing fees identified on the attachments. An application, which lacks any of the required attachments, shall be determined as incomplete and shall not be accepted.

Disclosure of Campaign Contributions

In accordance with the Conflict of Interest in Zoning Act, O.C.G.A., Chapter 36-67A, the following questions must be answered:
Have you the applicant made $250 or more in campaign contributions to a local government official within two years immediately preceding the filing of this application? _____ Yes ✓ No

If the answer is yes, you must file a disclosure report with the governing authority of DeKalb County showing:
1. The name and official position of the local government official to whom the campaign contribution was made.
2. The dollar amount and description of each campaign contribution made during the two years immediately preceding the filing of this application and the date of each such contribution.

The disclosure must be filed within 10 days after the application is first filed and must be submitted to the C.E.O. and the Board of Commissioners, DeKalb County, 1300 Commerce Drive, Decatur, Ga. 30030.

NOTARY _____ SIGNATURE OF APPLICANT / DATE _____
Check One: Owner _____ Agent _____
EXPIRATION DATE / SEAL _____

330 West Ponce de Leon Ave., Suite 500, Decatur, GA 30030-3221
Voice (404) 371-2155 Fax (404) 371-2813
www.co.dekalb.ga.us/planning

EXHIBIT A
OWNER INFORMATION

Parcels/ Address: 16 124 02 001
2261 Stone Mountain Lithonia Road, Lithonia 30058
16 101 03 011
0 Phillips Road, Lithonia 30058

Owner: Joshua Landing, LLC
Patrick Frohling
6165 Riverside Dr NW
Atlanta, Georgia 30328-3621
770.231.6141
frohlin@bellsouth.net

Applicant: Benchmark Group
Bucky Davis
6111 Peachtree Dunwoody Road
Building F, Suite 102
Atlanta, Ga 30328
770.393.3984
Buckdavis1@comcast.net

Contact Information:

DeKalb County Planning & Development Department
Vernon Jones, Chief Executive Officer — Patrick Ejike, Director

REZONE APPLICATION AUTHORIZATION

Completion of this form is required if the individual making the request is not the owner of the property.

DATE: 3/7/07

CHECK TYPE OF APPLICATION:
( ) LAND USE PLAN
( ) REZONE
( ) MINOR MODIFICATION

TO WHOM IT MAY CONCERN:
(I) / (WE) Joshua Landing, LLC - Patrick Frohling - Mgr
[Name of owner(s)]
being (owner)/(owners) of the property described below or attached hereby delegate authority to
Benchmark
[Name of Applicant or Representative]
to file an application on (my) / (our) behalf.

Notary Public — Owner
Notary Public — Owner
Notary Public — Owner

330 West Ponce de Leon Ave., Suite 500, Decatur, GA 30030-3221
Voice (404) 371-2155 Fax (404) 371-2813
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R:\1445-0002 Croft HB-300 Unit Subdivision\2 SURVEY\PRELIM PLAT-30-2 1445-0002.dwg Thu, 07/21/22 11:24 AM

PRIME ENGINEERING® INCORPORATED
3715 NORTHSIDE PARKWAY NW
300 NORTHCREEK, SUITE 200
404-425-7100

PROJECT:
STONECREST ESTATES PHASE 1

PREPARED FOR:
CRAFT HOMES, LLC

SEAL — REGISTERED PROFESSIONAL ENGINEER NO. 29658 MICHAEL BUCKY DAVIS — DATE: 9/07/21

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DRAWING TITLE
PRELIMINARY PLAT FOR STONECREST ESTATES PHASE 1
LOCATED IN:
LAND LOT 101 & 1024,
16TH DISTRICT
CITY OF STONECREST
DEKALB COUNTY GA.

DRAWN BY: JMK	DRAWING DATE: 09/07/2021
DESIGNED BY: MB	DRAWING SCALE: 1" = 40'
CHECKED BY: MB	PROJECT NUMBER: 1445-0002
DRAWING NUMBER: SHEET 2 OF 8	

NOT ISSUED FOR CONSTRUCTION

DRAWING DATE: 09/07/2021	DRAWN BY: JMK
DRAWING SCALE: 1" = 40'	DESIGNED BY: MB
PROJECT NUMBER: 1445-0002	CHECKED BY: MB
DRAWING NUMBER: SHEET 3 OF 8	
NOT ISSUED FOR CONSTRUCTION	

DRAWING TITLE

PRELIMINARY PLAT FOR STONECREST ESTATES PHASE 1

LOCATED IN:
LAND LOT 101 & 1024,
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SEAL

GEORGIA REGISTERED NO. 2958 LAND SURVEYOR MICHAEL J. BAGGETT

DATE: 9/07/21

PROJECT:

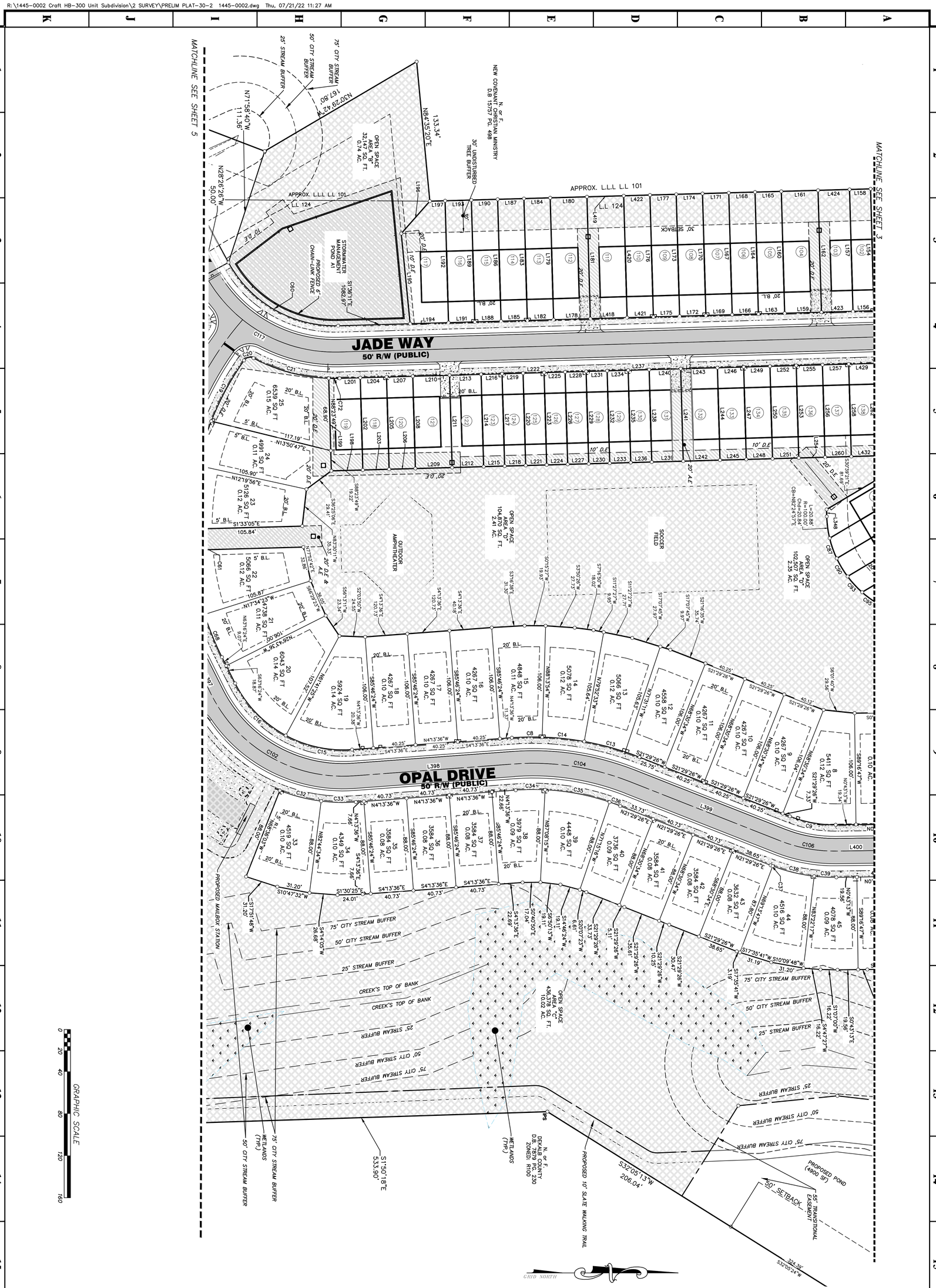
STONECREST ESTATES PHASE 1

PREPARED FOR:

CRAFT HOMES, LLC

PRIME ENGINEERING INCORPORATED
3715 NORTHSIDE PARKWAY NW
300 NORTHCREEK, SUITE 200
404-425-7100

R:\1445-0002 Craft HB-300 Unit Subdivision\2 SURVEY\PRELIM PLAT-30-2 1445-0002.dwg Thu, 07/21/22 11:27 AM



DRAWING DATE	09/07/2021
DRAWN BY	JMK
DRAWING SCALE	1" = 40'
DESIGNED BY	MB
PROJECT NUMBER	1445-0002
CHECKED BY	MB
DRAWING NUMBER	SHEET 4 OF 8
NOT ISSUED FOR CONSTRUCTION	

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PRELIMINARY PLAT FOR STONECREST ESTATES PHASE 1

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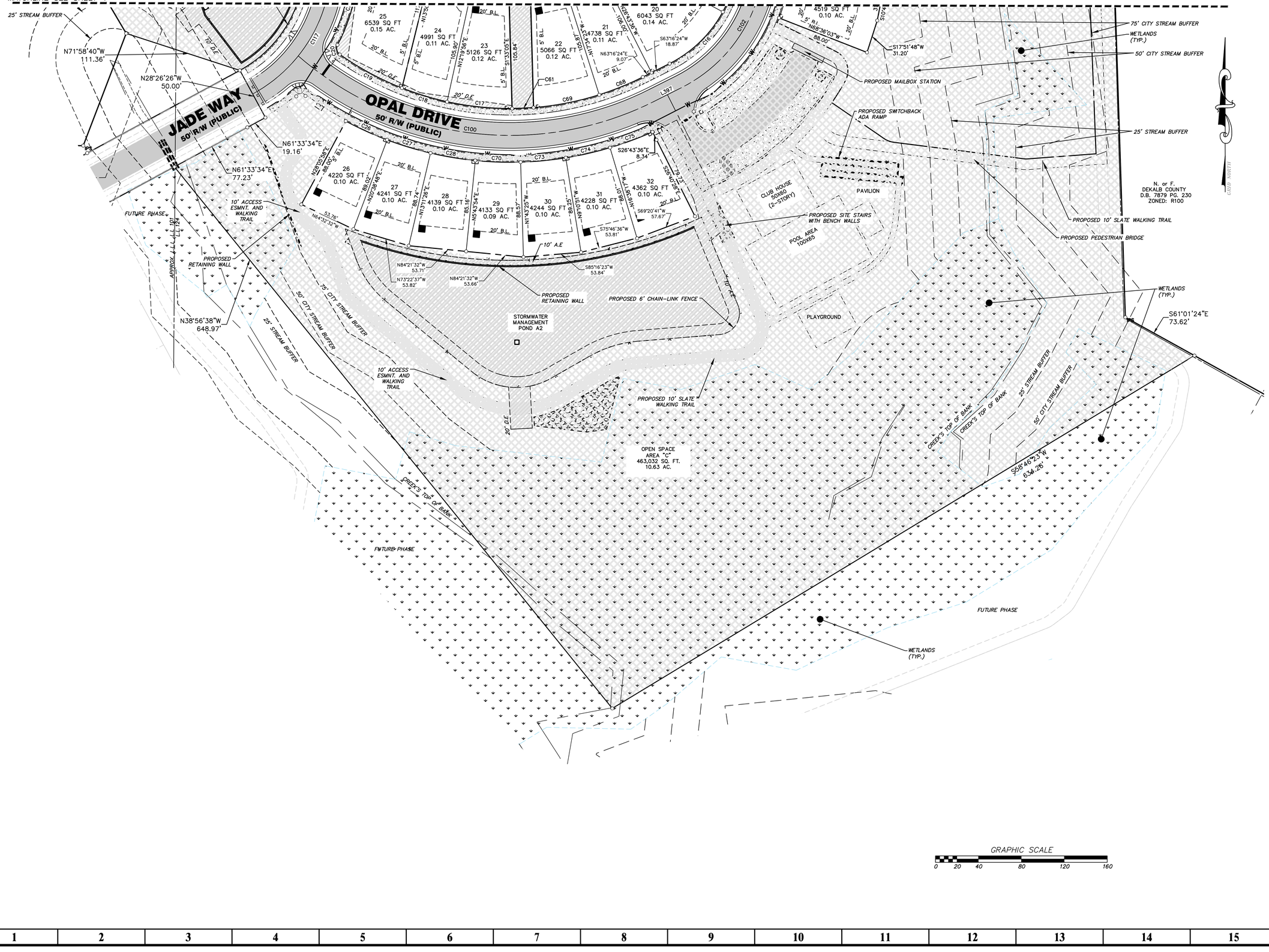
STONECREST ESTATES PHASE 1

PREPARED FOR:

CRAFT HOMES, LLC

PRIME ENGINEERING INCORPORATED
3715 NORTHSIDE PARKWAY NW
300 NORTHCREEK, SUITE 200
404-425-7100

MATCHLINE SEE SHEET 4



GRAPHIC SCALE
0 20 40 80 120 160

PRIME ENGINEERING INCORPORATED
9715 NORTHSIDE PARKWAY NW
300 NORTHCREEK, SUITE 200
404-425-7100

PROJECT:
STONECREST ESTATES PHASE 1

PREPARED FOR:
CRAFT HOMES, LLC

SEAL

GEORGIA REGISTERED NO. 2958 LAND SURVEYOR MICHAEL BARGE

DATE: 9/07/21

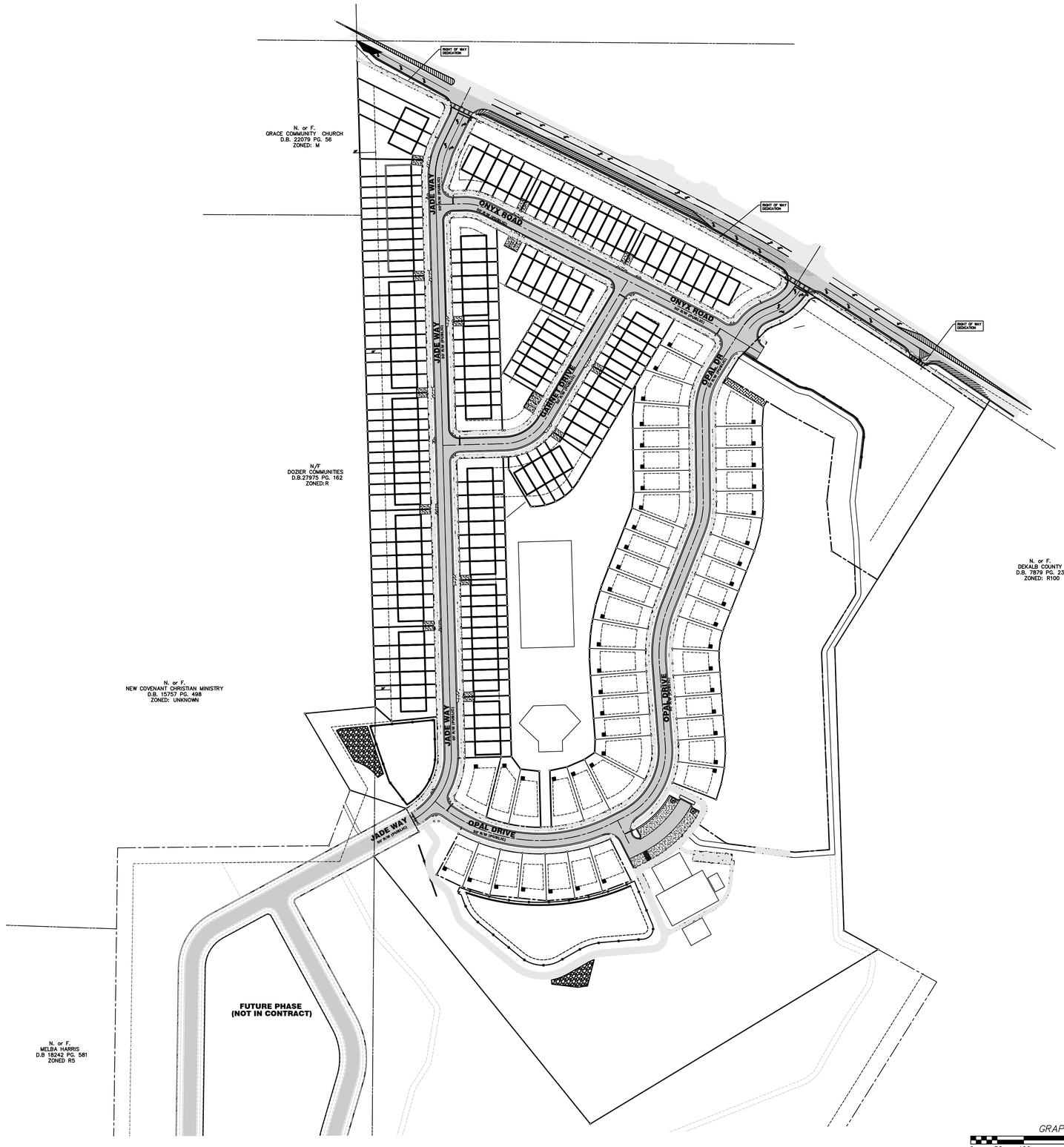
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PROJECT NUMBER	1445-0002
DRAWING NUMBER	SHEET 5 OF 8

NOT ISSUED FOR CONSTRUCTION

R:\1445-0002 Craft HB-300 Unit Subdivision\2 SURVEY\PRELIM PLAT-30-2 1445-0002.dwg Thu, 07/21/22 11:30 AM



Parcel Area Table		
Parcel #	AREA SQ. FT.	AREA AC.
50	5409 SQ. FT.	0.12 AC.
51	2200 SQ. FT.	0.05 AC.
52	2200 SQ. FT.	0.05 AC.
53	2200 SQ. FT.	0.05 AC.
54	2200 SQ. FT.	0.05 AC.
55	2200 SQ. FT.	0.05 AC.
56	2200 SQ. FT.	0.05 AC.
57	3080 SQ. FT.	0.07 AC.
58	2640 SQ. FT.	0.06 AC.
59	1760 SQ. FT.	0.04 AC.
60	1760 SQ. FT.	0.04 AC.
61	1760 SQ. FT.	0.04 AC.
62	1760 SQ. FT.	0.04 AC.
63	1760 SQ. FT.	0.04 AC.
64	1760 SQ. FT.	0.04 AC.
65	1760 SQ. FT.	0.04 AC.
66	1760 SQ. FT.	0.04 AC.
67	2642 SQ. FT.	0.06 AC.
68	3078 SQ. FT.	0.07 AC.
69	2200 SQ. FT.	0.05 AC.
70	2227 SQ. FT.	0.05 AC.
71	2378 SQ. FT.	0.05 AC.
72	4117 SQ. FT.	0.09 AC.
73	5747 SQ. FT.	0.13 AC.
74	3730 SQ. FT.	0.09 AC.
75	6815 SQ. FT.	0.16 AC.
76	3705 SQ. FT.	0.09 AC.
77	2320 SQ. FT.	0.05 AC.
78	2320 SQ. FT.	0.05 AC.
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80	2320 SQ. FT.	0.05 AC.
81	2320 SQ. FT.	0.05 AC.
82	2320 SQ. FT.	0.05 AC.
83	2320 SQ. FT.	0.05 AC.
84	2320 SQ. FT.	0.05 AC.
85	3480 SQ. FT.	0.08 AC.
86	4060 SQ. FT.	0.09 AC.
87	2900 SQ. FT.	0.07 AC.
88	2900 SQ. FT.	0.07 AC.
89	2900 SQ. FT.	0.07 AC.
90	2900 SQ. FT.	0.07 AC.
91	2900 SQ. FT.	0.07 AC.
92	2900 SQ. FT.	0.07 AC.
93	4060 SQ. FT.	0.09 AC.
94	3480 SQ. FT.	0.08 AC.
95	2320 SQ. FT.	0.05 AC.
96	2320 SQ. FT.	0.05 AC.
97	2320 SQ. FT.	0.05 AC.
98	2320 SQ. FT.	0.05 AC.
99	2320 SQ. FT.	0.05 AC.
100	2320 SQ. FT.	0.05 AC.
101	2320 SQ. FT.	0.05 AC.
102	2320 SQ. FT.	0.05 AC.
103	3480 SQ. FT.	0.08 AC.
104	4060 SQ. FT.	0.09 AC.
105	2900 SQ. FT.	0.07 AC.
106	2900 SQ. FT.	0.07 AC.
107	2900 SQ. FT.	0.07 AC.
108	2900 SQ. FT.	0.07 AC.
109	2900 SQ. FT.	0.07 AC.

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Parcel #	AREA SQ. FT.	AREA AC.
110	2900 SQ. FT.	0.07 AC.
111	4060 SQ. FT.	0.09 AC.
112	4060 SQ. FT.	0.09 AC.
113	2900 SQ. FT.	0.07 AC.
114	2900 SQ. FT.	0.07 AC.
115	2900 SQ. FT.	0.07 AC.
116	2900 SQ. FT.	0.07 AC.
117	4263 SQ. FT.	0.10 AC.
118	2195 SQ. FT.	0.05 AC.
119	2635 SQ. FT.	0.06 AC.
120	2195 SQ. FT.	0.05 AC.
121	3074 SQ. FT.	0.07 AC.
122	2635 SQ. FT.	0.06 AC.
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124	1757 SQ. FT.	0.04 AC.
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136	2200 SQ. FT.	0.05 AC.
137	2200 SQ. FT.	0.05 AC.
138	2200 SQ. FT.	0.05 AC.
139	3953 SQ. FT.	0.09 AC.
140	4235 SQ. FT.	0.10 AC.
141	2200 SQ. FT.	0.05 AC.
142	2200 SQ. FT.	0.05 AC.
143	2200 SQ. FT.	0.05 AC.
144	2200 SQ. FT.	0.05 AC.
145	2200 SQ. FT.	0.05 AC.
146	3080 SQ. FT.	0.07 AC.
147	3080 SQ. FT.	0.07 AC.
148	2200 SQ. FT.	0.05 AC.
149	2200 SQ. FT.	0.05 AC.
150	2200 SQ. FT.	0.05 AC.
151	2200 SQ. FT.	0.05 AC.
152	4796 SQ. FT.	0.11 AC.
153	2200 SQ. FT.	0.05 AC.
154	2200 SQ. FT.	0.05 AC.
155	2200 SQ. FT.	0.05 AC.
156	2200 SQ. FT.	0.05 AC.
157	2200 SQ. FT.	0.05 AC.
158	4091 SQ. FT.	0.09 AC.
159	2773 SQ. FT.	0.06 AC.
160	1760 SQ. FT.	0.04 AC.
161	1760 SQ. FT.	0.04 AC.
162	1760 SQ. FT.	0.04 AC.
163	1760 SQ. FT.	0.04 AC.
164	2640 SQ. FT.	0.06 AC.
165	2157 SQ. FT.	0.05 AC.
166	2558 SQ. FT.	0.06 AC.
167	2135 SQ. FT.	0.05 AC.
168	2102 SQ. FT.	0.05 AC.
169	4160 SQ. FT.	0.10 AC.

Parcel Area Table		
Parcel #	AREA SQ. FT.	AREA AC.
170	3370 SQ. FT.	0.08 AC.
171	2200 SQ. FT.	0.05 AC.
172	2200 SQ. FT.	0.05 AC.
173	2200 SQ. FT.	0.05 AC.
174	3080 SQ. FT.	0.07 AC.
175	2640 SQ. FT.	0.06 AC.
176	1760 SQ. FT.	0.04 AC.
177	1760 SQ. FT.	0.04 AC.
178	1760 SQ. FT.	0.04 AC.
179	1760 SQ. FT.	0.04 AC.
180	3654 SQ. FT.	0.08 AC.

PRIME ENGINEERING®
INCORPORATED
9715 NORTHSIDE PARKWAY NW
300 NORTHCREEK, SUITE 200
404-425-7100

PROJECT:
STONECREST ESTATES PHASE 1

PREPARED FOR:
CRAFT HOMES, LLC

SEAL

GEORGIA REGISTERED LAND SURVEYOR NO. 2858 MICHAEL J. BAKER

DATE: 9/07/21

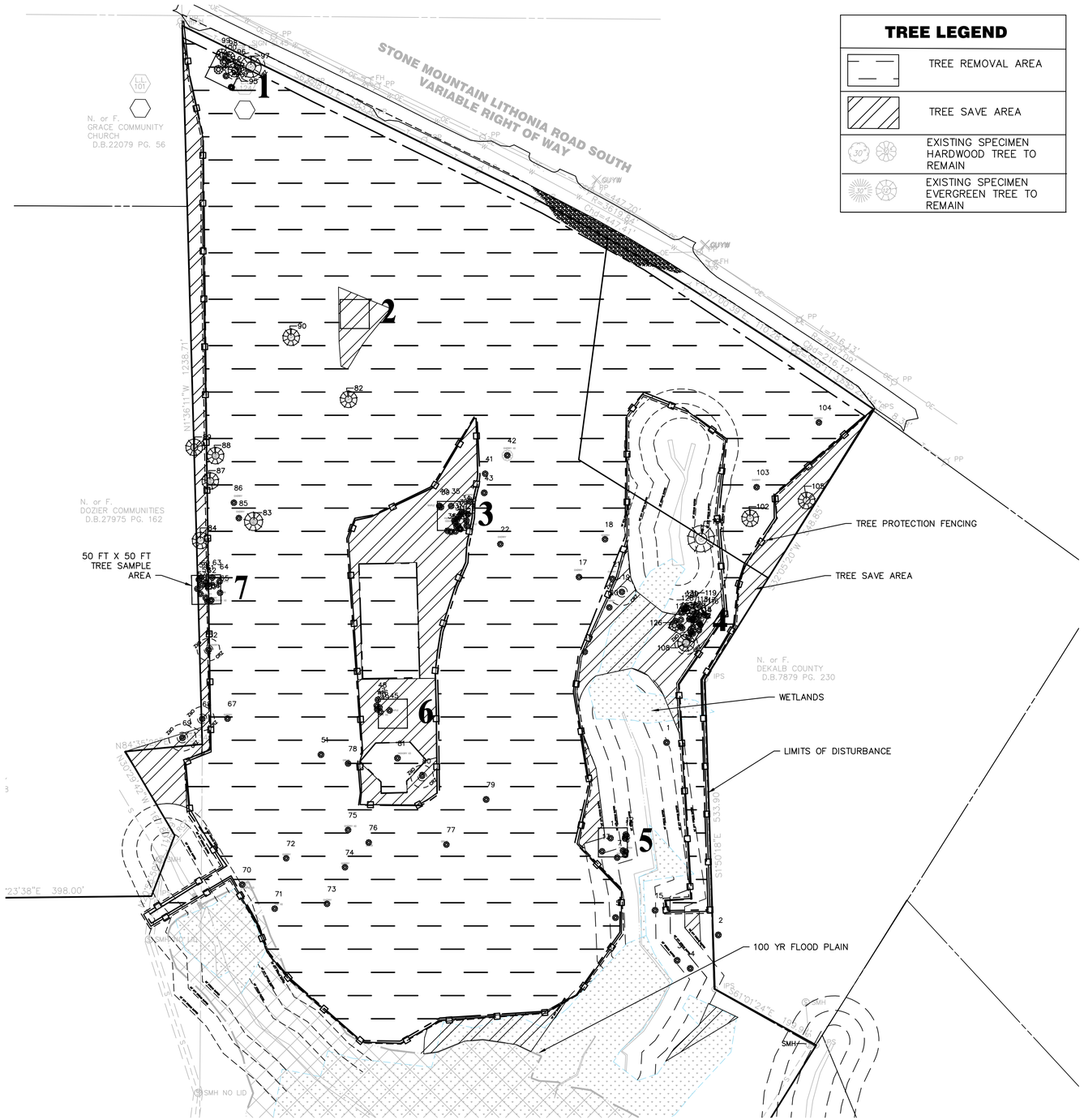
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DRAWING TITLE
PRELIMINARY PLAT FOR STONECREST ESTATES PHASE 1
LOCATED IN:
LAND LOT 101 & 1024,
16TH DISTRICT
CITY OF STONECREST
DEKALB COUNTY GA.

DRAWING DATE 09/07/2021	DRAWN BY JMK		
DRAWING SCALE 1" = 100'	DESIGNED BY MB		
PROJECT NUMBER 1445-0002	CHECKED BY MB		
DRAWING NUMBER **SHEET 6 OF 8**			

NOT ISSUED FOR CONSTRUCTION

R:\1445-0002 Craft HB-300 Unit Subdivision\2 SURVEY\PRELIM PLAT-30-2 1445-0002.dwg Thu, 07/21/22 11:32 AM



1 L-101 **TREE SURVEY**
SCALE:1" = 100'

TREE LEGEND

- TREE REMOVAL AREA
- TREE SAVE AREA
- EXISTING SPECIMEN HARDWOOD TREE TO REMAIN
- EXISTING SPECIMEN EVERGREEN TREE TO REMAIN

TREE DENSITY CALCULATIONS FOR SITE

Site Acreage:	27.4 AC
1 Acre:	43,560 SF
Site SF:	1,193,544 SF

EXISTING SITE DBH CALCULATIONS

Tree Sampling Site (50 FT X 50 FT):	2500 SF
SF PER ACRE	43,560 SF
SAMPLING SITE MULTIPLIER:	17.42
TREE SAMPLING SITE 1:	152 DBH
TREE SAMPLING SITE 2:	0 DBH
TREE SAMPLING SITE 3:	157 DBH
TREE SAMPLING SITE 4:	217 DBH
TREE SAMPLING SITE 5:	NA DBH
TREE SAMPLING SITE 6:	40 DBH
TREE SAMPLING SITE 7:	98 DBH
TOTAL SAMPLE AREA AVERAGE:	110.7 DBH
EXISTING TREE DBH/ ACRE:	1927.8 DBH

SPECIMEN TREE SURVEY

Tree ID Number	LOCATION		GENUS	DBH	STATUS	TREE DENSITY UNITS
	NORTHING	EASTING				
1	1360436.185	2309428.734	PINE	30	SAVE	9.8
2	1360104.419	2309517.878	PINE	30	SAVE	9.8
3	1360060.625	2309446.821	PINE	30	SAVE	9.8
4	1360046.734	2309460.534	PINE	30	SAVE	9.8
5	1360134.374	2309340.708	PINE	32	REMOVE	11.2
15	1360146.853	2309408.943	PINE	30	SAVE	9.8
16	1360192.359	2309287.792	OAK	32	REMOVE	11.2
19	1360695.624	2309351.83	OAK	36	SAVE	14.2
26	1360803.795	2309073.555	DOGWOOD	12	SAVE	3.2
32	1360820.562	2309067.807	PERSIMMON	10	SAVE	3.2
41	1360899.331	2309116.055	OAK	30	REMOVE	9.8
43	1360866.336	2309114.516	PINE	30	REMOVE	9.8
51	1360413.295	2309833.168	PINE	30	REMOVE	9.8
52	1360596.022	2308639.405	HICKORY	30	REMOVE	9.8
68	1360476.834	2308628.565	OAK X 2	48	REMOVE	25.2
69	1360444.347	2308594.395	SYCAMORE X 2	36	SAVE	14.2
70	1360191.209	2308697.311	MAPLE X 3	36	REMOVE	14.2
71	1360149.726	2308753.309	OAK X 2	36	REMOVE	14.2
79	1360337.969	2309117.792	PINE	36	REMOVE	14.2
80	1360378.769	2309007.274	OAK	30	SAVE	9.8
81	1360409.15	2308964.892	HICKORY X 3	30	REMOVE	9.8
82	1361027.44	2308880.764	OAK	30	REMOVE	9.8
83	1360816.968	2308716.57	PINE	33	REMOVE	11.8
84	1360784.157	2308625.682	OAK	30	REMOVE	9.8
87	1360880.808	2308642.377	PINE	30	REMOVE	9.8
88	1360930.41	2308651.442	PINE	30	REMOVE	9.8
89	1360944.79	2308614.605	PINE	30	REMOVE	9.8
90	1361134.398	2308781.873	OAK	30	REMOVE	9.8
97	1361600.226	2308712.124	OAK	38	REMOVE	15.8
102	1360822.464	2309572.841	OAK	30	SAVE	9.8
105	1360853.007	2309670.175	OAK	30	SAVE	9.8
106	1360787.221	2309488.429	OAK	48	SAVE	25.2
108	1360907.657	2309462.295	PINE	30	SAVE	9.8
					TOTAL TDUs REMOVED:	225.6
					TOTAL TDUs SAVED:	148.2

SAMPLE AREA #1

TREE ID	NORTHING	EASTING	GENUS	DBH	TDUs
91	1361565.072	2308678.876	Sweet Gum	2	0.8
92	1361564.866	2308679.35	Sweet Gum	3	0.8
93	1361565.664	2308678.195	Sweet Gum	2	0.8
94	1361584.97	2308669.489	PINE	3	0.8
95	1361594.539	2308684.493	PINE	24	6
96	1361601.193	2308688.224	PINE	11	3.1
97	1361600.226	2308712.124	OAK	38	15.8
98	1361617.057	2308674.846	PINE	19	5.4
99	1361621.586	2308662.313	OAK	22	6
100	1361609.199	2308666.64	OAK	14	4
101	1361595.757	2308656.43	OAK	14	4
				TOTAL TDUs:	47.5

SAMPLE AREA #2

TREE ID	NORTHING	EASTING	GENUS	DBH	TDUs
NA	NA	NA	NA	NA	NA

SAMPLE AREA #3

TREE ID	NORTHING	EASTING	GENUS	DBH	TDUs
23	1360829.627	2309086.079	PINE	10	3.1
24	1360818.483	2309083.83	PINE	15	3.9
26	1360803.795	2309073.555	DOGWOOD	4	1.6
27	1360804.293	2309072.862	PINE	12	3.1
28	1360809.45	2309060.812	PINE	16	4.8
29	1360808.737	2309066.699	PINE	6	1.4
30	1360814.818	2309064.144	PINE	8	2.2
31	1360818.19	2309063.062	CEDAR	2	0.8
32	1360820.562	2309067.807	PERSIMMON	10	3.2
33	1360825.064	2309070.851	MAPLE	4	1.6
34	1360832.19	2309075.459	PINE	15	4.7
35	1360843.623	2309057.453	OAK	14	4
36	1360801.006	2309051.078	PINE	2	0.6
37	1360799.361	2309057.064	MAPLE	4	1.6
38	1360739.798	2309064.894	PINE	12	3.1
39	1360841.933	2309039.751	PINE	12	3.1
40	1360843.932	2309037.155	MAPLE	3	0.8
				TOTAL TDUs:	63.6

SAMPLE AREA #4

TREE ID	NORTHING	EASTING	GENUS	DBH	TDUs
107	1360647.698	2309453.426	CHERRY	12	3.2
108	1360907.657	2309462.295	PINE	30	9.8
109	1360917.209	2309451.589	OAK	4	1.6
110	1360624.033	2309474.015	MAPLE	3	0.8
111	1360626.328	2309470.287	MAPLE	3	0.8
112	1360629.3	2309472.374	OAK	15	4
113	1360634.666	2309474.072	MAPLE	5	1.6
114	1360638.835	2309487.039	OAK	6	1.6
115	1360640.168	2309486.238	OAK	3	0.8
116	1360640.046	2309488.891	MAPLE	2	0.8
117	1360640.579	2309493.962	OAK	6	1.6
118	1360657.885	2309480.596	OAK	12	3.2
119	1360662.699	2309473.585	OAK	24	6
120	1360650.264	2309474.658	MAPLE	6	1.6
121	1360645.957	2309478.678	OAK	15	4
122	1360646.978	2309473.304	OAK	12	3.2
123	1360648.605	2309467.899	MAPLE	2	0.8
124	1360633.231	2309455.51	PINE	12	3.1
125	1360636.445	2309452.444	MAPLE	2	0.8
126	1360637.786	2309442.285	POPULAR	18	4.8
127	1360645.637	2309444.118	MAPLE	12	3.2
128	1360650.593	2309454.033	MAPLE	2	0.8
129	1360664.987	2309458.88	MAPLE	4	1.6
130	1360666.63	2309462.376	MAPLE	3	0.8
131	1360668.447	2309462.077	MAPLE	2	0.8
132	1360629.332	2309448.454	MAPLE	2	0.8
				TOTAL TDUs:	62.1

SAMPLE AREA #5

TREE ID	NORTHING	EASTING	GENUS	DBH	TDUs
6	1360242.517	2309357.397	MAPLE	2	0.8
7	1360237.695	2309343.658	PINE	6	1.4
8	1360248.082	2309358.359	RIVER BIRCH	6	1.6
9	1360249.616	2309353.599	RIVER BIRCH	6	1.6
10	1360270.521	2309357.179	PINE	4	1.4
11	1360273.31	2309357.656	PINE	4	1.4
12	1360277.493	2309358.371	PINE	4	1.4
13	1360248.604	2309317.552	PINE	4	1.4
14	1360271.208	2309332.182	PINE	3	0.6
				TOTAL TDUs:	11.6

SAMPLE AREA #6

TREE ID	NORTHING	EASTING	GENUS	DBH	TDUs
45	1360491.344	2308951.334	MAPLE	6	1.6
46	1360496.608	2308934.035	OAK	4	1.6
47	1360499.554	2308929.08	OAK	4	1.6
48	1360509.658	2308931.203	OAK	6	1.6
49	1360488.504	2308935.563	OAK	8	2.4
50	1360493.164	2308929.945	OAK	12	3.2
				TOTAL TDUs:	12

SAMPLE AREA #7

TREE ID	NORTHING	EASTING	GENUS	DBH	TDUs
53	1360679.28	2308637.269	HICKORY	4	1.6
54	1360681.111	2308643.92	HICKORY	2	0.8
55	1360685.35	2308634.322	HICKORY	3	0.8
56	1360692.123	2308625.23	HICKORY	14	4
57	1360700.98	2308620.585	OAK	2	0.8
58	1360708.367	2308627.347	SWEETGUM	15	4
59	1360716.812	2308622.479	HICKORY	10	3.2
60	1360720.352	2308626.114	OAK	20	5.4
61	1360712.017	2308635.36	HICKORY	3	0.8
62	1360707.387	2308637.245	HICKORY	3	0.8
63	1360720.795	2308645.884	HICKORY	2	0.8
64	1360713.5	2308658.347	MAPLE	3	0.8
65	1360694.096	2308659.181	OAK	15	4
66	1360681.318	2308643.815	HICKORY	2	0.8
				TOTAL TDUs:	28.6

ENGINEER'S ACKNOWLEDGEMENT:

I CERTIFY THAT THIS PROJECTS MEETS THE DEKALB COUNTY STORMWATER QUALITY REQUIREMENT PER THE DEVELOPMENT ORDINANCE SECTION 14-42

ENGINEER SIGNATURE

NORTH

GRAPHIC SCALE
0 50 100 200 300 400

PRIME ENGINEERING INCORPORATED
3715 NORTHSIDE PARKWAY NW
300 NORTHCREEK, SUITE 200
404-425-7100

PROJECT: **STONECREST ESTATES PHASE 1**

PREPARED FOR: **CRAFT HOMES, LLC**

SEAL — REGISTERED GEORGIA LANDSCAPE ARCHITECT NO. 2858 MICHAEL BARGER

DATE: 9/07/21

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DRAWING TITLE: **PRELIMINARY PLAT FOR STONECREST ESTATES PHASE 1**

LOCATED IN:
LAND LOT 101 & 1024,
16TH DISTRICT
CITY OF STONECREST
DEKALB COUNTY GA.

DRAWING DATE: 09/07/2021	DRAWN BY: JMK		
DRAWING SCALE: 1" = 100'	DESIGNED BY: MB	CHECKED BY: MB	NOT ISSUED FOR CONSTRUCTION
PROJECT NUMBER: 1445-0002			
DRAWING NUMBER: SHEET 7 OF 8			

R:\1445-0002 Craft HB-300 Unit Subdivision\3 ENGINEERING\Drawings\S-6 TREE SURVEY.dwg Thu, 07/21/22 11:36 AM

Parcel Line Table		
Line #	Length	Direction
L1	25.00	N63°02'54"W
L2	88.00	N26°57'06"E
L3	25.00	S63°02'54"E
L4	88.00	S26°57'06"W
L5	25.00	N63°02'54"W
L6	88.00	N26°57'06"E
L7	25.00	S63°02'54"E
L8	25.00	N63°02'54"W
L9	88.00	N26°57'06"E
L10	25.00	S63°02'54"E
L11	25.00	N63°02'54"W
L12	88.00	N26°57'06"E
L13	25.00	S63°02'54"E
L14	25.00	N63°02'54"W
L15	88.00	N26°57'06"E
L16	25.00	S63°02'54"E
L17	25.00	N63°02'54"W
L18	88.00	N26°57'06"E
L19	25.00	S63°02'54"E
L20	35.00	N63°02'54"W
L21	88.00	N26°57'06"E
L22	35.00	S63°02'54"E
L23	30.00	N63°02'54"W
L24	88.00	N26°57'06"E
L25	30.00	S63°02'54"E
L26	20.00	N63°02'54"W
L27	88.00	N26°57'06"E
L28	20.00	S63°02'54"E
L29	20.00	N63°02'54"W
L30	88.00	N26°57'06"E
L31	20.00	S63°02'54"E
L32	20.00	N63°02'54"W
L33	88.00	N26°57'06"E
L34	20.00	S63°02'54"E
L35	20.00	N63°02'54"W
L36	88.00	N26°57'06"E
L37	20.00	S63°02'54"E
L38	20.00	N63°02'54"W
L39	88.00	N26°57'06"E
L40	20.00	S63°02'54"E
L41	20.00	N63°02'54"W
L42	88.00	N26°57'06"E
L43	20.00	S63°02'54"E
L44	20.00	N63°02'54"W
L45	88.00	N26°57'06"E
L46	20.00	S63°02'54"E
L47	20.00	N63°02'54"W
L48	88.00	N26°57'06"E
L49	20.00	S63°02'54"E
L50	29.98	N63°02'54"W
L51	88.00	N26°53'23"E
L52	30.07	S63°02'54"E
L53	35.02	N63°02'54"W
L54	88.00	N26°57'06"E
L55	34.93	S63°02'54"E
L56	23.43	N63°02'54"W
L58	88.01	N26°57'06"E
L59	25.00	S63°02'54"E
L61	91.11	N26°57'06"E
L62	25.00	S63°02'54"E

Parcel Line Table		
Line #	Length	Direction
L64	100.21	N26°57'06"E
L65	25.00	S63°02'54"E
L66	89.64	S63°02'54"E
L67	10.60	N63°02'54"W
L68	41.59	N63°02'54"W
L69	40.54	S26°01'50"W
L70	41.29	S18°15'54"W
L71	173.77	S63°58'10"E
L72	34.91	S26°01'50"W
L73	155.50	N63°58'10"W
L74	39.40	N1°36'11"W
L75	6.34	S26°01'50"W
L77	143.47	N63°58'10"W
L78	28.22	N1°36'11"W
L80	120.11	N89°19'23"W
L81	85.08	N1°36'11"W
L83	116.15	S88°23'49"W
L84	33.83	N1°36'11"W
L85	12.86	S1°36'11"E
L86	116.00	S88°23'49"W
L87	20.00	N1°36'11"W
L88	20.00	S1°36'11"E
L89	116.00	S88°23'49"W
L90	20.00	N1°36'11"W
L91	20.00	S1°36'11"E
L92	116.00	S88°23'49"W
L93	20.00	N1°36'11"W
L94	20.00	S1°36'11"E
L95	116.00	S88°23'49"W
L96	20.00	N1°36'11"W
L97	20.00	S1°36'11"E
L98	116.00	S88°23'49"W
L99	20.00	N1°36'11"W
L100	20.00	S1°36'11"E
L101	116.00	S88°23'49"W
L102	20.00	N1°36'11"W
L103	20.00	S1°36'11"E
L104	116.00	S88°23'49"W
L105	20.00	N1°36'11"W
L106	20.00	S1°36'11"E
L107	116.00	S88°23'49"W
L108	20.00	N1°36'11"W
L109	30.00	S1°36'11"E
L110	116.00	S88°23'49"W
L111	30.00	N1°36'11"W
L112	35.00	S1°36'11"E
L113	116.00	S88°23'49"W
L114	35.00	N1°36'11"W
L115	25.00	S1°36'11"E
L116	116.00	S88°23'49"W
L117	25.00	N1°36'11"W
L118	25.00	S1°36'11"E
L119	116.00	S88°23'49"W
L120	25.00	N1°36'11"W
L121	25.00	S1°36'11"E
L122	116.00	S88°23'49"W
L123	25.00	N1°36'11"W
L124	25.00	S1°36'11"E
L125	116.00	S88°23'49"W
L126	25.00	N1°36'11"W

Parcel Line Table		
Line #	Length	Direction
L127	25.00	S1°36'11"E
L128	116.00	S88°23'49"W
L129	25.00	N1°36'11"W
L130	25.00	S1°36'11"E
L131	116.00	S88°23'49"W
L132	25.00	N1°36'11"W
L133	30.00	S1°36'11"E
L134	116.00	S88°23'49"W
L135	30.00	N1°36'11"W
L136	116.00	N88°23'49"E
L137	20.00	S1°36'11"E
L138	116.00	S88°23'49"W
L139	20.00	N1°36'11"W
L140	20.00	S1°36'11"E
L141	116.00	S88°23'49"W
L142	20.00	N1°36'11"W
L143	20.00	S1°36'11"E
L144	116.00	S88°23'49"W
L145	20.00	N1°36'11"W
L146	20.00	S1°36'11"E
L147	116.00	S88°23'49"W
L148	20.00	N1°36'11"W
L149	20.00	S1°36'11"E
L150	116.00	S88°23'49"W
L151	20.00	N1°36'11"W
L152	116.00	N88°23'49"E
L153	20.00	S1°36'11"E
L154	116.00	S88°23'49"W
L155	20.00	N1°36'11"W
L156	20.00	S1°36'11"E
L157	116.00	S88°23'49"W
L158	20.00	N1°36'11"W
L159	35.00	S1°36'11"E
L160	116.00	S88°23'49"W
L161	35.00	N1°36'11"W
L162	116.00	N88°23'49"E
L163	25.00	S1°36'11"E
L164	116.00	S88°23'49"W
L165	25.00	N1°36'11"W
L166	25.00	S1°36'11"E
L167	116.00	S88°23'49"W
L168	25.00	N1°36'11"W
L169	25.00	S1°36'11"E
L170	116.00	S88°23'49"W
L171	25.00	N1°36'11"W
L172	25.00	S1°36'11"E
L173	116.00	S88°23'49"W
L174	25.00	N1°36'11"W
L175	25.00	S1°36'11"E
L176	116.00	S88°23'49"W
L177	25.00	N1°36'11"W
L178	35.00	S1°36'11"E
L179	116.00	S88°23'49"W
L180	35.00	N1°36'11"W
L181	116.00	N88°23'49"E
L182	25.00	S1°36'11"E
L183	116.00	S88°23'49"W
L184	25.00	N1°36'11"W
L185	25.00	S1°36'11"E
L186	116.00	S88°23'49"W

Parcel Line Table		
Line #	Length	Direction
L187	25.00	N1°36'11"W
L188	25.00	S1°36'11"E
L189	116.00	S88°23'49"W
L190	25.00	N1°36'11"W
L191	25.00	S1°36'11"E
L192	116.00	S88°23'49"W
L193	25.00	N1°36'11"W
L194	36.58	S1°36'11"E
L195	86.21	S84°22'49"W
L196	41.08	N48°30'26"W
L197	14.55	N1°36'11"W
L198	30.00	S1°34'39"E
L199	88.11	S88°23'49"W
L201	19.69	N1°36'11"W
L202	87.80	N88°23'49"E
L203	25.00	S1°34'39"E
L204	25.00	N1°36'11"W
L205	87.81	N88°23'49"E
L206	25.00	S1°34'39"E
L207	25.00	N1°36'11"W
L208	87.83	N88°23'49"E
L209	35.00	S1°34'39"E
L210	35.00	N1°36'11"W
L211	87.84	N88°23'49"E
L212	30.00	S1°34'39"E
L213	30.00	N1°36'11"W
L214	87.85	N88°23'49"E
L215	20.00	S1°34'39"E
L216	20.00	N1°36'11"W
L217	87.86	N88°23'49"E
L218	20.00	S1°34'39"E
L219	20.00	N1°36'11"W
L220	87.87	N88°23'49"E
L221	20.00	S1°34'39"E
L222	20.00	N1°36'11"W
L223	87.88	N88°23'49"E
L224	20.00	S1°34'39"E
L225	20.00	N1°36'11"W
L226	87.89	N88°23'49"E
L227	20.00	S1°34'39"E
L228	20.00	N1°36'11"W
L229	87.90	N88°23'49"E
L230	20.00	S1°34'39"E
L231	20.00	N1°36'11"W
L232	87.91	N88°23'49"E
L233	20.00	S1°34'39"E
L234	20.00	N1°36'11"W
L235	87.92	N88°23'49"E
L236	20.00	S1°34'39"E
L237	20.00	N1°36'11"W
L238	87.93	N88°23'49"E
L239	30.00	S1°35'10"E
L240	30.00	N1°36'11"W
L241	87.94	N88°23'49"E
L242	34.97	S1°34'13"E
L243	34.97	N1°36'11"W
L244	87.96	N88°23'49"E
L245	25.00	S1°34'39"E
L246	25.00	N1°36'11"W
L247	87.97	N88°23'49"E

Parcel Line Table		
Line #	Length	Direction
L248	25.00	S1°34'39"E
L249	25.00	N1°36'11"W
L250	87.98	N88°23'49"E
L251	25.00	S1°34'39"E
L252	25.00	N1°36'11"W
L253	87.99	N88°23'49"E
L254	25.00	S1°34'39"E
L255	25.00	N1°36'11"W
L256	88.00	N88°23'49"E
L257	25.00	N1°36'11"W
L258	88.01	N88°23'49"E
L259	25.00	S1°34'39"E
L260	25.00	S1°34'39"E
L261	45.03	S1°34'39"E
L262	88.02	S88°23'49"W
L263	38.03	N1°36'11"W
L265	81.04	N88°23'49"E
L266	41.25	S1°36'11"E
L267	48.25	N1°36'11"W
L268	25.00	S1°36'11"E
L269	88.00	S88°23'49"W
L270	25.00	N1°36'11"W
L271	88.00	N88°23'49"E
L272	25.00	S1°36'11"E
L273	25.00	N1°36'11"W
L274	88.00	N88°23'49"E
L275	25.00	S1°36'11"E
L276	25.00	N1°36'11"W
L277	88.00	N88°23'49"E
L278	25.00	S1°36'11"E
L279	25.00	N1°36'11"W
L280	88.00	N88°23'49"E
L281	25.00	S1°36'11"E
L282	25.00	N1°36'11"W
L283	88.00	N88°23'49"E
L284	35.00	S1°36'11"E
L285	35.00	N1°36'11"W
L286	88.00	N88°23'49"E
L287	35.00	S1°36'11"E
L288	35.00	N1°36'11"W
L289	88.00	N88°23'49"E
L290	25.00	S1°36'11"E
L291	25.00	N1°36'11"W
L292	88.00	N88°23'49"E
L293	25.00	S1°36'11"E
L294	25.00	N1°36'11"W
L295	88.00	N88°23'49"E
L296	25.00	S1°36'11"E
L297	25.00	N1°36'11"W
L298	88.00	N88°23'49"E
L299	25.00	S1°36'11"E
L300	25.00	N1°36'11"W
L301	88.00	N88°23'49"E
L302	36.89	S1°36'11"E
L303	53.89	N1°36'11"W
L305	20.35	N88°23'49"E
L307	33.68	S63°02'54"E
L308	88.00	S26°57'11"W
L309	25.00	N63°02'49"W
L310	88.00	N26°57'11"E

Parcel Line Table		
Line #	Length	Direction
L311	25.00	S63°02'54"E
L312	88.00	S26°57'11"W
L313	25.00	N63°02'49"W
L314	25.00	S63°02'54"E
L315	88.00	S26°57'11"W
L316	25.00	N63°02'49"W
L317	25.00	S63°02'54"E
L318	88.00	S26°57'11"W
L319	25.00	N63°02'49"W
L320	25.00	S63°02'54"E
L321	88.00	S26°57'11"W
L322	25.00	N63°02'49"W
L323	25.00	S63°02'54"E
L324	80.71	S30°43'09"W
L325	43.73	N63°02'49"W
L326	42.04	S63°02'54"E
L327	34.41	S30°43'09"W
L328	88.00	N59°16'51"W
L329	28.62	N30°43'09"E
L330	88.19	S63°02'49"E
L331	20.00	S30°43'09"W
L332	88.00	N59°16'51"W
L333	20.00	N30°43'09"E
L334	20.00	S30°43'09"W
L335	88.00	N59°16'51"W
L336	20.00	N30°43'09"E
L337	20.00	S30°43'09"W
L338	88.00	N59°16'51"W
L339	20.00	N30°43'09"E
L340	20.00	S30°43'09"W
L341	88.00	N59°16'51"W
L342	20.00	N30°43'09"E
L343	30.00	S30°43'09"W
L344	88.00	N59°16'51"W
L345	30.00	N30°43'09"E
L347	108.28	S30°39'21"E
L348	6.67	S88°23'49"W
L349	23.74	N1°34'39"W
L350	107.39	S30°39'21"E
L351	106.02	S30°39'21"E
L352	104.05	S30°39'21"E
L353	47.57	S30°43'09"W
L356	88.75	S54°48'51"E
L357	88.00	S59°17'12"E
L358	41.72	S30°43'09"W
L360	24.29	N30°43'09"E
L361	88.00	S59°17'12"E
L362	25.00	S30°43'09"W
L363	25.00	N30°43'09"E
L364	88.00	S59°17'12"E
L365	25.00	S30°43'09"W
L366	25.00	N30°43'09"E
L367	88.00	S59°17'12"E
L368	25.00	S30°43'09"W
L369	25.00	N30°43'09"E
L370	88.00	S59°17'12"E
L371	35.00	S30°43'09"W
L372	35.00	N30°43'09"E
L373	88.00	S59°17'12"E
L374	19.67	S30°43'09"W

Parcel Line Table		
Line #	Length	Direction
L375	10.33	S30°43'09"W
L376	30.00	N30°43'09"E
L377	88.00	S59°17'12"E
L378	20.00	S30°43'09"W
L379	20.00	N30°43'09"E
L380	88.00	S59°17'12"E
L381	20.00	S30°43'09"W
L382	20.00	N30°43'09"E
L383	88.00	S59°17'12"E
L384	20.00	S30°43'09"W
L385	20.00	N30°43'09"E
L386	88.00	S59°17'12"E
L387	10.60	S30°43'09"W
L388	9.40	S30°43'09"W
L389	20.00	N30°43'09"E
L390	44.51	S30°43'09"W
L391	32.17	N30°43'09"E
L395	37.10	N30°43'09"E
L397	27.95	N63°16'24"E
L398	152.50	N4°13'36"W
L399	153.83	N21°29'26"E
L400	38.36	N0°43'13"W
L401	127.82	N0°43'13"W
L402	101.31	N32°05'20"E
L403	18.63	N66°57'21"E
L404	3.66	N32°05'20"E
L405	306.42	S30°43'09"W
L407	117.08	S88°23'49"W
L408	69.55	S26°01'50"W
L412	46.41	N57°54'40"W
L414	474.04	N63°02'54"W
L416	52.35	S88°23'49"W
L417	25.00	S59°01'17"E
L418	35.00	S1°36'11"E
L419	35.00	N1°36'11"W
L420	116.00	N88°23'49"E
L421	25.00	S1°36'11"E
L422	25.00	N1°36'11"W
L423	30.00	S1°36'11"E
L424	30.00	N1°36'11"W
L425	20.00	S1°36'11"E
L426	20.00	N1°36'11"W
L427	35.00	S1°36'11"E
L428	35.00	N1°36'11"W
L429	25.00	N1°36'11"W
L430	81.00	N88°23'49"E
L431	4.08	N88°23'49"E

Curve Table					
Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C1	68.73	127.00	31.01	N51° 27' 09"E	67.89
C2	8.41	53.00	9.09	N62° 24' 42"E	8.40
C3	4.89	19.50	14.38	N50° 40' 41"E	4.88
C4	14.14	9.00	90.00	S12° 54' 40"E	12.73
C5	40.05	165.00	13.91	N25° 08' 05"E	39.95
C6	40.25	165.00	13.98	N11° 11' 30"E	40.15
C7	14.18	165.00	4.92	N1° 44' 29"E	14.17
C8	28.88	276.00	6.00	N1° 13' 45"W	28.87
C9	44.58	115.00	22.21	S10° 23' 07"W	44.30
C13	40.25	276.00	8.36	S14° 18' 08"W	40.22
C14	40.25	276.00	8.36	S5° 56' 47"W	40.22
C15	65.31	115.00	32.54	S12° 02' 30"W	64.43
C16	70.18	115.00	34.96	S45° 47' 30"W	69.09
C17	61.05	275.00	12.72	N84° 01' 38"W	60.92
C18	44.05	275.00	9.18	N73° 04' 46"W	44.00
C19	65.87	275.00	13.72	N61° 37' 42"W	65.72
C20	10.11	7.00	82.71	N13° 24' 33"W	9.25
C21	74.78	165.00	25.97	N14° 57' 51"E	74.14
C26	42.28	324.99	7.45	S65° 37' 35"E	42.25
C27	42.29	324.99	7.46	S73° 04' 53"E	42.26
C28	42.31	324.99	7.46	S80° 32' 20"E	42.28
C32	40.73	165.00	14.14	N14° 19' 42"E	40.62
C33	33.07	165.00	11.48	N1° 30' 55"E	33.02
C34	27.96	226.00	7.09	N0° 40' 56"W	27.94
C35	62.65	226.00	15.88	N10° 48' 14"E	62.45
C36	10.83	226.00	2.75	N20° 07' 05"E	10.83
C37	2.07	165.00	0.72	N21° 07' 50"E	2.07
C38	40.73	165.00	14.14	N13° 41' 58"E	40.62
C39	21.16	165.00	7.35	N2° 57' 15"E	21.15
C40	60.53	115.02	30.15	N14° 21' 27"E	59.84
C41	4.03	45.00	5.14	S60° 28' 47"E	4.03
C42	11.00	7.00	90.00	S43° 23' 49"W	9.90
C43	115.77	115.00	57.68	S59° 33' 29"W	110.94
C44	10.54	7.00	86.23	S73° 50' 08"W	9.57
C45	27.69	65.00	24.41	N54° 45' 09"E	27.48
C46	61.56	115.00	30.67	N51° 37' 14"E	60.83
C47	10.81	7.01	88.33	N80° 29' 33"E	9.77
C48	10.31	115.00	5.14	S60° 28' 47"E	10.31
C49	57.31	115.00	28.55	S77° 19' 33"E	56.72
C50	10.18	7.00	83.31	S49° 56' 47"E	9.31
C51	2.32	5.00	26.55	S4° 59' 16"W	2.30
C52	4.72	63.00	4.30	S16° 07' 01"W	4.72
C53	21.68	103.00	12.06	S19° 59' 59"W	21.64
C54	11.00	7.00	90.00	S43° 23' 49"W	9.90
C55	32.39	65.00	28.55	N77° 19' 33"W	32.06
C56	11.46	7.00	93.77	N16° 09' 52"W	10.22
C57	65.43	65.00	57.68	N59° 33' 29"E	62.71
C58	11.00	7.00	90.00	S46° 36' 11"E	9.90
C59	79.58	165.00	27.63	S12° 12' 50"W	78.81
C60	126.78	115.00	63.16	S29° 58' 41"W	120.45
C61	297.39	275.00	61.96	S85° 44' 47"E	283.11
C62	1.57	115.00	0.78	N63° 26' 21"W	1.57
C63	25.24	115.00	12.58	N70° 07' 05"W	25.19
C64	26.66	115.00	13.28	S83° 02' 54"E	26.60
C65	18.70	165.00	6.50	S22° 46' 59"W	18.69
C66	24.39	165.00	8.47	S15° 18' 05"W	24.36
C67	29.35	165.00	10.19	S5° 58' 19"W	29.31
C68	43.93	275.00	9.15	N67° 51' 00"E	43.89
C69	62.48	275.00	13.02	N78° 56' 09"E	62.35
C70	42.29	324.99	7.46	S87° 59' 45"E	42.26

Curve Table					
Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C71	7.14	165.00	2.48	S0° 21' 48"E	7.14
C72	10.32	165.00	3.58	N0° 11' 20"E	10.32
C73	42.30	324.99	7.46	N84° 32' 51"E	42.27
C74	42.29	324.99	7.46	N77° 05' 26"E	42.26
C75	42.29	324.65	7.46	N69° 38' 01"E	42.26
C85	14.58	81.66	10.23	N81° 47' 41"E	14.56
C87	20.43	100.00	11.70	S70° 34' 59"W	20.39
C88	20.61	115.00	10.27	N73° 01' 46"E	20.58
C90	20.03	100.00	11.48	S58° 59' 31"W	20.00
C91	20.06	115.00	10.00	N62° 53' 48"E	20.04
C93	20.48	100.00	11.73	S47° 23' 09"W	20.44
C94	20.15	115.00	10.04	N52° 52' 40"E	20.13
C95	18.85	100.00	10.80	S36° 07' 08"W	18.82
C96	23.87	115.00	11.89	N41° 54' 41"E	23.83
C97	10.53	115.00	5.25	N33° 20' 32"E	10.53
C99	17.12	65.00	15.09	S59° 24' 44"W	17.07
C100	355.36	300.00	67.87	S82° 47' 34"E	334.94
C102	164.93	140.00	67.50	N29° 31' 24"E	155.56
C104	112.66	251.00	25.72	N8° 37' 55"E	111.72
C106	54.27	140.00	22.21	N10° 23' 07"E	53.93
C109	80.17	140.00	32.81	N15° 41' 03"E	79.08
C111	54.77	90.00	34.87	N49° 31' 20"E	53.93
C113	54.77	90.00	34.87	N49° 31' 20"E	53.93
C115	90.60	90.00	57.68	S59° 33' 29"W	86.82
C116	67.52	140.00	27.63	S12° 12' 50"W	66.87
C117	154.34	140.00	63.16	S29° 58' 41"W	146.64
C118	8.07	90.00	5.14	N60° 28' 47"W	8.07
C119	44.85	90.00	28.55	N77° 19' 33"W	44.39

PRIME ENGINEERING®
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9715 NORTHSIDE PARKWAY NW
300 NORTHCREEK, SUITE 200
404-425-7100

PROJECT:
STONECREST ESTATES
PHASE 1

PREPARED FOR:
CRAFT HOMES, LLC

SEAL

REGISTERED GEORGIA PROFESSIONAL ENGINEER NO. 29958 MICHAEL BRAGG LAND SURVEYOR

DATE: 9/07/21

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DRAWING TITLE
PRELIMINARY PLAT
FOR
STONECREST ESTATES PHASE 1
LOCATED IN:
LAND LOT 101 & 1024,
16TH DISTRICT
CITY OF STONECREST
DEKALB COUNTY GA.

DRAWING DATE	09/07/2021
DRAWING SCALE	1" = 100'
PROJECT NUMBER	
DRAWING NUMBER	SHEET 8 OF 8
DRAWN BY	JMK
DESIGNED BY	MB
CHECKED BY	MB

NOT ISSUED FOR CONSTRUCTION

R:\1445-0002 Craft HB-300 Unit Subdivision\2 SURVEY\PRELIM PLAT-39-2 1445-0002.dwg Thu, 07/21/22 11:33 AM

CITY COUNCIL AGENDA ITEM

SUBJECT: A Resolution Approving The Municipal Court Fee Schedule

AGENDA SECTION: (*check all that apply*)

☐ **PRESENTATION** ☐ **PUBLIC HEARING** ☐ **CONSENT AGENDA** ☐ **OLD BUSINESS**

☒ **NEW BUSINESS** ☐ **OTHER, PLEASE STATE:** Click or tap here to enter text.

CATEGORY: (*check all that apply*)

☐ **ORDINANCE** ☒ **RESOLUTION** ☐ **CONTRACT** ☐ **POLICY** ☐ **STATUS REPORT**

☐ **OTHER, PLEASE STATE:** Click or tap here to enter text.

ACTION REQUESTED: ☒ **DECISION** ☐ **DISCUSSION,** ☐ **REVIEW, or** ☐ **UPDATE ONLY**

Previously Heard Date(s): 05/23/22 & Click or tap to enter a date.

Current Work Session: Click or tap to enter a date.

Current Council Meeting: Monday, July 25, 2022

SUBMITTED BY: Mallory Minor, Municipal Court Clerk

PRESENTER: Mallory Minor

PURPOSE: Approval of the Municipal Court Fee Schedule

FACTS: Section 9-6(a) Court fees states that the Municipal Court judge may recommend to the City Council for its approval a schedule of fees to defray the cost of operation. The publication requirement of Section 2-178 has been satisfied. The Municipal Court seeks approval from City Council to set reasonable fees and charges for services provided by the Municipal Court Department, in order to recoup the cost of conducting municipal court business on the public's behalf without unduly relying on taxes.

OPTIONS: Approve, Deny, Defer Click or tap here to enter text.

RECOMMENDED ACTION: Approve for Adoption

ATTACHMENTS:

(1) Attachment 1 - Resolution

CITY COUNCIL AGENDA ITEM

(2) Attachment 2 - Municipal Court Fee Schedule
(3) Attachment 3 - Article I, Section 9-6 – Court fees
(4) Attachment 4 - Article IV, Section 2-178 – Administrative process for altering or setting fees charged by the city
(5) Attachment 5 - Click or tap here to enter text.

MUNICIPAL COURT FEE SCHEDULE (Effective FY2022)

Prepared May 1, 2022

Municipal Court
Fee Schedule

MUNICIPAL COURT FEE SCHEDULE		
	Current Fee	**Proposed Fee**
Citation/Disposition Fee (Certified Copy)	**$2.50 per page ($0.50 additional page)**	**$2.50 per page ($0.50 additional page)**
Citation/Disposition Fee (Non-Certified Copy)	**$1.00 per page**	**$1.00 per page**
Citation/Disposition Fee (Electronic Copy)	**Free**	**Free**
Court Fee (includes $10.00 Technology Fee, $15.00 Court Administrative Fee & $20.00 Courtware Solutions Inc. Fee)	**$45.00**	**$45.00**
Mailing Fee	**Additional Fee Based on Page Count**	**Additional Fee Based on Page Count**

STATE OF GEORGIA

COUNTY OF DEKALB

CITY OF STONECREST

RESOLUTION NO. 2022-_____

A RESOLUTION BY THE MAYOR AND CITY COUNCIL OF THE CITY OF STONECREST APPROVING THE MUNICIPAL COURT FEE SCHEDULE FOR THE MUNICIPAL COURT OF THE CITY OF STONECREST; AND FOR OTHER PURPOSES.

WHEREAS, the City of Stonecrest ("City") is a municipal corporation duly organized and existing under the laws of the State of Georgia; and

WHEREAS, the Mayor and City Council are the governing authority of the City of Stonecrest, Georgia; and

WHEREAS, Section 9-6(a) Court fees of the City of Stonecrest Code of Ordinances states that the Municipal Court judge may recommend to the City Council for its approval a schedule of fees to defray the cost of operation; and

WHEREAS, the Municipal Court of the City of Stonecrest intends to establish Municipal Court Fee Schedule for the purpose of providing for reasonable fees and charges for services provided by the Municipal Court Department, use of City property, and purchase of certain goods provided by the City in order to recoup the cost of conducting municipal court business on the public's behalf without unduly relying on taxes; and

WHEREAS, Municipal Court Fee Schedule must be approved by the City Council.

NOW, THEREFORE BE IT RESOLVED BY MAYOR AND CITY COUNCIL THE CITY OF

STONECREST, GEORGIA, that the Municipal Court Fee Schedule is hereby established and approved as attached hereto as Exhibit "A".

BE IT FINALLY RESOLVED that this Resolution shall be effective immediately upon its adoption.

SO RESOLVED THIS _____ DAY OF_____ 2022.

CITY OF STONECREST, GEORGIA

_____
JAZZMIN COBBLE, MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM

_____
CITY ATTORNEY

EXHIBIT A

Sec. 9-6. - Court fees.

(a) The Municipal Court judge may recommend to the City Council for its approval a schedule of fees to defray the cost of operation.

(b) The Council may set fines for violations of City ordinances.

(Ord. No. 2017-11-02, § 9-6, 11-20-2017)

Sec. 2-178. - Administrative process for altering or setting fees charged by the city.

(a) The city manager or his designee shall:

(1) Post any proposed change to the city fee schedule at city hall and on the city's website at least 45 days before the change is to take effect, including a calculation of the effective date of such change.

(2) Notify the mayor and city council by paper or electronic communication and by announcement at the next regular meeting of the city council of the proposed change.

(3) All communications or postings of proposed changes to the city fee schedule shall include a justification for the needed change, which may include an analysis of the costs associated with the application, permit or license, costs of enforcement and investigation incurred by the application, permit or license, and such other facts or circumstances deemed relevant to the need for the change to the fee schedule.

(b) Persons impacted by the proposed change shall have 30 days from the posted communication to make objections known to the city manager, in writing or by electronic communication, who shall then forward such objections to the city attorney and the mayor and city council. If oral objections are communicated, the objector shall be informed of the opportunity to provide feedback in writing.

(Ord. No. 09-05, § 2-178, 9-18-2017)

CITY COUNCIL AGENDA ITEM

SUBJECT: Decriminalization of Marijuana Ordinance – 1st Read

AGENDA SECTION: (*check all that apply*)

☐ **PRESENTATION** ☐ **PUBLIC HEARING** ☐ **CONSENT AGENDA** ☐ **OLD BUSINESS**
☒ **NEW BUSINESS** ☐ **OTHER, PLEASE STATE: PUBLIC NOTICE**

CATEGORY: (*check all that apply*)

☒ **ORDINANCE** ☐ **RESOLUTION** ☐ **CONTRACT** ☐ **POLICY** ☐ **STATUS REPORT**
☐ **OTHER, PLEASE STATE:** Click or tap here to enter text.

ACTION REQUESTED: ☒ **DECISION** ☐**DISCUSSION,** ☐ **REVIEW, or** ☐ **UPDATE ONLY**

Previously Heard Date(s): 07/11/22 & Click or tap to enter a date.

Current Work Session: Click or tap to enter a date.

Current Council Meeting: Monday, July 25, 2022

SUBMITTED BY: Mallory Minor, Municipal Court Clerk

PRESENTER: Mallory Minor

PURPOSE: Decriminalization of Marijuana – 1st Read

FACTS: The Municipal Court of Stonecrest support laws that remove criminal sanctions for low-level marijuana use. Although, decriminalization means different things in different jurisdictions, the idea is the same: Instead of threatening offenders with jail time and permanent criminal records, police issue civil citations. This means a relatively small fine, with no criminal record.

OPTIONS: Discussion only Click or tap here to enter text.

RECOMMENDED ACTION: N/A

ATTACHMENTS:

(1) Attachment 1 - Amended Ordinance
(2) Attachment 2 - Section 16-54. – Marijuana Possession

CITY COUNCIL AGENDA ITEM

(3) Attachment 3 - 36-32-6. Jurisdiction in marijuana possession cases; retention of fines and bond forfeitures; transfer of cases.
(4) Attachment 4 - 16-13-30. Purchase, possession, manufacture, distribution, or sale of controlled substances or marijuana; penalties
(5) Attachment 5 – Sec 16-29.2 – Loitering for the purposes of engaging in drug related activity

STATE OF GEORGIA

CITY OF STONECREST

ORDINANCE NO. 2022-_____

AN ORDINANCE TO AMEND CHAPTER 16 (MISCELLANEOUS PROVISIONS AND OFFENSES), ARTICLE 3 (OFFENSES AGAINST PUBLIC PEACE, ORDER AND SAFETY), DIVISIONS 1 (GENERALLY) AND 2 (DRUG AND ALCOHOL-RELATED OFFENSES) OF THE CITY OF STONECREST CODE OF ORDINANCES TO PROVIDE A PENALTY OF POSSESSION OF ONE OUNCE OR LESS OF MARIJUANA; TO ENCOURAGE LAW ENFORCEMENT OFFICERS TO ISSUE CITATIONS FOR SUCH OFFENSE IN LIEU OF EFFECTUATING ARREST; TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN ADOPTION DATE; TO PROVIDE AN EFFECTIVE DATE; AND TO PROVIDE FOR OTHER LAWFUL PURPOSES.

WHEREAS, the City of Stonecrest, Georgia (the "City") is a municipal corporation created under the laws of the State of Georgia; and

WHEREAS, the duly elected governing authority of the City is the Mayor and Council thereof; and

WHEREAS, the Mayor and City Council find that enforcement of the State law offense prohibiting possession of one ounce or less of marijuana has been inequitable and has fallen disproportionately on certain subsets of the population; and

WHEREAS, arrest and/or conviction for the State law offense of possession of one ounce or less of marijuana presents employment obstacles which marginalize portions of the population; and

WHEREAS, O.C.G.A. § 36-32-6 grants municipal courts concurrent jurisdiction to try to dispose of cases wherein a person is charged with possession of one ounce or less of marijuana when such conduct occurs inside a municipality; and

WHEREAS, in 2018 the City adopted a Marijuana Possession Ordinance that was codified under Chapter 16 (Miscellaneous Provisions and Offenses), Article 3 (Offenses Against Public Peace, Order and Safety), Division 2 (Drug and Alcohol-Related Offenses), Section 16.54 of the City of Stonecrest Code of Ordinances (the "Code"); and

WHEREAS, the Marijuana Possession Ordinance does not include specific punishment prescribed for violation of the Code 16.54 which prohibits the possession of one ounce or less of marijuana; and

WHEREAS, after due consideration, the duly elected governing authority desires to amend the Marijuana Possession Ordinance to facilitate equity in the administration of criminal justice; and

WHEREAS, the City Council finds that it is necessary to amend the Marijuana Possession Ordinance for the interest of maintaining the public safety and general welfare of citizens of the City and its visitors.

NOW THEREFORE, BE IT AND IT IS HEREBY ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF STONECREST, GEORGIA and by the authority thereof:

Section 1. The Code of Ordinances, City of Stonecrest, Georgia is hereby amended by revising Chapter 16 (Miscellaneous Provisions and Offenses), Article 3 (Offenses Against Public Peace, Order and Safety), Division 1 (Generally) by revising the following section to be read and codified as follows with added text in **bold** and deleted text in red ~~strikethrough~~ font:

"Sec. 16-29.2. Loitering for the purposes of engaging in drug-related activity.

(d) A police officer may not detain an individual under this Code section unless both of the following elements are satisfied:

(1) The person engages in one or more of the following behaviors:

a. The person passes or receives from a passer-by, bystander or person in a motor vehicle money, objects having characteristics consistent with controlled substances, and/or an envelope, bag or other container that could reasonably contain such objects or money;

b. The person conceals or attempts to conceal an object having characteristics consistent with controlled substances and/or an envelope, bag, clear plastic baggie or other container that could reasonably contain such objects;

c. The person flees or obscures himself upon seeing law enforcement officers;

d. The person communicates the fact that law enforcement officers are in the vicinity to another person in a manner that suggests that the communication is a warning; or

e. The officer observes the person in possession of any instrument or object that is designed or marketed as useful primarily for one or more of the following purposes:

1. To inject, ingest, inhale or otherwise introduce ~~marijuana or~~ a controlled substance into the human body;

2. To enhance the effect of ~~marijuana or~~ a controlled substance on the human body;

3. To test the strength, effectiveness or purity of ~~marijuana or~~ a controlled substance;

4. To process or prepare ~~marijuana or~~ a controlled substance for introduction into the human body;

5. To conceal any quantity of ~~marijuana or~~ a controlled substance; or

6. To contain or hold ~~marijuana or~~ a controlled substance while it is being introduced into the human body.

(2) One of the following factors applies:

a. The officer is aware that, within the preceding three years, the person has been convicted of an offense defined in O.C.G.A. § Tit. 16, Ch. 13, or of complicity to commit such an offense, or of conspiracy to commit such an offense with in the preceding three years;

b. The officer has knowledge of a specific reliable tip concerning unlawful drug-related activity at a specific location, and the person who is found loitering is doing so at a time, in a place or in a manner that is otherwise consistent with the details provided in the tip;

c. The person is loitering in an area that has been designated a notorious drug-related activity area, as defined in subsection (g) of this section;

d. The person is in an area where he is prohibited **from being** by court order ~~from being~~, and the officer is aware of the court order;

e. The officer knows that the person has been previously convicted of loitering with the intention of engaging in unlawful drug-related activity under this section; or

f. Any vehicle the person has approached or communicated through is registered to an individual who has been convicted of an unlawful drug-related activity in the previous three years and the officer is aware of that fact.

(e) No arrest may be made for a violation of this section unless the arresting officer first affords the person an opportunity to explain the person's presence and conduct, unless flight by the person or other circumstances make it impracticable to afford such an opportunity, and no one shall be convicted of violating this section if it appears at trial that the explanation given at the scene was true and disclosed a lawful purpose.

(f) If a police officer who detains a person pursuant to this Code section develops probable cause to believe that the person is in violation of this Code section, the officer may order the person to immediately leave the location and to remain at least 500 feet away from the location for at least five hours. In the event that person refuses to comply with such an order, the police officer may arrest the person and charge him with a violation of this section.

(g) The City may, by written directive, clearly and publicly designate areas of the City that are frequently associated with excessive incidents of drug-related offenses, including offenses involving controlled substances, as defined in O.C.G.A. § Tit. 16, Ch. 13, ~~or marijuana,~~ subject to any requirements of state law. "

Section 2. The Code of Ordinances, City of Stonecrest, Georgia is hereby amended by revising Chapter 16 (Miscellaneous Provisions and Offenses), Article 3 (Offenses Against Public Peace, Order and Safety), Division 2 (Drug and Alcohol-Related Offenses) by revising the following section to be read and codified as follows with added text in **bold** and deleted text in red ~~strikethrough~~ font:

"Sec. 16-54. Marijuana possession.

(a) It shall be unlawful for any person to possess or have under his control within the city one ounce or less of marijuana.

(b) For the purposes of this section, the term "marijuana" means all parts of the plant of the genus cannabis, whether growing or not, the seeds thereof, the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin, and shall not include the mature stalks of such plant, fiber produced from such stalks, oil, or cake, or the completely sterilized samples of seeds of the plant which are incapable of germination.

(c) Exceptions. The appropriate use of legally prescribed marijuana is not prohibited. The term "legally prescribed" means that the individual has a prescription or other written approval from a physician for the use of a drug in the course of medical treatment. It must include the patient's name, the name of the substance, quantity/amount to be taken, and the period of authorization.

(d) ~~Any person charged with a violation of this section shall be entitled, upon request, to have the case against him transferred to the State Court of DeKalb County, to be prosecuted and tried as a misdemeanor in that court.~~

Any person found guilty of violating this section shall be punished by a fine not exceeding $100.00.

(e) No person convicted of violating this section shall be punished by imprisonment for any period of time.

(f) Any person charged with a violation of this section shall be entitled, upon request, to have the case against him transferred to the State Court of DeKalb County, to be prosecuted and tried as a misdemeanor in that court. "

Section 3. The preamble of this Ordinance shall be considered to be and is hereby incorporated by reference as if fully set out herein.

Section 4. (a) It is hereby declared to be the intention of the Mayor and Council that all sections, paragraphs, sentences, clauses, and phrases of this Ordinance 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 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 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.

(c) 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 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 this Ordinance and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

Section 5. The City Clerk, with the concurrence of the City Attorney, is authorized to correct any scrivener's errors found in this Ordinance, including its exhibits, as enacted.

Section 6. All ordinances and parts of ordinances in conflict herewith are hereby expressly repealed to the extent of the conflict only.

Section 7. The effective date of this Ordinance shall be the date of its adoption by the Mayor and Council unless otherwise stated herein.

Section 8. The Ordinance shall be codified in a manner consistent with the laws of the State of Georgia and the City of Stonecrest.

Section 9. It is the intention of the governing body, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of Ordinances, City of Stonecrest, Georgia and the sections of this Ordinance may be renumbered to accomplish such intention.

SO ORDAINED this _____ day of_____, 2022.

CITY OF STONECREST, GEORGIA

_____

Jazzmin Cobble, Mayor

ATTEST:

_____

City Clerk

APPROVED AS TO FORM:

_____

City Attorney

Sec. 16-54. - Marijuana possession.

(a) It shall be unlawful for any person to possess or have under his control within the city one ounce or less of marijuana.

(b) For the purposes of this section, the term "marijuana" means all parts of the plant of the genus cannabis, whether growing or not, the seeds thereof, the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin, and shall not include the mature stalks of such plant, fiber produced from such stalks, oil, or cake, or the completely sterilized samples of seeds of the plant which are incapable of germination.

(c) Exceptions. The appropriate use of legally prescribed marijuana is not prohibited. The term "legally prescribed" means that the individual has a prescription or other written approval from a physician for the use of a drug in the course of medical treatment. It must include the patient's name, the name of the substance, quantity/amount to be taken, and the period of authorization.

(d) Any person charged with a violation of this section shall be entitled, upon request, to have the case against him transferred to the State Court of DeKalb County, to be prosecuted and tried as a misdemeanor in that court.

(Ord. No. 2018-10-03, § 16-54, 10-15-2018)

Document: O.C.G.A. § 36-32-6

O.C.G.A. § 36-32-6

Copy Citation

Current through the 2021 Regular and Special Sessions of the General Assembly.

Official Code of Georgia Annotated TITLE 36 Local Government (§§ 36-1-1 — 36-93-26) Provisions Applicable to Municipal Corporations Only (Chs. 30 — 46) CHAPTER 32 Municipal Courts (Arts. 1 — 3) Article 1 General Provisions (§§ 36-32-1 — 36-32-13)

36-32-6. Jurisdiction in marijuana possession cases; retention of fines and bond forfeitures; transfer of cases.

(a) The municipal court of any municipality is granted jurisdiction to try and dispose of cases where a person is charged with the possession of one ounce or less of marijuana if the offense occurred within the corporate limits of such municipality. The jurisdiction of any such court shall be concurrent with the jurisdiction of any other courts within the county having jurisdiction to try and dispose of such cases.

(b) Any fines and bond forfeitures arising from the prosecution of such cases shall be retained by the municipality and shall be paid into the treasury of such municipality.

(c) Any defendant charged with possession of an ounce or less of marijuana in a municipal court shall be entitled on request to have the case against him or her transferred to the court having general misdemeanor jurisdiction in the county wherein the alleged offense occurred.

(d) Nothing in this Code section shall be construed to give any municipality the right to impose a fine or punish by imprisonment in excess of the limits as set forth in the municipality's charter.

History

Code 1981, § **36-32-6**, enacted by Ga. L. 1983, p. 825, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1997, p. 1377, § 3; Ga. L. 2015, p. 693, § 3-32/HB 233.

Annotations

Notes

Editor's notes.

Ga. L. 1997, p. 1377, § 4, not codified by the General Assembly, provides that: "it is the intent of the General Assembly to restore the law of this state to that which was generally understood to be the law prior to the decision of the Court of Appeals in *Williams v. State,* 222 Ga. App. 698, Case No. A96A1472, decided August 20, 1996, such that possession of one ounce or less of marijuana is a misdemeanor and the provisions of Code Section **36-32-6** are applicable to such offenses."

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

JUDICIAL DECISIONS

Discretionary nature of judge's decision. —

Grant of writ of mandamus to the defendant was reversed because mandamus was not an allowable remedy since the opportunity for review via a writ of certiorari existed as to the municipal judge's decision as the municipal court's duty under O.C.G.A. § **36-32-6**(c) as to the defendant's marijuana possession was a discretionary act allowing the opportunity for review via a writ. Schaeffer v. Kearney, 355 Ga. App. 449, 844 S.E.2d 515, 2020 Ga. App. LEXIS 332 (2020).

Research References & Practice Aids

Cross references.

Purchase, possession, manufacture, distribution, or sale of controlled substances or marijuana, § 16-13-30.

Law reviews.

For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 1 (2015).

Hierarchy Notes:

O.C.G.A. Title 36

O.C.G.A. Title 36, Ch. 32

Official Code of Georgia Annotated

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Date and Time: Jun 30, 2022 12:51:01 p.m. EDT

Document: O.C.G.A. § 16-13-30

O.C.G.A. § 16-13-30

Copy Citation

Current through the 2021 Regular and Special Sessions of the General Assembly.

16-13-30. Purchase, possession, manufacture, distribution, or sale of controlled substances or marijuana; penalties.

(a) Except as authorized by this article, it is unlawful for any person to purchase, possess, or have under his or her control any controlled substance.

(b) Except as authorized by this article, it is unlawful for any person to manufacture, deliver, distribute, dispense, administer, sell, or possess with intent to distribute any controlled substance.

(c) Except as otherwise provided, any person who violates subsection (a) of this Code section with respect to a controlled substance in Schedule I or a narcotic drug in Schedule II shall be guilty of a felony and, upon conviction thereof, shall be punished as follows:

(1) If the aggregate weight, including any mixture, is less than one gram of a solid substance, less than one milliliter of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of less than one gram, by imprisonment for not less than one nor more than three years;

(2) If the aggregate weight, including any mixture, is at least one gram but less than four grams of a solid substance, at least one milliliter but

(2) If the aggregate weight, including any mixture, is at least one gram but less than four grams of a solid substance, at least one milliliter but less than four milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of at least one gram but less than four grams, by imprisonment for not less than one nor more than eight years; and

(3)

(A) Except as provided in subparagraph (B) of this paragraph, if the aggregate weight, including any mixture, is at least four grams but less than 28 grams of a solid substance, at least four milliliters but less than 28 milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of at least four grams but less than 28 grams, by imprisonment for not less than one nor more than 15 years.

(B) This paragraph shall not apply to morphine, heroin, opium, or any substance identified in subparagraph (RR) or (SS) of paragraph (1) or paragraph (13), (14), or (15) of Code Section 16-13-25, or subparagraph (A), (C.5), (F), (U.1), (V), or (V.2) of paragraph (2) of Code Section 16-13-26 or any salt, isomer, or salt of an isomer; rather, the provisions of Code Section 16-13-31 shall control these substances.

(d) Except as otherwise provided, any person who violates subsection (b) of this Code section with respect to a controlled substance in Schedule I or Schedule II shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 30 years. Upon conviction of a second or subsequent offense, he or she shall be imprisoned for not less than ten years nor more than 40 years or life imprisonment. The provisions of subsection (a) of Code Section 17-10-7 shall not apply to a sentence imposed for a second such offense; provided, however, that the remaining provisions of Code Section 17-10-7 shall apply for any subsequent offense.

(e) Any person who violates subsection (a) of this Code section with respect to a controlled substance in Schedule II, other than a narcotic drug, shall be guilty of a felony and, upon conviction thereof, shall be punished as follows:

(1) If the aggregate weight, including any mixture, is less than two grams of a solid substance, less than two milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of less than two grams, by imprisonment for not less than one nor more than three years;

(2) If the aggregate weight, including any mixture, is at least two grams but less than four grams of a solid substance, at least two milliliters but less than four milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of at least two grams but less than four grams, by imprisonment for not less than one nor more than eight years; and

(3) If the aggregate weight, including any mixture, is at least four grams but less than 28 grams of a solid substance, at least four milliliters but less than 28 milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of at least four grams but less than 28 grams, by imprisonment for not less than one nor more than 15 years.

(f) Upon a third or subsequent conviction for a violation of subsection (a) of this Code section with respect to a controlled substance in Schedule I or II or subsection (i) of this Code section, such person shall be punished by imprisonment for a term not to exceed twice the length of the sentence applicable to the particular crime.

(g) Except as provided in subsection (l) of this Code section, any person who violates subsection (a) of this Code section with respect to a controlled substance in Schedule III, IV, or V shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than three years. Upon conviction of a third or subsequent offense, he or she shall be imprisoned for not less than one year nor more than five years.

(h) Any person who violates subsection (b) of this Code section with respect to a controlled substance in Schedule III, IV, or V shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years.

(i)

(1) Except as authorized by this article, it is unlawful for any person to possess or have under his or her control a counterfeit substance. Any person who violates this paragraph shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than two years.

(2) Except as authorized by this article, it is unlawful for any person to manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute a counterfeit substance. Any person who violates this paragraph shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years.

(j)

(1) It shall be unlawful for any person to possess, have under his or her control, manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute marijuana.

(2) Except as otherwise provided in subsection (c) of Code Section 16-13-31 or in Code Section 16-13-2, any person who violates this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years.

(k) It shall be unlawful for any person to hire, solicit, engage, or use an individual under the age of 17 years, in any manner, for the purpose of manufacturing, distributing, or dispensing, on behalf of the solicitor, any controlled substance, counterfeit substance, or marijuana unless the manufacturing, distribution, or dispensing is otherwise allowed by law. Any person who violates this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 20 years or by a fine not to exceed $20,000.00, or both.

(l)

(1) Any person who violates subsection (a) of this Code section with respect to flunitrazepam, a Schedule IV controlled substance, shall be guilty of a felony and, upon conviction thereof, shall be punished as follows:

(A) If the aggregate weight, including any mixture, is less than two grams of a solid substance of flunitrazepam, less than two milliliters of liquid flunitrazepam, or if flunitrazepam is placed onto a secondary medium with a combined weight of less than two grams, by imprisonment for not

less than one nor more than three years;

(B) If the aggregate weight, including any mixture, is at least two grams but less than four grams of a solid substance of flunitrazepam, at least two milliliters but less than four milliliters of liquid flunitrazepam, or if the flunitrazepam is placed onto a secondary medium with a combined weight of at least two grams but less than four grams, by imprisonment for not less than one nor more than eight years; and

(C) If the aggregate weight, including any mixture, is at least four grams of a solid substance of flunitrazepam, at least four milliliters of liquid flunitrazepam, or if the flunitrazepam is placed onto a secondary medium with a combined weight of at least four grams, by imprisonment for not less than one nor more than 15 years.

(2) Any person who violates subsection (b) of this Code section with respect to flunitrazepam, a Schedule IV controlled substance, shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 30 years. Upon conviction of a second or subsequent offense, such person shall be punished by imprisonment for not less than ten years nor more than 40 years or life imprisonment. The provisions of subsection (a) of Code Section 17-10-7 shall not apply to a sentence imposed for a second such offense, but that subsection and the remaining provisions of Code Section 17-10-7 shall apply for any subsequent offense.

(m) As used in this Code section, the term "solid substance" means a substance that is not in a liquid or gas form. Such term shall include tablets, pills, capsules, caplets, powder, crystal, or any variant of such items.

History

Code 1933, § 79A-811, enacted by Ga. L. 1974, p. 221, § 1; Ga. L. 1975, p. 1112, § 1; Ga. L. 1979, p. 1258, § 1; Ga. L. 1980, p. 432, § 1; Ga. L. 1985, p. 149, § 16; Ga. L. 1990, p. 992, § 1; Ga. L. 1992, p. 2041, § 1; Ga. L. 1996, p. 1023, §§ 1.1, 2; Ga. L. 1997, p. 1311, § 4; Ga. L. 2012, p. 899, §§ 3-7A, 3-7B, 3-7C/HB 1176; Ga. L. 2013, p. 141, § 16/HB 79; Ga. L. 2014, p. 780, §§ 2-1, 3-1/SB 364; Ga. L. 2017, p. 417, § 6-1/SB 104.

Annotations

Notes

The 2017 amendment, effective May 8, 2017, substituted the present provisions of subparagraph (c)(3)(B) for the former provisions, which read: "This paragraph shall not apply to morphine, heroin, or opium or any salt, isomer, or salt of an isomer; rather, the provisions of Code Section 16-13-31 shall control these substances.".

Editor's notes.

Ga. L. 2012, p. 899, § 9-1(b)(2)/HB 1176, not codified by the General Assembly, provides: "Section 3-7C of this Act shall become effective on July 1, 2014, at which time, Section 3-7B of this Act shall be superceded and repealed in its entirety, and Section 3-7C of this Act shall apply to offenses which occur on or after July 1, 2014. Any offense occurring before July 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a subsequent conviction for the same type of offense, of whatever degree or level, pursuant to this Act."

JUDICIAL DECISIONS

General Consideration

Sentencing

Search and Seizure

Possession

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Marijuana

General Consideration

Editor's notes.

Many of the following annotations were taken from cases decided prior to the 1996 amendment of this Code section.

Constitutionality of paragraph (j)(1). —

O.C.G.A. § 16-13-30(j)(1) is not vague and uncertain, and does not violate due process. Walker v. State, 261 Ga. 739, 410 S.E.2d 422, 1991 Ga. LEXIS 1040 (1991).

Constitutionality of paragraph (j)(2). —

Difference between punishments for purchase of marijuana under O.C.G.A. § 16-13-30(j)(2) and possession of the marijuana amount under O.C.G.A. § 16-13-2(b) does not constitute a denial of equal protection because imposition of a felony sentence under the former applies equally to all those accused of purchasing any amount of the controlled substance and, thus, there is no unconstitutional disparate treatment of similarly situated persons. State v. Jackson, 271 Ga. 5, 515 S.E.2d 386, 1999 Ga. LEXIS 322 (1999).

Right of privacy does not embrace right to possess dangerous drugs. Blincoe v. State, 231 Ga. 886, 204 S.E.2d 597, 1974 Ga. LEXIS 1269 (1974).

General Assembly vested with discretion to determine what harmful substances shall be illegal. —

It is a matter of discretion vested in General Assembly, in light of scientific knowledge available to it, to determine what harmful substances shall be declared to be illegal. Blincoe v. State, 231 Ga. 886, 204 S.E.2d 597, 1974 Ga. LEXIS 1269 (1974).

Construction with other Code sections. —

When one count of the accusation filed by the district attorney recited that it was charged under O.C.G.A. § 16-13-30, which is a felony which may not be brought by accusation pursuant to O.C.G.A. § 17-7-70 without the assent of the accused, not on record in the case, nor was it one of those felonies listed in O.C.G.A. § 17-7-70.1 which, under circumstances not present in the case, may be pursued by accusation, the count was considered by the court to be brought under O.C.G.A. § 16-13-2(b), misdemeanor possession of less than an ounce of marijuana. Chadwick v. State, 236 Ga. App. 199, 511 S.E.2d 286, 1999 Ga. App. LEXIS 119 (1999).

Although a court may not sentence second time offenders under both O.C.G.A. §§ 16-13-30(d) and 17-10-7(a), the court may sentence second time offenders under both O.C.G.A. § 16-13-30(d) and any remaining provisions of O.C.G.A. § 17-10-7. Brown v. State, 252 Ga. App. 714, 556 S.E.2d 881, 2001 Ga. App. LEXIS 1359 (2001), cert. denied, No. S02C0476, 2002 Ga. LEXIS 307 (Ga. Mar. 29, 2002).

Construed with O.C.G.A. §§ 16-13-26(1)(D) and 16-13-31. —

When the total weight of the substances seized from defendant was only 24.4 grams of cocaine, the defendant argued that the only Georgia statute that proscribes possession of cocaine is O.C.G.A. § 16-13-31, which prohibits the possession of 28 grams or more of cocaine. However, although O.C.G.A. § 16-13-31 deals with being in knowing, actual possession of 28 grams or more of cocaine or any mixture containing cocaine, O.C.G.A. § 16-13-26(1)(D) (prior to 1988 amendment inserting "cocaine," at beginning of paragraph) lists "Coca leaves, any salt, compound, derivative, stereoisomers of cocaine, or preparation of coca leaves, and any salt, compound, derivative, stereoisomers of cocaine, or preparation thereof which is chemically equivalent or identical with any of these substances . . . ," which includes cocaine. Under O.C.G.A. § 16-13-30, the unlawful possession of any controlled substance, regardless of amount, constitutes an offense. Dixon v. State, 180 Ga. App. 222, 348 S.E.2d 742, 1986 Ga. App. LEXIS 2685 (1986) (decided prior to 1988 amendment of § 16-13-26).

Construction with O.C.G.A. § 17-10-7. —

Because the felony convictions not challenged by the defendant would have sufficed to render the defendant a recidivist and because both of the defendant's attacks on prior convictions for drug possession with intent to distribute lacked merit, the trial court did not err when the court considered those prior convictions and sentenced the defendant to serve 30 years without parole under O.C.G.A. §§ 16-13-30(b) and 17-10-7(c). Merritt v. State, 329 Ga. App. 871, 766 S.E.2d 217, 2014 Ga. App. LEXIS 789 (2014).

Construction of statute with federal laws.—

Statute lists simple possession of marijuana and possession with intent to distribute in disjunctive, which indicates that they are elements in the alternative, and, thus, O.C.G.A. § 16-13-30(j) is divisible such that a modified-categorical approach to determine whether the statute qualified as a crime of violence applied; the defendant's two prior Georgia convictions were for possession with intent to distribute marijuana, which qualified as a predicate offense for both the Armed Career Criminal Act and Sentencing Guidelines. United States v. Bates, 960 F.3d 1278, 2020 U.S. App. LEXIS 17249 (11th Cir. 2020).

Notice requirement of O.C.G.A § 17-10-2(a) applies to mandatory life sentences imposed under O.C.G.A. § 16-13-30(d). Moss v. State, 206 Ga. App. 310, 425 S.E.2d 386, 1992 Ga. App. LEXIS 1619 (1992).

In a prosecution for selling a controlled substance, imposition of a life sentence was improper where the state notified defendant of its intent to use previous drug convictions as similar transactions evidence but did not inform defendant of its intent to use the prior convictions in seeking the mandatory life sentence. Miller v. State, 219 Ga. App. 284, 464 S.E.2d 860, 1995 Ga. App. LEXIS 1015 (1995).

Construction with federal provisions. —

Unpublished decision: When the defendant appealed 160-month sentence for violating 21 U.S.C.S. § 841(a)(1) and (b)(1)(C), the defendant's 2003 Georgia felony conviction for possession with intent to distribute marijuana, in violation of O.C.G.A. § 16-13-30(j)(1), qualified as a controlled substance offense for purposes of applying the career offender enhancement under U.S. Sentencing Guidelines Manual § 4B1.1(a). United States v. Stevens, 654 Fed. Appx. 984, 2016 U.S. App. LEXIS 12415 (11th Cir. 2016).

Identification of defendant by confidential informant and detective. —

Trial court did not abuse the court's discretion, nor commit plain error, allowing the confidential informant (CI) and the detective to identify the defendant in videos and photographs because in addition to interacting with the defendant over the course of several drug transactions, the CI and the detective testified to have known the defendant for a long time, thus, there was some basis for concluding they were in a better position to correctly identify the defendant than the jurors. Goforth v. State, 360 Ga. App. 832, 861 S.E.2d 800, 2021 Ga. App. LEXIS 400 (2021).

Quantity purchased is not element of crime. —

Sufficient evidence existed to support a defendant's conviction of purchasing marijuana under O.C.G.A. § 16-13-30(j)(1) as the quantity purchased was not an element of the crime and the purchase could be established by proof of a promise to pay such as the defendant had made; however, the defendant's conviction was reversed for failure to give a lesser included offense instruction. Johnson v. State, 296 Ga. App. 697, 675 S.E.2d 588, 2009 Ga. App. LEXIS 317 (2009), cert. denied, No. S09C1191, 2009 Ga. LEXIS 420 (Ga. June 29, 2009).

Substance not listed as controlled substance. —

As to the possession of a controlled substance, namely Alpha-PVP (alpha-pyrrolidinopentiophenone), the state failed to present sufficient evidence to support the defendant's conviction for possession of a controlled substance because Alpha-PVP was not listed in any of the controlled substance schedules, nor was there testimony or other evidence that it was chemically related to any listed controlled substance. Roundtree v. State, 358 Ga. App. 140, 854 S.E.2d 340, 2021 Ga. App. LEXIS 21 (2021).

Jurisdiction in any county where crime could have been committed. —

Under O.C.G.A. § 16-13-30(j)(1), it was unlawful for any person to possess marijuana and since the marijuana was found in defendant's pocket when the defendant was arrested, and defendant was observed traveling in Newton County before defendant's arrest in Rockdale County, the evidence was sufficient to conclude beyond a reasonable doubt that defendant was guilty of possession of less than one ounce of marijuana since O.C.G.A. § 17-2-2(e) provided that if a crime was committed upon any vehicle traveling within the state and it cannot readily be determined in which county the crime was committed, the crime shall be considered as having been committed in any county in

readily be determined in which county the crime was committed, the crime shall be considered as having been committed in any county in which the crime could have been committed through which the vehicle has traveled. Johnson v. State, 299 Ga. App. 706, 683 S.E.2d 659, 2009 Ga. App. LEXIS 951 (2009).

Indictment sufficient. —

Although the indictment did not explicitly allege that the XLR11 was not specifically utilized as part of the manufacturing process, the indictment was sufficient because the indictment put the defendant on notice of the factual allegations the defendant had to defend in court, of the specific dates involved, and of the defendant's actions that constituted the alleged offenses. Budhani v. State, 345 Ga. App. 34, 812 S.E.2d 105, 2018 Ga. App. LEXIS 165 (2018), overruled in part, Willis v. State, 304 Ga. 686, 820 S.E.2d 640, 2018 Ga. LEXIS 685 (2018), aff'd, 306 Ga. 315, 830 S.E.2d 195, 2019 Ga. LEXIS 448 (2019).

Defendant's indictment for possessing and selling XLR11 withstood a general demurrer because the indictment alleged the essential elements of the offenses under O.C.G.A. § 16-13-30(b); under O.C.G.A. § 16-13-50(a), the state was not required to allege the affirmative defenses in O.C.G.A. § 16-13-25(12) such as that the XLR11 was intended for human consumption. Budhani v. State, 306 Ga. 315, 830 S.E.2d 195, 2019 Ga. LEXIS 448 (2019).

Poorly-worded charge. —

Trial court did not err in allowing the manufacturing methamphetamine offense to proceed to the jury under O.C.G.A. § 16-13-30(b); despite the poor wording of the caption of the count at issue, which stated "trafficking in methamphetamine," because the body of the count clearly charged the defendant with manufacturing methamphetamine, and the defendant failed to show how the defendant was misled by the presentment, nor did it expose the defendant to double jeopardy in violation of U.S. Const., amend. 5 or Ga. Const. 1983, Art. I, Sec. I, Para. XVIII. Gentry v. State, 281 Ga. App. 315, 635 S.E.2d 782, 2006 Ga. App. LEXIS 943 (2006), cert. denied, No. S07C0117, 2007 Ga. LEXIS 78 (Ga. Jan. 22, 2007).

Refusal to sever charges. —

Trial court did not abuse its discretion in failing to sever a charge against the defendant for possession of methamphetamine in violation of O.C.G.A. § 16-13-30(a) and a charge against the defendant for kidnapping with bodily injury in violation of O.C.G.A. § 16-5-40; when the defendant was arrested for possession, the kidnapping was ongoing, as the victim remained locked in the camper where the defendant had bound the victim, and it was not an abuse of discretion for a trial judge to deny a motion for severance where the crimes alleged were part of a continuous transaction and from the nature of the entire transaction, it would have almost been impossible to present to a jury evidence of one of the crimes without also permitting evidence of the other. Johnson v. State, 281 Ga. App. 7, 635 S.E.2d 278, 2006 Ga. App. LEXIS 983 (2006).

No abuse of discretion in refusing to sever charges. —

Trial court did not abuse the court's discretion by refusing to sever a defendant's drug charges from the defendant's trial on a charge of influencing a witness because evidence of either crime would have been admissible at the trial of the other and the charged offenses were neither so numerous nor so complex that the jury was unable to parse the evidence and correctly apply the law with regard to each charge. Perry v. State, 317 Ga. App. 885, 733 S.E.2d 57, 2012 Ga. App. LEXIS 833 (2012).

Illegal possession and sale of a controlled substance are separate and distinct crimes as a matter of law. Harmon v. State, 235 Ga. 329, 219 S.E.2d 441, 1975 Ga. LEXIS 869 (1975).

Illegal possession and illegal sale of a proscribed drug are separate crimes as a matter of law. However, if the evidence required to convict an accused of the illegal sale is the only evidence showing illegal possession, then illegal possession is included in the crime of illegal sale as a matter of fact. Sullivan v. State, 178 Ga. App. 769, 344 S.E.2d 737, 1986 Ga. App. LEXIS 1758 (1986).

State failed to prove drug regulated by law. —

Defendant was improperly convicted of violating the Georgia's Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., by distributing a Schedule IV drug, Zolpidem, which was commonly known as Ambien, O.C.G.A. §§ 16-13-28(a)(33) and 16-13-30(b), because the state failed to prove that the drug Ambien was regulated by law, and the trade name of a statutorily designated controlled substance was not the proper subject of judicial notice; while the state presented evidence that the defendant admitted to distributing Ambien and produced testimony that "Ambien" was a Schedule IV controlled substance, the state was required to identify "Ambien" as a trade name for Zolpidem through admissible evidence. DeLong v. State, 310 Ga. App. 518, 714 S.E.2d 98, 2011 Ga. App. LEXIS 605 (2011).

Sale of noncontrolled substance not lesser-included offense. —

Offense of unlawfully selling a noncontrolled substance while representing the substance to be a controlled substance (O.C.G.A. § **16-13-30.1**) is not included in the offense of conspiracy to sell or distribute cocaine (O.C.G.A. § 16-13-30). Smith v. State, 202 Ga. App. 664, 415 S.E.2d 481, 1992 Ga. App. LEXIS 149 (1992).

No evidence of lesser included offense of possession of cocaine. —

With regard to a defendant's conviction for trafficking in cocaine, the trial court did not err by failing to charge the jury on the lesser included offense of possession of cocaine with intent to distribute as there was no dispute that the cocaine exceeded the amount necessary to sustain a trafficking conviction, therefore, there was no evidence of the lesser included offense. However, even if the trial court's failure to give the requested instruction was error, it is highly probable that the error did not contribute to the verdict in light of the overwhelming evidence that the defendant committed the greater offense. Celestin v. State, 296 Ga. App. 727, 675 S.E.2d 480, 2009 Ga. App. LEXIS 164 (2009), cert. denied, No. S09C1200, 2009 Ga. LEXIS 340 (Ga. June 1, 2009).

Sell and possession of cocaine did not merge. —

Offenses of selling cocaine and possessing cocaine in violation of O.C.G.A. § 16-13-30(a) and (b) did not merge because two discrete portions of cocaine were used to prove the two discrete offenses; the offense of selling cocaine was proven by evidence of a crack cocaine sale to a confidential informant, and the offense of possessing cocaine was proven by the evidence that the defendant possessed the additional crack cocaine later found in the car the defendant occupied. Robertson v. State, 306 Ga. App. 721, 703 S.E.2d 343, 2010 Ga. App. LEXIS 1038 (2010).

Possession included in trafficking offense. —

Offenses of possession of cocaine and possession of cocaine with intent to distribute were lesser included offenses, as a matter of fact, of the trafficking offense since proof of the two possession offenses was established by "the same or less than all the facts" required to establish the distribution offense; thus, it was error to convict defendant of all three offenses. Hancock v. State, 210 Ga. App. 528, 437 S.E.2d 610, 1993 Ga. App. LEXIS 1239 (1993).

Even if the first count of an indictment did indeed charge both possession of marijuana with intent to distribute and simple possession, those offenses could be joined in one count because they were offenses of the same nature that differed only in degree and that related to only one transaction; thus, the count was not subject to demurrer as duplicitous. Davis v. State, 285 Ga. App. 460, 646 S.E.2d 342, 2007 Ga. App. LEXIS 547 (2007).

Distinguishing trafficking from possession. —

Amount of controlled substance is chosen as the basis for distinguishing the crime of trafficking from the somewhat less serious crimes

described in O.C.G.A. § 16-13-30. Twenty-eight grams was chosen as the dividing line. Bassett v. Lemacks, 258 Ga. 367, 370 S.E.2d 146, 1988 Ga. LEXIS 339 (1988).

Conviction for possessing cocaine was not inconsistent with acquittal of trafficking in cocaine, when the cocaine upon which the possession offense was based had been seized at a different time and place from the cocaine upon which the trafficking offense was based. Rogers v. State, 182 Ga. App. 599, 356 S.E.2d 546, 1987 Ga. App. LEXIS 2637 (1987).

Evidence did not demand acquittal of methamphetamine charges. —

Defendant was not entitled to an acquittal on either a charge of conspiracy to manufacture methamphetamine or possession of methamphetamine, as the evidence showed that methamphetamine was being manufactured inside the residence in which defendant was found, and conviction of possession of methamphetamine did not rest solely upon evidence that the methamphetamine was found on the premises also occupied by others, nor did such conviction rest solely upon defendant's spatial proximity to the contraband. McWhorter v. State, 275 Ga. App. 624, 621 S.E.2d 571, 2005 Ga. App. LEXIS 1056 (2005).

Evidence sufficient for selling products positive for indazole amide. —

State's evidence, including testimony and reports produced by the forensic chemist who tested the confiscated products as well as the exhibits showing which products were received and the results of the testing, was sufficient to prove that the products the defendants were charged with selling tested positive for indazole amide. Awtrey v. State, 346 Ga. App. 892, 815 S.E.2d 655, 2018 Ga. App. LEXIS 433 (2018).

Mere possession will not serve as basis for conviction for possessing contraband for purposes of sale. Wright v. State, 154 Ga. App. 400, 268 S.E.2d 378, 1980 Ga. App. LEXIS 2194, cert. denied, 449 U.S. 900, 101 S. Ct. 270, 66 L. Ed. 2d 130, 1980 U.S. LEXIS 3494 (1980).

When illegal possession is included in illegal sale as matter of fact. —

If evidence required to convict of illegal sale of controlled substance is the only evidence showing possession, illegal possession is included in crime of illegal sale as a matter of fact. Harmon v. State, 235 Ga. 329, 219 S.E.2d 441, 1975 Ga. LEXIS 869 (1975).

When possession and possession with intent to distribute may both be punished. —

If a person intends to distribute only a designated part of narcotics which are possessed, both offense of possession and possession with intent to distribute may be punished. Howard v. State, 144 Ga. App. 208, 240 S.E.2d 908, 1977 Ga. App. LEXIS 2638 (1977).

Merger. —

Offense of manufacturing methamphetamine under O.C.G.A. § 16-13-30(b) was a lesser included offense of trafficking/manufacturing under O.C.G.A. § 16-31-31(f)(1); thus, the trial court was authorized to sentence a defendant for the greater offense after merging the lesser offense into it. Richards v. State, 290 Ga. App. 360, 659 S.E.2d 651, 2008 Ga. App. LEXIS 239 (2008).

Selling merged into trafficking offense. —

Convictions on counts for selling methamphetamine were lesser included offenses of convictions for trafficking in methamphetamine and, therefore, merged into the trafficking convictions. Nunery v. State, 229 Ga. App. 246, 493 S.E.2d 610, 1997 Ga. App. LEXIS 1369 (1997).

No merger with misdemeanor DUI charge. —

No merger with misdemeanor DUI charge.

Defendant could be convicted on both felony possession of methamphetamine and driving under the influence of methamphetamine, a misdemeanor. Helmeci v. State, 230 Ga. App. 866, 498 S.E.2d 326, 1998 Ga. App. LEXIS 304 (1998).

Possession and distribution of methamphetamine charges did not merge. —

Possession of methamphetamine and distribution of methamphetamine charges did not merge under O.C.G.A. § 16-1-7 when defendant smoked methamphetamine in the company of a second person who later returned with a fresh supply of the drug with which defendant injected the second person; methamphetamine that defendant possessed while smoking constituted a separate amount of methamphetamine not accounted for in the distribution charge. Crutchfield v. State, 291 Ga. App. 24, 660 S.E.2d 878, 2008 Ga. App. LEXIS 427 (2008).

Manufacturing methamphetamine. —

Evidence was sufficient for a jury to find defendant guilty of manufacturing methamphetamine, as defendant leased a house in which a widespread methamphetamine manufacturing operation took place, which created a strong chemical smell immediately apparent upon entering the house, and defendant tested positive for methamphetamine, circumstantially linking defendant to the manufacturing process and undermining defendant's claim that defendant was unaware of the activity. Kirby v. State, 275 Ga. App. 216, 620 S.E.2d 459, 2005 Ga. App. LEXIS 933 (2005).

Defendant's conviction of manufacturing methamphetamine under O.C.G.A. § 16-13-30(b) was supported by sufficient evidence as the presence of chemicals and supplies as well as methamphetamine in the various containers of liquid were all indicative of a methamphetamine manufacturing operation, and testimony indicated the presence of a level of contamination in the defendant's apartment that showed that the laboratory had probably been in operation for several weeks; furthermore, the scope of the operation was such that it could not have been hidden from the defendant by defendant's co-tenant. Gentry v. State, 281 Ga. App. 315, 635 S.E.2d 782, 2006 Ga. App. LEXIS 943 (2006), cert. denied, No. S07C0117, 2007 Ga. LEXIS 78 (Ga. Jan. 22, 2007).

Because the evidence surrounding the stop of the defendant and the evidence seized thereon, including money, various guns, and almost 43 grams of methamphetamine, was sufficient to support a conviction for possession of methamphetamine with intent to distribute, the conviction was upheld on appeal; moreover, based on trial counsel's testimony and evidence that both counsel and the defendant extensively discussed the pros and cons of having a jury hear the case, sufficient extrinsic evidence showed that the defendant knowingly, voluntarily, and intelligently waived any right to a trial by jury. Whitaker v. State, 286 Ga. App. 143, 648 S.E.2d 396, 2007 Ga. App. LEXIS 558 (2007).

Evidence that the defendant owned the house where the ingredients and equipment were found, the defendant talked to the codefendant about whether the codefendant should abscond and bought the codefendant a truck, and the defendant made a list of pharmacy directions for the codefendant so that the codefendant could avoid legal restrictions on the purchase of ingredients was sufficient to support a conviction for attempt to manufacture methamphetamine. Taylor v. State, 320 Ga. App. 596, 740 S.E.2d 327, 2013 Ga. App. LEXIS 244 (2013).

Evidence was sufficient to convict the defendant of manufacturing methamphetamine and trafficking methamphetamine because, given the large array of products involved in the production of methamphetamine, their proximity to each other in the residence, and the fact that methamphetamine was found throughout the residence, the jury heard sufficient evidence to allow the jury to conclude that it would have been virtually impossible for the defendant to have been unaware that methamphetamine was being produced there; and the state presented evidence that police had observed the defendant sell methamphetamine to a confidential informant from the same residence where the methamphetamine was being produced. Cummings v. State, 345 Ga. App. 702, 814 S.E.2d 806, 2018 Ga. App. LEXIS 270 (2018), cert. denied, No. S18C1280, 2018 Ga. LEXIS 728 (Ga. Nov. 15, 2018).

Rule of lenity did not apply to imitation controlled substances. —

Trial court did not err by refusing to apply the rule of lenity with regard to a defendant's conviction for selling a counterfeit substance

Trial court did not err by refusing to apply the rule of lenity with regard to a defendant's conviction for selling a counterfeit substance because the evidence revealed that the substance would not fall under either definition of "imitation controlled substance" set forth in O.C.G.A. § 16-13-21(12.1)(A) as the parties stipulated only that the substance recovered was not a controlled substance and there was no evidence presented that the substance was specifically designed or manufactured to resemble the physical appearance of a controlled substance. As a result, the rule of lenity did not apply, and the trial court properly sentenced the defendant for a felony. Chandler v. State, 294 Ga. App. 27, 668 S.E.2d 510, 2008 Ga. App. LEXIS 1099 (2008).

Prior similar act admissible. —

Prior guilty plea to charge of selling cocaine was substantially relevant to corroborate identification of defendant as seller, and as a prior similar act, it was similar and relevant. Evans v. State, 209 Ga. App. 606, 434 S.E.2d 148, 1993 Ga. App. LEXIS 957 (1993), cert. denied, No. S93C1990, 1993 Ga. LEXIS 1152 (Ga. Dec. 3, 1993).

Evidence showing independent crimes involving similar dollar amounts of drugs sold in sidewalk sales to passing vehicles was sufficient proof of similarity between other crimes and the one for which defendant was indicted. Aldridge v. State, 222 Ga. App. 437, 475 S.E.2d 195, 1996 Ga. App. LEXIS 869 (1996).

Admission of similar transaction evidence in a case charging the defendant with possession of cocaine with intent to distribute, O.C.G.A. § 16-13-30(b), and obstructing or hindering law enforcement officers, O.C.G.A. § 16-10-24, was proper because, in both the similar transaction and the incident leading to the charges being tried, the defendant was arrested in possession of cocaine and "sale-sized" baggies after seeking to avoid police; the trial court also gave an instruction that the similar transaction evidence was limited to the purpose of showing the defendant's bent of mind in committing the charged offenses. Cotton v. State, 297 Ga. App. 664, 678 S.E.2d 128, 2009 Ga. App. LEXIS 515 (2009).

Defendant was properly convicted of trafficking in methamphetamine, O.C.G.A. § 16-13-31, violating the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., and contributing to the delinquency of a minor, O.C.G.A. § 16-12-1, because the trial court properly admitted the state's similar transaction evidence when the evidence was introduced for the appropriate purpose of showing the defendant's knowledge and intent regarding the methamphetamine found in the defendant's room, and the trial court instructed the jury to consider the evidence for that limited purpose; both incidents occurred on the same street and both involved methamphetamine, and in both incidents police found the drugs in the defendant's bedroom along with scales. Swan v. State, 300 Ga. App. 667, 686 S.E.2d 310, 2009 Ga. App. LEXIS 1245 (2009).

During defendant's trial for possession of methamphetamine and possession of marijuana, the trial court did not abuse the court's discretion in admitting evidence of the defendant's prior conviction on an obstruction charge because the trial court admitted the evidence for the purpose of showing the defendant's course of conduct only after conducting a hearing pursuant to Ga. Unif. Super. Ct. R. 31.3(B), which the court was required to do, and the state satisfied the criteria delineated in Rule 31.3 for the admission of similar-transaction evidence; even assuming that the similar-transaction evidence should have been excluded, any error in the evidence's admission was harmless because there was videotaped evidence that the defendant was driving an obviously stolen vehicle, that the defendant fled from officers who attempted to conduct a traffic stop, that the defendant continued to lead the officers on a chase even after the defendant's tires had been flattened, that the defendant ultimately exited the vehicle and ran on foot, and that methamphetamine and marijuana not belonging to the owner were found inside the vehicle in which the defendant was the sole occupant. Mangum v. State, 308 Ga. App. 84, 706 S.E.2d 612, 2011 Ga. App. LEXIS 124 (2011).

Trial court did not abuse the court's discretion in admitting similar transaction evidence because both the prior incident and the incident for which the defendant was convicted involved the possession of cocaine since the prior possession was for the purpose of distribution, inasmuch as the evidence showed that the defendant did, in fact, distribute cocaine on that occasion, and the possession for which the defendant was convicted was for an unknown purpose and not clearly for personal use; one incident involved possession and sale of less than one gram of cocaine, the other involved possession of less than two grams of cocaine, and both incidents occurred in the county within a span of two weeks. Gaudlock v. State, 310 Ga. App. 149, 713 S.E.2d 399, 2011 Ga. App. LEXIS 453 (2011), cert. denied, No. S11C1610, 2011 Ga. LEXIS 851 (Ga. Oct. 17, 2011).

Trial court did not abuse the court's discretion by allowing the admission of evidence regarding the defendant's prior drug possession arrest

Trial court did not abuse the court's discretion by allowing the admission of evidence regarding the defendant's prior drug possession arrest because the evidence of prior drug activity was highly probative of intent to sell a controlled substance for which the defendant was on trial and the prior act of drug possession happened while the defendant was driving a car in the same area where the sale of the methamphetamine during the first buy occurred. Moton v. State, 351 Ga. App. 789, 833 S.E.2d 171, 2019 Ga. App. LEXIS 488 (2019).

Erroneous admission of prior conviction harmless. —

Trial court's admission of the defendant's prior convictions for possession of cocaine was erroneous because the state did not present any testimony at trial establishing the prior convictions, but rather, the state's evidence was limited to the introduction of copies of the defendant's guilty pleas and convictions for the prior drug possession offenses; however, in light of the overwhelming competent evidence establishing the defendant's guilt of the sale of cocaine, it was unlikely that the erroneous admission of the prior possession offenses contributed to the verdict. Perry v. State, 314 Ga. App. 575, 724 S.E.2d 874, 2012 Ga. App. LEXIS 237 (2012).

Trial court did not abuse the court's discretion in admitting evidence of the defendant's prior attempts to manufacture methamphetamine because the state needed the evidence of the defendant's prior drug conviction to show the defendant's bent of mind and course of conduct with respect to the methamphetamine offense at issue, criminal attempt to manufacture methamphetamine in violation of O.C.G.A. §§ 16-4-1 and 16-13-30(b); the defendant disclaimed any involvement with or knowledge of a methamphetamine laboratory. Newton v. State, 313 Ga. App. 889, 723 S.E.2d 95, 2012 Ga. App. LEXIS 104 (2012).

Based on the defendant's position that the defendant was not involved with a methamphetamine laboratory, as well as the similarity of the defendant's prior drug crime with criminal attempt to manufacture methamphetamine, the trial court did not abuse the court's discretion in admitting the evidence of the defendant's prior attempts to manufacture methamphetamine for the purpose of showing the defendant's bent of mind and course of conduct; the trial court was authorized to find that the probative value of the similar transaction evidence outweighed its prejudicial effect, and the trial court provided jury instructions that limited consideration of the similar transaction evidence to the appropriate purposes and provided guidance so as to diminish its prejudicial impact. Newton v. State, 313 Ga. App. 889, 723 S.E.2d 95, 2012 Ga. App. LEXIS 104 (2012).

Admissibility of expert testimony. —

Knowledge of the amount of crack cocaine one would generally possess for personal use or the amount which might evidence distribution was not necessarily within the scope of the ordinary layman's knowledge and experience. Therefore, the testimony of a veteran police officer on the subject would be properly admissible under former O.C.G.A. § 24-9-67 (see now O.C.G.A. § 24-7-707). Davis v. State, 200 Ga. App. 44, 406 S.E.2d 555, 1991 Ga. App. LEXIS 762 (1991).

Defendant's argument that the evidence was insufficient to support defendant's conviction for possession by ingestion of methamphetamine because the testimony of defendant's expert witness, a forensic toxicologist with a private clinical reference laboratory, called into question the validity of the state crime lab report, was rejected because the determination of the credibility of defendant's expert and the effect of the expert's testimony on the validity of the state crime lab report were for the jury. Poston v. State, 274 Ga. App. 117, 617 S.E.2d 150, 2005 Ga. App. LEXIS 679 (2005).

Officer properly qualified as expert witness in drug possession and distribution. —

In a prosecution for possession of cocaine with intent to distribute (O.C.G.A. § 16-13-30(b)), the trial court did not abuse the court's discretion in qualifying the officer as an expert witness in drug possession and distribution as the arresting officer testified to making 35 to 40 drug-related arrests, about half of which were for possession with intent to distribute. Hight v. State, 293 Ga. App. 254, 666 S.E.2d 678, 2008 Ga. App. LEXIS 839 (2008).

In the defendant's trial for possession of methamphetamine with intent to distribute, the state properly laid the foundation for an investigator's opinion that the amount of meth, the paraphernalia, and the cash on the defendant's person were consistent with distribution: the investigator testified that the investigator had worked on the drug task force for seven years, had taken numerous courses, and came into contact with drug activity daily. Benton v. State, 356 Ga. App. 441, 847 S.E.2d 625, 2020 Ga. App. LEXIS 460 (2020), cert. denied, No. S21C0110, 2021 Ga. LEXIS 253 (Ga. App. 5, 2021).

(2020), cert. denied, No. S21C0110, 2021 Ga. LEXIS 253 (Ga. Apr. 5, 2021).

Testimony of confidential informant admissible. —

When the confidential informant testified and was subject to cross-examination, the informant's statement that the informant found out that the defendant was selling cocaine out of the defendant's residence was admissible to explain the circumstances leading to the defendant's arrest. Hamilton v. State, 242 Ga. App. 77, 528 S.E.2d 843, 2000 Ga. App. LEXIS 95 (2000).

Revelation of the identity of a confidential informant. —

Defendant was not entitled to the identity of a confidential informant (CI) who purchased cocaine from the defendant in two controlled buys because, to the extent that the defendant wished to call the CI to impeach the CI or the investigating officer's testimony, the disclosure of the CI's identity was not required in that the investigating officer engaged in visual surveillance throughout the controlled buy operations and clearly observed the defendant when the defendant sold drugs to the CI and an audiotape recording of one controlled buy diminished the need for the CI to amplify or refute any conflicting testimony. Chandler v. State, 317 Ga. App. 406, 731 S.E.2d 88, 2012 Ga. App. LEXIS 715 (2012).

Affidavit supporting search warrant not stale. —

In a trial for possession of marijuana with intent to distribute, the trial court did not err in denying a motion to suppress a search warrant on the basis that a nine-month lapse from the crimes' occurrences rendered stale the information contained in the affidavit in support of the warrant since the information in the affidavit was not so remote that it made it unlikely that the items sought would not have been in the defendant's home at the time the warrant was issued. Amica v. State, 307 Ga. App. 276, 704 S.E.2d 831, 2010 Ga. App. LEXIS 1083 (2010), cert. denied, No. S11C0594, 2011 Ga. LEXIS 363 (Ga. Apr. 26, 2011).

Suppression of evidence. —

Motion to suppress illegally obtained evidence was properly granted. State v. Crank, 212 Ga. App. 246, 441 S.E.2d 531, 1994 Ga. App. LEXIS 205 (1994).

Because the defendant did not grant consent to an officer to search the defendant's purse, and no other exception to the warrant requirement allowing a search of the purse applied, the trial court properly granted suppression of the drugs seized from within the purse. State v. Fulghum, 288 Ga. App. 746, 655 S.E.2d 321, 2007 Ga. App. LEXIS 1284 (2007).

Consequence of a defendant's failure to contemporaneously object to the admission of evidence. —

Despite the defendant's contrary claim on appeal, because trial counsel failed to contemporaneously object to the introduction of the defendant's own statement offering to sell narcotics to a confidential informant, the defendant waived any error regarding admission of the statement on appeal; moreover, because trial counsel failed to request a mistrial or curative instruction regarding that evidence, the trial court's failure to give such an instruction, sua sponte, was not erroneous. Williams v. State, 288 Ga. App. 741, 655 S.E.2d 674, 2007 Ga. App. LEXIS 1282 (2007).

Suppression motion erroneously granted based on venue following traffic stop. —

Grant of the defendant's motion to suppress on the basis of venue was reversed because the state did not need to establish venue at the pretrial hearing on the defendant's motion to suppress as it was not relevant to the issues raised in the motion, which challenged the reasonable basis for the traffic stop or whether the resulting search of the defendant and the defendant's vehicle were supported by probable cause. State v. Wallace, 338 Ga. App. 611, 791 S.E.2d 187, 2016 Ga. App. LEXIS 510 (2016).

Inconsistency in indictment caused no prejudice. —

Defendant's conviction for possession of a controlled substance was proper despite the indictment charging the defendant with possession of a controlled substance with intent to distribute because the allegations in the indictment tracked the language of possession of a controlled substance and fully apprised the defendant of the offense charged, the defendant failed to show that the defense was prejudiced in any way by the inconsistency between the denomination of the offense and the allegations in the indictment, and the defendant requested a jury charge on the offense of possession of a controlled substance as a lesser included offense of possession of a controlled substance with intent to distribute. Bryant v. State, 320 Ga. App. 838, 740 S.E.2d 772, 2013 Ga. App. LEXIS 286 (2013).

Jury instruction on substance of O.C.G.A. §§ 16-13-30 and 16-13-31. —

When the defendant was charged with trafficking in cocaine and possession of marijuana and on the day of the trial filed a request that the "jury be charged with the substance of § 16-13-30 and § 16-13-31," by seeking an instruction on two entire Code sections the request necessarily included much matter not adjusted to the issues of the case, and for this reason it was not error to fail to give such instructions. Partridge v. State, 187 Ga. App. 325, 370 S.E.2d 173, 1988 Ga. App. LEXIS 687 (1988).

Jury instruction on actual and constructive possession. —

In the absence of a request, a court's failure to give an instruction defining actual and constructive possession does not constitute reversible error. Black v. State, 167 Ga. App. 204, 305 S.E.2d 837, 1983 Ga. App. LEXIS 3313 (1983).

When a jury issue exists as to whether the defendant was exercising actual or constructive possession of cocaine, the lesser offense of possession of cocaine was reasonably raised by the evidence, and the trial court committed prejudicial error in failing to instruct pursuant to the defendant's written request. Alvarado v. State, 194 Ga. App. 781, 391 S.E.2d 668, 1990 Ga. App. LEXIS 316, aff'd, 260 Ga. 563, 397 S.E.2d 550, 1990 Ga. LEXIS 420 (1990).

Because there was evidence that the defendant, at different times, had both actual and constructive possession of marijuana, the trial court's jury charge on both types of possession was proper and did not impermissibly expand the indictment, which did not specify the manner of possession. Davis v. State, 285 Ga. App. 460, 646 S.E.2d 342, 2007 Ga. App. LEXIS 547 (2007).

Jury instruction on equal access not required. —

When a defendant was charged with possession of cocaine with intent to distribute, it was not error to fail to give a charge on equal access. The state was not relying upon the defendant's ownership or control of the home to prove that cocaine in the kitchen belonged to the defendant, but upon direct evidence that the defendant tossed the cocaine into the kitchen after being apprehended by an officer; furthermore, a charge on constructive possession was not tantamount to a charge on the presumption of ownership. Thomas v. State, 291 Ga. App. 795, 662 S.E.2d 849, 2008 Ga. App. LEXIS 646 (2008).

In a prosecution for possession of cocaine with intent to distribute (O.C.G.A. § 16-13-30(b)), the defendant was not entitled to an instruction on equal access, which applied only when the sole evidence of possession of contraband found in a vehicle was the defendant's ownership or possession of the vehicle. There was additional evidence showing that the drugs belonged to the defendant: (1) a large sum of cash on the defendant's person; (2) the defendant's prior conviction for possession of cocaine with intent to distribute; and (3) testimony that the defendant conducted another drug transaction on the day of the arrest. Hight v. State, 293 Ga. App. 254, 666 S.E.2d 678, 2008 Ga. App. LEXIS 839 (2008).

Because equal access was not a defendant's sole defense to a charge of possession with intent to distribute cocaine, the trial court was not required sua sponte to give a charge on equal access after the court gave the jury an instruction on presumption of possession based on ownership of the premises. Bailey v. State, 294 Ga. App. 437, 669 S.E.2d 453, 2008 Ga. App. LEXIS 1212 (2008), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Jury instruction on lesser included offense. —

Trial court did not err in instructing the jury to consider the lesser offense of possession of methamphetamine only if the jury did not believe beyond a reasonable doubt that the defendant was guilty of possession of methamphetamine with intent to distribute because the trial court did not insist upon unanimity with regard to the jury's decision on the greater offense. Dockery v. State, 308 Ga. App. 502, 707 S.E.2d 889, 2011 Ga. App. LEXIS 224 (2011), cert. denied, No. S11C1080, 2011 Ga. LEXIS 577 (Ga. July 11, 2011).

Curative instruction properly given. —

Sale of marijuana convictions, in violation of O.C.G.A. § 16-13-30(j), were upheld, as an officer's in-court identification of defendant was obtained via investigative techniques and was thus not unduly suggestive, and the trial court gave curative instructions to the jury after the officer testified to pulling defendant's photograph from an arrest record. Hansberry v. State, 260 Ga. App. 480, 580 S.E.2d 274, 2003 Ga. App. LEXIS 401 (2003).

Because the state presented sufficient evidence showing defendant's involvement in the sale of cocaine and the sale of cocaine within 1,000 feet of a public housing project as a party to the crimes, and because the judge's instruction and explanation after reading the wrong indictment to the jury at trial cured any error, the defendant's convictions were upheld on appeal, and a mistrial based on the latter was properly denied; moreover, the defendant was properly denied a new trial. Walker v. State, 290 Ga. App. 749, 660 S.E.2d 844, 2008 Ga. App. LEXIS 407 (2008), cert. dismissed, No. S08C1701, 2008 Ga. LEXIS 776 (Ga. Sept. 22, 2008).

Jury instruction on further deliberations. —

On appeal from a conviction for possession of cocaine, because the verdict of "guilty with reasonable doubt" was unclear and had no single element that was necessarily dispositive of the jury's finding with regard to ultimate criminal responsibility, the trial court did not err by refusing to accept the verdict and in sending the jury out for further deliberations with proper instructions. Robinson v. State, 282 Ga. App. 214, 638 S.E.2d 370, 2006 Ga. App. LEXIS 1348 (2006), cert. denied, No. S07C0406, 2007 Ga. LEXIS 152 (Ga. Feb. 5, 2007).

Jury instruction insufficient. —

Jury charge failed to define properly the offenses of trafficking in methamphetamine and possession of methamphetamine with intent to distribute because all the jury was told was that it was a violation of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., to traffic or possess with intent to distribute methamphetamine; the instructions given completely failed to inform the jury about the manner in which the offense of trafficking in methamphetamine or the offense of possessing methamphetamine with intent to distribute may have been committed. As such, the jury did not receive sufficient instructions to guide the jury in determining the defendant's guilt or innocence on these charges. Torres v. State, 298 Ga. App. 158, 679 S.E.2d 757, 2009 Ga. App. LEXIS 638 (2009).

Reversal of a conviction for conspiracy to violate the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., through a violation of O.C.G.A. § 16-13-30(j)(1), was required because the trial court failed to provide any limiting instruction informing jurors that the purchaser and the buyer in a drug transaction could not conspire together. Darville v. State, 289 Ga. 698, 715 S.E.2d 110, 2011 Ga. LEXIS 671 (2011).

Recharge on "sale" proper in jury instruction. —

Trial court did not err in recharging the jury after the jury requested a specific definition of "sale" under O.C.G.A. § 16-13-30 because the court acted within the court's discretion by simply referring the jury back to the correct charge, rather than giving a lengthy explanation of the absence of a word-for-word definition in O.C.G.A. § 16-13-30, and given that the charge was correct as given initially, the recharge did not deprive the defendant of any legitimate defense to the defendant's actions; the jury appeared to be confused about whether the jury had a proper definition of a sale, and when the trial court referred the jury to the correct law that had already been given, it sufficiently informed the jury that the jury had the definition that the jury needed. Ware v. State, 308 Ga. App. 24, 707 S.E.2d 111, 2011 Ga. App. LEXIS 29 (2011), cert. denied, No. S11C0941, 2011 Ga. LEXIS 441 (Ga. May 31, 2011).

"Ontrack system" test results for marijuana inadmissible. —

State's failure to present any evidence as to the characteristics, theory, operation, reliability, or scientific acceptability of "ontrack system" test performed on the defendant's urine specimen at local jail to detect the presence of tetrahydrocannabinol rendered the results of the test inadmissible. Hubbard v. State, 207 Ga. App. 703, 429 S.E.2d 123, 1993 Ga. App. LEXIS 322 (1993).

Forfeiture statute. —

Forfeiture statute, O.C.G.A. § 16-13-49, did not apply to a transaction involving an imitation controlled substance. White v. State, 264 Ga. 547, 448 S.E.2d 354, 1994 Ga. LEXIS 765 (1994).

Plea bargaining. —

Although the prosecutor incorrectly stated the minimum and maximum sentences in negotiating a plea bargain, defendant rejected the plea bargain and defendant's decision was a fully informed one. Accordingly, denial of a new trial was proper because there was no showing that defendant was harmed by the misstatement. Hester v. State, 261 Ga. App. 614, 583 S.E.2d 274, 2003 Ga. App. LEXIS 722 (2003).

Guilty pleas. —

Because the defendant confirmed that the defendant was not under the influence of drugs, that the defendant was satisfied with counsel's representation, and that the defendant wished to plead guilty to selling cocaine, the trial court did not err in accepting the guilty plea. McCloud v. State, 272 Ga. App. 609, 612 S.E.2d 907, 2005 Ga. App. LEXIS 333 (2005).

Trial court did not abuse the court's discretion by finding that a defendant's guilty plea was voluntarily, knowingly, and intelligently made as to a conviction for possession of cocaine because the trial court had no obligation to inform the defendant of the possible collateral consequence of the revocation for a prior offense and, because the defendant was represented by counsel, the trial court properly presumed that the defendant's counsel had informed the defendant of such a collateral consequence. Lamb v. State, 278 Ga. App. 97, 628 S.E.2d 165, 2006 Ga. App. LEXIS 238 (2006).

Claimed errors on appeal deemed abandoned. —

While the defendant argued that the state's evidence was insufficient to support convictions on two counts of selling cocaine in violation of O.C.G.A. § 16-13-30(b), and cited the proper standard of review, due to the lack of argument, citation of authority, or citations to the record to support this position that claim was abandoned under Ga. Ct. App. R. 25(c)(2). Clark v. State, 285 Ga. App. 182, 645 S.E.2d 671, 2007 Ga. App. LEXIS 475 (2007).

Ineffective assistance. —

In a prosecution for selling marijuana and possessing marijuana with the intent to distribute, given that the state conceded that the state failed to file notice regarding the state's intent to introduce a prior conviction as evidence in aggravation of punishment, the evidence was not introduced; as a result, defense counsel could not be found ineffective for failing to object to the introduction of the prior conviction. Allen v. State, 280 Ga. App. 663, 634 S.E.2d 831, 2006 Ga. App. LEXIS 921 (2006).

Trial court did not err in denying the defendant's motion for a new trial on the ground that the defendant's trial counsel rendered ineffective assistance by failing to obtain an electronic enhancement of a videotape depicting a drug sale, which allegedly would have shown that defendant was not the perpetrator of the offense, because the defendant failed to show that the defendant was prejudiced as a result of trial counsel's failure to obtain an electronic enhancement of the videotape prior to trial since the enhanced images failed to create a

reasonable probability that the defendant was not the perpetrator depicted in the images; an undercover officer unequivocally identified the defendant as the perpetrator based upon the officer's personal observations and independent memory of the defendant at the time of the drug sale, and although the defendant attempted to prove that another individual was the perpetrator depicted in the videotape's images,

the defendant failed to proffer sufficient evidence in support of the defendant's claim. Faulkner v. State, 304 Ga. App. 791, 697 S.E.2d 914, 2010 Ga. App. LEXIS 613 (2010).

Counsel's deficiency did not warrant a new trial. —

While the defendant's trial counsel was ineffective in failing to object to that portion of the state's closing argument in which the prosecutor referenced a slain officer's funeral a week prior, as that fact had no relevance to the charges the defendant was facing, based on the overwhelming evidence of guilt, including the defendant's admission, the defendant's convictions for trafficking in cocaine and possession of cocaine with intent to distribute were upheld on appeal; thus, a new trial was properly denied. Cantrell v. State, 290 Ga. App. 651, 660 S.E.2d 468, 2008 Ga. App. LEXIS 394 (2008).

New trial motion properly denied. —

Upon convictions of possessing cocaine with intent to distribute and obstructing a law enforcement officer, the trial court properly denied the defendant's motion for a new trial as: (1) a challenged juror affirmed the guilty verdict; (2) details about a government witness's plea deal would not have changed the trial outcome; and (3) lab results confirming the purity of the contraband seized was sufficient to show that the substance defendant possessed was cocaine. Tate v. State, 278 Ga. App. 324, 628 S.E.2d 730, 2006 Ga. App. LEXIS 318 (2006).

Upon convictions on two counts of selling cocaine, the trial court properly denied the defendant a new trial as the state's commentary during opening and closing argument on the connection between illegal drugs and crime in the community was proper, no abuse of discretion resulted from the admission of the defendant's booking mug shot, and the state's identification witnesses could testify about their level of certainty in identifying the defendant. Clark v. State, 285 Ga. App. 182, 645 S.E.2d 671, 2007 Ga. App. LEXIS 475 (2007).

Sentencing

Constitutionality of subsection (d). —

O.C.G.A. § 16-13-30(d), which mandates a sentence of life imprisonment upon a second conviction for selling cocaine, is not unconstitutional; it does not violate the Eighth and the Fourteenth Amendments to the Constitution of the United States. Grant v. State, 258 Ga. 299, 368 S.E.2d 737, 1988 Ga. LEXIS 248 (1988); Rucks v. State, 201 Ga. App. 142, 410 S.E.2d 206, 1991 Ga. App. LEXIS 1267 (1991); Carr v. State, 201 Ga. App. 479, 411 S.E.2d 913, 1991 Ga. App. LEXIS 1426 (1991); Crutchfield v. State, 218 Ga. App. 360, 461 S.E.2d 555, 1995 Ga. App. LEXIS 713 (1995), cert. denied, No. S95C1983, 1995 Ga. LEXIS 1242 (Ga. Nov. 17, 1995).

Mandatory life imprisonment sentence found in O.C.G.A. § 16-13-30(d) does not unconstitutionally deprive a defendant of due process of law. Tillman v. State, 260 Ga. 801, 400 S.E.2d 632, 1991 Ga. LEXIS 74 (1991).

Mandatory life sentence of O.C.G.A. § 16-13-30(d) does not constitute cruel and unusual punishment under Ga. Const. 1983, Art. I, Sec. I, Para. XVII. Stephens v. State, 261 Ga. 467, 405 S.E.2d 483, 1991 Ga. LEXIS 332 (1991); Cody v. State, 222 Ga. App. 468, 474 S.E.2d 669, 1996 Ga. App. LEXIS 875 (1996).

O.C.G.A. § 16-13-30(d) does not violate the equal protection or due process guarantees of the Georgia and federal constitutions. Isom v. State, 261 Ga. 596, 408 S.E.2d 701, 1991 Ga. LEXIS 425 (1991).

O.C.G.A. § 16-13-30(d) does not violate state or federal constitutional guarantees against cruel and unusual punishment. Isom v. State, 261 Ga. 596, 408 S.E.2d 701, 1991 Ga. LEXIS 425 (1991); Martin v. State, 205 Ga. App. 200, 422 S.E.2d 6, 1992 Ga. App. LEXIS 1106 (1992), cert. dismissed, No. S92C1472, 1992 Ga. LEXIS 802 (Ga. Oct. 2, 1992); Crutchfield v. State, 218 Ga. App. 360, 461 S.E.2d 555, 1995 Ga. App. LEXIS 713 (1995), cert. denied, No. S95C1983, 1995 Ga. LEXIS 1242 (Ga. Nov. 17, 1995).

Sentencing scheme in O.C.G.A. § 16-13-30(d) cannot be found unconstitutional for not having a rational basis since the legislature may have perceived repeated violations of O.C.G.A. § 16-13-30(b) with narcotic drugs (for which a life sentence is mandated) as a greater threat to the public health, safety, and welfare than repeated violations with nonnarcotic drugs. Hailey v. State, 263 Ga. 210, 429 S.E.2d 917, 1993 Ga. LEXIS 478 (1993), cert. denied, 510 U.S. 1048, 114 S. Ct. 700, 126 L. Ed. 2d 667, 1994 U.S. LEXIS 169 (1994).

No violations based on a high percentage of African-Americans convicted. —

O.C.G.A. § 16-13-30 does not violate due process or equal protection based on statistical evidence as to the high percentage of African-Americans serving life sentences for drug offenses, nor because it creates an irrational sentencing scheme. Stephens v. State, 265 Ga. 356, 456 S.E.2d 560, 1995 Ga. LEXIS 161, cert. denied, 516 U.S. 849, 116 S. Ct. 144, 133 L. Ed. 2d 90, 1995 U.S. LEXIS 5894 (1995).

Constitutionality of subsections (b) and (d). —

No evidence supported contention that provision mandating life sentence for the second conviction of unlawful possession of a controlled substance with intent to distribute has been unconstitutionally enforced selectively against young, impoverished blacks. Hall v. State, 262 Ga. 596, 422 S.E.2d 533, 1992 Ga. LEXIS 915 (1992), cert. denied, 507 U.S. 1055, 113 S. Ct. 1956, 123 L. Ed. 2d 660, 1993 U.S. LEXIS 3088 (1993); Hailey v. State, 263 Ga. 210, 429 S.E.2d 917, 1993 Ga. LEXIS 478 (1993), cert. denied, 510 U.S. 1048, 114 S. Ct. 700, 126 L. Ed. 2d 667, 1994 U.S. LEXIS 169 (1994).

Subsection (d) not retroactive. —

O.C.G.A. § 16-13-30(d), granting trial courts greater discretion in sentencing, is not retroactive to offenses committed prior to the effective date of that section. Mikell v. State, 231 Ga. App. 85, 498 S.E.2d 531, 1998 Ga. App. LEXIS 268 (1998), vacated, 237 Ga. App. 26, 514 S.E.2d 680, 1999 Ga. App. LEXIS 370 (1999), rev'd, 270 Ga. 467, 510 S.E.2d 523, 1999 Ga. LEXIS 17 (1999).

Discriminatory enforcement of section. —

When the defendant produced, from several sources, various statistics, articles, and charts showing that blacks are more likely to be imprisoned for drug offenses than are whites, but did not offer any evidence specific to the defendant's own case that would support an inference that racial considerations played a part in the prosecution's decision to charge the defendant, the defendant's statistics failed to prove an essential element necessary in a selective prosecution case, i.e., that the prosecution engaged in a deliberate selective process of enforcement based on race. Cain v. State, 262 Ga. 598, 422 S.E.2d 535, 1992 Ga. LEXIS 953 (1992).

Defendant's claim that the mandatory life imprisonment provision was applied in a racially discriminatory manner was not properly supported since no evidence was offered that (1) blacks in general or (2) defendant in particular had been selectively prosecuted. Anderson v. State, 218 Ga. App. 872, 463 S.E.2d 502, 1995 Ga. App. LEXIS 908 (1995).

Construed with O.C.G.A. § 17-10-7. —

Both O.C.G.A. §§ 16-13-30(d) and 17-10-7 give direction as to the imposition of punishment under specified aggravated circumstances; however, O.C.G.A. § 16-13-30(d) increases the maximum from 15 years to life for the subsequent offense, whereas O.C.G.A. § 17-10-7 does not increase the maximum but adds weight in favor of its imposition. Wainwright v. State, 208 Ga. App. 777, 432 S.E.2d 555, 1993 Ga. App. LEXIS 577 (1993).

O.C.G.A. § 16-13-30(d) is interpreted as providing that, although the court may not sentence second time offenders under both O.C.G.A. §§ 16-13-30(d) and 17-10-7(a), it may sentence second time offenders under both § 16-13-30(d) and any remaining provisions of § 17-10-7. Blackwell v. State, 237 Ga. App. 896, 516 S.E.2d 787, 1999 Ga. App. LEXIS 556 (1999), cert. denied, No. S99C1235, 1999 Ga. LEXIS 758 (Ga. Sept. 17, 1999).

LEXIS 758 (Ga. Sept. 17, 1999).

Because O.C.G.A. § 17-10-7 is the only recidivist provision that governs the situation where a defendant, who has a prior felony conviction for armed robbery, is subsequently convicted of a felony for selling cocaine, the trial court correctly applied that section in sentencing

defendant. Harden v. State, 239 Ga. App. 700, 521 S.E.2d 829, 1999 Ga. App. LEXIS 1114 (1999).

In a prosecution for sale of cocaine, the court was not required to impose a life sentence upon the defendant who had five previous drug convictions. The court retained the discretion either to impose any sentence within the statutory mandatory minimum and maximum sentence range or else to impose a life sentence. Scott v. State, 248 Ga. App. 542, 545 S.E.2d 709, 2001 Ga. App. LEXIS 324 (2001).

Since the defendant was found guilty of possessing cocaine with the intent to distribute, the defendant's third conviction for the possession of a controlled substance with the intent to distribute and the defendant's ninth felony conviction, the sentencing judge had the discretion to sentence the defendant under O.C.G.A. § 16-13-30(d) to "any sentence within the statutory mandatory minimum and maximum sentence range or else to impose a life sentence" and was not required to sentence the defendant to life imprisonment under O.C.G.A. § 17-10-7(a). Mann v. State, 273 Ga. 366, 541 S.E.2d 645, 2001 Ga. LEXIS 65 (2001).

After the defendant entered a guilty plea to possession of cocaine with intent to distribute, and the state introduced copies of a prior out-of-state drug conviction and a prior federal drug conviction, the trial court erred in sentencing defendant to 30 years under O.C.G.A. §§ 16-13-30(d) and 17-10-7(a). Papadoupalos v. State, 249 Ga. App. 300, 548 S.E.2d 59, 2001 Ga. App. LEXIS 493 (2001).

Because the defendant's conviction on count one of the indictment was the second conviction for violating O.C.G.A. § 16-13-30(b), selling a controlled substance, the trial court was not prohibited from sentencing the defendant under both O.C.G.A. §§ 16-13-30(d) and 17-10-7(c). Johnson v. State, 259 Ga. App. 452, 576 S.E.2d 911, 2003 Ga. App. LEXIS 147 (2003).

Trial court's decision to probate a portion of the sentence imposed on the defendant for the defendant's second conviction for possession of cocaine with intent to distribute, requiring the defendant to serve only seven years, was in direct contravention to O.C.G.A. § 16-13-30(d), which stated specifically that a second time offender was to have been imprisoned for not less than 10 years; by the plain reading of § 16-13-30(d), a defendant must have served at least 10 years in prison, and O.C.G.A. § 17-10-7(c), which applied to a second offense under § 16-13-30(b), required that the time be served without parole. State v. Jones, 265 Ga. App. 493, 594 S.E.2d 706, 2004 Ga. App. LEXIS 163 (2004), cert. denied, No. S04C1066, 2004 Ga. LEXIS 591 (Ga. June 28, 2004), overruled in part, Langley v. State, No. S21G0783, 2022 Ga. LEXIS 14 (Ga. Feb. 1, 2022).

Trial court did not err in stacking two recidivist sentencing provisions by first sentencing defendant to life in prison under former O.C.G.A. § 16-13-30(d), which at the time of defendant's crime and sentencing required a life sentence for repeat offenders of § 16-13-30(b), and by then sentencing defendant to life without parole under O.C.G.A. § 17-10-7(c), which required that upon conviction of a fourth felony, defendant was not eligible for parole. Butler v. State, 277 Ga. App. 57, 625 S.E.2d 458, 2005 Ga. App. LEXIS 1364 (2005), aff'd, 281 Ga. 310, 637 S.E.2d 688, 2006 Ga. LEXIS 979 (2006).

Court of Appeals properly affirmed the imposition of a life sentence without parole against the defendant, as a recidivist, under both O.C.G.A. §§ 16-13-30(d) and 17-10-7(c), as the defendant was convicted and sentenced before the effective date of the 1996 amendment to O.C.G.A. § 16-13-30(d), thus making a life sentence the only sentence that the trial court could impose; further, because the instant felony conviction was the defendant's fourth, O.C.G.A. § 17-10-7(c) applied to the sentence by operation of subsection (e) of that statute, as enacted in 1994, so as to require the defendant to serve the sentence imposed by the trial court without the possibility of parole. Butler v. State, 281 Ga. 310, 637 S.E.2d 688, 2006 Ga. LEXIS 979 (2006).

Upon the conviction for the sale of cocaine, the trial court properly sentenced the defendant under O.C.G.A. § 17-10-7(c) and not O.C.G.A. § 17-10-1(a)(1), to the minimum sentence of ten years imprisonment under O.C.G.A. § 16-13-30(d), without the possibility of parole, as the defendant had three prior felony convictions. Fortson v. State, 283 Ga. App. 120, 640 S.E.2d 693, 2006 Ga. App. LEXIS 1571 (2006), overruled in part, Langley v. State, No. S21G0783, 2022 Ga. LEXIS 14 (Ga. Feb. 1, 2022).

Because sufficient proof of the necessary prior convictions, even without inclusion of the defendant's first offender plea, existed to authorize punishment under both O.C.G.A. §§ 16-13-30 and 17-10-7, the recidivist sentence imposed by the trial court was upheld. Johnson v. State, 284 Ga. App. 724, 644 S.E.2d 544, 2007 Ga. App. LEXIS 392 (2007), cert. denied, No. S07C1179, 2007 Ga. LEXIS 538

Johnson v. State, 284 Ga. App. 724, 644 S.E.2d 344, 2007 Ga. App. LEXIS 592 (2007), cert. denied, No. S07C1179, 2007 Ga. LEXIS 556 (Ga. July 13, 2007).

Trial court properly denied the defendant's plea withdrawal motion as the court fully informed the defendant that the sentence the court intended on imposing would be without parole, despite failing to advise the defendant of the sentence prior to the acceptance of the plea; moreover, as methamphetamine was a Schedule II non-narcotic drug, the more general provisions of O.C.G.A. §§ 16-13-30(e) and 17-10-7, and not O.C.G.A. § 16-13-30(c), applied. Thomas v. State, 287 Ga. App. 500, 651 S.E.2d 801, 2007 Ga. App. LEXIS 1003 (2007).

Defendant's sentence of 30 years without parole for trafficking in cocaine was a sentence allowed under O.C.G.A. § 16-13-30(d), and hence, not illegal or void. Defendant could not have been sentenced under O.C.G.A. § 17-10-7(a), or defendant's sentence would have been 40 years. Because the sentence was not void, it was not subject to modification under O.C.G.A. § 17-10-1(f). State v. Blue, 304 Ga. App. 471, 696 S.E.2d 692, 2010 Ga. App. LEXIS 561 (2010).

Defendant sentenced to life in prison without parole, under O.C.G.A. §§ 16-13-30(d) and 17-10-7(c), based on the defendant's prior convictions stemming from guilty pleas, was not entitled to habeas relief on the basis of the defendant's trial counsel's failure to review the transcripts of the defendant's prior plea colloquies because: (1) no per se rule required counsel to review the transcripts; and (2) counsel otherwise adequately investigated the validity of the prior convictions. Barker v. Barrow, 290 Ga. 711, 723 S.E.2d 905, 2012 Ga. LEXIS 294, cert. denied, 568 U.S. 987, 133 S. Ct. 540, 184 L. Ed. 2d 354, 2012 U.S. LEXIS 8455 (2012).

Pursuant to O.C.G.A. § 17-10-7(b.1), a defendant who has been convicted previously of violating either subsection (a), or (j), or paragraph (i)(1) of O.C.G.A. § 16-13-30 may not be sentenced as a recidivist for a second or any subsequent conviction for violating any of those provisions even if the defendant had never been convicted previously of violating the exact subsection for which the defendant is being sentenced. Mathis v. State, 336 Ga. App. 257, 784 S.E.2d 98, 2016 Ga. App. LEXIS 157 (2016).

Construed with O.C.G.A. § 16-13-31. —

Most reasonable interpretation of the legislative intent in enacting O.C.G.A. § 16-13-31(f)(1) was to supplant the general punishment provision of O.C.G.A. § 16-13-30(b) with a specific and potentially more harsh punishment provision for manufacturing methamphetamine. Richards v. State, 290 Ga. App. 360, 659 S.E.2d 651, 2008 Ga. App. LEXIS 239 (2008).

Legislative intent behind O.C.G.A. § 16-13-30(d) and the purpose for the statute's enactment is to deter repeat offenders of certain drug crimes enumerated in subsection (b) and to segregate persons who have two convictions of such offenses from the rest of society for an extended period of time. Mays v. State, 200 Ga. App. 457, 408 S.E.2d 714, 1991 Ga. App. LEXIS 1058 (1991), rev'd in part, 262 Ga. 90, 414 S.E.2d 481, 1992 Ga. LEXIS 244 (1992), vacated, 204 Ga. App. 80, 418 S.E.2d 167, 1992 Ga. App. LEXIS 688 (1992).

The 1996 amendment of O.C.G.A. § 16-13-30(d) giving the trial court greater discretion in imposing a lesser sentence than life was not retroactive. Maddox v. State, 227 Ga. App. 602, 490 S.E.2d 174, 1997 Ga. App. LEXIS 987 (1997).

Trial court erred in imposing mandatory life sentences for crimes committed in 1997, that is, after the legislative enactment making a life sentence discretionary. Moton v. State, 242 Ga. App. 397, 530 S.E.2d 31, 2000 Ga. App. LEXIS 203 (2000).

Special probation. —

Plain language of O.C.G.A. § 42-8-35.2(a) requires that a term of special probation be served "in addition to any term of imprisonment" rendered under O.C.G.A. § 16-13-30(d); thus, the two statutes do not conflict. Accordingly, a defendant was properly sentenced to a ten-year incarceration followed by special probation, and the defendant's claim that O.C.G.A. § 42-8-32.5 was implicitly repealed by the 1996 amendment to O.C.G.A. § 16-13-30 was without merit. Mike v. State, 290 Ga. App. 214, 659 S.E.2d 664, 2008 Ga. App. LEXIS 283 (2008), cert. denied, No. S08C1196, 2008 Ga. LEXIS 612 (Ga. June 16, 2008), overruled in part, Langley v. State, No. S21G0783, 2022 Ga. LEXIS 14 (Ga. Feb. 1, 2022).

Defendant's sentence for possession of methamphetamine with intent to distribute of 30 years, with the first 20 years to be served in confinement and the remainder to be served on probation, along with a special term of probation of three years in addition to the 30-year term, was valid under O.C.G.A. §§ 16-13-30(d) and 42-8-35.2. Benton v. State, 356 Ga. App. 441, 847 S.E.2d 625, 2020 Ga. App. LEXIS

term, was valid under O.C.G.A. §§ 16-13-30(d) and 42-8-35.2. Benton v. State, 356 Ga. App. 441, 847 S.E.2d 625, 2020 Ga. App. LEXIS 460 (2020), cert. denied, No. S21C0110, 2021 Ga. LEXIS 253 (Ga. Apr. 5, 2021).

Authority to resentence defendant. —

Because the trial court was correct that the court had imposed a sentence not allowed, the sentence was void and the trial court retained jurisdiction to resentence the defendant. Loveless v. State, 344 Ga. App. 716, 812 S.E.2d 42, 2018 Ga. App. LEXIS 130 (2018).

Subsection (b) must be violated for life sentence to be mandatory. —

Trial court erred in imposing life sentences upon counts two, three, and four of the indictment when a defendant must have been convicted of violating O.C.G.A. § 16-13-30(b) in order for the imposition of a life sentence to be mandatory. Brown v. State, 204 Ga. App. 794, 420 S.E.2d 823, 1992 Ga. App. LEXIS 988 (1992).

Motion to modify sentence inappropriate remedy. —

Defendant's claim that the trial court did not give defendant credit for time defendant spent in pretrial confinement when the court sentenced defendant after defendant pled guilty to charges of possession of cocaine with intent to distribute and possession of marijuana with intent to distribute was cognizable only in a mandamus or injunction action against the Commissioner of the Georgia Department of Corrections, or in a petition for habeas corpus, not in a motion to modify defendant's sentence, and the trial court properly dismissed defendant's motion to modify defendant's sentence. Maldonado v. State, 260 Ga. App. 580, 580 S.E.2d 330, 2003 Ga. App. LEXIS 428 (2003).

With regard to the defendant's conviction for attempted possession of oxycodone with the intent to distribute and the sentence imposed of 30 years confinement as a recidivist, to serve 20 years in confinement and the remainder probated, the defendant was entitled to resentencing as the state conceded that the state failed to show that the defendant's prior convictions were adjudged upon the advice of counsel or following a waiver thereof. Woodall v. State, 291 Ga. App. 484, 662 S.E.2d 549, 2008 Ga. App. LEXIS 535 (2008).

Motion to correct void sentence. —

Sentencing court should have dismissed the defendant's motion to vacate a void sentence for lack of jurisdiction because the defendant's motion presented no cognizable claim that a sentence was void as constituting punishment the law did not allow. The defendant only challenged the existence or validity of the factual or adjudicative predicate for the recidivist sentence. Kimbrough v. State, 325 Ga. App. 519, 754 S.E.2d 109, 2014 Ga. App. LEXIS 8 (2014).

Because a more specific law applies to trafficking methamphetamine, the general provisions for manufacturing controlled substances do not apply; there being no uncertainty as to which statute applies, the rule of lenity is not implicated. State v. Nankervis, 295 Ga. 406, 761 S.E.2d 1, 2014 Ga. LEXIS 538 (2014).

Life sentence for conviction of a second offense. —

Life sentence for conviction of a second offense was permissible when defendant had not been convicted of the first offense at the time defendant committed the second offense. Hailey v. State, 263 Ga. 210, 429 S.E.2d 917, 1993 Ga. LEXIS 478 (1993), cert. denied, 510 U.S. 1048, 114 S. Ct. 700, 126 L. Ed. 2d 667, 1994 U.S. LEXIS 169 (1994); Key v. State, 226 Ga. App. 240, 485 S.E.2d 804, 1997 Ga. App. LEXIS 487 (1997).

After the defendant was convicted of trafficking in cocaine and conspiracy of trafficking in cocaine in 2011 and sentenced to two concurrent terms of life in prison, the defendant's life sentence was proper because the defendant's 2010 trafficking conviction pursuant to O.C.G.A. § 16-13-31 qualified as an actual conviction under O.C.G.A. § 16-13-30(b) to trigger the recidivist provisions of § 16-13-30(d) and enhance the defendant's sentence for the 2011 trafficking conviction; and the legislature did not intend that violators of the more serious offense of trafficking be exempt from the severe punishment of § 16-13-30(d). Duron v. State, 340 Ga. App. 74, 796 S.E.2d 310, 2017 Ga. App.

LEXIS 11 (2017), cert. denied, No. S17C0983, 2017 Ga. LEXIS 599 (Ga. June 30, 2017).

Life sentence based on conviction under prior statute. —

O.C.G.A. § 16-13-30(d) authorizes a life sentence only for a second violation of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., which was enacted in 1974. Thus, it does not include earlier convictions for crimes which would have been violations of the Act had they been committed after the effective date of the Act. Smith v. State, 193 Ga. App. 365, 387 S.E.2d 648, 1989 Ga. App. LEXIS 1427 (1989).

Prior conviction under federal law. —

Life sentence may only be imposed for a second violation of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., and was not authorized since the prior offense used against the defendant was a federal drug conviction. Query v. State, 217 Ga. App. 61, 456 S.E.2d 704, 1995 Ga. App. LEXIS 340 (1995), cert. denied, No. S95C1168, 1995 Ga. LEXIS 791 (Ga. June 1, 1995).

After federal convictions, state prosecutions barred on same conduct. —

Threshold requirement of concurrent jurisdiction in O.C.G.A. § 16-1-8(c) was met in the defendant's state prosecution because the Georgia crimes of manufacturing, delivering, or selling a controlled substance and attempt, O.C.G.A. §§ 16-13-30(a) and 16-13-33, were counterparts to the defendant's federal convictions under 21 U.S.C.S. §§ 841(b)(1)(C) and 846. Calloway v. State, 303 Ga. 48, 810 S.E.2d 105, 2018 Ga. LEXIS 66 (2018).

Defendant, sentenced to life under O.C.G.A. § 16-13-30(d) was not similarly situated to codefendant granted first offender probation for equal protection purposes because the codefendant was a first offender and defendant was convicted of seven other drug charges in addition to the sale of 200 grams or more of cocaine and had prior convictions for robbery and possession of cocaine with intent to distribute. Bell v. State, 252 Ga. App. 74, 555 S.E.2d 747, 2001 Ga. App. LEXIS 1204 (2001).

Career offender implications. —

Unpublished decision: Defendant's conviction for possessing a counterfeit substance with intent to sell under O.C.G.A. § 16-13-30(i) was an offense under a state law that prohibited the possession of a counterfeit substance, and was punishable by imprisonment for a term exceeding one year; as such, the elements of the offense matched the plain language of U.S. Sentencing Guidelines Manual §§ 4B1.1 and 4B1.2, and the offense was sufficient to count towards defendant's career offender status. Moreover, this interpretation was not modified by the statutory definitions contained in 21 U.S.C.S. § 802(7), and nothing in 28 U.S.C.S. § 994 prevented the sentencing commission from using the commission's authority in this manner. United States v. Smith, 156 Fed. Appx. 154, 2005 U.S. App. LEXIS 25382 (11th Cir. 2005), cert. denied, 547 U.S. 1048, 126 S. Ct. 1639, 164 L. Ed. 2d 349, 2006 U.S. LEXIS 2641 (2006).

Unpublished decision: Defendant was properly sentenced as an armed career criminal because the defendant's 1998 Georgia felony conviction for obstructing or hindering a law enforcement officer was a violent felony, and the defendant's 1998 Georgia felony conviction for possessing marijuana with the intent to distribute fell squarely within the Armed Career Criminal Act's definition of a serious drug offense. United States v. Dixon, 598 Fed. Appx. 704, 2015 U.S. App. LEXIS 1698 (11th Cir. 2015).

Prior out-of-state convictions. —

Defense counsel was not ineffective for failing to object to the trial court's use of prior felonies defendant committed in California to sentence the defendant as a recidivist under O.C.G.A. § 17-10-7(c) as the elements of Cal. Health & Safety Code §§ 11054(f), 11350(a) (possession of cocaine) were sufficiently similar to those of O.C.G.A. §§ 16-13-26(1)(D) and 16-13-30(c); and the elements of Cal. Penal. Code § 211 (robbery) were sufficiently similar to those of O.C.G.A. § 16-8-40. Williams v. State, 296 Ga. App. 270, 674 S.E.2d 115, 2009 Ga. App. LEXIS 189 (2009).

Nonfinal conviction of first offense as predicate for life sentence on second charge. —

O.C.G.A. § 17-10-2(a), relating to presentence hearings, did not operate to bar the trial court from relying on one of the cocaine charges to which defendant pled guilty in a guilty plea hearing in order to impose an enhanced mandatory life sentence pursuant to O.C.G.A. § 16-13-30(d) for the second sale of cocaine charge to which defendant pled guilty at the same hearing. Plea bargain negotiations can serve the same purpose as the giving of notice under O.C.G.A. § 17-10-2(a), and, when plea bargain negotiations are conducted, the defendant can be given "clear notice" of what the state intends to rely upon in aggravation of sentencing at the guilty plea hearing. Martin v. State, 207 Ga. App. 861, 429 S.E.2d 332, 1993 Ga. App. LEXIS 370 (1993).

In order for the imposition of life sentences to be mandatory pursuant to O.C.G.A. § 16-13-30(d), a defendant's prior conviction need not have preceded the defendant's subsequent violations of O.C.G.A. § 16-13-30(b), but the defendant's prior conviction must necessarily have preceded the defendant's subsequent trial for violating O.C.G.A. § 16-13-30(b). State v. Sears, 202 Ga. App. 352, 414 S.E.2d 494, 1991 Ga. App. LEXIS 1774 (1991).

Prior conviction trigger for mandatory life sentence. —

Defendant's conviction for the more serious offense of trafficking in cocaine under O.C.G.A. § 16-13-31 was sufficient in conjunction with the defendant's previous conviction for possession of cocaine with intent to distribute under O.C.G.A. § 16-13-30(b) to trigger the mandatory life sentence provisions of § 16-13-30(d) and the state gave proper notice that the prior conviction would be used in aggravation at sentencing pursuant to § 16-13-30(d). Brundage v. State, 231 Ga. App. 478, 499 S.E.2d 408, 1998 Ga. App. LEXIS 470 (1998).

Life sentence appropriate. —

When there is evidence of record that the defendant was properly notified of the state's intent to use defendant's prior drug convictions in aggravation of punishment at the sentencing hearing, and such evidence was not sufficiently rebutted by defendant, the trial court did not err in sentencing defendant to life in prison as a recidivist. Washington v. State, 216 Ga. App. 352, 454 S.E.2d 214, 1995 Ga. App. LEXIS 113 (1995).

Defendant's conviction for the more serious offense of trafficking in cocaine under O.C.G.A. § 16-13-31 was sufficient in conjunction with prior convictions for sale of cocaine to trigger the mandatory life sentence provision of O.C.G.A. § 16-13-30(d). Covington v. State, 231 Ga. App. 851, 501 S.E.2d 37, 1998 Ga. App. LEXIS 538 (1998).

Life sentence cannot be imposed for a first offense even though, at the time a conviction is entered on that offense, the defendant had committed and been convicted of an intervening offense. Mays v. State, 262 Ga. 90, 414 S.E.2d 481, 1992 Ga. LEXIS 244 (1992).

Recidivist punishment under subsection (d) not precluded by § 17-10-7(c). —

Imposition of mandatory life sentences as recidivist punishment for convictions under each count of an indictment charging six separate offenses of selling cocaine was not precluded by provisions of the statute placing limitations on the use of prior convictions as the basis for imposing enhanced recidivist punishment. McCoy v. State, 210 Ga. App. 672, 437 S.E.2d 366, 1993 Ga. App. LEXIS 1308 (1993).

Neither of two concurrent convictions can serve as the predicate for the imposition of a life sentence (under O.C.G.A. § 16-13-30(d)) as to the other. State v. Sears, 202 Ga. App. 352, 414 S.E.2d 494, 1991 Ga. App. LEXIS 1774 (1991).

Rehabilitation and life sentence. —

There appears to be no constitutional requirement that a defendant receive "the benefit of rehabilitation" before a life sentence for

repeated conduct may be imposed under O.C.G.A. § 16-13-30(d). Beasley v. State, 202 Ga. App. 349, 414 S.E.2d 663, 1991 Ga. App. LEXIS 1773 (1991).

Neither convictions could serve basis for life imprisonment. —

Concurrent six-year sentences imposed upon defendant were not void, and the state's appeal was dismissed, since neither of defendant's instant convictions could serve as the predicate for the imposition of a life sentence as to the others. State v. Sampson, 203 Ga. App. 396, 417 S.E.2d 34, 1992 Ga. App. LEXIS 432 (1992), cert. denied, No. S92C0825, 1992 Ga. LEXIS 571 (Ga. July 8, 1992).

Use of second offense to revoke first-offender probation. —

Trial court did not err in treating the defendant's commission of the second offense both as the basis for the revocation of defendant's first-offender probation which, in turn, resulted in defendant's conviction of the original offense, and as the "second or subsequent offense" for which O.C.G.A. § 16-13-30 mandates a life sentence. Dean v. State, 200 Ga. App. 752, 409 S.E.2d 667, 1991 Ga. App. LEXIS 1140 (1991), cert. denied, No. S91C1484, 1991 Ga. LEXIS 583 (Ga. Sept. 6, 1991).

Notice required for life term. —

If a life sentence is to be imposed under O.C.G.A. § 16-13-30(d), the state must notify defendant of any conviction the state intends to use in aggravation of punishment pursuant to that section. Armstrong v. State, 264 Ga. 237, 442 S.E.2d 759, 1994 Ga. LEXIS 421 (1994).

Notice to the defendant that two prior convictions would be used against the defendant was timely where notice was given on the day of trial, but before the trial started. Howard v. State, 234 Ga. App. 260, 506 S.E.2d 648, 1998 Ga. App. LEXIS 1200 (1998).

Written notice that the state intends to present evidence of prior convictions coupled with oral notice that the state intends to seek a life sentence satisfies the notice requirement. Washington v. State, 238 Ga. App. 561, 519 S.E.2d 234, 1999 Ga. App. LEXIS 858 (1999).

Advance notice not required. —

O.C.G.A. § 16-13-30 contains no requirement of advance notice of prior felony convictions as a condition to sentencing or to receiving evidence of prior drug conviction. Armstrong v. State, 209 Ga. App. 796, 434 S.E.2d 560, 1993 Ga. App. LEXIS 998 (1993), aff'd, 264 Ga. 237, 442 S.E.2d 759, 1994 Ga. LEXIS 421 (1994).

Advising on sentencing. —

In a prosecution for possession of methamphetamine, the defendant claimed defense counsel was ineffective for failing to advise the defendant of the possibility of receiving a prison sentence without the possibility of parole. This claim failed as the trial court was entitled to believe trial counsel's testimony that counsel advised the defendant of this possible sentence before the defendant elected to go to trial. Matthews v. State, 294 Ga. App. 836, 670 S.E.2d 520, 2008 Ga. App. LEXIS 1329 (2008).

Enforcement of plea agreement. —

With regard to the defendant's drug possession charges and a plea agreement that waived recidivist punishment, the court held that the trial court erred by denying the defendant's motion to enforce the plea agreement made with the prior district attorney because an agreement as to terms was clearly made and the fact that the state changed the state's mind and no longer wanted to honor the plea agreement was not acceptable policy. Syms v. State, 331 Ga. App. 225, 770 S.E.2d 305, 2015 Ga. App. LEXIS 138 (2015).

Indictment sufficient. —

Indictment sufficient.

Trial court's decision overruling the defendant's special demurrer to an indictment charging the defendant with trafficking in methamphetamine and misdemeanor possession of marijuana in violation of O.C.G.A. §§ 16-13-30(b) and 16-13-31(e) was authorized

because the allegations of the indictment were sufficient to be easily understood by the jury, to allow the defendant to prepare the defendant's defense, and to protect the defendant from double jeopardy; the indictment sufficiently set forth the date of the offenses and tracked the material language of the statutes proscribing the charged offenses, and the language set forth in the counts against the codefendants separately designated the drugs upon which those charges were based and made clear that the defendant's drug charges were not based upon the drugs allegedly possessed by those individual codefendants. Fyfe v. State, 305 Ga. App. 322, 699 S.E.2d 546, 2010 Ga. App. LEXIS 628 (2010), cert. denied, No. S10C1942, 2011 Ga. LEXIS 229 (Ga. Feb. 28, 2011), overruled in part, McNair v. State, 293 Ga. 282, 745 S.E.2d 646, 2013 Ga. LEXIS 594 (2013), overruled in part, Maddox v. State, 322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013).

Waiver of error in indictment. —

Trial court did not err in permitting the state to try the defendant on both the sale of cocaine and trafficking in cocaine charge, after the prosecutor informed the defendant that the defendant would only be tried for the sale offense, and after the trial court excluded evidence of the trafficking crime as a similar transaction; by failing to object, the defendant waived any alleged error. Brockington v. State, 265 Ga. App. 13, 592 S.E.2d 858, 2003 Ga. App. LEXIS 1613 (2003).

No fatal variance in indictment. —

It was not a fatal variance to prosecute the defendants for possession of amphetamine when the indictment alleged possession of methamphetamine. The defendants were well aware of the misnomer and were not surprised at trial since their defense was that the substance belonged to a codefendant, and the defendants were not subject to further prosecution for possession of amphetamine. Howard v. State, 291 Ga. App. 289, 661 S.E.2d 644, 2008 Ga. App. LEXIS 467 (2008).

Indictment not final when pre-trial notice given. —

When the defendant's conviction on the first count of the instant four count indictment for violations of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., was not final at the time the state gave the state's pre-trial notice of the state's intent to seek a mandatory life sentence, the conviction on the first count could not be the basis for the imposition of a life sentence on either of the remaining counts of the indictment. Nunnally v. State, 203 Ga. App. 639, 417 S.E.2d 170, 1992 Ga. App. LEXIS 550 (1992), cert. denied, No. S92C0916, 1992 Ga. LEXIS 593 (Ga. June 25, 1992).

Jury instructions on lesser included offense. —

Instructions on the elements of the offense of possession of cocaine with intent to distribute and on the lesser included offense of simple possession given in the language of the Suggested Pattern Jury Charge were sufficient. Burse v. State, 232 Ga. App. 729, 503 S.E.2d 638, 1998 Ga. App. LEXIS 815 (1998).

Defendant was properly convicted of trafficking in methamphetamine in violation of O.C.G.A. § 16-13-31(e) because the trial court did not commit reversible error by refusing to charge the jury on the lesser included offense of simple possession of methamphetamine, O.C.G.A. § 16-13-30, when there was no written request to give a charge on simple possession; even if the trial court erred in not giving the charge, reversal was not required in light of the overwhelming evidence that defendant possessed 432.31 grams of methamphetamine, which clearly constituted trafficking, and, therefore, it was highly unlikely that the failure to give an instruction on simple possession contributed to the verdict. Gonzalez v. State, 299 Ga. App. 777, 683 S.E.2d 878, 2009 Ga. App. LEXIS 970 (2009).

Trial court's failure to charge the jury on manufacturing methamphetamine, O.C.G.A. § 16-13-30(a), as a lesser included offense of trafficking methamphetamine, O.C.G.A. § 16-13-31(f), did not contribute to the verdict and was harmless; although the trial court was

required to charge the jury on § 16-13-30(b) as a lesser included offense to § 16-13-31(f) since there was evidence that the defendant manufactured methamphetamine as prohibited by § 16-13-30(b), there was no relevant distinction between the two statutes with regard to methamphetamine as applied to the case. Because the evidence established that the defendant manufactured methamphetamine, and the defendant's admission that the defendant was "cooking" showed that the defendant knowingly manufactured methamphetamine, the jury could have found the defendant guilty of both offenses or not guilty of both. Poole v. State, 302 Ga. App. 464, 691 S.E.2d 317, 2010 Ga. App. LEXIS 161 (2010), overruled in part, McNair v. State, 293 Ga. 282, 745 S.E.2d 646, 2013 Ga. LEXIS 594 (2013).

Trial counsel was not deficient for failing to object to the trial court's instruction on the lesser included offense of possession of MDMA (Ecstasy) because the instruction explained the elements of possession of MDMA with intent to distribute and delineated that charge from simple possession of MDMA; the charge substantially covered the principles in the defendant's request to charge and adequately instructed the jury as to the jury's consideration of the charged offense and the lesser offense, and since there was overwhelming evidence of the defendant's guilt, in that the defendant possessed a distribution amount of MDMA, the defendant could not show a reasonable probability that the outcome of the defendant's trial would have been different. Taylor v. State, 306 Ga. App. 175, 702 S.E.2d 28, 2010 Ga. App. LEXIS 895 (2010), cert. denied, No. S11C0258, 2011 Ga. LEXIS 231 (Ga. Feb. 28, 2011).

Evidence sufficient for conviction of manufacturing marijuana. —

See Holland v. State, 205 Ga. App. 695, 423 S.E.2d 694, 1992 Ga. App. LEXIS 1300 (1992).

When verdict sustained. —

If the totality of the evidence is sufficient to connect defendant to possession of drugs, even though there is evidence to authorize a contrary finding, the jury's verdict will be sustained. Singleton v. State, 194 Ga. App. 5, 389 S.E.2d 496, 1989 Ga. App. LEXIS 1705 (1989).

Possession with intent to distribute is not punishable by both fine and imprisonment. —

General Assembly has not seen fit to permit imposition of both fine and imprisonment as punishment for a felony, except in specified cases, and possession of phencyclidine with intent to distribute is not one of these. Taylor v. State, 149 Ga. App. 362, 254 S.E.2d 432, 1979 Ga. App. LEXIS 1849 (1979).

Unauthorized fines are void part of sentence. —

When defendants violated O.C.G.A. § 16-13-30(b) by possessing with intent to distribute diazepam, a Schedule IV controlled substance, the trial court was without authority to impose a $5,000 fine on one defendant and $10,000 fines on each of the other defendants since O.C.G.A. § 16-13-30(h) does not authorize imposition of any fines; since a trial judge may only fix a sentence within the limits prescribed by law, the fines imposed are void and must be stricken from the respective sentences. Castillo v. State, 166 Ga. App. 817, 305 S.E.2d 629, 1983 Ga. App. LEXIS 3279 (1983).

Defendant's sentence for cocaine possession requiring the defendant to begin making monthly payments on fines, fees, and court costs during the defendant's incarceration was a punishment that the law did not allow, and therefore was void. Pursuant to O.C.G.A. § 17-10-8, the defendant could only be ordered to make such payments as a condition of probation. Crane v. State, 302 Ga. App. 422, 691 S.E.2d 559, 2010 Ga. App. LEXIS 148 (2010).

Juvenile court erred in imposing a fine for possession of cocaine because a fine was not an authorized penalty under O.C.G.A. § 16-13-30. In re A. T., 302 Ga. App. 713, 691 S.E.2d 642, 2010 Ga. App. LEXIS 218 (2010).

Monetary fines not authorized on conviction. —

Upon conviction of a defendant of possession of cocaine with intent to distribute, the trial court was without authority to impose a fine

Upon conviction of a defendant of possession of cocaine with intent to distribute, the trial court was without authority to impose a fine, penalty fee, and D.A.T.E. fee; the penalty for the offense does not include monetary fines. Rawls v. State, 210 Ga. App. 408, 436 S.E.2d 527, 1993 Ga. App. LEXIS 1202 (1993).

Fine of $50,000 was not authorized upon a conviction of a violation of O.C.G.A. § 16-13-30. Donelson v. State, 220 Ga. App. 688, 469 S.E.2d 861, 1996 Ga. App. LEXIS 313 (1996).

Phrase "subsequent offense" in O.C.G.A. § 16-13-30(g) means possession of any controlled substance rather than "a controlled substance in Schedule III, IV, or V." Ray v. State, 181 Ga. App. 42, 351 S.E.2d 490, 1986 Ga. App. LEXIS 2801 (1986).

Repeat offenders. —

It was not error to sentence defendant as a repeat offender rather than under O.C.G.A. § 16-13-30, where first offense involved possession and control of a controlled substance, and second offense involved possession with intent to distribute. Sewell v. State, 162 Ga. App. 483, 291 S.E.2d 783, 1982 Ga. App. LEXIS 2192 (1982).

Enhanced punishment based upon prior conviction. —

If the state has not specifically informed the defendant, prior to trial, that it intends to seek enhanced punishment based upon a conviction for a prior offense, the trial court would not be able to impose an enhanced sentence, even if the offense for which the defendant is being tried is a "second or subsequent offense." Mays v. State, 262 Ga. 90, 414 S.E.2d 481, 1992 Ga. LEXIS 244 (1992); Jordan v. State, 217 Ga. App. 420, 457 S.E.2d 692, 1995 Ga. App. LEXIS 467 (1995).

Previous convictions not final at the time a sentence was imposed because they were on appeal could not be relied upon as grounds for imposing enhanced punishment. Dunn v. State, 208 Ga. App. 197, 430 S.E.2d 50, 1993 Ga. App. LEXIS 466 (1993); Covington v. State, 226 Ga. App. 484, 486 S.E.2d 706, 1997 Ga. App. LEXIS 657 (1997).

Unpublished decision: Categorical approach was properly applied in determining that a defendant's prior conviction under O.C.G.A. § 16-13-30 was a "controlled substance offense" for purposes of the career offender guideline, U.S. Sentencing Guidelines Manual § 4B1.1; although the defendant received less than the statutory minimum sentence under O.C.G.A. § 16-13-30, the state court record showed that the defendant was convicted of selling cocaine, not possessing cocaine. United States v. Partee, 376 Fed. Appx. 614, 2010 U.S. App. LEXIS 10687 (7th Cir.), cert. denied, 562 U.S. 991, 131 S. Ct. 439, 178 L. Ed. 2d 340, 2010 U.S. LEXIS 8271 (2010).

Date of commission of offense determines applicability of enhanced punishment. —

It is not the date of conviction which determines the applicability of enhanced punishment but the date of the commission of the offense; where conviction was for offense which occurred prior to offense which resulted in prior conviction, trial court erred in imposing enhanced punishment under subsection (d). Doe v. State, 205 Ga. App. 322, 422 S.E.2d 558, 1992 Ga. App. LEXIS 1218 (1992).

Second conviction for sale of cocaine results in sentence of imprisonment for life, even when the prior offense is not set out in the indictment, when the state complies with the requirement of O.C.G.A. § 17-10-2(a), which provides that only such evidence in aggravation as the state has made known to the defendant prior to defendant's trial shall be admissible. State v. Hendrixson, 251 Ga. 853, 310 S.E.2d 526, 1984 Ga. LEXIS 555 (1984).

Sentenced for a second offense of cocaine possession. —

Defendant's previous conviction for cocaine possession with the intent to distribute constituted a previous conviction for cocaine possession that triggered the mandatory 30-year sentencing for a second simple possession offense under O.C.G.A. § 16-13-30(c). Smiley v. State, 241 Ga. App. 712, 527 S.E.2d 585, 2000 Ga. App. LEXIS 4 (2000).

Life sentence for trafficking in cocaine. —

Life sentence was properly imposed on the defendant after the defendant was convicted of trafficking in cocaine under O.C.G.A. § 16-13-31. Howard v. State, 234 Ga. App. 260, 506 S.E.2d 648, 1998 Ga. App. LEXIS 1200 (1998).

Life sentence based on conviction in another state. —

Imposition of the life sentence was erroneous when defendant's prior conviction was under South Carolina law and thus did not invoke the provisions of O.C.G.A. § 16-13-30(d). Peterson v. State, 212 Ga. App. 147, 441 S.E.2d 481, 1994 Ga. App. LEXIS 191 (1994).

Probation as punishment. —

Punishments provided in O.C.G.A. § 16-13-30 do not preclude probation as a punishment. Lester v. State, 190 Ga. App. 59, 378 S.E.2d 364, 1989 Ga. App. LEXIS 115 (1989).

Sentence for attempted possession appropriate. —

Trial court did not err in sentencing defendant, who had been convicted of attempted possession of crack cocaine, for purchasing a piece of a nut from an undercover police officer thinking it was crack cocaine, within the sentencing range for attempted possession of a Schedule II controlled substance, despite the fact that the indictment did not specifically allege that crack cocaine was a Schedule II controlled substance. The indictment and proof clearly showed that defendant had in fact attempted to purchase a Schedule II controlled substance. Lovain v. State, 253 Ga. App. 271, 558 S.E.2d 812, 2002 Ga. App. LEXIS 29 (2002).

Fine as condition of probation. —

When a defendant was convicted of possession of cocaine with intent to distribute under O.C.G.A. § 16-13-30 and sentenced to the mandatory minimum of 10 years' imprisonment, plus 30 years on probation, the trial court did not err in imposing a $5,000 fine as a condition of probation. O.C.G.A. § 17-10-8 permitted a trial court to impose a fine as a condition of probation. Marshall v. State, 291 Ga. App. 284, 661 S.E.2d 662, 2008 Ga. App. LEXIS 473 (2008).

Sentence outside statutory range. —

Since the ten-year felony sentence, entered by the trial court and imposed upon the defendant's convictions for possession of a controlled substance, possession of marijuana, and improper turn, was outside the statutory range in O.C.G.A. § 16-13-30(g), the sentence was void. Accordingly, the trial court had jurisdiction to resentence the defendant at any time. Simmons v. State, 315 Ga. App. 82, 726 S.E.2d 573, 2012 Ga. App. LEXIS 320 (2012).

Because the 25-year sentence imposed by the trial court exceeded the statutory maximum under O.C.G.A. § 16-13-30(c), the sentence was void. Royals v. State, 327 Ga. App. 337, 761 S.E.2d 357, 2014 Ga. App. LEXIS 334 (2014).

Sentence within authorized range. —

Defendant's sentence to five years of confinement to be probated after 12 months, payment of fines, a monthly probation fee, and submission to special conditions of probation was well within the range authorized for possession of cocaine and was not cruel and unusual punishment. Toth v. State, 213 Ga. App. 247, 444 S.E.2d 159, 1994 Ga. App. LEXIS 530 (1994).

When a defendant was sentenced to five years imprisonment for possession of cocaine, the sentence was within the statutory limits of two to 15 years, and was not so overly severe or excessive as to shock the conscience. Palmore v. State, 236 Ga. App. 285, 511 S.E.2d 624, 1999 Ga. App. LEXIS 128 (1999).

Defendant's sentence of 30 years with five years to serve and 25 years on probation for selling cocaine was within the limits set by O.C.G.A. § 16-13-30(d) and would not be disturbed. Harden v. State, 239 Ga. App. 700, 521 S.E.2d 829, 1999 Ga. App. LEXIS 1114 (1999).

Since defendant, as a fourth-time felon, faced a maximum punishment of 30 years in prison with no possibility of parole, and the trial court sentenced defendant to 25 years in prison with no possibility of parole, defendant's sentence was within the statutory guidelines; accordingly, the sentence was not void. Taylor v. State, 261 Ga. App. 248, 582 S.E.2d 209, 2003 Ga. App. LEXIS 601 (2003), cert. dismissed, No. S03C1377, 2003 Ga. LEXIS 801 (Ga. Sept. 22, 2003).

Appellate court declined to review the defendant's 30-year sentence because the sentence was within the statutory guidelines; the defendant had been found guilty of possessing cocaine with the intent to distribute, the state introduced three prior felony convictions in aggravation of sentencing pursuant to O.C.G.A. § 17-10-2(a), and given the defendant's prior drug convictions and the mandate of O.C.G.A. § 17-10-7(c), the defendant faced a maximum punishment of life in prison under O.C.G.A. § 16-13-30(d). Jackson v. State, 284 Ga. App. 619, 644 S.E.2d 491, 2007 Ga. App. LEXIS 376 (2007), cert. denied, No. S07C1169, 2007 Ga. LEXIS 521 (Ga. June 25, 2007), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Defendant misconstrued the language in O.C.G.A. § 16-13-30(d) when the defendant contended that a prior conviction for the sale of marijuana was improperly used to enhance defendant's sentence for a first conviction for possession with intent to sell amphetamine; the defendant's sentence of 30 years with 20 to serve was within the range set out for a conviction for possession with intent to sell amphetamine. McElreath v. State, 284 Ga. App. 349, 643 S.E.2d 863, 2007 Ga. App. LEXIS 320 (2007).

Because the defendant's conviction was the second for possession of cocaine, the defendant was subject to a sentence of between 5 and 30 years under O.C.G.A. § 16-13-30(c), and the trial judge's sentence of 25 years, with eight years to serve, was within the legal range of punishment. Shook v. State, 300 Ga. App. 59, 684 S.E.2d 129, 2009 Ga. App. LEXIS 1083 (2009).

Trial court did not err in vacating the defendant's sentence of 40 years confinement and resentencing the defendant as a recidivist to 20 years confinement because there was nothing in the record showing that the trial court failed to exercise the court's discretion when the court imposed the sentence; the 20-year sentence the trial court imposed on resentencing was within the court's discretion, as the sentence fell within the statutory limits for the offense for which the defendant was convicted, possession of cocaine with intent to distribute. Bush v. State, 305 Ga. App. 617, 699 S.E.2d 899, 2010 Ga. App. LEXIS 763 (2010).

No modification of the defendant's sentence or hearing was mandated because the trial court considered the positive evidence presented by the defendant, weighed that evidence with the evidence of the defendant's prior criminal history, and the seriousness of the charge before pronouncing the sentence; the sentence was authorized by O.C.G.A.§ 16-13-30, and the record did not support the defendant's ineffective assistance of counsel claim. Benford v. State, 316 Ga. App. 95, 729 S.E.2d 414, 2012 Ga. App. LEXIS 492 (2012).

Even though the General Assembly reduced the punishment for possession of methamphetamine after the subject offense occurred, the trial court did not err in imposing a sentence within the range that existed at the time of the offense, and the sentence did not amount to cruel and unusual punishment. Thompson v. State, 332 Ga. App. 204, 770 S.E.2d 364, 2015 Ga. App. LEXIS 254 (2015), cert. denied, No. S15C1245, 2015 Ga. LEXIS 562 (Ga. Sept. 8, 2015).

Life sentence neither discriminatory nor disproportionate. —

Mandatory life sentence for second violation of O.C.G.A. § 16-13-30 did not violate defendant's equal protection or due process rights, nor was it disproportionate. Jackson v. State, 223 Ga. App. 471, 477 S.E.2d 893, 1996 Ga. App. LEXIS 1200 (1996).

Trial court lacked discretion to suspend, probate or defer sentence. —

When the defendant was twice convicted of selling cocaine, the trial court correctly held that the court lacked discretion to suspend, probate, or defer a portion of the defendant's life sentence. Mosley v. State, 203 Ga. App. 275, 416 S.E.2d 736, 1992 Ga. App. LEXIS 499 (1992).

Defendant held sentenced beyond statutory maximum. —

See Smith v. State, 186 Ga. App. 303, 367 S.E.2d 573, 1988 Ga. App. LEXIS 376 (1988).

Maximum sentence appropriate. —

Because conspiracy to manufacture methamphetamine was a crime penalized by a special law, the general provisions of the penal code did not apply; thus, under both O.C.G.A. §§ 16-13-30 and 16-13-33, which were mutually exclusive, defendant was properly sentenced to 30 years, which was the maximum sentence allowed. McWhorter v. State, 275 Ga. App. 624, 621 S.E.2d 571, 2005 Ga. App. LEXIS 1056 (2005).

Merger of sentences by operation of law. —

Convictions for possession of methamphetamine and criminal attempt to manufacture methamphetamine merged as a matter of fact since the state used the same conduct to establish commission of both crimes, namely the same methamphetamine oil found in a toilet; therefore, though it was permissible to prosecute defendant for each crime, defendant could not be convicted for both offenses and the possession conviction and sentence were vacated by operation of law on appeal. Womble v. State, 290 Ga. App. 768, 660 S.E.2d 848, 2008 Ga. App. LEXIS 412 (2008).

Merger of convictions. —

Defendant's conviction for manufacturing marijuana in violation of O.C.G.A. § 16-13-30(j)(1) should have been merged into the defendant's conviction for trafficking in marijuana in violation of O.C.G.A. § 16-13-31(c) because the same evidence was used to prove both crimes, and the manufacturing count did not require proof of any fact which the trafficking count did not require. Preval v. State, 302 Ga. App. 785, 692 S.E.2d 51, 2010 Ga. App. LEXIS 226 (2010).

Denial of merger. —

Because the defendant's convictions for attempt to sell oxycodone and possession with intent to distribute each required proof of a fact which the other did not, the trial court did not err in not merging the offenses and in sentencing the defendant on both. Crankshaw v. State, 336 Ga. App. 700, 786 S.E.2d 245, 2016 Ga. App. LEXIS 130 (2016).

Trial court did not err in failing to merge the defendant's convictions for possession of drug-related objects and possession of methamphetamine, each of which required proof that the other did not. Lee v. State, 347 Ga. App. 508, 820 S.E.2d 147, 2018 Ga. App. LEXIS 559 (2018).

Waiver of notice required for life term. —

Error by the trial court in imposing a life sentence when the defendant was not given formal notice prior to trial of the state's intent to demand recidivist punishment was waived by the defendant's failure to object at the time the state introduced the defendant's prior drug conviction into evidence during the presentencing phase of the trial. Tillman v. State, 217 Ga. App. 269, 457 S.E.2d 228, 1995 Ga. App. LEXIS 387 (1995), cert. denied, No. S95C1204, 1995 Ga. LEXIS 909 (Ga. July 14, 1995).

Term of 30-years imprisonment for sale of cocaine was not an abuse of discretion because, even though O.C.G.A. § 17-10-7(a) was not applicable, such term was within the statutory limits. Covington v. State, 231 Ga. App. 851, 501 S.E.2d 37, 1998 Ga. App. LEXIS 538 (1998).

Banishment. —

It was proper for the trial court to banish the defendant from all areas of Georgia north of Interstate 20 after the defendant pled guilty to possession of cocaine. The sentence allowed the defendant to receive rehabilitative services while at the same time removing the defendant from an area where the defendant committed the defendant's prior crimes and presumably had access to illegal drugs. Shook v. State, 300 Ga. App. 59, 684 S.E.2d 129, 2009 Ga. App. LEXIS 1083 (2009).

Rule of lenity inapplicable. —

Trial court did not err in failing to apply the rule of lenity because both of the defendant's offenses, trafficking in methamphetamine and misdemeanor possession of marijuana, O.C.G.A. §§ 16-13-30(e) and 16-13-31(b), were classified as felonies, and thus, the rule of lenity did not apply. Fyfe v. State, 305 Ga. App. 322, 699 S.E.2d 546, 2010 Ga. App. LEXIS 628 (2010), cert. denied, No. S10C1942, 2011 Ga. LEXIS 229 (Ga. Feb. 28, 2011), overruled in part, McNair v. State, 293 Ga. 282, 745 S.E.2d 646, 2013 Ga. LEXIS 594 (2013), overruled in part, Maddox v. State, 322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013).

Because there was no uncertainty that O.C.G.A. § 16-13-30(c)(1) applied to the defendant's sentencing, the rule of lenity was not applicable. Cooper v. State, 352 Ga. App. 783, 835 S.E.2d 724, 2019 Ga. App. LEXIS 628 (2019).

Remand for resentencing required. —

Because it was unclear which schedule, which Code section, and which sentencing range would apply to the substances the defendant pled guilty to selling, the defendant's sentences had to be vacated and the case remanded to the trial court for a hearing to determine on which schedule the controlled substances at issue belonged, and to impose a lawful and appropriate sentence. Williams v. State, 320 Ga. App. 243, 739 S.E.2d 727, 2013 Ga. App. LEXIS 159 (2013).

Search and Seizure

Anonymous tip serving as basis for investigatory stop. —

An investigative stop of the defendant's automobile which resulted in seizure of narcotics and the defendant's arrest did not violate the Fourth Amendment when the anonymous tip which formed the basis for the stop had been sufficiently corroborated by the arresting officer's recognition of the defendant as having been involved in an earlier drug investigation so as to furnish reasonable suspicion that the defendant was engaged in criminal activity. State v. Ball, 207 Ga. App. 729, 429 S.E.2d 258, 1993 Ga. App. LEXIS 320 (1993), cert. denied, No. S93C0921, 1993 Ga. LEXIS 566 (Ga. Apr. 15, 1993).

Search of probationer's residence. —

Trial court properly denied the defendant's motion to suppress because the court did not err in determining that the law-enforcement officers who searched the defendant's home had reasonable suspicion to suspect criminal activity or violations of probation based on the probation officer's concerns that the defendant was using drugs and attempting to avoid detection; thus, the search was conducted for probationary purposes, rather than for law-enforcement purposes. Whitfield v. State, 337 Ga. App. 167, 786 S.E.2d 547, 2016 Ga. App. LEXIS 286 (2016).

First-tier encounter. —

Trial court did not err in denying the defendant's motion for new trial after the defendant was convicted of possession of cocaine because the court properly denied a motion to suppress the defendant's statement to a police officer that the defendant had a crack pipe in a pocket; the initial interaction between the officer and the defendant was a first-tier consensual encounter, and thus, the defendant was free to disregard the officer's questions and walk away. Minor v. State, 314 Ga. App. 253, 723 S.E.2d 702, 2012 Ga. App. LEXIS 170 (2012).

Trial court properly denied the defendant's motion to suppress with regard to the defendant's drug conviction because the case involved a first-tier encounter wherein the officer asked for consent to search, which was given by the defendant and, therefore, the search was not a seizure and did not require articulable suspicion. Carter v. State, 319 Ga. App. 624, 737 S.E.2d 724, 2013 Ga. App. LEXIS 30 (2013)

seizure and did not require articulable suspicion. Carter v. State, 319 Ga. App. 624, 737 S.E.2d 724, 2013 Ga. App. LEXIS 30 (2013).

Motion to suppress filed by a defendant charged with possession of marijuana and possession of a drug-related object, O.C.G.A. §§ 16-13-30(j)(1) and 16-13-32.2(a), should have been denied because a deputy's question to the defendant, whether there was anything in the vehicle the deputy needed to know about, did not elevate a first-tier police-citizen encounter to a detention. State v. Martin, 337 Ga. App. 390, 787 S.E.2d 314, 2016 Ga. App. LEXIS 330 (2016).

Scope of consent. —

Given that a police officer was granted consent to search the defendant's hotel room to search for the victim's stolen truck keys, upon the officer's receipt of an inconclusive response that a set of keys found could belong to the victim, a continued search, which yielded methamphetamine, was reasonable, and did not exceed the original scope of consent granted; thus, the trial court did not err in denying the defendant's motion to suppress the drug evidence that officers found as a result of a continued search. Shuler v. State, 282 Ga. App. 706, 639 S.E.2d 623, 2006 Ga. App. LEXIS 1514 (2006).

State failed to prove that an officer's opening of a pill container found in the defendant's pocket was justified based on consent, when the defendant only consented to the removal of the pill box from the defendant's pocket, and the box was not immediately identifiable as contraband. Defendant's convictions on controlled substances charges were reversed. McCormack v. State, 325 Ga. App. 183, 751 S.E.2d 904, 2013 Ga. App. LEXIS 985 (2013).

Invalid consent. —

Any implied consent by the defendant emptying the defendant's own pockets while one officer had the officer's stungun pointed at the defendant rendered the "consent" invalid. State v. Williams, 281 Ga. App. 187, 635 S.E.2d 807, 2006 Ga. App. LEXIS 1022 (2006).

Oxycodone found in the glove box of a car was inadmissible because the oxycodone was discovered pursuant to a consent search that was the product of an unauthorized traffic stop. The officer had no reasonable suspicion to justify stopping the defendants other than that the defendants' car was "out of place" at an empty truck stop parking lot. Groves v. State, 306 Ga. App. 779, 703 S.E.2d 371, 2010 Ga. App. LEXIS 1052 (2010).

In the state's appeal, the trial court did not err in granting the defendant's motion to suppress because the court did not err in finding that the officers' detention of the defendant was unreasonable as the defendant's consent to the search of the defendant's purse was the product of an illegal detention, thus, it was not valid. State v. Allen, 330 Ga. App. 752, 769 S.E.2d 165, 2015 Ga. App. LEXIS 56 (2015).

Valid consent. —

Trial court did not err by denying the defendant's motion to suppress because the evidence established that the defendant's consent was voluntary in that the defendant signed the consent forms, gave the officer the key to the home, and the record showed that during the defendant's detention, no interrogation or questioning occurred, and the duration of the detention was not overly long; further, the defendant did not appear intoxicated, spoke fluent English, was not being punished or threatened, and the consent came after the defendant spontaneously sought out the officer to talk. Durham v. State, 320 Ga. App. 81, 739 S.E.2d 389, 2013 Ga. App. LEXIS 125 (2013).

Valid consent from handcuffed defendant. —

Defendant's conviction for possession of cocaine with the intent to distribute was upheld on appeal as the defendant failed to establish that the motion to suppress would have been granted had counsel not waived the issue because, even in handcuffs, the defendant voluntarily consented to the search of the vehicle and the defendant failed to show that the consent was invalid. Blitch v. State, 323 Ga. App. 677, 747 S.E.2d 863, 2013 Ga. App. LEXIS 709 (2013).

Pat-down search exceeded permissible scope. —

Because the state introduced no evidence that the defendant consented to an officer's opening of a matchbox retrieved from the defendant's pants, the officer was not concerned that a weapon was hidden in the box, and the box was not readily identifiable as contraband, the search of the defendant's person exceeded the permissible scope of a pat-down for weapons, requiring suppression of the cocaine found inside the matchbox. Mason v. State, 285 Ga. App. 596, 647 S.E.2d 308, 2007 Ga. App. LEXIS 594 (2007).

Pat-down search proper. —

Trial court did not err in denying the defendant's motion to suppress drug evidence found on the defendant's person because the defendant's detention and pat-down was justified; a narcotics investigator was justified in believing that the investigator's safety was at risk based on the circumstances, including that officers were searching a house to execute an arrest warrant for a resident thereof, suspicion of drug activity at the house had been reported by neighbors, and the defendant, who was sitting up in bed, failed to comply with the investigator's repeated commands that the defendant display the defendant's hands, which were obscured under the covers. Jones v. State, 314 Ga. App. 247, 723 S.E.2d 697, 2012 Ga. App. LEXIS 174 (2012).

Plain feel doctrine. —

Trial court did not err in denying the defendant's motion to suppress drug evidence found on the defendant's person because the seizure of the items in the defendant's pockets was lawful; under the plain feel doctrine, a narcotics investigator was entitled to seize the item, and the evidence was properly admitted; it was unnecessary for the investigator to conclusively identify what type of drug the defendant was carrying in order for the plain feel doctrine to make the seizure of the contraband lawful. Jones v. State, 314 Ga. App. 247, 723 S.E.2d 697, 2012 Ga. App. LEXIS 174 (2012).

Safety frisk justified. —

Trial court properly denied the defendant's motion to suppress the contraband found on the defendant's person as a result of a traffic stop that came to fruition after an officer observed the defendant making a U-turn in front of a recently robbed bank because the defendant admitted to having a knife in the defendant's pocket but refused to remove the defendant's hand therefrom. As a result, the police were justified in frisking the defendant for safety reasons and the contraband was, therefore, legally obtained from the defendant. Johnson v. State, 289 Ga. App. 27, 656 S.E.2d 161, 2007 Ga. App. LEXIS 1315 (2007).

Vehicle stop for seatbelt violation. —

When the officer testified that the officer had a clear and unobstructed view of the driver of the vehicle not wearing a seat belt, this view was sufficient to establish probable cause for the stop, and once the vehicle was lawfully stopped, the officer was allowed to ask for the driver's consent to search the car. State v. Millsap, 243 Ga. App. 519, 528 S.E.2d 865, 2000 Ga. App. LEXIS 103 (2000).

With regard to a defendant's convictions for possession of methamphetamine with intent to distribute, possession of a firearm during the commission of a drug offense, and carrying a concealed weapon, the trial court properly denied the defendant's motion to suppress the items seized from the defendant's vehicle and the defendant's person after a traffic stop as the defendant's failure to wear a seatbelt and to have insurance on the vehicle justified the traffic stop. Thereafter, after being released from the traffic stop and being asked to come back, the defendant consented to the search of the vehicle and of the defendant's person, which led to the seizure of the contraband. Hughes v. State, 293 Ga. App. 404, 667 S.E.2d 163, 2008 Ga. App. LEXIS 949 (2008).

Defendant's conviction on one count of felony possession of marijuana was upheld on appeal and the trial court did not err in denying the defendant's motion to suppress based on the defendant's assertion that the initial traffic stop was illegal because the initial stop, as well as the brief detention, was authorized as a result of the officer observing the defendant not wearing a seat belt. Davis v. State, 318 Ga. App.

166, 733 S.E.2d 453, 2012 Ga. App. LEXIS 872 (2012).

Vehicle stop due to broken taillight. —

Trial court properly denied a defendant's motion to suppress the evidence of drug contraband found in the defendant's vehicle after the vehicle was stopped due to a broken taillight as the officers had the right to detain the defendant while awaiting word as to possible outstanding warrants; a certified drug recognition expert questioned the defendant and observed the defendant having bloodshot eyes, droopy eyelids, and displaying relaxed inhibitions; and the defendant sufficiently and voluntarily consented to the search of the vehicle as was shown on a videotape of the traffic stop, despite the defendant being handcuffed at the time. Maloy v. State, 293 Ga. App. 648, 667 S.E.2d 688, 2008 Ga. App. LEXIS 1033 (2008).

Investigatory detention to search for weapon. —

After the subject of an investigative stop at an airport admitted the presence of a weapon, and the officers then removed that subject to the airport precinct for further investigation, the detention was reasonable under the circumstances, and evidence uncovered of illegal possession of a controlled substance during a subsequent search conducted with the subject's voluntary consent was improperly suppressed. State v. Crisanti, 220 Ga. App. 705, 470 S.E.2d 314, 1996 Ga. App. LEXIS 345 (1996).

Probable cause for arrest. —

Police search of a defendant's bag and person, which produced handguns, cocaine, cash, and other drugs was lawful because the search was made pursuant to the police officers' lawful warrantless arrest of the defendant when the defendant arrived at a motel room exactly answering a detailed description provided by a confidential informant, who stated that the defendant would be carrying a shoulder bag containing drugs and a loaded handgun. Green v. State, 302 Ga. App. 388, 691 S.E.2d 283, 2010 Ga. App. LEXIS 135 (2010).

Trial court did not err in denying the defendant's motion to suppress evidence a police officer recovered from a rental car because the officer had reasonable grounds for detaining the defendant since the officer found the defendant and a friend in the parking lot of a closed business late at night, knew that several burglaries and thefts had occurred in the area recently, and observed that the defendant and the friend appeared to be nervous when the officer spoke with them; in the course of securing a firearm the officer saw a firearm in the center console of the rental car, the officer saw in plain view a digital scale with white residue, affording the officer probable cause to effect a custodial arrest of the defendant. Culpepper v. State, 312 Ga. App. 115, 717 S.E.2d 698, 2011 Ga. App. LEXIS 905 (2011).

Defendant's motion for independent expert to examine seized substances rejected. —

Trial court did not err in refusing to grant a continuance to allow an independent expert chemist of defendant's choice sufficient time to analyze the seized controlled substances and testify at trial since the defendant did not move to have this expert appointed until after the trial had commenced, the earliest possible time the expert could testify would be the end of the week, and the court expected the trial to be over by that time, but expressed the court's willingness to appoint someone else who would not unduly delay the trial. Dixon v. State, 180 Ga. App. 222, 348 S.E.2d 742, 1986 Ga. App. LEXIS 2685 (1986).

Shared curtilage affects admissibility. —

It is confusing to combine the concepts of "common area" and "curtilage" in deciding whether a particular area adjoining an apartment building is entitled to protection; therefore, the test should be the reasonableness of the resident's expectation of privacy and the officer's reasons for being in the yard. Espinoza v. State, 265 Ga. 171, 454 S.E.2d 765, 1995 Ga. LEXIS 156 (1995).

Evidence was not within the curtilage shared by two units in a duplex where it was not found in the hallway leading to both units or in the front yard between two driveways leading to the dwelling. Because the evidence was located in the yard outside the driveway leading to defendant's unit, an area where defendant had a reasonable expectation of privacy, i.e., a part of the curtilage of defendant's unit, for which police did not have a search warrant, the evidence should have been suppressed. Espinoza v. State, 265 Ga. 171, 454 S.E.2d 765,

1995 Ga. LEXIS 156 (1995).

Wooded area not part of curtilage. —

In woods 50 yards from the defendant's home, police found items used to manufacture methamphetamine under a tarp. The wooded area where the contraband was found was not so closely tied to the defendant's home as to warrant protection as curtilage under the Fourth Amendment. Minor v. State, 298 Ga. App. 391, 680 S.E.2d 459, 2009 Ga. App. LEXIS 687 (2009), cert. denied, No. S09C1744, 2009 Ga. LEXIS 771 (Ga. Nov. 9, 2009).

Use of a trained drug detection dog. —

Record supported the trial court's judgment that a vehicle checkpoint that was established to check drivers' licenses, registrations, and proof of insurance was established for a legitimate purpose, that a police officer did not violate defendant's rights when the officer walked a drug detection dog around defendant's car while another officer was checking the validity of defendant's driver's license, and that police had probable cause to search defendant's car after the dog alerted on it, and the trial court properly denied a motion to suppress evidence which defendant filed after defendant was charged with trafficking in cocaine and possession of cocaine with intent to distribute, and convicted defendant of both offenses. McCray v. State, 268 Ga. App. 84, 601 S.E.2d 452, 2004 Ga. App. LEXIS 851 (2004).

Search for heroin or cocaine prior to arrest. —

Totality of circumstances provided sufficient probable cause to arrest and search defendant at airport for possession of heroin or cocaine, and fact that search preceded arrest rather than vice versa was not particularly important where formal arrest followed quickly on heels of search. Berry v. State, 163 Ga. App. 705, 294 S.E.2d 562, 1982 Ga. App. LEXIS 3242 (1982).

Entrapment. —

Defendant's testimony, corroborated by a paid informant, established a prima facie case of entrapment. There was no evidence introduced that, prior to the defendant's entrapment, defendant had a predisposition to deliver, sell, distribute, or knowingly possess cocaine as forbidden by O.C.G.A. § 16-13-30(b). Since the state failed to introduce evidence to rebut the affirmative defense of entrapment, the defendant was entitled to a directed verdict of acquittal. Hill v. State, 261 Ga. 377, 405 S.E.2d 258, 1991 Ga. LEXIS 322 (1991).

Entrapment defense was properly rebuted. —

Trial court properly denied the defendant's motion for a new trial because even assuming that the defendant established a prima facie case of entrapment, the jury was authorized to find the state's evidence rebutted that defense beyond a reasonable doubt as the jury heard an audio recording of the defendant boasting that the defendant had sold a gram of heroin for $65 and that no one could get clean off of the defendant's product; thus, there was some evidence to disprove entrapment. Johnson v. State, 355 Ga. App. 683, 845 S.E.2d 419, 2020 Ga. App. LEXIS 370 (2020).

Ineffective assistance of counsel claim dismissed despite defendant's claim of working with police. —

After the defendant was convicted of selling cocaine, the trial court did not err in denying the defendant's claim of ineffective assistance of counsel since the defendant failed to show that counsel did not adequately prepare for trial or that counsel's performance was deficient and that such deficiency prejudiced the defendant's defense that the defendant was working with the police and had made the sale as part of an attempt to catch another drug dealer. Sullivan v. State, 259 Ga. App. 708, 578 S.E.2d 277, 2003 Ga. App. LEXIS 242 (2003).

Nervousness in the presence of police officers does not provide reasonable articulable suspicion. —

When officers testified the officers observed a black male exit a breeze way known for drug sales and walk in a hurried fashion toward the

which officers testified the officers observed a black male exit a breeze way known for drug sales and walk in a hurried fashion toward the male's car, becoming nervous when seeing the officers, this activity does not amount to the reasonable articulable suspicion required for a Terry stop. Peters v. State, 242 Ga. App. 816, 531 S.E.2d 386, 2000 Ga. App. LEXIS 352 (2000).

Nervousness inadequate for prolonging detention. —

As an officer did not detain a defendant for an unreasonable length of time after a traffic stop, the fact that the defendant's nervousness alone did not provide the officer with reasonable suspicion to prolong the detention was immaterial as the defendant consented to a search of the defendant's vehicle. As there was no Fourth Amendment violation, methamphetamine and drug paraphernalia found during the search did not have to be suppressed. McKnight v. State, 296 Ga. App. 38, 673 S.E.2d 573, 2009 Ga. App. LEXIS 122 (2009).

Traffic stop concluded. —

After issuing a courtesy warning ticket for a seatbelt violation to defendant, the traffic stop was concluded and defendant's continued detention was excessive because the officer's testimony did not establish reasonable suspicion of criminal activity. State v. Cunningham, 246 Ga. App. 663, 541 S.E.2d 453, 2000 Ga. App. LEXIS 1323 (2000).

Traffic stop not unreasonably prolonged. —

After an officer stopped a defendant for speeding at 3:32 A.M., the officer was given two different names for the defendant's intoxicated teenaged passenger; neither name was in the system. As the officer testified that in 90 percent of the cases, this meant that there was an outstanding warrant, suspension, probation, or parole, the officer had reasonable grounds to prolong the traffic stop; therefore, the methamphetamine the officer found in a consent search of a box hidden under the defendant's leg did not have to be suppressed. Matthews v. State, 294 Ga. App. 836, 670 S.E.2d 520, 2008 Ga. App. LEXIS 1329 (2008).

As an officer's questioning of the defendant, after a traffic stop, about the defendant's length of time in Georgia was done to determine whether the defendant was in compliance with O.C.G.A. §§ 40-2-8(a) and 40-5-20(a), and did not unreasonably prolong the stop, the defendant's rights under U.S. Const., amend. IV were not violated. Therefore, methamphetamine seized from the defendant's purse during the stop did not have to be suppressed. Sommese v. State, 299 Ga. App. 664, 683 S.E.2d 642, 2009 Ga. App. LEXIS 925 (2009).

State trooper's request to search a defendant's vehicle after telling the defendant that the defendant was free to go did not unreasonably prolong the detention and did not violate the defendant's Fourth Amendment rights. Therefore, the four pounds of marijuana found during the search was not subject to suppression. Davis v. State, 303 Ga. App. 785, 694 S.E.2d 696, 2010 Ga. App. LEXIS 336 (2010), cert. denied, No. S10C1405, 2010 Ga. LEXIS 716 (Ga. Sept. 20, 2010).

Search of vehicle incident to arrest for driving under suspension. —

Though central dispatch advised an officer that the defendant had not been served with notice of suspension of the defendant's license, the officer had probable cause to arrest the defendant for driving under suspension (O.C.G.A. § 40-5-121) as the officer had no way of knowing whether the defendant had obtained actual or constructive notice of the suspension by other means. Thus, drugs found in a search of the defendant's car incident to the arrest were admissible; the trial court's ultimate conclusion that the defendant did not have notice of the suspension did not "retroactively vitiate" the probable cause supporting the arrest. Johnson v. State, 297 Ga. App. 254, 676 S.E.2d 884, 2009 Ga. App. LEXIS 449 (2009).

Initial approach of vehicle justified. —

Officers' initial approach of defendant's vehicle and request for consent to search were warranted, even without an articulable suspicion of criminal activity at the time of their approach; moreover, even if a reasonable articulable suspicion of criminal activity had been required to briefly detain defendant, the officers had such suspicion upon seeing: (1) individuals approach defendant's car in an area known for drug

activity; (2) the individuals turn and walk away upon seeing the police; and (3) defendant's passenger swallowing what appeared to be a crack rock as the police approached. Sego v. State, 279 Ga. App. 484, 631 S.E.2d 505, 2006 Ga. App. LEXIS 615 (2006).

Consent search during sobriety roadblock. —

With regard to a defendant being charged with possessing drugs, the trial court properly denied the defendant's motion to suppress the drugs found in the defendant's vehicle during a sobriety roadblock as the roadblock was legal and the defendant voluntarily consented to the search. Britt v. State, 294 Ga. App. 142, 668 S.E.2d 461, 2008 Ga. App. LEXIS 1088 (2008).

Passenger's behavior provided reasonable suspicion and consent search authorized. —

In a prosecution for possession of methamphetamine and hydrocodone, a passenger, when questioned by police, was fidgety and nervous, stuttered, would not make eye contact, and fell after exiting the car. The passenger's behavior gave police reasonable suspicion to believe that the passenger had taken drugs, which justified the police in detaining the passenger and the defendant (who was the driver) while the police conducted a consent search of the car, which belonged to the passenger's boss. Robinson v. State, 295 Ga. App. 136, 670 S.E.2d 837, 2008 Ga. App. LEXIS 1336 (2008), cert. denied, No. S09C0622, 2009 Ga. LEXIS 211 (Ga. Apr. 20, 2009).

Defendant never withdrew consent to search. —

With regard to a defendant's conviction for possession of methamphetamine, the trial court properly denied the defendant's motion to suppress the drugs found on the defendant's person as the police obtained the defendant's consent to search the defendant's person and the defendant's failure to produce all of the items from the defendant's pockets did not amount to a withdrawal of the consent to search. Allison v. State, 293 Ga. App. 447, 667 S.E.2d 225, 2008 Ga. App. LEXIS 968 (2008).

Voluntary consent to search hotel room. —

Trial court did not err in denying a motion to suppress evidence a police officer seized in a hotel room because the trial court was authorized to find that the state satisfied the state's burden of showing that the defendant's consent to enter the hotel room was voluntary and not the product of coercion, express or implied; the officer's testimony and the defendant's statement supported a finding that the officer requested and received the defendant's consent to enter the hotel room under circumstances that did not suggest either coercion or threat, and the trial court was authorized to infer that the defendant's consent to search was freely given in the calculated hope that the officer would not find the hidden contraband. Liles v. State, 311 Ga. App. 355, 716 S.E.2d 228, 2011 Ga. App. LEXIS 721 (2011).

Group search. —

Trial court erred in granting the defendant's motion to suppress evidence of contraband, namely, defendant's possession of marijuana, as police officer's discovery of the marijuana was not pursuant to an impermissible pat-down search that two other officers conducted on a group of students, including the defendant, but was pursuant to the defendant's invitation for the officer to search the defendant after the officer asked the defendant why the defendant's license had been suspended; however, a remand was necessary to determine whether the defendant's consent to search was voluntarily given. State v. Baker, 261 Ga. App. 258, 582 S.E.2d 133, 2003 Ga. App. LEXIS 562 (2003).

Consent of probationer to search. —

When officers went to a defendant's residence to conduct a probation search based on a tip that the defendant was involved with drugs as the defendant willingly led the officers to a concealed gun, and voluntarily furnished a urine sample that tested positive for methamphetamine, the defendant gave valid consent to the search, which eliminated the need for either probable cause or a search warrant under U.S. Const., amend. IV. Brooks v. State, 285 Ga. 424, 677 S.E.2d 68, 2009 Ga. LEXIS 155 (2009).

Failure to file timely motion. —

In a prosecution for possession of cocaine with intent to distribute, because the defendant failed to voice an objection at trial regarding an inaccuracy in a search warrant affidavit as to the precise location of the alleged cocaine sale which served as the basis of the charge, but instead raised the objection for the first time in a motion for a new trial, the objection was late; thus, the appellate court's review of the motion was waived. Jackson v. State, 281 Ga. App. 368, 636 S.E.2d 34, 2006 Ga. App. LEXIS 988 (2006).

Suppression motion improperly granted. —

Because the evidence gathered while the defendant's residence was under surveillance, including the contents of the defendant's garbage as well as an officer's specific testimony regarding marijuana residue found on a piece of plastic wrap, supported a finding of probable cause necessary to justify the issuance of a search warrant for the defendant's residence, suppression of the evidence seized as a result of the execution of the search warrant was improper. State v. Davis, 288 Ga. App. 164, 653 S.E.2d 311, 2007 Ga. App. LEXIS 1049 (2007).

Evidence seized from search based on valid arrest warrant. —

Trial court did not err in denying the defendant's motion to suppress evidence found on the defendant's person because officers' search of a resident's house, where the officers found the defendant with a methamphetamine pipe, was legal since the police reasonably believed that the resident was in the house at the time of their entry based upon information from a neighbor and the fact that the vehicle registered to the resident was parked in front of the house; because the police had a valid arrest warrant for the resident and limited their search to those areas where the resident could be located, the fact that the officers could have been motivated to enter the house to search for drugs was immaterial and did not render the entry and subsequent seizure of evidence from the defendant illegal. Jones v. State, 314 Ga. App. 247, 723 S.E.2d 697, 2012 Ga. App. LEXIS 174 (2012).

Trial court did not err in denying the defendant's motion to suppress evidence seized from a residence because an investigator's knowledge was not so remote that it made it unlikely that methamphetamine manufacturing activities would be found at the premises at the time the warrant was issued; the investigator's knowledge coincided with an officer's detection of a strong odor of ether at the premises, and the search warrant was both issued and executed on the same day that the odor was detected. Newton v. State, 313 Ga. App. 889, 723 S.E.2d 95, 2012 Ga. App. LEXIS 104 (2012).

Sufficient probable cause for issuance of search warrant. —

Trial court did not err in denying the defendant's motion to suppress evidence seized from a residence because the totality of the circumstances presented probable cause supporting the magistrate's issuance of a search warrant of the premises; in addition to the strong odor of ether, a DEA-trained officer knew that the odor was indicative of a methamphetamine laboratory operation, there was a prior report that a methamphetamine laboratory was being operated on the premises, and a co-defendant had previously admitted to selling methamphetamine. Newton v. State, 313 Ga. App. 889, 723 S.E.2d 95, 2012 Ga. App. LEXIS 104 (2012).

Presence in high drug area insufficient for stop. —

Officer did not have specific articulable facts sufficient to give rise to a reasonable suspicion of criminal activity and therefore the court should have granted the defendant's motion to suppress the cocaine and marijuana evidence. Specifically, while the officer believed that the defendant was involved in a criminal activity because the defendant briefly visited a motel located in a high drug area, and the defendant's brief visit was consistent with drug activity, a person's mere presence in a high crime area does not give rise to reasonable suspicion of criminal activity, even if police observe conduct which the police believe consistent with a general pattern of such activity. Adkinson v. State, 322 Ga. App. 1, 743 S.E.2d 563, 2013 Ga. App. LEXIS 433 (2013).

Odor constitutes sufficient probable cause for issuance of search warrant.

Odor constitutes sufficient probable cause for issuance of search warrant. —

Trial court erred in granting the defendant's motion to suppress by ruling that the odor of marijuana alone could not establish the requisite probable cause for the issuance of a search warrant for a residence as the appellate court overruled the holding in State v. Pando, 284 Ga. App. 70 (2007), that the presence of odors could never be the sole basis for the issuance of a search warrant; and determined that, if the affidavit for the search warrant contained sufficient information for a magistrate to determine that the officer who detected the odor of marijuana emanating from a specified location was qualified to recognize the odor, the presence of such an odor could be the sole basis for the issuance of a search warrant. State v. Kazmierczak, 331 Ga. App. 817, 771 S.E.2d 473, 2015 Ga. App. LEXIS 250 (2015).

If the affidavit for the search warrant contains sufficient information for a magistrate to determine that the officer who detected the odor of marijuana emanating from a specified location is qualified to recognize the odor, the presence of such an odor may be the sole basis for the issuance of a search warrant; to the extent that the holdings in Patman v. State, 244 Ga. App. 833 (2000), Shivers v. State, 258 Ga. App. 253 (2002), State v. Fossett, 253 Ga. App. 791 (2002), State v. Charles, 264 Ga. App. 874 (2003), Boldin v. State, 282 Ga. App. 492 (2006), and Martinez-Vargas v. State, 317 Ga. App. 232 (2012), can be interpreted as support for the premise that the odor of raw marijuana emanating from a particular location cannot be the sole basis for the issuance of a search warrant for that location, such interpretations are disapproved. State v. Kazmierczak, 331 Ga. App. 817, 771 S.E.2d 473, 2015 Ga. App. LEXIS 250 (2015).

Controlled buys demonstrated reliability of informant justifying search. —

With regard to drug-related convictions, the trial court properly denied the defendant's motion to suppress because the search warrant was supported by probable cause in that the confidential informant took a position against penal interest by reporting to officers that the informant bought drugs from the defendant, the officer stated that the information supplied by the confidential informant was confirmed by conducting three controlled drug purchases from the defendant, and the controlled buys strongly corroborated the reliability of the informant and demonstrated a fair probability that contraband would be found in the defendant's house. Reid v. State, 321 Ga. App. 653, 742 S.E.2d 166, 2013 Ga. App. LEXIS 367 (2013).

Possession

Unlawful possession of any controlled substance, regardless of amount, constitutes an offense. Scott v. State, 170 Ga. App. 409, 317 S.E.2d 282, 1984 Ga. App. LEXIS 2888, aff'd, 253 Ga. 147, 317 S.E.2d 830, 1984 Ga. LEXIS 855 (1984).

Possession as lesser included offense of conspiracy to purchase marijuana. —

Trial court did not plainly err by failing to instruct the jury on possession of marijuana as a lesser-included offense of conspiracy to purchase marijuana because the offense of possession of marijuana was not a lesser-included offense of conspiracy to purchase marijuana as the facts necessary to prove each offense were different. Hunter v. State, 355 Ga. App. 520, 844 S.E.2d 858, 2020 Ga. App. LEXIS 346 (2020).

Possession not included in crime of manufacturing. —

Possession of marijuana is not a necessary element of the crime of knowingly manufacturing marijuana by cultivating or planting, and so misdemeanor possession is not a lesser offense included in the crime of manufacturing as a matter of law. Galbreath v. State, 213 Ga. App. 80, 443 S.E.2d 664, 1994 Ga. App. LEXIS 459 (1994); Hunt v. State, 222 Ga. App. 66, 473 S.E.2d 157, 1996 Ga. App. LEXIS 537 (1996), cert. denied, No. S96C1728, 1996 Ga. LEXIS 1005 (Ga. Oct. 11, 1996).

Possession included in offense of possession with intent to distribute. —

Offense of possession of marijuana was a lesser included offense of the offense of possession of marijuana with intent to distribute, where the possession charge could be established by proof of a less culpable mental state (general criminal intent) than was required to establish

the commission of possession with intent to distribute (specific criminal intent to distribute). Talley v. State, 200 Ga. App. 442, 408 S.E.2d 463, 1991 Ga. App. LEXIS 1059 (1991).

Possession of marijuana is a lesser included offense of the offense of possession of marijuana with intent to distribute as a matter of law. Hardeman v. State, 216 Ga. App. 165, 453 S.E.2d 775, 1995 Ga. App. LEXIS 55 (1995).

Evidence sufficient to prove possession and intent to distribute. —

Evidence that small baggies of cocaine were found in a large plastic bag on the ground, where the defendant had been observed dropping what appeared to the officer to be a baseball-size clear looking bag, permitted a rational trier of fact to infer that the defendant had been in possession of the cocaine. Ample evidence showed the defendant's intent to distribute the cocaine. Barber v. State, 317 Ga. App. 600, 732 S.E.2d 125, 2012 Ga. App. LEXIS 772 (2012).

Sufficient evidence supported the defendant's conviction for possession of cocaine with the intent to distribute because the jury could infer from a narcotics officer's expert opinion testimony that the defendant possessed the cocaine with the intent to distribute the cocaine, given the way the defendant concealed the drugs, the way the drugs were packaged for street sale, the amount of drugs on the defendant's person, and the fact that the defendant lacked a device for using the drugs. Moreover, the jury could infer that the defendant was selling drugs given that a citizen alerted the police to suspicious activity at the address where the defendant was found and because the defendant was lingering around a house that was not the defendant's home, late at night, in a high drug-sales area, without a credible explanation. Thomas v. State, 321 Ga. App. 214, 741 S.E.2d 298, 2013 Ga. App. LEXIS 340 (2013), cert. denied, No. S13C1182, 2013 Ga. LEXIS 777 (Ga. Sept. 23, 2013), overruled in part, Langley v. State, No. S21G0783, 2022 Ga. LEXIS 14 (Ga. Feb. 1, 2022).

Appellate court refused to disturb the jury's verdict convicting the defendant of possession of drugs with the intent to distribute because after hearing the evidence and having the opportunity to judge the credibility of the witnesses, the jury properly concluded that the only reasonable hypothesis was that the defendant possessed the drugs found hidden in the kitchen, despite the defendant's argument that others had equal access. King v. State, 325 Ga. App. 777, 755 S.E.2d 22, 2014 Ga. App. LEXIS 74 (2014).

Evidence was sufficient to convict the defendant of possession of marijuana with intent to distribute because the marijuana found in the stolen car was packaged in nine individual baggies, with eight of the baggies contained in a larger plastic bag on the driver's side floorboard and the ninth baggie on the passenger seat; the sheriff's investigator testified that, based on the sheriff's training and experience, the marijuana was packaged in a manner commonly used for distribution; the victim, who had the victim's car stolen, testified at trial that the marijuana did not belong to the victim; and any rational trier of fact could infer that the defendant possessed marijuana, a controlled substance, with intent to distribute. McNorrill v. State, 338 Ga. App. 466, 789 S.E.2d 823, 2016 Ga. App. LEXIS 472 (2016).

Evidence was sufficient to convict the defendant of possession of methamphetamine, possession of methamphetamine with intent to distribute, and two counts of possession of drug-related objects as the state presented ample evidence of the defendant's constructive possession of the methamphetamine and drug paraphernalia found inside a fabric bag because the contraband was found in the defendant's residence, which authorized a jury to presume that the defendant possessed it; a witness testified that the defendant and another individual sold methamphetamine; and a law-enforcement officer testified that the items contained in the bag, such as separate baggies and a digital scale, showed an intent to distribute drugs. Duncan v. State, 346 Ga. App. 777, 815 S.E.2d 294, 2018 Ga. App. LEXIS 387 (2018), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Conspiracy to possess marijuana with intent to distribute is not a lesser included offense of possession. Rowe v. State, 181 Ga. App. 492, 352 S.E.2d 813, 1987 Ga. App. LEXIS 2543 (1987).

Prima facie case of unlawful possession of controlled substance. —

If state proves that the defendant possessed controlled substance in a container without a label indicating a valid prescription, the state has established a prima facie case and shifts to the defendant the burden of going forward with evidence showing that the defendant's possession was under a valid prescription or that the defendant was otherwise exempted from the Georgia Controlled Substances Act,

O.C.G.A. § 16-13-20 et seq. Nix v. State, 135 Ga. App. 672, 219 S.E.2d 6, 1975 Ga. App. LEXIS 1778 (1975).

Head of household presumption of possession of contraband found therein is no longer a viable presumption in Georgia. Ramsay v. State, 175 Ga. App. 97, 332 S.E.2d 390, 1985 Ga. App. LEXIS 2776 (1985).

Evidence sufficient for conviction of selling heroin at townhome. —

Defendant's convictions for trafficking in heroin and possession with intent to distribute cocaine were supported by evidence that the drugs were found in plain view in the townhome, the defendant was seen selling heroin to an informant in the front yard, and the defendant had $3,189 in cash and three cell phones, one of which was used to communicate with a person being investigated for selling drugs, in the defendant's possession when arrested. Hargrove v. State, 361 Ga. App. 106, 863 S.E.2d 364, 2021 Ga. App. LEXIS 439 (2021).

Evidence of apartment "ownership" held sufficient. —

Defendant's convictions for trafficking in cocaine and possession of heroin with intent to distribute was sustained even though the evidence connecting the defendant to the apartment was circumstantial. Williams v. State, 262 Ga. App. 67, 584 S.E.2d 625, 2003 Ga. App. LEXIS 713 (2003).

Cash as proof of intent to distribute. —

It was not error to admit into evidence $390 in cash found on defendant at the time of defendant's arrest for possessing heroin with intent to distribute, where defendant was unemployed, and there was testimony that the packets of heroin defendant dropped by defendant's feet were the size packets that sold for 10 to 20 dollars and the money found in defendant's possession was in denominations of mostly 10 and 20 dollar bills. Such evidence would tend to show that defendant had been selling heroin and that defendant intended to distribute the packages of heroin in defendant's possession. Thus, the money had probative value in determining the issue of intent. Houston v. State, 180 Ga. App. 267, 349 S.E.2d 228, 1986 Ga. App. LEXIS 2708 (1986).

While a defendant was presumed to be in possession of cocaine found in a car that the defendant owned, the defendant argued the presumption was rebutted by evidence that others in the car had equal access to the drugs. As the defendant also possessed $494 in cash, the jury was not compelled to find the presumption of possession rebutted; therefore, the evidence, including testimony that the number of bags of cocaine found was inconsistent with personal consumption, was sufficient to convict the defendant of possession of cocaine with intent to distribute in violation of O.C.G.A. § 16-13-30(b). Hamilton v. State, 293 Ga. App. 297, 666 S.E.2d 630, 2008 Ga. App. LEXIS 926 (2008).

Allegation that the defendant "unlawfully," possessed cocaine was sufficient to encompass both the intent to commit the proscribed act and the knowledge necessary to form that intent. Dye v. State, 177 Ga. App. 813, 341 S.E.2d 469, 1986 Ga. App. LEXIS 1554 (1986).

Prescription drugs prescribed for another. —

Nothing in the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., authorizes possession of controlled substances that allegedly were prescribed for someone other than the defendant but were not in the prescription container when found in the possession of the defendant. Black v. State, 194 Ga. App. 660, 391 S.E.2d 432, 1990 Ga. App. LEXIS 286 (1990), cert. denied, No. S90C0803, 1990 Ga. LEXIS 769 (Ga. Apr. 5, 1990).

Evidence sufficient to prove oxycodone pills were controlled substance. —

Testimony from experts in drug identification that, based on the fact that the logo on pills found in the defendant's possession matched that of pharmaceutically prepared oxycodone tablets, the pills were oxycodone, was sufficient to allow a reasonable jury to conclude that the defendant possessed that controlled substance. Kessinger v. State, 298 Ga. App. 479, 680 S.E.2d 546, 2009 Ga. App. LEXIS 713 (2009).

Multiple offenses for simultaneous possession. —

Defendant may be prosecuted, convicted, and separately sentenced for the simultaneous possession of each of the controlled substances listed in O.C.G.A. § 16-13-26. Tabb v. State, 250 Ga. 317, 297 S.E.2d 227, 1982 Ga. LEXIS 1235 (1982).

Sole or joint possession. —

Law recognizes that possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons shared actual or constructive possession of a thing, possession is joint. Anderson v. State, 166 Ga. App. 459, 304 S.E.2d 550, 1983 Ga. App. LEXIS 3242 (1983).

Although a probationer's boyfriend claimed ownership to methamphetamine found in a tin in the probationer's dresser drawer, the trial court, as the finder of fact, was entitled to believe that testimony while disbelieving a professed exclusive ownership of the methamphetamine; moreover, the fact that the tin was found in the probationer's dresser drawer provided more than a mere spatial connection between the probationer and this particular contraband. Giang v. State, 285 Ga. App. 491, 646 S.E.2d 710, 2007 Ga. App. LEXIS 555 (2007).

Evidence sufficient to prove constructive, joint possession. —

When police officers in execution of a no-knock search warrant on the home where the teenage defendant lived with defendant's mother found a sock with cocaine in the sock floating in a toilet of a bathroom that defendant had exited, defendant's cousin acknowledged seeing defendant with the sock earlier and suspecting drugs were in the sock, and the officers also found marijuana and crack cocaine in a cigar box that defendant admitted owning during an earlier detention hearing, the evidence was sufficient to prove the defendant was in constructive, joint possession of the drugs. In the Interest of R.S., 253 Ga. App. 409, 559 S.E.2d 143, 2002 Ga. App. LEXIS 86 (2002).

By showing circumstantially that the defendant and two codefendants had equal access to the cocaine and marijuana in the defendant's truck, the evidence established that all three were parties to the crime and, thus, guilty of joint constructive possession of the drugs under O.C.G.A. §§ 16-13-2(b) and 16-13-30(b). Davis v. State, 270 Ga. App. 777, 607 S.E.2d 924, 2004 Ga. App. LEXIS 1601 (2004).

Defendant's conviction for possession of marijuana was affirmed as an accomplice testified that the accomplice and the defendant smoked a substance and that it was marijuana; having smoked the substance repeatedly and with it only inches away from the defendant in the glove compartment, the defendant had the power and intention to exercise dominion or control over the marijuana and to have constructively and jointly possessed it with the accomplice. Michael v. State, 281 Ga. App. 289, 635 S.E.2d 790, 2006 Ga. App. LEXIS 989 (2006), cert. denied, No. S07C0097, 2006 Ga. LEXIS 950 (Ga. Nov. 6, 2006), overruled in part, Gibbs v. State, 340 Ga. App. 723, 798 S.E.2d 308, 2017 Ga. App. LEXIS 126 (2017).

Despite the defendant's contrary claim, the state presented sufficient evidence that the defendant and the codefendants had joint constructive possession of the contraband seized, and that the jury could reject the defendant's equal access defense, given that: (1) some of that contraband was found in a bedroom in which the defendant slept and underneath the defendant's mattress; and (2) a large amount of cash was found in the defendant's purse. Castillo v. State, 288 Ga. App. 828, 655 S.E.2d 695, 2007 Ga. App. LEXIS 1308 (2007).

There was sufficient evidence to support the defendants' convictions for trafficking in cocaine and possession of less than one ounce of marijuana because the evidence established that the contraband was found in a shoe under the driver's seat of the van the defendants were traveling in, and sufficient circumstantial evidence proved that the defendant driver had the power and intention to exercise dominion or control over the cocaine and marijuana based on that defendant's driving of the van at the time of the traffic stop. There was sufficient circumstantial evidence to establish that the defendant occupant had the power and intention to exercise dominion or control over the cocaine and marijuana found in the van based on that defendant's conflicting story given to the police with regard to what the defendants were doing and the fact that a smoking pipe that tested positive for cocaine was found on that defendant's person. Woodard v. State, 289 Ga. App. 643, 658 S.E.2d 129, 2008 Ga. App. LEXIS 101 (2008), cert. denied, No. S08C1061, 2008 Ga. LEXIS 475 (Ga. June 2, 2008),

overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Because the codefendant testified and identified the defendant as the owner of the cocaine at issue, and because the defendant was standing next to the cocaine in plain view, evidence presented at trial was sufficient to support defendant's joint and constructive

possession of the cocaine; moreover, defendant's act of pointing to evidence that the codefendant had equal access to the cocaine was of no consequence as the equal access doctrine did not apply to those charged with being in joint constructive possession of contraband. Slade v. State, 289 Ga. App. 877, 658 S.E.2d 439, 2008 Ga. App. LEXIS 222 (2008).

There was sufficient evidence to support defendant's conviction for possession of methamphetamine as the state produced evidence connecting the defendant to methamphetamine oil found in a toilet by more than spatial proximity since the evidence showed that the production of methamphetamine oil was a final stage in the process of manufacturing methamphetamine in a form suitable for sale and personal use, and officers recognized the strong odor of the methamphetamine manufacturing process permeating the house where defendant was located along with methamphetamine oil. Womble v. State, 290 Ga. App. 768, 660 S.E.2d 848, 2008 Ga. App. LEXIS 412 (2008).

When the defendants, a married couple who were in a car with a third person, were charged with trafficking in cocaine, possession of cocaine with intent to distribute, possession of amphetamine, and possession of a firearm during certain crimes, there was sufficient evidence that the defendants had joint constructive possession of a duffel bag in which drugs and a weapon were found. The evidence showed that one spouse exercised control over the car that transported the contraband and that the other spouse tried to retrieve a paper sack inside the duffel bag at the sheriff's office with suspicious and inconsistent explanations. Howard v. State, 291 Ga. App. 289, 661 S.E.2d 644, 2008 Ga. App. LEXIS 467 (2008).

Even if others had access to cocaine found in a kitchen, a jury could infer that a defendant had joint constructive possession of the cocaine since the evidence showed that the defendant had been seen earlier in the day with 15 bags of cocaine that the defendant said the defendant planned to sell that day, that when the police came to execute a warrant on an alleged drug dealer's house the defendant ran into the house where the defendant was found in the kitchen with seven bags of cocaine and a heated pot of grease containing three additional "hits," and that the defendant was the only one in the kitchen. Riley v. State, 292 Ga. App. 202, 663 S.E.2d 835, 2008 Ga. App. LEXIS 745 (2008).

Defendant's convictions for trafficking in methamphetamine and possession of cocaine were upheld on appeal as the jury was authorized to find that the defendant constructively possessed the contraband since the defendant lived at the apartment searched by consent and despite the fact that others living in the apartment had equal access to the drugs. Additionally, the defendant was found lying on a mattress atop a bag containing more than an ounce of methamphetamine. Maldonado v. State, 293 Ga. App. 356, 667 S.E.2d 156, 2008 Ga. App. LEXIS 940 (2008).

Two intruders entered a house through a window, threatened the occupants with handguns, and stole over an ounce of marijuana from the house. As defendant was found trapped behind the steering wheel of the get-away vehicle after the vehicle crashed while fleeing a patrol car (the intruders having fled), the evidence was sufficient to establish that the defendant and the intruders were in joint, constructive possession of the marijuana. Olds v. State, 293 Ga. App. 884, 668 S.E.2d 485, 2008 Ga. App. LEXIS 1089 (2008).

Evidence was sufficient to support two defendants' convictions for constructive possession of methamphetamine, in violation of O.C.G.A. § 16-13-30(a), since, according to an accomplice, the codefendants and the accomplice smoked methamphetamine inside a vehicle prior to a police stop. The accomplice's testimony was corroborated by observations of the investigating officers. Davenport v. State, 308 Ga. App. 140, 706 S.E.2d 757, 2011 Ga. App. LEXIS 142 (2011), cert. denied, No. S11C1024, 2011 Ga. LEXIS 614 (Ga. Sept. 6, 2011), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Evidence was sufficient to sustain the defendant's convictions for trafficking in cocaine, a violation of O.C.G.A. § 16-13-31(a)(1), and possession of ecstasy, a violation of O.C.G.A. § 16-13- 30(a), although the defendant was neither in actual possession of the contraband nor in control of the vehicle where the contraband was found because there was slight evidence of access, power, and intention to exercise control or dominion over the contraband and, therefore, excluding every other reasonable hypothesis save that of the defendant's guilt, as required under former O.C.G.A. § 24-4-6 (see now O.C.G.A. § 24-14-6), the question of constructive, joint possession was within the jury's discretion. The ecstasy pills were found in a prescription pill bottle belonging to the defendant, and the pill bottle was found in a bag

with the cocaine. Ferrell v. State, 312 Ga. App. 122, 717 S.E.2d 705, 2011 Ga. App. LEXIS 900 (2011), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Evidence was sufficient to establish constructive possession of crack cocaine because the defendant admitted during questioning that the cocaine in a passenger's shoe was the defendant's payment for driving, which constituted at least slight evidence indicating that the defendant had access, power, and intention to exercise dominion over the crack. Stokes v. State, 317 Ga. App. 435, 731 S.E.2d 118, 2012 Ga. App. LEXIS 725 (2012), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Evidence that the defendant and another shared the bedroom where the cocaine was found, that the defendant admitted the defendant was aware the roommate sold drugs, and that the defendant used drugs supported the defendant's conviction for possession of cocaine. Stacey v. State, 292 Ga. 838, 741 S.E.2d 881, 2013 Ga. LEXIS 373 (2013).

Since the defendant leased the apartment where the drugs were found, there was sufficient evidence for the jury to conclude that the defendant and the codefendant were in joint constructive possession of the cocaine and marijuana found there. Ahmed v. State, 322 Ga. App. 154, 744 S.E.2d 345, 2013 Ga. App. LEXIS 470 (2013).

Evidence sufficient to prove constructive, joint possession but not sufficient to prove intent to distribute. —

With regard to a defendant's convictions for possession of marijuana with the intent to distribute, trafficking in 4-Methylenedioxymethamphetamine, commonly known as ecstasy, trafficking in cocaine, and possession of a firearm during the commission of a crime, there was sufficient evidence to support the defendant's conviction for possession of the contraband, which was found in a backpack, based on the strong odor of marijuana coming from the vehicle in which the defendant was a passenger, the defendant's suspicious and nervous behavior, the defendant's joint living arrangement with two other defendants, the defendant's possession of ammunition for another one of the defendant's weapons, and the fact that the defendant was, at times, within arm's reach of the backpack, which showed an intent and power to exercise joint control over the backpack and the drugs found therein; likewise, there was sufficient evidence to support the trafficking charges based on the amounts of the contraband found; and, there was sufficient evidence to support the firearm possession charge since the defendant was found in possession of a magazine that fit the gun located within arm's reach. However, considering that there were four people in the vehicle, the court found that the state's evidence was insufficient to exclude the reasonable hypothesis that the marijuana was intended for personal use, therefore, the conviction for the intent to distribute marijuana was reduced to possession. Vines v. State, 296 Ga. App. 543, 675 S.E.2d 260, 2009 Ga. App. LEXIS 246 (2009).

Actual or constructive possession. —

Person who knowingly has direct physical control over a thing at a given time is in actual possession of the thing. A person who, though not in actual possession, knowingly has both the power and intention at a given time to exercise dominion or control over a thing is then in constructive possession of the thing. Anderson v. State, 166 Ga. App. 459, 304 S.E.2d 550, 1983 Ga. App. LEXIS 3242 (1983).

Possession of marijuana may be actual or constructive, and the evidence is sufficient to support a conviction for possession where it would authorize a jury to find that defendant, at the very least, was in constructive possession of marijuana, since defendant exercised dominion and control over it. Hadden v. State, 181 Ga. App. 628, 353 S.E.2d 532, 1987 Ga. App. LEXIS 2572 (1987).

Possession sufficient to sustain a conviction pursuant to O.C.G.A. § 16-13-30(b) may be either actual or constructive. Walton v. State, 194 Ga. App. 490, 390 S.E.2d 896, 1990 Ga. App. LEXIS 174 (1990).

Neither actual nor constructive possession of cocaine is an element of the offense of selling of cocaine. Evans v. State, 235 Ga. App. 577, 510 S.E.2d 313, 1998 Ga. App. LEXIS 1575 (1998).

Defendant's motion for a directed verdict of acquittal on a charge of possession of cocaine with intent to distribute was properly denied; the evidence establishing defendant's constructive possession of cocaine included defendant's presence in the room where it was found, defendant's actual possession of a key to the apartment where it was found and $346.00 in cash, testimony by another individual at the

scene that the individual and defendant were partners in the drug trade, and defendant's giving a false name when police arrived. Jackson v. State, 276 Ga. App. 694, 624 S.E.2d 270, 2005 Ga. App. LEXIS 1362 (2005).

As the officer heard a bag that contained dime bags of marijuana fall from where the defendant, who was in custody, was walking and where a later search of the defendant revealed empty baggies, the circumstantial evidence tended to prove the offense of possession with intent to distribute marijuana under O.C.G.A. § 16-13-30 and the state was not required to tender the illegal drugs at trial. In the Interest of P.M.H., 277 Ga. App. 643, 627 S.E.2d 211, 2006 Ga. App. LEXIS 179 (2006).

Although the defendant claimed that at least 10 others were within throwing distance of the pouch containing cocaine, sufficient evidence supported the defendant's conviction of possession of cocaine and possession of less than one ounce of marijuana under O.C.G.A. § 16-13-30; the pouch was found between the defendant's legs, and the labels found in the pouch tied the defendant to the marijuana cigarettes found in the defendant's car given that they were the same type of labels. Pierre v. State, 281 Ga. App. 69, 635 S.E.2d 363, 2006 Ga. App. LEXIS 1003 (2006).

Sufficient evidence established the defendant's possession of the cocaine under O.C.G.A. § 16-13-30; a deputy found the cocaine in the area where the other deputy saw it fly from the defendant's window during a chase of the defendant's vehicle, and this was sufficient for the jury to conclude that the cocaine belonged to defendant. Florence v. State, 282 Ga. App. 31, 637 S.E.2d 779, 2006 Ga. App. LEXIS 1306 (2006).

Defendant's possession of cocaine conviction was upheld on appeal as supported by the sufficiency of the evidence given: (1) an officer's act of observing a hand emerge from the passenger window and toss out a bag of cocaine; (2) that, based on the officer's testimony, it would have been physically impossible for the driver of the vehicle to toss out the bag while driving the car; and (3) the evidence showed that the defendant was the passenger and no other person was in the car; moreover, as witness credibility was the jury's province, the court found that a rational trier of fact could have found the defendant guilty of possession of cocaine beyond a reasonable doubt. Johnson v. State, 283 Ga. App. 425, 641 S.E.2d 655, 2007 Ga. App. LEXIS 81 (2007).

Sufficient evidence of constructive possession of crack cocaine was presented to convict a defendant under O.C.G.A. § 16-13-30(b) based on the facts that plastic baggies containing a large amount of crack cocaine were found in an apartment bathroom shortly after the defendant fled there and closed the door; and numerous similarities existed between other items found under the tub and items found in the defendant's pockets. Marshall v. State, 295 Ga. App. 354, 671 S.E.2d 860, 2008 Ga. App. LEXIS 1374 (2008), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Jury was authorized to infer that a defendant had been in possession of the bag of cocaine found on the ground next to the garbage dumpster based on an officer's testimony that the officer saw the defendant walk over to the dumpster and bend down next to the dumpster, and that no other items were found in the area where the defendant had bent down. White v. State, 313 Ga. App. 605, 722 S.E.2d 198, 2012 Ga. App. LEXIS 34 (2012).

Sufficient evidence supported the defendant's conviction for possession of cocaine based on the evidence showing that the defendant ran from the back yard of a girlfriend's leased residence and had approximately 26 grams of cocaine on or near the defendant's person when apprehended on the front porch of the adjoining property by the police; thus, the evidence authorized the jury to infer that the defendant had either constructive or actual possession of the cocaine. Smith v. State, 323 Ga. App. 668, 747 S.E.2d 859, 2013 Ga. App. LEXIS 712 (2013).

Defendant's conviction for drug possession was upheld on appeal because there was sufficient evidence to support the defendant's conviction based on the defendant admitting to owning the safe where approximately 80 grams of marijuana were located. Franklin v. State, 325 Ga. App. 728, 754 S.E.2d 774, 2014 Ga. App. LEXIS 60 (2014).

Evidence of the quantum of marijuana seized in conjunction with the presence of the weapon and ammunition found in the bedroom the defendant ran to on being confronted by police, as well as the cell phones containing the defendant's photograph, the scholarship application in the defendant's name, the video security system, the police scanner, and the defendant's mother's pill bottle therein, linked the defendant to the marijuana and weapon. Copeland v. State, 327 Ga. App. 520, 759 S.E.2d 593, 2014 Ga. App. LEXIS 373 (2014).

Spatial proximity was not the only evidence of the defendant's possession of crack cocaine as the pill bottle containing the cocaine was not on the ground when the defendant got out of the car, the defendant attempted to hide the bottle with the defendant's feet during the search, and in a similar transaction the defendant had carried a pill bottle containing crack cocaine. Tanksley v. State, 327 Ga. App. 273, 758 S.E.2d 611, 2014 Ga. App. LEXIS 316 (2014).

Neither actual nor constructive possession shown. —

When the only evidence relating to defendant was that the defendant and codefendants left a codefendant's apartment together in a codefendant's car, that a codefendant was carrying a bag containing drugs when the codefendant left the codefendant's apartment that was found on the floor in front of the seat where a codefendant was riding, and there was no evidence that defendant even knew the bag was in the car, the evidence did not show actual possession by defendant; and a finding that defendant was in constructive possession of the contraband must be based upon some connection between the defendant and the contraband other than spatial proximity. The evidence was insufficient to support defendant's conviction of possession of the contraband. Shirley v. State, 166 Ga. App. 456, 304 S.E.2d 468, 1983 Ga. App. LEXIS 2210, cert. vacated, 251 Ga. 505, 309 S.E.2d 142, 1983 Ga. LEXIS 983 (1983).

Because there was no evidence connecting defendant with the cocaine found in a hotel room other than defendant's presence at a hotel and the fact that the room was registered in defendant's name, any presumption of possession was rebutted as a matter of law. Stringer v. State, 275 Ga. App. 519, 621 S.E.2d 761, 2005 Ga. App. LEXIS 1020 (2005).

At most, the evidence showed that cocaine in a bottle found in a yard near the defendant's home was in the possession of the defendant's son, who was seen throwing something into the yard as the officers approached to execute a search warrant; the trial court should have granted a directed verdict on the charge of possessing drugs with intent to distribute for the drugs in the bottle. Smith v. State, 278 Ga. App. 315, 628 S.E.2d 722, 2006 Ga. App. LEXIS 321 (2006), cert. denied, No. S06C1314, 2006 Ga. LEXIS 687 (Ga. Sept. 12, 2006).

Evidence was insufficient to prove that a defendant constructively possessed drugs as, even assuming that the defendant had been in a bedroom in which drugs were found, there was not sufficient evidence that the defendant exercised control over the drugs, or knew the drugs were present, since: (1) no contraband was found on or near the defendant's person; (2) the drugs were found inside a ball of electrical tape in a corner of the bedroom; (3) the home belonged to another person; and an officer believed that the other person resided in the bedroom, and (4) there was no evidence that the defendant resided on the premises, or that the defendant was seen in the bedroom in which the drugs were found. Johnson v. State, 282 Ga. App. 52, 637 S.E.2d 775, 2006 Ga. App. LEXIS 1302 (2006).

Evidence was insufficient to show constructive possession of methamphetamine found in a car in which defendant was a passenger because there was no evidence, besides spatial proximity, connecting the defendant with the contraband since there was no evidence showing that the defendant knew that a baggy found in the car contained contraband or the defendant hid the baggy in the car. Millsaps v. State, 300 Ga. App. 383, 685 S.E.2d 371, 2009 Ga. App. LEXIS 1177 (2009), overruled in part, Maddox v. State, 322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013).

Trial court erred in finding that the defendant violated the defendant's probation by committing the new felony of possessing a controlled substance, piperazine or TFMPP, in violation of O.C.G.A. § 16-13-30 because the circumstantial evidence was insufficient to show the defendant's constructive possession of the TFMPP pills; the only evidence linking the defendant to the drugs was spatial proximity, but it was at least equally likely that the pills belonged to the driver of the truck where the pills were found. Scott v. State, 305 Ga. App. 596, 699 S.E.2d 894, 2010 Ga. App. LEXIS 761 (2010).

Possession of cocaine found in passenger's pockets. —

Evidence was sufficient to convict a defendant of being a party to the crime of possession of cocaine in violation of O.C.G.A. §§ 16-2-20(b) and 16-13-30(a), although the cocaine was found in the defendant's nephew's pockets, because the nephew was blind and could not have driven himself to locate the drugs or completed the purchase by himself. Wade v. State, 305 Ga. App. 819, 701 S.E.2d 214, 2010 Ga. App. LEXIS 819 (2010).

In vicinity of contraband. —

Merely having been in the vicinity of contraband does not, without more, establish possession. Ridgeway v. State, 187 Ga. App. 381, 370 S.E.2d 216, 1988 Ga. App. LEXIS 695 (1988).

Defendant's conviction for possession of cocaine, O.C.G.A. § 16-13-30(a), was reversed because the trial court determined under Ga. Unif. Super. Ct. R. 31.3(B) whether the state possessed a proper purpose for admission of similar transaction evidence, or whether the two offenses were sufficiently connected or similar; the error was not harmless because the state could not establish that the defendant had actual possession of the cocaine found in the girlfriend's vehicle. McCrory v. State, 341 Ga. App. 174, 798 S.E.2d 385, 2017 Ga. App. LEXIS 166 (2017).

Evidence of possession of "portable" contraband near defendant's home. —

Even if the equal access doctrine applied to marijuana plants growing in buckets near defendant's home, there was substantial other evidence of defendant's possession of the "portable" contraband, such as that defendant was linked to ownership of the containers in which some of the plants were growing, that some of the plant-filled buckets were on the boundaries of defendant's yard within feet of defendant's dog pen and defendant's garden, all visible from defendant's yard, and that defendant was a gardener and had a readily available water source. Blitch v. State, 188 Ga. App. 487, 373 S.E.2d 227, 1988 Ga. App. LEXIS 1084 (1988).

Access to premises. —

When the defendant made no affirmative showing that anyone other than the defendant and the defendant's spouse had actual access to the bedroom or the bedroom closet during several days or weeks prior to the discovery of the pills, the jury was authorized to find defendant guilty of the offense of unlawful possession of diazepam. Prescott v. State, 164 Ga. App. 671, 297 S.E.2d 362, 1982 Ga. App. LEXIS 3340 (1982).

Evidence authorized a finding that the defendant and a codefendant were in joint constructive possession of the drugs in the bedroom that they were apparently sharing and in which the contraband was found. Anderson v. State, 166 Ga. App. 459, 304 S.E.2d 550, 1983 Ga. App. LEXIS 3242 (1983).

Despite the defendant's denial of any knowledge of the existence of drugs and other contraband in a motel room in which the defendant was the sole occupant, evidence of the contraband found in close proximity to other evidence which the defendant admitted owning, when coupled with the fact that only one key to the room existed, which the defendant admitted to having, and that no one had brought anything into the room since the person the defendant alleged was the owner of the evidence had left, was sufficient to support the defendant's convictions under O.C.G.A. §§ 16-11-106, 16-13-2, and 16-13-30, and 16-13-31. Hall v. State, 283 Ga. App. 266, 641 S.E.2d 264, 2007 Ga. App. LEXIS 31 (2007).

Evidence was sufficient to prove that two defendants knowingly possessed cocaine and marijuana found in a house to which the defendants both had keys and where their belongings were located, as required by O.C.G.A. §§ 16-13-30(j)(1) and 16-13-31(a), although the defendants did not own or rent the house. Lott v. State, 303 Ga. App. 775, 694 S.E.2d 698, 2010 Ga. App. LEXIS 342 (2010), cert. denied, No. S10C1335, 2010 Ga. LEXIS 757 (Ga. Sept. 20, 2010), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Equal access of others to premises. —

Evidence that cocaine was found hidden on the outside of the defendant's mobile home, which was parked in an area to which a large number of persons, not only visitors to the unit occupied by the defendant but anyone having business in the mobile home park, had potential access, without evidence directly connecting the defendant to the cocaine, was entirely circumstantial, and insufficient to sustain the defendant's conviction for possession of cocaine. Prescott v. State, 164 Ga. App. 671, 297 S.E.2d 362, 1982 Ga. App. LEXIS 3340

the defendant's conviction for possession of cocaine. Prescott v. State, 164 Ga. App. 671, 297 S.E.2d 362, 1982 Ga. App. LEXIS 3540 (1982).

Defendant's conviction for unlawful possession of cocaine was reversed, where there was no evidence that defendant occupied the bedroom where the cocaine was found, and other persons living in the residence had equal access to the bedroom. Nations v. State, 177 Ga. App. 801, 341 S.E.2d 482, 1986 Ga. App. LEXIS 1533 (1986); Johnson v. State, 245 Ga. App. 583, 538 S.E.2d 481, 2000 Ga. App. LEXIS 1015 (2000).

When the state presented evidence that the defendant was a lessee and occupant of an apartment where cocaine was found there was a rebuttable presumption that the defendant had possession and evidence that others had access was not sufficient to rebut the presumption against the defendant. Wilson v. State, 231 Ga. App. 525, 499 S.E.2d 911, 1998 Ga. App. LEXIS 502 (1998).

Evidence was sufficient to convict defendant of possession of cocaine where a pipe used to smoke crack cocaine the night before was found in defendant's bedroom, even though defendant shared the house with other people, because additional evidence connected defendant to the pipe besides the fact that defendant used the room where it was found, as there was testimony that defendant actually possessed the crack and smoked it, and there was no evidence that anyone else had equal access to defendant's bedroom. Whitlock v. State, 265 Ga. App. 111, 593 S.E.2d 17, 2003 Ga. App. LEXIS 1538 (2003).

Sufficient evidence overcame defendant's equal access defense as defendant's ownership or possession of a vehicle containing the seized methamphetamine was not the sole evidence establishing defendant's guilt of possession of methamphetamine; the state also relied on defendant's roommate's testimony that defendant purchased the seized methamphetamine and kept the methamphetamine in the vehicle. Stovall v. State, 275 Ga. App. 244, 620 S.E.2d 462, 2005 Ga. App. LEXIS 939 (2005), cert. denied, No. S06C0200, 2006 Ga. LEXIS 100 (Ga. Jan. 30, 2006).

Insufficient evidence supported the defendant's conviction of possession of marijuana under O.C.G.A. § 16-13-30; the defendant lived with a female, and there was no evidence presented in the case that connected the defendant to the small baggies of marijuana found hidden in a bag under the end table of the living room in the apartment. Gentry v. State, 281 Ga. App. 315, 635 S.E.2d 782, 2006 Ga. App. LEXIS 943 (2006), cert. denied, No. S07C0117, 2007 Ga. LEXIS 78 (Ga. Jan. 22, 2007).

There was sufficient evidence to support a defendant's conviction on various drug possession charges based on the evidence of various drugs being found in the bedroom the defendant resided in of a two-bedroom apartment shared with another, despite others having equal access to the apartment. Smith v. State, 297 Ga. App. 526, 677 S.E.2d 717, 2009 Ga. App. LEXIS 464 (2009).

Insufficient evidence supported defendant's conviction of possession of marijuana with intent to distribute. —

There was insufficient evidence to support the defendant's conviction for possession of marijuana with the intent to distribute because the state merely proved that the defendant possessed marijuana and failed to produce any evidence that the defendant possessed scales or other drug-dealing paraphernalia or that large amounts of cash on the defendant's person or in the defendant's apartment were found. Beard v. State, 318 Ga. App. 128, 733 S.E.2d 426, 2012 Ga. App. LEXIS 865 (2012).

Effect of equal access of others to premises. —

Merely finding contraband on premises occupied by defendant is not sufficient to support conviction if it affirmatively appears from evidence that persons other than defendant had equal opportunity to commit the crime. McCann v. State, 137 Ga. App. 445, 224 S.E.2d 99, 1976 Ga. App. LEXIS 2480 (1976); Person v. State, 155 Ga. App. 106, 270 S.E.2d 319, 1980 Ga. App. LEXIS 2477 (1980); Anderson v. State, 166 Ga. App. 459, 304 S.E.2d 550, 1983 Ga. App. LEXIS 3242 (1983).

Equal access rule generally applies to contraband in open, notorious, and easily accessible areas. Wright v. State, 154 Ga. App. 400, 268 S.E.2d 378, 1980 Ga. App. LEXIS 2194, cert. denied, 449 U.S. 900, 101 S. Ct. 270, 66 L. Ed. 2d 130, 1980 U.S. LEXIS 3494 (1980).

"Equal access" instruction not warranted. —

Defendant was not entitled to an "equal access" instruction relating to drugs found in the defendant's vehicle since, as there was no instruction on presumption of possession, that presumption was not placed before the jury, and since the defendant's ownership of the vehicle was not the sole evidence of possession of cocaine with intent to distribute. State v. Johnson, 280 Ga. 511, 630 S.E.2d 377, 2006 Ga. LEXIS 338 (2006).

Because the state was not relying upon the defendant's ownership or control of the residence in order to link the ownership and possession of the methamphetamine found to the defendant, a charge on equal access was not authorized by the evidence. Thrasher v. State, 289 Ga. App. 399, 657 S.E.2d 316, 2008 Ga. App. LEXIS 97 (2008).

In a defendant's trial for possession of cocaine, the state did not rely on a presumption that the defendant possessed the cocaine, but presented direct evidence that the defendant exited a car with the drugs in a bag and disposed of the bag in the woods following an accident. Therefore, the defendant was not entitled to an equal access charge relative to the woods. Hill v. State, 302 Ga. App. 291, 690 S.E.2d 677, 2010 Ga. App. LEXIS 123 (2010).

Conviction not precluded when defendant connected with contraband. —

Totality of the evidence was sufficient to connect the defendant to the possession of cocaine seized in a residence shared by the defendant and the defendant's girl friend even though the evidence would have authorized a finding that others had equal access to the drugs. Lane v. State, 177 Ga. App. 553, 340 S.E.2d 228, 1986 Ga. App. LEXIS 2431 (1986).

Evidence from the defendant's live-in girlfriend that a lunch bag and shoe box containing marijuana and scales belonged to the defendant was sufficient to prove that the defendant had sole constructive possession of the marijuana in violation of O.C.G.A. § 16-13-30(j), although both the defendant and the girlfriend had equal access to the marijuana. Jefferson v. State, 309 Ga. App. 861, 711 S.E.2d 412, 2011 Ga. App. LEXIS 473 (2011), overruled in part, Maddox v. State, 322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013).

When joint constructive possession alleged. —

Equal access rule, conceptually and historically, has no application when all persons allegedly having equal access to the contraband are alleged to have been in joint constructive possession of that contraband. It is simply a defense available to the accused to whom a presumption of possession flows. Castillo v. State, 166 Ga. App. 817, 305 S.E.2d 629, 1983 Ga. App. LEXIS 3279 (1983).

When state's evidence is of actual, physical possession. —

"Equal access" rule is inapplicable when the state's evidence is not that the defendant constructively possessed contraband, but that the defendant actually and physically possessed the contraband. Marshall v. State, 153 Ga. App. 198, 264 S.E.2d 718, 1980 Ga. App. LEXIS 1747 (1980).

Equal access rule inapplicable to marijuana plants growing outside. —

While equal access rule may be applicable with reference to loose, portable quantities of contraband found inside house, it is not properly applicable to marijuana plants growing outside, which require a period of months to grow, mature, and be harvested. Goode v. State, 130 Ga. App. 791, 204 S.E.2d 526, 1974 Ga. App. LEXIS 1265 (1974).

Equal access rule does not apply to cases involving marijuana plants growing on the land outside the owner's or lessee's residence, and not in portable containers, on the basis that such contraband is stationary. Ward v. State, 178 Ga. App. 129, 342 S.E.2d 373, 1986 Ga. App. LEXIS 1610 (1986).

Equal access rule inapplicable where physical possession shown. —

When a search warrant was executed, the defendant was found with a bucket of water into which the defendant was placing packets of foil, and a sampling of the packets showed the presence of cocaine, the rule that the mere presence of contraband on the premises occupied by

and a sampling of the packets showed the presence of cocaine, the rule that the mere presence of contraband on the premises occupied by an accused is insufficient to sustain a conviction when there is also evidence of access by others was not applicable, even though there was no proof that others had not put cocaine in the bucket. Bradley v. State, 180 Ga. App. 386, 349 S.E.2d 263, 1986 Ga. App. LEXIS 2729 (1986).

Chain of custody. —

State failed to prove an adequate chain of custody because there was no evidence at trial that the plastic bag and the alleged cocaine were distinct items with readily observable distinguishing characteristics; fungible items require proof of chain of custody. Phillips v. Williams, 276 Ga. 691, 583 S.E.2d 4, 2003 Ga. LEXIS 551 (2003).

In a trial for possession of cocaine, it was not error to admit a substance into evidence when the only break in the chain of custody occurred after a scientist tested the substance and found the substance to be cocaine; even if there was error, it was harmless given the overwhelming evidence of guilt, including trial testimony and scientist's report, even without the substance being introduced into evidence. Cowins v. State, 290 Ga. App. 814, 660 S.E.2d 865, 2008 Ga. App. LEXIS 419 (2008).

Equal access defense was not sufficient. —

Evidence that the defendant placed an object, which was later found to be crack cocaine, on the hood of a car, that two other men did not move, and then the defendant tried to flee after seeing the police, was sufficient for a jury to find that the defendant was not merely in close proximity to the drugs, but that the other men in the area did not have an equal opportunity to place the cocaine on the hood of the truck. Daniels v. State, 261 Ga. App. 5, 582 S.E.2d 4, 2003 Ga. App. LEXIS 528 (2003).

Evidence was sufficient to support defendant's conviction for possession of more than 28 grams of a mixture containing methamphetamine, as a search of defendant's vehicle after a lawful stop revealed the drug as well as paraphernalia, and the presumption of equal access between defendant and the passenger was overcome by defendant's voluntary statement that the drugs belonged to the defendant. Collins v. State, 273 Ga. App. 598, 615 S.E.2d 646, 2005 Ga. App. LEXIS 584 (2005).

There was sufficient evidence to support defendant's conviction for possession of marijuana with intent to distribute, because defendant drove a car into a parking lot, an individual who was empty-handed got into the vehicle and they drove to a remote area of the lot, and thereafter, the individual exited the vehicle, as the presumption of the equal access rule was rebutted by police officers' observation that the individual was empty handed and that the marijuana which was found in defendant's vehicle was in a briefcase behind the passenger's seat; there was also sufficient other evidence that supported a finding that defendant possessed the marijuana. Causey v. State, 274 Ga. App. 506, 618 S.E.2d 127, 2005 Ga. App. LEXIS 777 (2005).

Even though the defendant did not own the home where methamphetamine and other contraband were found, and even though the defendant was not arrested with drugs or drug-related objects on the defendant's person, there was sufficient evidence to link the defendant to the contraband, including a codefendant's testimony that the defendant brought the drugs into the home and the defendant's statement to the police about the drug's location. Tucker v. State, 276 Ga. App. 117, 622 S.E.2d 466, 2005 Ga. App. LEXIS 1186 (2005).

Evidence supported the defendant's conviction for possession of methamphetamine because: (1) the defendant acknowledged that an unoccupied tractor-trailer was defendant's; (2) the police entered the cab and saw in plain sight a crack cocaine or methamphetamine pipe; (3) testing of the pipe was positive for methamphetamine; (4) the defendant admitted that the defendant smoked methamphetamine in the pipe and had a "drug problem"; and (5) the equal access rule did not apply as the defendant made inculpatory admissions authorizing a finding that the defendant possessed the methamphetamine. Rochefort v. State, 279 Ga. 738, 620 S.E.2d 803, 2005 Ga. LEXIS 665 (2005).

Although the defendant contended that the trial court erred by denying the defendant's motion for a directed verdict of acquittal because presence in the vicinity of contraband did not establish possession, defendant and the codefendant were indicted and tried together for possession of methamphetamine, the jury was entitled to conclude that defendant was in possession of the methamphetamine-coated pipe, which was found in the car the defendant drove, next to the driver's seat; moreover, the jury heard the officer's testimony that the defendant stated at arrest that the defendant was aware the item was used to smoke methamphetamine, and the trial court charged the

jury on the doctrine of equal access. Thus, the jury was able to contemplate and reject the equal access defense, and sufficient evidence was presented for the jury to find that the defendant possessed the methamphetamine. Dover v. State, 307 Ga. App. 126, 704 S.E.2d 235, 2010 Ga. App. LEXIS 1099 (2010).

Equal access rule in automobile context. —

Equal access rule, as the rule applies in the automobile context, is merely that evidence showing that a person or persons other than the owner or driver of the automobile had equal access to contraband found in the automobile may or will, depending upon the strength of the evidence, overcome the presumption that the contraband was in the exclusive possession of the owner or driver. Castillo v. State, 166 Ga. App. 817, 305 S.E.2d 629, 1983 Ga. App. LEXIS 3279 (1983).

Evidence was insufficient to support a conviction for possession of cocaine because the sole evidence of possession was the defendant's ownership and driving of the vehicle in which the cocaine was found under the passenger seat, and the passenger had equal access to that cocaine. Turner v. State, 276 Ga. App. 381, 623 S.E.2d 216, 2005 Ga. App. LEXIS 1256 (2005), overruled in part, Maddox v. State, 322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013), overruled in part as stated in Griffin v. State, 331 Ga. App. 550, 769 S.E.2d 514, 2015 Ga. App. LEXIS 41 (2015).

Presumption as to drugs found in automobile. —

Absent contrary circumstances, drugs found in an automobile are presumed to belong to the driver and owner. Moore v. State, 155 Ga. App. 149, 270 S.E.2d 339, 1980 Ga. App. LEXIS 2500 (1980).

Sufficient evidence supported defendant's conviction for possession of cocaine found in the car the defendant was driving despite the fact that others had access to the car the day before and the only evidence linking defendant to the cocaine was the defendant's possession of the car; the trier of fact heard defendant's claim, and apparently decided that defendant did not rebut the inference that the driver of an automobile is presumed to have possession and control of contraband found in the automobile. Davis v. State, 272 Ga. App. 33, 611 S.E.2d 710, 2005 Ga. App. LEXIS 209 (2005).

Since the defendant admitted knowing that methamphetamine was in a vehicle in which the defendant was a passenger, and drug paraphernalia found in the defendant's home showed a sufficient connection to and knowledge of the drugs found in the vehicle, the evidence was sufficient to prove that the defendant was in constructive possession of the drugs in violation of O.C.G.A. § 16-13-30(a). Clewis v. State, 293 Ga. App. 412, 667 S.E.2d 158, 2008 Ga. App. LEXIS 952 (2008).

Defendant, as the driver of a vehicle stopped at a roadblock, was presumed to have possession and control of drugs found in the vehicle. Although the defendant presented some evidence of others' access to the vehicle, the question of whether the presumption was rebutted was for the jury, which decided against the defendant. Blankenship v. State, 301 Ga. App. 602, 688 S.E.2d 395, 2009 Ga. App. LEXIS 1421 (2009).

Evidence was sufficient to support the defendant's convictions for possession of methamphetamine and possession of marijuana because in the absence of any evidence to the contrary, the jury was authorized to consider the rebuttable presumption that the defendant, as the sole driver of a stolen vehicle, had possession of and control over the contraband contained within that vehicle, and the record was devoid of any evidence that someone other than the defendant had access to the interior of the vehicle; while affirmative evidence showing that a person or persons other than the owner or driver of the automobile had equal access to contraband found in the automobile may or will, depending upon the strength of the evidence, overcome the presumption that the contraband was in the exclusive possession of the owner or driver, this legal principle does not mean that the state must establish a negative fact, but rather, the burden on the state remains the same: to prove every element of the crimes charged beyond a reasonable doubt. Mangum v. State, 308 Ga. App. 84, 706 S.E.2d 612, 2011 Ga. App. LEXIS 124 (2011).

Presumption of ownership may be overcome by evidence of equal access. —

Evidence of equal access to drugs is sufficient to overcome presumption that contraband belongs to defendant driver and owner of

Evidence of equal access to drugs is sufficient to overcome presumption that contraband belongs to defendant driver and owner of automobile and was in defendant's possession; whether or not this evidence was sufficient to rebut inference arising from finding of drugs in automobile is a question for jury to decide. Moore v. State, 155 Ga. App. 149, 270 S.E.2d 339, 1980 Ga. App. LEXIS 2500 (1980).

Evidence was sufficient to convict defendant of possession of marijuana and cocaine based upon the drugs that were found on the floorboard of the truck that defendant used, which defendant's father owned, as defendant did not claim that the drugs belonged to defendant's passenger in the truck and no one else had equal access on that day to the truck. Marion v. State, 268 Ga. App. 699, 603 S.E.2d 321, 2004 Ga. App. LEXIS 989 (2004).

Presence of cocaine metabolites in body fluid is direct evidence only of the fact that cocaine was introduced into the body producing the fluid, and is not direct evidence that the person possessed the cocaine. Rather, the presence of cocaine metabolites in body fluid is only circumstantial or indirect evidence of possession. Green v. State, 260 Ga. 625, 398 S.E.2d 360, 1990 Ga. LEXIS 469 (1990), cert. denied, 500 U.S. 935, 111 S. Ct. 2059, 114 L. Ed. 2d 464, 1991 U.S. LEXIS 2884 (1991), overruled in part as stated in West v. State, 288 Ga. App. 566, 654 S.E.2d 463, 2007 Ga. App. LEXIS 1252 (2007).

Quantification of substance in urine sample not required. —

Amounts of controlled substances in urine sample did not have to be quantified to prove charges of driving under the combined influence of marijuana and cocaine and drug possession. Kerr v. State, 205 Ga. App. 624, 423 S.E.2d 276, 1992 Ga. App. LEXIS 1324 (1992), cert. denied, No. S93C0106, 1993 Ga. LEXIS 32 (Ga. Jan. 7, 1993).

Proven through stillborn fetus. —

When the indictment charged defendant with possession of cocaine in violation of O.C.G.A. § 16-13-30, it was proper to admit evidence supporting the state's case that a blood specimen of her stillborn fetus tested positive for metabolite of cocaine. Jackson v. State, 208 Ga. App. 391, 430 S.E.2d 781, 1993 Ga. App. LEXIS 501, cert. dismissed, 263 Ga. 403, 436 S.E.2d 632, 1993 Ga. LEXIS 810 (1993).

Circumstantial evidence charge not necessary when direct evidence is sufficient. —

A charge to the jury that a conviction based on circumstantial evidence alone is not warranted unless the proven facts exclude every hypothesis other than the guilt of the accused is not required, even if requested, unless the state's evidence is entirely circumstantial; when a police officer testified that the officer saw the defendant in actual possession of cocaine, and there was other direct evidence of the defendant's possession of marijuana, including the defendant's admission that the defendant owned the garment in which some marijuana was found, there was no error in the trial court's refusal to give the charge. Wells v. State, 180 Ga. App. 133, 348 S.E.2d 681, 1986 Ga. App. LEXIS 2689 (1986).

Charge on circumstantial evidence not required. —

When, in a trial for possessing heroin with intent to distribute, there was direct evidence that defendant was in possession of heroin, it is not error to refuse to charge on circumstantial evidence. Houston v. State, 180 Ga. App. 267, 349 S.E.2d 228, 1986 Ga. App. LEXIS 2708 (1986).

Requested charge on mere presence properly denied. —

In a trial for possession of cocaine with intent to distribute, the court did not erroneously deny the defendant's request to charge on mere presence, where a police officer testified that the officer watched the defendant receive money from a third party in exchange for a packet of what appeared to be cocaine, and when the officer arrested the defendant moments later, the officer observed a number of packages of what proved to be cocaine in the front seat of the car in which the defendant was seated. Garner v. State, 199 Ga. App. 468, 405 S.E.2d 299, 1991 Ga. App. LEXIS 537 (1991).

Instruction proper. —

Charge regarding constructive possession which closely tracked the language of the Suggested Pattern Jury Instructions for Criminal Cases and which gave a rebuttable inference of possession was not erroneous. Pittman v. State, 208 Ga. App. 211, 430 S.E.2d 141, 1993 Ga. App. LEXIS 469 (1993), cert. denied, No. S93C1079, 1993 Ga. LEXIS 763 (Ga. July 15, 1993).

In a prosecution for possession of cocaine with the intent to distribute, the court did not err in giving an instruction on the lesser-included charge of possession of cocaine; no injury resulted because the jury found defendant guilty of possession of cocaine with intent to distribute under O.C.G.A. § 16-13-30(b) and that verdict was supported by sufficient competent evidence. Brown v. State, 243 Ga. App. 632, 534 S.E.2d 98, 2000 Ga. App. LEXIS 506 (2000).

Because it was unlawful under the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., to possess any amount of a controlled substance such as codeine, absent exceptions such as lawful possession, which was charged to the jury, the instruction as given was not misleading as the fact that the violation was an "alleged" violation was implicit given the trial court's instructions to the jury as to the state's burden of proof and the presumption of innocence. Furthermore, since the indictment's reference to codeine as a Schedule V drug was surplusage, the state was required to show that the defendant was in possession of codeine, not that the codeine fell within Schedule V; thus, the failure to instruct the jury regarding a Schedule V substance was not erroneous as it was not a defense to the offense of possession of codeine and to suggest so was misleading. Evans v. State, 330 Ga. App. 241, 766 S.E.2d 821, 2014 Ga. App. LEXIS 823 (2014), cert. dismissed, No. S15C0653, 2015 Ga. LEXIS 207 (Ga. Mar. 30, 2015).

Lesser included offense. —

When the indictment charged the defendant with trafficking in cocaine by possessing more than 28 ounces, the trial court erred in refusing to give the defendant's requested charge on the lesser included offense of simple possession of cocaine. Howard v. State, 220 Ga. App. 579, 469 S.E.2d 746, 1996 Ga. App. LEXIS 209 (1996), cert. denied, No. S96C1082, 1996 Ga. LEXIS 868 (Ga. May 23, 1996); Lumpkin v. State, 245 Ga. App. 627, 538 S.E.2d 514, 2000 Ga. App. LEXIS 1026 (2000).

Because the defendant was indicted for possession of more than 28 grams of methamphetamine, a violation of O.C.G.A. § 16-13-31, the defendant had sufficient notice that the lesser-included offense of possession with intent to distribute, a violation of O.C.G.A. § 16-13-30(b), might be submitted to the jury if the evidence warranted it; consequently, by charging the lesser offense in accordance with O.C.G.A. § 16-1-6, the trial court did not permit the jury to convict the defendant in a manner not alleged in the indictment in violation of the defendant's due process rights. Rupnik v. State, 273 Ga. App. 34, 614 S.E.2d 153, 2005 Ga. App. LEXIS 392 (2005).

State proved possession of marijuana. —

See Millwood v. State, 166 Ga. App. 292, 304 S.E.2d 103, 1983 Ga. App. LEXIS 3225 (1983).

Trial court properly denied defendant's motion for a directed verdict of acquittal, and properly entered a judgment of conviction against defendant for misdemeanor possession of marijuana, as the evidence sufficiently showed that defendant possessed marijuana which police found in a search of the home. Heller v. State, 275 Ga. App. 637, 621 S.E.2d 591, 2005 Ga. App. LEXIS 1064 (2005).

In a drug possession case, the defendant was not convicted based on circumstantial evidence that, in violation of former O.C.G.A. § 24-4-6 (see now O.C.G.A. § 24-14-6), failed to exclude every other hypothesis save that of the defendant's guilt; the passenger's testimony that the defendant handed the passenger drugs and told the passenger to discard the drugs provided direct evidence that the defendant possessed more than an ounce of marijuana in violation of O.C.G.A. § 16-13-30. Curtis v. State, 282 Ga. App. 322, 638 S.E.2d 773, 2006 Ga. App. LEXIS 1301 (2006), cert. denied, No. S07C0427, 2007 Ga. LEXIS 203 (Ga. Feb. 26, 2007).

Passenger's testimony, stating that the defendant passed marijuana to the passenger and told the passenger to discard the marijuana, was sufficiently corroborated under former O.C.G.A. § 24-4-8 (see now O.C.G.A. § 24-14-8) to support a finding of guilt of possession of more

than an ounce of marijuana under O.C.G.A. § 16-13-30; the marijuana found near the defendant was packaged the same way as the marijuana found outside the car, and it could, therefore, be inferred that the marijuana found outside the car had previously been in the back seat beside the defendant. Curtis v. State, 282 Ga. App. 322, 638 S.E.2d 773, 2006 Ga. App. LEXIS 1301 (2006), cert. denied, No. S07C0427, 2007 Ga. LEXIS 203 (Ga. Feb. 26, 2007).

Evidence supported the defendant's convictions of felony murder during the commission of aggravated assault, aggravated assault, possession of marijuana, and possession of a firearm during the commission of a crime since: (1) after smoking marijuana, the defendant attacked the victim, pulled a gun from the defendant's pocket, and shot the victim four times; (2) the victim told the police that the defendant did it; (3) the victim died; (4) a knife was found near the victim, the defendant had a stab wound and the defendant claimed self-defense; and (5) witnesses one and two saw the defendant pull the gun but did not see the victim with a knife. Hill v. State, 291 Ga. 160, 728 S.E.2d 225, 2012 Ga. LEXIS 500 (2012).

Sufficient evidence supported the defendant's conviction for possession of marijuana because the evidence showed that the defendant had marijuana in the defendant's possession when arrested. Smith v. State, 323 Ga. App. 668, 747 S.E.2d 859, 2013 Ga. App. LEXIS 712 (2013).

Possession of methamphetamine proven. —

Evidence was sufficient for a jury to find defendant guilty of possession of methamphetamine, as defendant leased a house in which a widespread methamphetamine manufacturing operation took place, which created a strong chemical smell immediately apparent upon entering the house, and defendant tested positive for methamphetamine in the defendant's system, circumstantially linking defendant to the manufacturing process and undermining the claim that defendant was unaware of the activity. Kirby v. State, 275 Ga. App. 216, 620 S.E.2d 459, 2005 Ga. App. LEXIS 933 (2005).

Because the defendant, who was a passenger in a vehicle stopped by police, and the vehicle's driver had different responses when the arresting officers asked them where they were going, and a bag containing about three pounds of methamphetamine was found between the passenger's and driver's seats, and the defendant fled the scene, and the packaging of the methamphetamine was very similar to the packaging of the cocaine, marijuana, and cash found at the defendant's residence two months earlier, the evidence was sufficient for a rational trier of fact to find the defendant guilty beyond a reasonable doubt of trafficking in methamphetamine and of possession of methamphetamine with intent to distribute. Salinas-Valdez v. State, 276 Ga. App. 732, 624 S.E.2d 278, 2005 Ga. App. LEXIS 1367 (2005).

Because a jury could find that the defendant was aware of the methamphetamine that fell from the defendant's pants and that the defendant had actual or constructive possession of the methamphetamine, the evidence was sufficient to find the defendant guilty of possession of methamphetamine under O.C.G.A. § 16-13-30(b). Hayes v. State, 276 Ga. App. 268, 623 S.E.2d 144, 2005 Ga. App. LEXIS 1225 (2005).

There was sufficient evidence to convict the defendant of possession of methamphetamine in violation of O.C.G.A. § 16-13-30(a), as methamphetamine was found in pants from which the defendant retrieved a key and in which the defendant's wallet was found, and methamphetamine was found in the defendant's wallet. Johnson v. State, 281 Ga. App. 7, 635 S.E.2d 278, 2006 Ga. App. LEXIS 983 (2006).

Because the trial court properly found that testimony tending to show that the defendant's daughter possessed the methamphetamine the defendant was charged with possessing was hearsay, and testimony from the defendant's grandson was irrelevant, the defendant's conviction for possession was affirmed on appeal. Corbin v. State, 287 Ga. App. 194, 651 S.E.2d 101, 2007 Ga. App. LEXIS 871 (2007).

Sufficient evidence was established to support a defendant's conviction for possession of methamphetamine with intent to distribute since the evidence seized from the defendant's vehicle included the division of the drugs in small plastic baggies, which was evidence of intent to distribute, as well as possessing methamphetamine weighing 24.75 grams, which was inconsistent with personal use. Davis v. State, 287 Ga. App. 478, 651 S.E.2d 750, 2007 Ga. App. LEXIS 928 (2007), cert. denied, No. S08C0176, 2008 Ga. LEXIS 179 (Ga. Feb. 11, 2008).

There was evidence that the defendant affirmatively stated to police officers that the methamphetamine was defendant's and not another individual's drug. The defendant testified at trial that the defendant had previously been convicted of possession of methamphetamine and that the defendant had used methamphetamine in the house; thus, there was sufficient evidence for the jury to conclude the defendant

was in possession of the methamphetamine. Shoemaker v. State, 292 Ga. App. 97, 663 S.E.2d 423, 2008 Ga. App. LEXIS 709 (2008).

Officer found methamphetamine in a portion of a truck where the defendant kept personal belongings and the defendant was the sole occupant of the vehicle. The defendant's testimony denying possession of the drugs and stating that others had equal access to the truck did not establish under former O.C.G.A. § 24-4-6 (see now O.C.G.A. § 24-14-6) that the circumstantial evidence was insufficient to convict the defendant of possession of methamphetamine. Bryson v. State, 293 Ga. App. 392, 667 S.E.2d 170, 2008 Ga. App. LEXIS 946 (2008).

There was sufficient evidence to support a defendant's conviction for possession of methamphetamine based on the contraband being found under the passenger seat in which the defendant was sitting and an officer observing the defendant reach under the seat. Further, a syringe was found in the defendant's pocket; thus, there was more evidence than just spatial proximity to support the conviction. McBee v. State, 296 Ga. App. 42, 673 S.E.2d 569, 2009 Ga. App. LEXIS 120 (2009).

Evidence was sufficient to support a conviction of possession of methamphetamine, O.C.G.A. § 16-13-30(a), because the state presented sufficient evidence that the defendant lived at the property, and the jury could, therefore, presume that the defendant had greater access and control to the closet in the house where methamphetamine was found than that of a mere occupant; when the defendant was arrested, the defendant admitted to police that the defendant previously sold methamphetamine, and the officers discovered a large amount of currency on the defendant's person. Scales and syringes were also found at the property, and the individuals who the defendant claimed lived in the home and possessed the methamphetamine were not discovered at the property. Turner v. State, 298 Ga. App. 107, 679 S.E.2d 127, 2009 Ga. App. LEXIS 618 (2009).

Evidence supported a conviction of possession of methamphetamine when an officer testified that the officer twice observed the defendant smoke methamphetamine, identified the pipe the defendant used, and explained, from the officer's narcotics training, how the pipe was used to smoke the methamphetamine; there was also methamphetamine recovered from the desk where the defendant was sitting. While the defendant complained that the pipe was not tested for the presence of methamphetamine, in drug possession cases the state was not required to present expert testimony scientifically identifying the substance or to introduce the drugs into evidence; moreover, the officer's testimony as to a conclusion of fact that could be within the officer's knowledge had been admitted without objection and thus could not be attacked as incompetent. Burg v. State, 298 Ga. App. 214, 679 S.E.2d 780, 2009 Ga. App. LEXIS 627 (2009).

Evidence was sufficient to sustain the defendant's conviction for possession of methamphetamine in violation of O.C.G.A. § 16-13-30(a) because the jury was justified in concluding that a wallet containing methamphetamine belonged to the defendant based on a deputy's testimony that the wallet was found on the defendant's person during a pat-down search incident to the defendant's arrest for driving with a suspended license. McGhee v. State, 303 Ga. App. 297, 692 S.E.2d 864, 2010 Ga. App. LEXIS 346 (2010).

Trial court did not err in denying the defendant's motion for a directed verdict of acquittal after a jury found the defendant guilty of possession of methamphetamine because the totality of the evidence, although circumstantial, was sufficient to authorize a rational jury to find the defendant guilty beyond a reasonable doubt and to reject as speculative and unreasonable the hypothesis that someone else discarded the drugs in a patrol car; the defendant possessed a homemade smoking pipe containing methamphetamine residue, there was similar transaction evidence, and the patrol officer testified that the officer had exclusive control of the officer's patrol car, the officer stayed with the officer's car whenever the car was serviced by third parties, the officer searched the backseat immediately after the defendant exited from the car, and the officer discovered the drugs directly up under the seat where the defendant had been sitting. Taylor v. State, 305 Ga. App. 748, 700 S.E.2d 841, 2010 Ga. App. LEXIS 807 (2010).

Evidence that the defendant had possession of the canister containing methamphetamine earlier on the day the defendant was arrested, the canister belonged to the defendant, and the defendant and a passenger had smoked methamphetamine from the canister a couple of hours before the officer found the canister was sufficient to support the defendant's conviction for methamphetamine possession under O.C.G.A. § 16-13-30(a). Mallard v. State, 321 Ga. App. 650, 742 S.E.2d 164, 2013 Ga. App. LEXIS 366 (2013), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Evidence was sufficient to convict the defendant of possession of methamphetamine and misdemeanor possession of marijuana as the evidence sufficed to support the jury's finding that the defendant possessed the drugs found under a mattress because the drugs were located under the mattress directly underneath where the defendant sat; and the defendant possessed digital scales that appeared to have drug residue on the scales. Smith v. State, 331 Ga. App. 296, 771 S.E.2d 8, 2015 Ga. App. LEXIS 162 (2015), overruled, Hill v. State, 360

Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Evidence that two bags of drugs were found in the apartment over a garage belonging to the defendant's mother where the defendant was present, and another individual only testified to bringing one bag, allowed the jury to find that the defendant had the power and intention

to exercise dominion and control over the methamphetamine found in the apartment as required for a conviction for possession of less than one gram of methamphetamine. Mantooth v. State, 335 Ga. App. 734, 783 S.E.2d 133, 2016 Ga. App. LEXIS 124 (2016), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Lipstick evidence insufficient to establish constructive possession of methamphetamine. —

Evidence was insufficient to convict the defendant of possession of methamphetamine as the defendant did not have constructive possession of the drugs found inside of a flower pot in a residence that was neither owned nor occupied by the defendant because there was no evidence that the residue on a pipe was actually lipstick; even if it was lipstick, there was no evidence that the defendant owned any lipstick, let alone the particular lipstick found on the pipe; the mere presence of a pipe with lipstick on it in the vicinity of a female did not constitute direct evidence of possession by that female; and there was no DNA or fingerprint evidence linking the defendant to the drug-laced pipe. Poteet v. State, 358 Ga. App. 82, 853 S.E.2d 671, 2021 Ga. App. LEXIS 4 (2021).

Evidence sufficient to support conviction of sale and trafficking in methamphetamine. —

Evidence that a defendant sold an undercover officer methamphetamine on two occasions, with one sale of more than 28 grams, and that the defendant participated in a later, larger drug deal, supported the defendant's convictions for trafficking in methamphetamine, O.C.G.A. § 16-13-31(e), and sale of methamphetamine under O.C.G.A. §§ 16-13-26(3)(B) and 16-13-30(b). Culajay v. State, 309 Ga. App. 631, 710 S.E.2d 846, 2011 Ga. App. LEXIS 420 (2011).

Evidence that defendant was actively attempting to dispose of methaqualone by flushing the methaqualone down the toilet authorized defendant's conviction. Anderson v. State, 166 Ga. App. 459, 304 S.E.2d 550, 1983 Ga. App. LEXIS 3242 (1983).

Evidence sufficient for conviction. —

See Smith v. State, 168 Ga. App. 92, 308 S.E.2d 226, 1983 Ga. App. LEXIS 3376 (1983); Bryant v. State, 174 Ga. App. 468, 330 S.E.2d 406, 1985 Ga. App. LEXIS 2717 (1985); Lewis v. State, 174 Ga. App. 613, 330 S.E.2d 810, 1985 Ga. App. LEXIS 2734 (1985); Clarington v. State, 178 Ga. App. 663, 344 S.E.2d 485, 1986 Ga. App. LEXIS 2554 (1986); Boles v. State, 178 Ga. App. 508, 343 S.E.2d 729, 1986 Ga. App. LEXIS 2542 (1986); Brown v. State, 178 Ga. App. 691, 344 S.E.2d 509, 1986 Ga. App. LEXIS 2563 (1986); Houston v. State, 180 Ga. App. 267, 349 S.E.2d 228, 1986 Ga. App. LEXIS 2708 (1986); Bradley v. State, 180 Ga. App. 386, 349 S.E.2d 263, 1986 Ga. App. LEXIS 2729 (1986); Black v. State, 181 Ga. App. 540, 353 S.E.2d 4, 1987 Ga. App. LEXIS 1477 (1987); Freeman v. State, 182 Ga. App. 654, 356 S.E.2d 718, 1987 Ga. App. LEXIS 2654 (1987); Pittman v. State, 183 Ga. App. 12, 357 S.E.2d 855, 1987 Ga. App. LEXIS 2678 (1987); Bentley v. State, 183 Ga. App. 112, 358 S.E.2d 274, 1987 Ga. App. LEXIS 2682 (1987); Howard v. State, 185 Ga. App. 215, 363 S.E.2d 621, 1987 Ga. App. LEXIS 2861 (1987); Lewis v. State, 186 Ga. App. 349, 367 S.E.2d 123, 1988 Ga. App. LEXIS 317 (1988); Wright v. State, 189 Ga. App. 441, 375 S.E.2d 895, 1988 Ga. App. LEXIS 1438 (1988); Doe v. State, 189 Ga. App. 793, 377 S.E.2d 546, 1989 Ga. App. LEXIS 30 (1989); Reeves v. State, 194 Ga. App. 539, 391 S.E.2d 35, 1990 Ga. App. LEXIS 191 (1990); Smith v. State, 197 Ga. App. 609, 398 S.E.2d 858, 1990 Ga. App. LEXIS 1379 (1990); Nelson v. State, 197 Ga. App. 898, 399 S.E.2d 748, 1990 Ga. App. LEXIS 1505 (1990); Shiropshire v. State, 201 Ga. App. 421, 411 S.E.2d 339, 1991 Ga. App. LEXIS 1383 (1991); Ross v. State, 206 Ga. App. 1, 424 S.E.2d 308, 1992 Ga. App. LEXIS 1552 (1992); Turner v. State, 213 Ga. App. 77, 443 S.E.2d 703, 1994 Ga. App. LEXIS 456 (1994); Moreland v. State, 213 Ga. App. 638, 445 S.E.2d 388, 1994 Ga. App. LEXIS 682 (1994); Teasley v. State, 214 Ga. App. 646, 448 S.E.2d 904, 1994 Ga. App. LEXIS 996 (1994); Thomas v. State, 222 Ga. App. 337, 474 S.E.2d 631, 1996 Ga. App. LEXIS 818 (1996); Lang v. State, 226 Ga. App. 729, 487 S.E.2d 485, 1997 Ga. App. LEXIS 749 (1997); Tate v. State, 230 Ga. App. 186, 495 S.E.2d 658, 1998 Ga. App. LEXIS 83 (1998); King v. State, 230 Ga. App. 301, 496 S.E.2d 312, 1998 Ga. App. LEXIS 115 (1998), cert. denied, No. S98C0754, 1998 Ga. LEXIS 548 (Ga. May 14, 1998); Johnson v. State, 230 Ga. App. 507, 496 S.E.2d 785 (1998); Grant v. State, 239 Ga. App. 608, 521 S.E.2d 654, 1999 Ga. App. LEXIS 1081 (1999); Heath v. State, 240 Ga. App. 492, 522 S.E.2d 761, 1999 Ga. App. LEXIS 1273 (1999); Brackins v. State, 249 Ga. App. 788, 549 S.E.2d 775, 2001 Ga. App. LEXIS 630 (2001); Wood v. State, 264 Ga. App. 787, 592 S.E.2d 455,

2003 Ga. App. LEXIS 1568 (2003); In the Interest of A.A., 265 Ga. App. 369, 593 S.E.2d 891, 2004 Ga. App. LEXIS 120 (2004), cert. dismissed, No. S04C1099, 2004 Ga. LEXIS 494 (Ga. June 7, 2004).

Evidence sufficient to sustain conviction for possession of cocaine with intent to distribute. Kinney v. State, 199 Ga. App. 354, 405 S.E.2d 98, 1991 Ga. App. LEXIS 473 (1991).

Evidence showing that cocaine found in the defendant's possession was divided between more than 30 small glassine or clear plastic packages indicated a manner of packaging commonly associated with the sale or distribution of such contraband and would authorize any rational trier of fact to infer that the defendant possessed cocaine with the intent to distribute. Williams v. State, 199 Ga. App. 544, 405 S.E.2d 539, 1991 Ga. App. LEXIS 547 (1991).

Defendant's presence in the vicinity of cocaine, defendant's participation in an attempt to elude possession, the finding of cocaine at the defendant's feet and the presence of cocaine in the defendant's bodily system as evinced by drug tests were sufficient to authorize a rational trier of fact to infer that the defendant possessed cocaine with intent to distribute. Jones v. State, 207 Ga. App. 46, 427 S.E.2d 40, 1993 Ga. App. LEXIS 57 (1993).

Defendant's conviction of possession of cocaine in violation of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-30 et seq., was supported by sufficient evidence; the defendant admitted that a passenger in the defendant's vehicle had purchased crack cocaine, and a pipe found in the vehicle tested positive for cocaine residue. Bevis v. State, 259 Ga. App. 269, 576 S.E.2d 652, 2003 Ga. App. LEXIS 75 (2003).

Conviction of a second defendant for possession of marijuana with intent to distribute in violation of O.C.G.A. § 16-13-30 was affirmed after: (1) evidence that the second defendant expected to receive $1,000 to receive a package for a person authorized the jury to conclude beyond a reasonable doubt that defendant was aware the package contained contraband; (2) a mistrial was not warranted since curative instructions were given by the court regarding the irrelevancy of remands by the first defendant's attorney; and (3) the package was admissible since it was easily identifiable, securely packed, and there was no evidence of tampering. Sandoval v. State, 260 Ga. App. 61, 579 S.E.2d 75, 2003 Ga. App. LEXIS 309 (2003).

Evidence of the defendant's possession of cocaine was sufficient when the evidence consisted of a police officer's testimony that the officer saw the defendant discard a glass tube while fleeing the officer and a forensic chemist's testimony that the tube contained trace amounts of cocaine. Jones v. State, 260 Ga. App. 487, 580 S.E.2d 278, 2003 Ga. App. LEXIS 411 (2003).

Evidence was sufficient to support defendant's conviction for possession of cocaine with intent to distribute, as a police officer saw defendant commit traffic offenses, pursued defendant's car for those offenses, saw defendant throw a white substance out of the driver's side window, the substance was later identified as an amount of cocaine consistent with the distribution and personal use of cocaine, and defendant had a large amount of cash on defendant at the time defendant's car was finally stopped; the evidence was sufficient under the Jackson standard to support each element of defendant's conviction although a remand was required to make a finding regarding an ineffective assistance of counsel claim. Talbot v. State, 261 Ga. App. 12, 581 S.E.2d 669, 2003 Ga. App. LEXIS 512 (2003).

On appeal from the trial court's judgment convicting the defendant of possession of marijuana, the appellate court refused to affirm the defendant's conviction on the basis of seeds, stems, and residue that were found in the defendant's bedroom because those items were not tested scientifically and a forensic toxicologist who testified could not state beyond a reasonable doubt that the items were marijuana, but the appellate court held that the toxicologist's testimony that the toxicologist found marijuana metabolites in a urine sample the defendant gave to police was sufficient to sustain the defendant's conviction. Cargile v. State, 261 Ga. App. 319, 582 S.E.2d 473, 2003 Ga. App. LEXIS 531 (2003), cert. denied, No. S03C1360, 2003 Ga. LEXIS 808 (Ga. Sept. 22, 2003).

Evidence was sufficient to support the defendant's conviction for possession of cocaine when the state introduced blood test results showing a metabolite of cocaine in the defendant's blood after the defendant refused to spit out the substance the defendant was chewing. Millsap v. State, 261 Ga. App. 427, 582 S.E.2d 568, 2003 Ga. App. LEXIS 650 (2003).

Evidence held sufficient for possessing cocaine, possessing cocaine within 1,000 feet of a housing project, and attempted bribery, where police officers observed the defendant engaging in what appeared to be a drug transaction, the officers thereafter found cocaine on the

police officers observed the defendant engaging in what appeared to be a drug transaction, the officers thereafter found cocaine on the sidewalk where the defendant had been standing and cocaine in the defendant's pockets, and the defendant told a police officer who was counting the defendant's money to take it and the defendant's watch, and that the defendant would pay the officer more in a week if the officer would let the defendant go. Hester v. State, 261 Ga. App. 614, 583 S.E.2d 274, 2003 Ga. App. LEXIS 722 (2003).

Even assuming the lab results regarding methamphetamine were non-probative hearsay, the detailed testimony by the officers provided the requisite evidence to convict defendant of manufacturing and trafficking in methamphetamine. Bilow v. State, 262 Ga. App. 850, 586 S.E.2d 675, 2003 Ga. App. LEXIS 785 (2003), cert. denied, No. S04C0048, 2004 Ga. LEXIS 42 (Ga. Jan. 12, 2004).

Testimony of the officers alone held sufficient to support convictions of selling cocaine as the credibility and weight to be given to the witnesses was within the province of the jury. Sutton v. State, 261 Ga. App. 860, 583 S.E.2d 897, 2003 Ga. App. LEXIS 790 (2003).

Evidence that, inter alia, an officer observed the defendant drop a piece of paper which later tested positive for cocaine was sufficient to support a conviction for possession of cocaine. Griffin v. State, 266 Ga. App. 50, 596 S.E.2d 405, 2004 Ga. App. LEXIS 296 (2004).

Evidence supported the defendant's conviction for possession of methamphetamine as an accomplice's statement that the defendant was involved in a drug transaction was supported by the defendant's admission that the defendant was at the accomplice's house to buy drugs, the defendant's possession of a digital scale of the type used in drug transactions, and cash in an amount an expert testified was typical of that charged for an eightball of methamphetamine. Lewis v. State, 268 Ga. App. 547, 602 S.E.2d 278, 2004 Ga. App. LEXIS 962 (2004).

There was sufficient evidence to show that the defendant possessed cocaine since the defendant resided in the bedroom where the cocaine was discovered, a friend testified that the friend heard the defendant admit the cocaine was found in the defendant's room, the defendant's mother pointed out the room as defendant's, and after the cocaine was discovered, the defendant went into hiding, and the argument of equal access by the defendant's mother and brother to the cocaine was unavailing when other evidence linked the defendant to the cocaine. Truitt v. State, 266 Ga. App. 56, 596 S.E.2d 219, 2004 Ga. App. LEXIS 299 (2004).

Defendant's acts, including telephoning a known drug dealer about purchasing cocaine and driving to an agreed location to make the transaction sufficiently constituted a substantial step to convict defendant of attempting to possess cocaine. Massey v. State, 267 Ga. App. 482, 600 S.E.2d 437, 2004 Ga. App. LEXIS 690 (2004).

When marijuana allegedly possessed by the defendant was tested by the state crime lab but then was lost and was not presented at trial, the evidence presented, including the defendant's admissions and the arresting officers' identification of the marijuana, was sufficient to sustain the defendant's possession conviction. Jones v. State, 268 Ga. App. 246, 601 S.E.2d 763, 2004 Ga. App. LEXIS 897 (2004).

Evidence that an undercover police officer tried to purchase drugs from a third person, that the third person said the person would have to get the drugs from "his source," and that the officer was present when defendant gave a package to a third person shortly before the third person delivered cocaine to the officer was sufficient to sustain defendant's convictions for trafficking in cocaine and possessing cocaine with intent to distribute. Serrate v. State, 268 Ga. App. 276, 601 S.E.2d 766, 2004 Ga. App. LEXIS 888 (2004).

Evidence was sufficient to support the defendant's conviction of possession of cocaine in violation of O.C.G.A. § 16-13-30(a) as cocaine was a controlled substance under O.C.G.A. § 16-13-26(1)(D) and the defendant had an additional 2.2 grams of cocaine in the defendant's pocket when the defendant was arrested for trafficking in cocaine found in a cooler. Salgado v. State, 268 Ga. App. 18, 601 S.E.2d 417, 2004 Ga. App. LEXIS 827 (2004).

Evidence was sufficient to sustain convictions of possession of controlled substances, O.C.G.A. § 16-13-30(a), and possession of controlled substances with intent to distribute, O.C.G.A. § 16-13-30(b), when two witnesses testified that the substance in a bag carried by the defendant appeared to be crack cocaine, and a field test indicated that the substance was crack cocaine. Riddle v. State, 267 Ga. App. 630, 600 S.E.2d 709, 2004 Ga. App. LEXIS 738 (2004).

When the defendant's possession of a vehicle was not the sole evidence of defendant's possession of drugs and a confidential informant's testimony was not material to the defense, the defendant was not entitled to know the informant's identity and the trial court properly denied the defendant's motion for a new trial on the charges of possession of cocaine. Respress v. State, 267 Ga. App. 654, 600 S.E.2d 727, 2004 Ga. App. LEXIS 743 (2004).

Evidence was sufficient to support the defendant's conviction for possession of cocaine as cocaine was found in the defendant's pocket during a search of the defendant's clothes while being arrested on other charges. Finney v. State, 270 Ga. App. 422, 606 S.E.2d 637, 2004 Ga. App. LEXIS 1467 (2004).

Defendant's cocaine possession conviction was affirmed as defendant's statement that defendant and two other men went to the victim's house to buy cocaine, that the victim came out of the victim's house with the cocaine and gave it to defendant, and that defendant split the cocaine with defendant's accomplices, was corroborated by proof that cash was found on the victim's bed next to several bags of a substance that later tested positive for crack cocaine. Williams v. State, 270 Ga. App. 424, 606 S.E.2d 871, 2004 Ga. App. LEXIS 1456 (2004).

Evidence was sufficient to support the defendant's conviction for possession of cocaine as the evidence showed that the defendant kept cocaine in the office and that the defendant alone controlled access to the defendant's office as a sign on the office door made it plain that the office was the defendant's office and that the office was off limits to everyone except the defendant. Simmons v. State, 271 Ga. App. 330, 609 S.E.2d 678, 2005 Ga. App. LEXIS 49 (2005).

Evidence was sufficient to support the defendant's conviction for possession of cocaine as police searched a hotel room where the defendant was with a girlfriend and cocaine residue and paraphernalia was found. Wilson v. State, 271 Ga. App. 359, 609 S.E.2d 703, 2005 Ga. App. LEXIS 41 (2005).

Evidence supported the defendant's possession of marijuana conviction because: defendant fled from the police, kicked two officers, and had marijuana, BC packets, and a cell phone, and the defendant's DNA matched the DNA on the beer can. Lewis v. State, 271 Ga. App. 744, 611 S.E.2d 80, 2005 Ga. App. LEXIS 157 (2005).

Evidence supported the defendant's conviction for possession of methamphetamine because a police officer testified the methamphetamine was taken from the defendant's wallet. Morrison v. State, 272 Ga. App. 34, 611 S.E.2d 720, 2005 Ga. App. LEXIS 219 (2005), aff'd, 280 Ga. 222, 626 S.E.2d 500, 2006 Ga. LEXIS 119 (2006), overruled in part, State v. Slaughter, 289 Ga. 344, 711 S.E.2d 651, 2011 Ga. LEXIS 470 (2011).

Conviction for possession by ingestion of methamphetamine was supported by a positive preliminary urine test for amphetamines conducted by the defendant's supervising probation officer and a gas chromatography/mass spectrometry test performed on the sample by the state forensic toxicologist, which confirmed the presence of methamphetamine. Poston v. State, 274 Ga. App. 117, 617 S.E.2d 150, 2005 Ga. App. LEXIS 679 (2005).

Sufficient evidence supported the defendant's conviction of possession of cocaine under O.C.G.A. § 16-13-30(a) as: (1) the informant testified that the defendant procured crack cocaine for the informant for $300.00; (2) detectives witnessed the defendant enter and exit the bar where, according to the informant, defendant obtained the cocaine; and (3) the substance tested positive for cocaine, a controlled substance under O.C.G.A. § 16-13-26(1)(D); the credibility of the informant, which, according to the defendant, was allegedly impaired by the informant's prior criminal conduct, was an issue for the jury. Ross v. State, 275 Ga. App. 137, 619 S.E.2d 809, 2005 Ga. App. LEXIS 905 (2005).

Circumstantial evidence under former O.C.G.A. § 24-4-6 (see now O.C.G.A. § 24-14-6) was sufficient to support the defendant's conviction for possession of cocaine, in violation of O.C.G.A. § 16-13-30, as the defendant was approached by two undercover officers and upon seeing that one of the officers had a badge, the defendant turned around and made a throwing motion with a clenched fist in the direction of a trash barrel; the defendant was in an area known for drug sales, and three pieces of crack cocaine were found in the vicinity of the trash barrel. Woods v. State, 275 Ga. App. 471, 620 S.E.2d 660, 2005 Ga. App. LEXIS 997 (2005).

Conviction for possessing cocaine with intent to distribute was sufficiently supported by evidence showing that 1.5 grams of cocaine were found in the defendant's pocket and that an electronic scale, small plastic baggies, and over $2,600.00 in cash were found in the defendant's residence. Copeland v. State, 273 Ga. App. 850, 616 S.E.2d 189, 2005 Ga. App. LEXIS 638 (2005).

Although a videotape of the transaction provided helpful confirmation of an undercover officer's identification of the defendant as the seller of cocaine, the testimony of the officer, by itself, was sufficient to support the jury's determination of guilt. Williams v. State, 277 Ga. App. 633, 627 S.E.2d 196, 2006 Ga. App. LEXIS 166 (2006).

635, 627 S.E.2d 196, 2006 Ga. App. LEXIS 166 (2006).

Evidence was sufficient to support conviction of simple possession of cocaine where, during the defendant's flight on foot from an officer, the officer saw defendant take an object from a pocket and flick it away and where the police found a small box containing drugs in the area of the chase, which the officer identified as the object the defendant discarded. Wilburn v. State, 278 Ga. App. 76, 628 S.E.2d 174, 2006 Ga. App. LEXIS 252 (2006).

Sufficient evidence, including a tape recording of the drug transaction, testimony from three government agents, and the jury's rejection of the defendant's defenses of misidentification and mere presence at the scene of a crime supported the defendant's sale of cocaine conviction; the defendant failed to preserve an alleged error in the jury charge regarding the factors the jury may consider in assessing reliability of identification testimony. Bonner v. State, 278 Ga. App. 855, 630 S.E.2d 127, 2006 Ga. App. LEXIS 418 (2006).

Defendant's convictions of possession of cocaine, O.C.G.A. § 16-13-30(a), and giving a false name and date of birth, O.C.G.A. § 16-10-25, were supported by sufficient evidence that, during a level-one encounter with an officer, the defendant gave the officer a false name and birth date, that, during a subsequent search of the defendant's person validly consented to by the defendant, the officer found documents that revealed the defendant's true identity and five pieces of a substance that the officer suspected was crack cocaine, that the officer's field test of the substance indicated positive for cocaine, that the substance was later tested at a state crime lab which confirmed that it was cocaine, and that there was a sufficient chain of custody for that substance. Postell v. State, 279 Ga. App. 275, 630 S.E.2d 867, 2006 Ga. App. LEXIS 518 (2006).

There was sufficient evidence to sustain the jury's verdict finding the defendant guilty beyond a reasonable doubt of possession of cocaine in violation of O.C.G.A. § 16-13-30(a), as the arresting officer testified that the defendant was in possession of a substance that tested positive for cocaine. Copeland v. State, 281 Ga. App. 11, 635 S.E.2d 283, 2006 Ga. App. LEXIS 984 (2006).

Appellate court upheld the defendant's convictions for possession of cocaine, sale of cocaine, and possession of cocaine with intent to distribute, based on sufficient evidence consisting of testimony from two special agents identifying the defendant, a videotape of a cocaine sale, and positive test results confirming the substance the defendant sold and possessed was cocaine. Henley v. State, 281 Ga. App. 242, 635 S.E.2d 856, 2006 Ga. App. LEXIS 1065 (2006).

Upon the defendant's challenge to the evidence supporting a cocaine possession charge and portions of the state's closing argument, because sufficient evidence corroborated the accomplice testimony supporting said charge, including that cocaine was found in the vicinity of the vehicle the defendant drove, and the defendant's flight from police showed a consciousness of guilt, conviction on said charge was upheld; moreover, the defendant waived objection to any argument of future dangerousness, and even if an objection had been made, the prosecutor's argument was proper, as such urged conviction based on current evidence that the defendant was a drug dealer and could not be seen as urging conviction based on future dangerousness. Carr v. State, 282 Ga. App. 199, 638 S.E.2d 348, 2006 Ga. App. LEXIS 1351 (2006).

Sufficient evidence supported the defendant's conviction of possession of cocaine with intent to distribute under O.C.G.A. § 16-13-30 despite the passenger's claim at trial that the passenger, not the defendant, threw the cocaine out the car window; the jury was permitted to reject the passenger's trial testimony as it conflicted with the passenger's earlier statement that the defendant had thrown the cocaine, and other evidence included the officer's statement that the cocaine was thrown from the driver's side where the defendant had been seated, and a substantial amount of cash was recovered from the defendant. Smith v. State, 282 Ga. App. 255, 638 S.E.2d 388, 2006 Ga. App. LEXIS 1355 (2006).

Defendant's convictions for possession of cocaine with intent to distribute and possession of a controlled substance within 1,000 feet of a housing project, in violation of O.C.G.A. § 16-13-30(b) and O.C.G.A. § 16-13-32.5(b), were based on sufficient evidence since the state proved by circumstantial evidence pursuant to former O.C.G.A. § 24-4-6 (see now O.C.G.A. § 24-14-6) that the defendant had been walking back and forth to an overturned bucket when people approached from the street in what appeared to be drug transactions, and the drugs were found under the bucket; there was evidence that the amount of drugs recovered were more than one would use for personal use, such that it indicated an intent to distribute, and there was also evidence indicating the proximity of the bucket to a nearby public housing complex. Reason v. State, 283 Ga. App. 608, 642 S.E.2d 236, 2007 Ga. App. LEXIS 136 (2007).

Defendant's convictions for malice murder, aggravated battery, burglary, and violation of the Georgia Controlled Substances Act, O.C.G.A.

Defendant's convictions for malice murder, aggravated battery, burglary, and violation of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., by unlawfully possessing cocaine and marijuana were supported by sufficient evidence; the defendant walked into a neighbor's house with a butcher knife in each hand and stabbed two people, knives found in the woods behind the defendant's apartment matched the descriptions of those used in the stabbings and had deoxyribonucleic acid matching the defendant's, two knives were missing from a knife block in the defendant's apartment, marijuana and cocaine were found in the apartment, the defendant told a friend that the defendant had "hurt some people really bad," and three eyewitnesses identified the defendant as the assailant. Swanson v. State, 282 Ga. 39, 644 S.E.2d 845, 2007 Ga. LEXIS 351 (2007).

There was sufficient evidence of possession to support a defendant's convictions of trafficking in cocaine, possession of cocaine with the intent to distribute, possession of marijuana, and possession of a firearm during the commission of a crime since: the defendant sped off when police tried to stop the defendant for running a stop sign; narcotics and a gun were found in the passenger side of the car; the passenger's story that the passenger had flagged down the defendant for a ride and that the passenger was unaware of the drugs and the gun was corroborated by the passenger's girlfriend; the defendant's sister, who owned the car, testified that there was no contraband in the car before the defendant took the car; the defendant had $1,755 in cash on the defendant's person; and the defendant had prior drug offenses. Jackson v. State, 284 Ga. App. 619, 644 S.E.2d 491, 2007 Ga. App. LEXIS 376 (2007), cert. denied, No. S07C1169, 2007 Ga. LEXIS 521 (Ga. June 25, 2007), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Given that the evidence presented against the defendant showed that, as the only passenger in a moving vehicle, the defendant, as that passenger, and not the driver, could have tossed bags of cocaine out of a window, the evidence supported the defendant's possession conviction. Johnson v. State, 283 Ga. App. 425, 641 S.E.2d 655, 2007 Ga. App. LEXIS 81 (2007).

Defendant's conviction for cocaine possession did not rest on "mere presence" evidence; an officer's unobstructed observation of the defendant in the act of throwing a crack pipe onto the ground, combined with the lab testing of the substance removed from the pipe, provided ample direct evidence from which the jury could have found that the defendant possessed cocaine. Smith v. State, 285 Ga. App. 399, 646 S.E.2d 499, 2007 Ga. App. LEXIS 533 (2007); Marshall v. State, 286 Ga. App. 86, 648 S.E.2d 674, 2007 Ga. App. LEXIS 696 (2007).

Evidence supported the defendant's convictions of two counts of malice murder, armed robbery, and possession of cocaine since: a driver carrying a gun and a bag ran out of a car that had been dragging the body of the car's owner and that had another dead victim in the passenger seat; bags of cocaine were on the lap of the victim in the passenger seat; one victim had been shot with a .44 caliber weapon; a canine unit located a .44 caliber revolver, cash, a man's clothes with cocaine in them, and a shoulder bag in the woods into which the driver had fled; the defendant came out of the woods wearing only underwear; and the defendant admitted to shooting the victims. Preston v. State, 282 Ga. 210, 647 S.E.2d 260, 2007 Ga. LEXIS 477 (2007).

In a prosecution for possession of marijuana with intent to distribute, there was sufficient evidence that the defendant possessed the marijuana found in a car in which the defendant was riding; the defendant admitted to owning the car, marijuana was found where the defendant had been sitting and under the driver's seat, and a passenger testified that the defendant had been driving earlier that evening and that the defendant admitted to the passenger that the marijuana was the defendant's. King v. State, 287 Ga. App. 375, 651 S.E.2d 496, 2007 Ga. App. LEXIS 976 (2007).

There was sufficient evidence to support a conviction for possession of methamphetamine and possession of drug related objects when the defendant admitted telling officers that the defendant owned a pipe that had methamphetamine residue on the pipe, but said that the admission had been made under pressure and that a purse in which drug-related items were found was a "community purse" used by employees of the convenience store where the defendant worked; it was for the jury to resolve conflicts in the testimony and to weigh the evidence. Doyal v. State, 287 Ga. App. 667, 653 S.E.2d 52, 2007 Ga. App. LEXIS 894 (2007).

Given that two officers testified that the officers saw the defendant, in plain view, packaging 35 grams of cocaine and 94 grams of marijuana into smaller packages, and the testimony of a single witness was generally sufficient to establish a fact, the defendant's convictions for trafficking in cocaine and possession of marijuana with the intent to distribute were upheld on appeal. King v. State, 289 Ga. App. 461, 657 S.E.2d 570, 2008 Ga. App. LEXIS 120 (2008).

There was sufficient evidence to uphold defendant's conviction for drug possession as the evidence established that the defendant attempted to sell drugs during a controlled buy situation set up by the police and a gray pouch containing numerous small red bags of

attempted to sell drugs during a controlled buy situation set up by the police and a gray pouch containing numerous small red bags of marijuana as well as one medium-sized bag of cocaine were found on the defendant's person. Further, at trial, the defendant admitted to possessing the marijuana and, although defendant insisted that the officers put the cocaine in the gray pouch, three officers participating in the arrest denied that the cocaine and the pouch had been planted. Habersham v. State, 289 Ga. App. 718, 658 S.E.2d 253, 2008 Ga. App. LEXIS 190 (2008).

Trial court properly denied a defendant's motion for a new trial, and there was sufficient evidence to support defendant's conviction for possession of cocaine with the intent to distribute and that defendant's drug possession was not for personal use, based on the finding of 25 pieces of crack cocaine, totaling 1.68 grams being found on defendant's person, and an officer testifying that the officer investigated crack cocaine sales in the area for over a year and was familiar with the price of crack cocaine, how the cocaine was packaged, how buyers and sellers interact, and how sellers often use a two-way radio, such as was found on the defendant, to conduct the transactions. Defendant's contention that the defendant was addicted to crack cocaine was further contradicted by no crack pipe being found on the defendant's person, nor was there any evidence that the defendant was under the influence of any drug at the time of the search. Griffin v. State, 291 Ga. App. 618, 662 S.E.2d 171, 2008 Ga. App. LEXIS 500 (2008), cert. denied, No. S08C1469, 2008 Ga. LEXIS 709 (Ga. Sept. 8, 2008).

There was sufficient evidence to support defendant's conviction for possession of cocaine and marijuana, both with intent to distribute, and defendant's conviction was not based only on circumstantial evidence as there was direct evidence that the defendant sold cocaine based on the defendant being observed in the bathroom of the residence doing something at the toilet in response to the police entry; a large quantity of cocaine and marijuana were found in the toilet tank; a witness linked defendant to those drugs; several digital scales were found around the house; and two witnesses testified that no one else in the house sold drugs but defendant. Howard v. State, 291 Ga. App. 386, 662 S.E.2d 203, 2008 Ga. App. LEXIS 513 (2008).

As the defendant admitted at trial that the defendant was in possession of a gun and cocaine when the defendant was stopped by the police and that the defendant was 16 years old at the time, there was sufficient evidence for the jury to find the defendant guilty of possession of cocaine, possession of a firearm while in the commission of a felony, and possession of a pistol by a person under the age of 18. Olive v. State, 291 Ga. App. 538, 662 S.E.2d 308, 2008 Ga. App. LEXIS 560 (2008).

Convictions of manufacture, distribution, and possession of methamphetamine with the intent to distribute under O.C.G.A. § 16-13-30(b), possession of ephedrine/pseudoephedrine under O.C.G.A. § 16-13-30.3(b)(1), and possession of a firearm during the commission of a felony under O.C.G.A. § 16-11-106(b)(4) were supported by the evidence. A panel van belonging to the defendant had been modified as a methamphetamine lab, was located on the defendant's property, and was powered by an electrical cord running from the defendant's trailer; everything necessary to support the production of methamphetamine was present in the vicinity of the vehicle; the defendant's name and that of the defendant's spouse had been scrawled on an interior panel of the vehicle; the defendant offered to provide any methamphetamine that a house guest wanted; uncured methamphetamine and enough ephedrine was present at the scene to make 30 to 33 grams of methamphetamine; and the defendant admitted to giving methamphetamine to others and to owning the sawed-off shotgun recovered from the panel van. Boone v. State, 293 Ga. App. 654, 667 S.E.2d 880, 2008 Ga. App. LEXIS 1041 (2008).

Additional evidence other than a defendant's ownership of the premises demonstrated the defendant's possession of cocaine with intent to distribute. The cocaine was found in an office containing the defendant's personal items; entry into the office had been made more difficult by installation of a steel padlocked door, which was locked when officers arrived to conduct the search; the defendant admitted to installing surveillance equipment; numerous items used to measure, prepare, and ingest cocaine were found in the office; and the defendant admitted to an officer that pill bottles of cocaine belonged to the defendant. Bailey v. State, 294 Ga. App. 437, 669 S.E.2d 453, 2008 Ga. App. LEXIS 1212 (2008), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Evidence was sufficient to support convictions of felony murder and possession of cocaine. A person fitting the defendant's description, wearing black clothing and carrying a black garbage bag, ran from the store where the victim worked; within an hour of the shooting, the defendant, who lived three blocks away, gave a neighbor's child "cigars without tobacco" and lottery tickets from a black garbage bag, and said that the defendant had "hit a lick"; packages of tobacco tubes were found on the ground between the store and the defendant's apartment complex; the victim's wallet was found in a trash receptacle at the complex, and a police dog followed the scent on the wallet to the defendant's apartment; officers searching the defendant's apartment found cocaine, a handgun, black clothing, a black stocking, and a

novelty dollar bill of the sort that had been given to the victim the night before the shooting; and the bullet that killed the victim was fired from the handgun in the defendant's room. Jones v. State, 284 Ga. 672, 670 S.E.2d 790, 2008 Ga. LEXIS 1021 (2008).

There was sufficient evidence to support a defendant's conviction for possession of cocaine based on the police observing the defendant making a throwing motion with the defendant's hands after the police commanded the defendant to come and thereafter finding in the area where the defendant was standing three rocks of dry crack cocaine even though it had been raining, and no one else was in the area. Ware v. State, 297 Ga. App. 400, 677 S.E.2d 423, 2009 Ga. App. LEXIS 438 (2009).

Evidence was sufficient to support a conviction of cocaine and marijuana possession. An officer testified that the officer found a plastic bag containing the drugs in the location where the officer saw a person identified as the defendant pull out an object and then replace the object; the defendant's arguments regarding the identification testimony, which was contradicted by defense witnesses, went to the weight and credit to be given the evidence and not to the evidence's sufficiency. Smith v. State, 297 Ga. App. 658, 678 S.E.2d 496, 2009 Ga. App. LEXIS 507 (2009).

Convictions of drug possession pursuant to O.C.G.A. §§ 16-13-2, 16-13-28, and 16-13-30 were supported by sufficient evidence under circumstances in which, following a stop, an officer found a bag of marijuana in the defendant's pocket, and, after arresting the defendant, the officer also found $858 in the defendant's pockets and a bottle containing 16 pills of Alprazolam under the dashboard of the car the defendant had been driving; the pills were what remained of a 90-pill prescription issued five days before to a different person. Further, a bag of cocaine was later found in the patrol car where the defendant was held before backup officers arrived. Noellien v. State, 298 Ga. App. 47, 679 S.E.2d 75, 2009 Ga. App. LEXIS 582 (2009).

There was sufficient evidence to support a defendant's conviction for possession of methamphetamine with the intent to distribute with regard to the police finding the contraband in the defendant's vehicle, despite the defendant's contention that the state failed to show that the defendant was in possession of the drug and failed to show an intention to distribute, based on the defendant's intentional use of the vehicle. Further, there was testimony from a witness that the witness had recently ingested methamphetamine that was procured from the defendant and the codefendants and that the defendant provided the transportation that facilitated the procurement of the methamphetamine that was ingested. Armstrong v. State, 298 Ga. App. 855, 681 S.E.2d 662, 2009 Ga. App. LEXIS 805 (2009).

Evidence was sufficient to convict the defendant of possession of methamphetamine in violation of O.C.G.A. § 16-13-30(a) because the defendant occupied and controlled a trailer where the drugs were found. Peacock v. State, 301 Ga. App. 873, 689 S.E.2d 853, 2010 Ga. App. LEXIS 12 (2010).

Evidence was sufficient to convict a defendant of constructive possession of cocaine in violation of O.C.G.A. § 16-13-30(a) given that an extended stay motel room where an undercover officer purchased cocaine was rented to the defendant, the defendant was in the room, and drugs and paraphernalia were in plain view on the table. A jury could infer that the defendant was aware of the cocaine, was in control of the cocaine, and was in sole or joint constructive possession of the cocaine. Conyers v. State, 302 Ga. App. 95, 690 S.E.2d 233, 2010 Ga. App. LEXIS 65 (2010), cert. denied, No. S10C0909, 2010 Ga. LEXIS 439 (Ga. June 1, 2010).

Evidence was sufficient to permit a rational jury to find the defendant guilty beyond a reasonable doubt of possession of cocaine in violation of O.C.G.A. § 16-13-30 because a sheriff's deputy and the arresting officer testified that cocaine was found on the defendant's person and the expert testimony of the state crime lab technician confirmed that the seized substance was cocaine. Davis v. State, 304 Ga. App. 355, 696 S.E.2d 381, 2010 Ga. App. LEXIS 527 (2010).

Any rational trier of fact could have found the defendant guilty of trafficking in cocaine, possession of methylenedioxyamphetamine, and possession of less than one ounce of marijuana beyond a reasonable doubt because based on the evidence, the jury was authorized to conclude that the defendant threw a plastic bag containing drugs out the passenger side window of the defendant's car; the state presented evidence that a deputy saw the defendant actually possessing the bag of illegal narcotics as the defendant held the bag in the car before the defendant threw the bag out the passenger's window, and another deputy assigned to the drug suppression task force testified, without objection, that the amount of cocaine in the bag was more than a user would have in a user's possession and that would be the amount that a mid-level dealer would have in a dealer's possession. McCombs v. State, 306 Ga. App. 64, 701 S.E.2d 496, 2010 Ga. App. LEXIS 798 (2010).

Since the defendant was the owner of the house where the ephedrine and pseudoephedrine were found, the defendant was presumed to have possessed all of the contents and, thus, there was sufficient evidence to support the defendant's possession conviction. Taylor v. State, 320 Ga. App. 596, 740 S.E.2d 327, 2013 Ga. App. LEXIS 244 (2013).

Evidence that the defendant's son spent most of the son's time in the downstairs of the defendant's house smoking marijuana and selling the marijuana to a regular stream of customers and that the defendant was not surprised when a safe in the son's bedroom was opened and drugs and paraphernalia were found there supported the defendant's conviction for possession of more than one ounce of marijuana. Kirchner v. State, 322 Ga. App. 275, 744 S.E.2d 802, 2013 Ga. App. LEXIS 495 (2013), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Evidence was sufficient to convict the defendant of trafficking in methamphetamine, possession of oxycodone and less than one ounce of marijuana, and driving while the defendant's license was suspended because the defendant knew the defendant's license to drive was suspended, and because the defendant knowingly had both the power and intention to exercise dominion or control over the controlled substances found in the backpack and was in constructive possession of those substances, as the defendant was driving the car in which the backpack was located, and the defendant was linked to the backpack by the defendant's control of the car and evidence that the backpack contained a copy of a fake driver's license the defendant gave to an officer. Armstrong v. State, 325 Ga. App. 690, 754 S.E.2d 652, 2014 Ga. App. LEXIS 51 (2014).

Testimony from both of the arresting officers that the officers personally witnessed the defendant with what looked like crack cocaine rocks in the defendant's mouth and further testimony that the officers saw the defendant spit out some pieces of the suspected cocaine, which the officers retrieved and which later tested positive for cocaine, supported a conviction for possession of cocaine. Jordan v. State, 326 Ga. App. 78, 755 S.E.2d 882, 2014 Ga. App. LEXIS 123 (2014).

Evidence that the defendant's ex-girlfriend and the ex-girlfriend's aunt saw the defendant place a plastic bag containing what they believed to be marijuana onto a scale before taking it out the back door and the defendant sat alone on the back steps until police arrived and found plastic bags of marijuana and cocaine side-by-side behind a panel beside the steps where the defendant sat, showed more than spatial proximity, and was sufficient to support a conviction for possession of cocaine. Johnson v. State, 335 Ga. App. 796, 783 S.E.2d 156, 2016 Ga. App. LEXIS 86 (2016).

Because the record showed that trace amounts of both marijuana and cocaine were found in the defendant's possession, and neither statute criminalizing possession of those substances required more, the evidence was sufficient to support the defendant's convictions for possession. Francis v. State, 345 Ga. App. 586, 814 S.E.2d 571, 2018 Ga. App. LEXIS 242 (2018).

Evidence sufficient for codeine possession conviction. —

Trial court did not err in refusing to direct a verdict of acquittal because the evidence was sufficient to convict the defendant of possession of codeine as the evidence at trial supported an inference that the defendant possessed a prescription bottle that was in another person's name and that the liquid in the bottle contained codeine; and the state was not required to show that the codeine fell specifically within Schedule V as a description in an indictment to a specified controlled substance by reference to a particular Schedule in the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., was mere surplusage. Evans v. State, 330 Ga. App. 241, 766 S.E.2d 821, 2014 Ga. App. LEXIS 823 (2014), cert. dismissed, No. S15C0653, 2015 Ga. LEXIS 207 (Ga. Mar. 30, 2015).

Trial court determines credibility and resolves conflicts. —

In a bench trial, because conflicts in the evidence were for the trial court as the trier of fact, and not the court of appeals to resolve, the defendant's convictions for theft by taking a motor vehicle and possessing cocaine were not subject to reversal on appeal based on the conflicts. Marshall v. State, 286 Ga. App. 86, 648 S.E.2d 674, 2007 Ga. App. LEXIS 696 (2007).

Defendant failed to demonstrate search warrant inadequately described car where cocaine found. —

Trial court properly denied defendant's motion to suppress evidence and motion for a directed verdict of acquittal, and properly entered a

Trial court properly denied defendant's motion to suppress evidence and motion for a directed verdict of acquittal, and properly entered a judgment of conviction against defendant for possession of cocaine, as the evidence sufficiently showed that defendant possessed cocaine which police found in a search of defendant's home and vehicle parked on a street just outside a fence that defendant and the wife owned;

the motion to suppress was properly denied since defendant did not show that the search warrant inadequately described the car in which the cocaine would be found. Heller v. State, 275 Ga. App. 637, 621 S.E.2d 591, 2005 Ga. App. LEXIS 1064 (2005).

Drugs within vehicles. —

Evidence was sufficient to authorize the jury's finding that defendant was in joint constructive possession of the cocaine, marijuana, and a pistol found inside the driver's car because the drugs were in plain view inside a car that smelled of raw marijuana, defendant was nervous about the impending search and gave evasive answers to the officers, defendant was in possession of an unusually large amount of cash and was in a position to see the pistol when the driver took the driver's proof of insurance from the glove box and, given the trafficking amount of cocaine found, the jury was authorized to infer that the driver and defendant possessed a loaded handgun to protect their illegal drug trade; thus, the evidence was sufficient to support the jury's finding that defendant was guilty of trafficking in cocaine, possession of marijuana, and possession of a firearm during the commission of a crime. Lopez v. State, 259 Ga. App. 720, 578 S.E.2d 304, 2003 Ga. App. LEXIS 257 (2003), cert. denied, No. S03C0933, 2003 Ga. LEXIS 583 (Ga. June 2, 2003).

When narcotics officers observed the defendant attempt to destroy a white substance against the side of the defendant's vehicle, and by rubbing the defendant's hand against a beer can, when coupled with a positive field test of both areas for cocaine, provided sufficient direct evidence to sustain a possession of cocaine conviction. Davis v. State, 260 Ga. App. 853, 581 S.E.2d 380, 2003 Ga. App. LEXIS 493 (2003).

When the evidence was sufficient to conclude that the defendant saw, had access to, and control over a plastic bag of cocaine sitting on a vehicle's front passenger seat, the trial court did not err in denying the defendant's acquittal motion. Felder v. State, 264 Ga. App. 583, 591 S.E.2d 471, 2003 Ga. App. LEXIS 1517 (2003).

Rational trier of fact was authorized to find that both defendants burglarized the victims' residence; that, once inside, they took money, clothing, and other personal property by use of a gun; that the first defendant also committed an aggravated assault on the female victim by striking her in the head with a handgun and was, therefore, in possession of a firearm during the commission of a crime; and that both defendants, along with their cohorts, had been in possession of the cocaine which was tossed out the vehicle they were riding in and found along the roadway. Davis v. State, 264 Ga. App. 221, 590 S.E.2d 192, 2003 Ga. App. LEXIS 1441 (2003).

Defendant was properly convicted of possession of cocaine after a crack pipe with cocaine residue was found in defendant's car because although defendant claimed that the pipe belonged to a friend, defendant admitted knowing of the pipe's presence in defendant's car. Walker v. State, 265 Ga. App. 449, 594 S.E.2d 678, 2004 Ga. App. LEXIS 147 (2004).

There was sufficient evidence to support defendant's conviction for possession of cocaine with intent to distribute because defendant was lawfully stopped for a traffic violation due to having only one operational headlight, a canine alerted to the passenger side of the vehicle, and a search of defendant's person and of the truck revealed cocaine and cash in such amounts as to lead a reasonable person to conclude that defendant had been selling the drugs. Barnett v. State, 275 Ga. App. 464, 620 S.E.2d 663, 2005 Ga. App. LEXIS 994 (2005).

Evidence was sufficient to support the defendant's conviction for violation of O.C.G.A. § 16-13-30 of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., because a passenger in the defendant's truck testified that the defendant purchased crack cocaine from an individual in a high drug area, a rock of crack cocaine was found in the defendant's truck, and a police officer corroborated that testimony pursuant to former O.C.G.A. § 24-4-8 (see now O.C.G.A. § 24-14-8) with the officer's own observations that the individual that the defendant was talking to had money in the individual's hand as it was lowered from the defendant's truck window. Millsap v. State, 275 Ga. App. 732, 621 S.E.2d 837, 2005 Ga. App. LEXIS 1104 (2005).

Since there was direct testimony that the defendant possessed the cocaine found in a car, corroborated by circumstantial evidence that a police officer saw the defendant take something from the defendant's pants and place it on the floor of the car, the defendant was properly found guilty of possession of cocaine. Depree v. State, 276 Ga. App. 499, 623 S.E.2d 701, 2005 Ga. App. LEXIS 1290 (2005).

Evidence that there were plastic bags of drugs in the driver's side door of a vehicle in which the defendant was sitting in the driver's seat, along with plastic bags recovered from the defendant's pocket that matched the bags containing the drugs, was sufficient to convict the defendant of possession of marijuana and cocaine with intent to distribute. Mackey v. State, 299 Ga. App. 851, 683 S.E.2d 899, 2009 Ga. App. LEXIS 1006 (2009).

Evidence that a cigarette pack containing methamphetamine and cocaine was found at the defendant's feet on the floor of a car after a traffic stop, along with evidence that the others in the car had just picked up the defendant to buy drugs from the defendant, was sufficient to allow a jury to find constructive possession in violation of O.C.G.A. § 16-13-30(a). Howard v. State, 300 Ga. App. 124, 684 S.E.2d 297, 2009 Ga. App. LEXIS 1097 (2009).

Trial court did not err in convicting the defendant of possession of cocaine with the intent to distribute, O.C.G.A. § 16-13-30(b), and possession of marijuana, O.C.G.A. § 16-13-2(b), because the circumstantial evidence established a meaningful connection between the defendant and the contraband, evidence which showed the defendant exercising power and dominion over the drugs found inside the wheel well on the front passenger's side of a car; the jury could infer that the drugs had been recently placed in the wheel well, and because the defendant had fled from the police, had been caught within arm's reach of the drugs, and had a large amount of cash in the defendant's pockets, the jury could infer that the defendant was a drug dealer and that the defendant had placed the drugs in the wheel well to avoid being prosecuted for possessing the drugs. Wright v. State, 302 Ga. App. 332, 690 S.E.2d 654, 2010 Ga. App. LEXIS 56 (2010).

Trial court erred in denying the defendant's motion for new trial after a jury found the defendant guilty of possession of more than one ounce of marijuana in violation of O.C.G.A. § 16-13-30(j) because the evidence adduced at trial was insufficient to show that the defendant was in sole constructive possession of the contraband when the defendant alone was charged with possessing the marijuana although the passenger in the defendant's car had equal access to the drugs, and the only legal evidence linking the defendant to the marijuana in the back seat was the defendant's spatial proximity to the marijuana; an officer's testimony concerning scales that were found in the car, to the extent it suggested some deception on the passenger's part, that deception did not give rise to the sole, reasonable inference that defendant was in sole constructive possession of the marijuana, and because the inference did not exclude every other reasonable hypothesis save the guilt of defendant, the evidence was insufficient to prove beyond a reasonable doubt that the defendant was in sole constructive possession of the marijuana. Rogers v. State, 302 Ga. App. 65, 690 S.E.2d 437, 2010 Ga. App. LEXIS 47 (2010), overruled in part, Maddox v. State, 322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013).

Possession of car and possession of drugs. —

Trial court did not err in denying either a motion for directed verdict or a motion for new trial based on sufficiency grounds because the evidence supported the finding that the defendant was in possession of bags of cocaine and marijuana found in the cargo area of the car when stopped and, although the defendant did not own the car, the fact that the defendant was driving the car gave rise to a rebuttable presumption that the defendant possessed the drugs found within the car, which the defendant failed to rebut. Cromartie v. State, 348 Ga. App. 563, 824 S.E.2d 32, 2019 Ga. App. LEXIS 47 (2019).

Insufficient evidence of possession in vehicle. —

There was insufficient evidence of constructive possession to support a conviction of possessing cocaine with intent to distribute; although a brown paper bag of cocaine was found under the passenger seat where the defendant had been sitting for over three hours, there was no evidence that the defendant knew of the contents of the bag or that the defendant had hid the bag, and the defendant's spatial proximity to the cocaine over a long period of time could not sustain the defendant's conviction. Gillis v. State, 285 Ga. App. 199, 645 S.E.2d 674, 2007 Ga. App. LEXIS 474 (2007).

Evidence was insufficient for adjudication as a delinquent for acts that would have constituted cocaine possession if committed by an adult because the circumstantial evidence of defendant's spatial proximity to cocaine found in a car's console did not exclude every reasonable hypothesis other than constructive possession. In the Interest of J.S., 303 Ga. App. 788, 694 S.E.2d 375, 2010 Ga. App. LEXIS 399 (2010).

Drugs thrown from vehicles. —

While a defendant claimed that the evidence was insufficient to exclude the possibility that the cocaine belonged solely to the defendant's passenger, the testimony of the passenger that the passenger dropped the drugs out of the truck after the defendant threw them in the passenger's lap was adequately corroborated under former O.C.G.A. § 24-4-8 (see now O.C.G.A. § 24-14-8) by the facts that the defendant had more than $2,000 in the defendant's pocket and that the defendant was the owner and driver of the truck from which the drugs were thrown; the defendant was, thus, properly convicted of trafficking in cocaine under O.C.G.A. § 16-13-31(a)(1) and possession of cocaine as a lesser included offense of possession with intent to distribute. Wingfield v. State, 297 Ga. App. 476, 677 S.E.2d 704, 2009 Ga. App. LEXIS 454 (2009).

Evidence sufficient for conviction of possession of methaqualone with intent to distribute. —

See Johnston v. State, 178 Ga. App. 219, 342 S.E.2d 706, 1986 Ga. App. LEXIS 2516 (1986).

Evidence insufficient to establish actual or constructive possession of cocaine or methamphetamine. —

See Dawson v. State, 183 Ga. App. 94, 357 S.E.2d 891, 1987 Ga. App. LEXIS 1897 (1987); Ridgeway v. State, 187 Ga. App. 381, 370 S.E.2d 216, 1988 Ga. App. LEXIS 695 (1988); Johnson v. State, 245 Ga. App. 583, 538 S.E.2d 481, 2000 Ga. App. LEXIS 1015 (2000).

Evidence was insufficient to support the defendant's convictions of possession of methamphetamine with intent to distribute as there was no evidence connecting the defendant to the drugs other than the defendant's own equal access. The drugs and paraphernalia were not found in an area exclusively used by the defendant, and the defendant's cousin had the same access to the drugs and paraphernalia. Xiong v. State, 295 Ga. App. 697, 673 S.E.2d 86, 2009 Ga. App. LEXIS 96 (2009), overruled in part, Maddox v. State, 322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013).

Evidence sufficient to support conviction for possession with intent to distribute. —

Given the items found in the defendant's pockets, including large amounts of drugs, cash, two cell phones, and a residue-laden razor blade, coupled with the evidence regarding the text messages between the defendant and other individuals, the evidence was sufficient to support the defendant's convictions for possession with intent to distribute the drugs. Glispie v. State, 335 Ga. App. 177, 779 S.E.2d 767, 2015 Ga. App. LEXIS 748 (2015), aff'd in part and rev'd in part, 300 Ga. 128, 793 S.E.2d 381, 2016 Ga. LEXIS 736 (2016), vacated in part, 341 Ga. App. 817, 801 S.E.2d 910, 2017 Ga. App. LEXIS 286 (2017).

Evidence of res gestae admissible as relevant. —

Because the defendant was charged with possessing cocaine, and other evidence showed that the defendant purchased cocaine from a man who was outside of a game room, evidence that the man dropped crack cocaine into a trash can immediately after the transaction as police detectives appeared, and that cash was found on the man, was relevant as part of the res gestae of the crime that the defendant was charged with committing; denial of the defendant's motion for mistrial was proper. Millsap v. State, 275 Ga. App. 732, 621 S.E.2d 837, 2005 Ga. App. LEXIS 1104 (2005).

Knowing possession of cocaine. —

There was no evidentiary basis upon which the jury could have concluded beyond a reasonable doubt that defendant was in knowing possession of cocaine. Evidence showed only that a certain amount of crack cocaine was found on the floorboard between the seat and the door on the passenger side of the car near where defendant had been sitting and that defendant denied seeing the owner of the car with any drugs that day. Reid v. State, 212 Ga. App. 787, 442 S.E.2d 852, 1994 Ga. App. LEXIS 397 (1994), overruled in part, Maddox v. State,

322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013).

Intent to possess not found. —

State failed to establish that a defendant knowingly possessed khat with the knowledge that it contained cathinone as the state's expert witness testified that cathinone converted into cathine, another chemical that the defendant was not charged with possessing, after some period of time and that cathinone was undetectable without the use of scientific testing equipment. Additionally, the evidence showed that the khat in the case was harvested more than two days before its subsequent arrival in Georgia, the defendant testified that the defendant believed the chemical "went out" of the khat after two days, and there was no evidence that the defendant made any attempt to conceal the nature of the package in which the khat was found by, for example, evading police or showing false identification. Mohamed v. State, 314 Ga. App. 181, 723 S.E.2d 694, 2012 Ga. App. LEXIS 144 (2012), cert. denied, No. S12C1038, 2012 Ga. LEXIS 616 (Ga. June 18, 2012).

Defendant was entitled to reversal of a conviction for possession of cathinone, a Schedule I substance, because the state failed to establish that the defendant knowingly possessed cathinone; a state crime lab chemist who tested the khat concluded that cathinone was not detectable by sight, although scientific testing revealed detectable amounts. Amin v. State, 317 Ga. App. 685, 732 S.E.2d 340, 2012 Ga. App. LEXIS 795 (2012).

Delivery and Distribution

Construed with O.C.G.A. § 16-13-32.5. —

Convictions for selling cocaine (O.C.G.A. § 16-13-30) and selling cocaine within 1000 feet of a public housing project (O.C.G.A. § 16-13-32.5) did not merge because the latter statute contains a specific non-merger provision and the intent thereof is simply to increase the punishment for violating both statutes. Harper v. State, 213 Ga. App. 611, 445 S.E.2d 300, 1994 Ga. App. LEXIS 672 (1994), cert. denied, No. S94C1579, 1994 Ga. LEXIS 1028 (Ga. Sept. 29, 1994).

Admission, in trafficking trial, of evidence of prior possession conviction. —

In trial for trafficking in cocaine, there was no error in admission of evidence of defendant's prior conviction for possession, since evidence of possession of a bag or container containing residue or traces of cocaine (which is the evidence upon which the prior conviction was based) does not demand the conclusion that defendant used, rather than sold or distributed, the cocaine which had at one time been in the bag. Stephens v. State, 208 Ga. App. 291, 430 S.E.2d 29, 1993 Ga. App. LEXIS 444 (1993).

Knowledge shown. —

Although circumstantial, evidence that the products the defendants were selling were pre-packaged in small quantities, yet sold for unusually large amounts, and that clerks observed customers come in multiple times a day to purchase them, along with smoking papers, and the customers often returned in an altered state, was sufficient to support a finding the defendants knew the products contained a controlled substance. Awtrey v. State, 346 Ga. App. 892, 815 S.E.2d 655, 2018 Ga. App. LEXIS 433 (2018).

Pregnant woman not guilty for transporting drugs to fetus. —

Legislature did not intend to include transmission of controlled substances to fetuses in the conduct prohibited by O.C.G.A. § 16-13-30(b). State v. Luster, 204 Ga. App. 156, 419 S.E.2d 32, 1992 Ga. App. LEXIS 796 (1992), cert. denied, No. S92C1020, 1992 Ga. LEXIS 467 (Ga. June 4, 1992).

Delivery of marijuana and distribution of marijuana are both distinct violations of O.C.G.A. § 16-13-30(b) and they are not included but each may be committed exclusive of the other. Buford v. State, 162 Ga. App. 498, 291 S.E.2d 256, 1982 Ga. App. LEXIS 2197 (1982).

Included offenses. —

Sale and delivery under O.C.G.A. § 16-13-30(b) are not separate and distinct crimes because a sale necessarily includes a delivery of goods for a price and the sale is complete upon delivery. Robinson v. State, 164 Ga. App. 652, 297 S.E.2d 751, 1982 Ga. App. LEXIS 3338 (1982).

When the trial court charged the entirety of O.C.G.A. § 16-13-30 even though the indictment alleged only possession of marijuana "with intent to distribute," sufficient remedial instructions were given which properly confined the charge to the particular portion of the section applicable to the offense charged in the indictment, and defendant was not harmed thereby. Caithaml v. State, 163 Ga. App. 429, 294 S.E.2d 674, 1982 Ga. App. LEXIS 2518 (1982).

Expert opinions. —

Although the police officer who made an investigatory stop of defendant's vehicle was not formally tendered as an expert witness, because the state laid the foundation for that officer's opinion by eliciting the testimony about the officer's experience and training in drug enforcement, and the defendant never objected to the officer's opinion that the amount of marijuana the defendant possessed was more consistent with distribution rather than personal use, the evidence was admissible. Daniels v. State, 278 Ga. App. 263, 628 S.E.2d 684, 2006 Ga. App. LEXIS 303 (2006), cert. denied, No. S06C1248, 2006 Ga. LEXIS 430 (Ga. June 12, 2006).

Smell of marijuana on person in own driveway. —

After the defendant exited a vehicle parked in the defendant's driveway, police smelled an odor of raw marijuana on the defendant's person and, after searching the vehicle with the driver's consent, found marijuana residue. Therefore, the police had probable cause to arrest the defendant for possession of marijuana. Minor v. State, 298 Ga. App. 391, 680 S.E.2d 459, 2009 Ga. App. LEXIS 687 (2009), cert. denied, No. S09C1744, 2009 Ga. LEXIS 771 (Ga. Nov. 9, 2009).

Intent to distribute inferred from evidence. —

After police officers found ten grams of cocaine, two "chunks" of hashish, and two bags containing approximately one pound of hashish in defendants' automobiles, the quantity of the contraband found, as well as the presence of a cocaine analysis field kit, cocaine-tainted spoons, rolling papers and related drug paraphernalia, gave rise to a reasonable reference that defendants had the intent to distribute marijuana and cocaine. Holbrook v. State, 177 Ga. App. 318, 339 S.E.2d 346, 1985 Ga. App. LEXIS 2951 (1985).

Evidence that the defendant was in possession of nine rocks of crack cocaine, did not have a smoking device, and did not appear to be under the influence at the time of the defendant's arrest, and an expert's testimony that someone with that amount of cocaine had the cocaine for the purpose of distributing the cocaine, established the defendant's intent to distribute cocaine. Palmer v. State, 210 Ga. App. 717, 437 S.E.2d 490, 1993 Ga. App. LEXIS 1331 (1993).

Defendant's possession of 11 rocks of cocaine combined with the officer's expert testimony that such quantity far exceeded that possessed for personal use sufficed to sustain a conviction for possessing cocaine with intent to distribute. Myers v. State, 268 Ga. App. 607, 602 S.E.2d 327, 2004 Ga. App. LEXIS 970 (2004).

Because two experienced police officers involved in defendant's arrest testified that the packaging of the marijuana found on defendant's person was consistent with preparing it for sale as opposed to personal use, and defendant conceded that the officers' testimony concerning their training and experience in drug cases laid a proper foundation for their opinion testimony that the packaging of the marijuana was consistent with distribution, sufficient evidence supported defendant's conviction of possession with the intent to distribute marijuana. Marshall v. State, 270 Ga. App. 663, 607 S.E.2d 258, 2004 Ga. App. LEXIS 1571 (2004).

Evidence supported the defendant's conviction of possession of marijuana and possession of cocaine with intent to distribute because the

Evidence supported the defendant's conviction of possession of marijuana and possession of cocaine with intent to distribute because the defendant stipulated that cocaine and marijuana were found under a sink and behind wall paneling in the house where the defendant lived, showing the defendant's constructive possession, and the amount of the drugs, and other indicia of distribution such as currency, baggies, razor blades, and scales, showed the defendant's intent to distribute. Marshall v. State, 273 Ga. App. 17, 614 S.E.2d 169, 2005 Ga. App. LEXIS 396 (2005).

Officer's testimony that the amount of cocaine in a bag in the defendant's possession was inconsistent with personal use, and that the cocaine was packaged for distribution, was sufficient to support the defendant's conviction for possessing cocaine with the intent to distribute. Best v. State, 279 Ga. App. 309, 630 S.E.2d 900, 2006 Ga. App. LEXIS 533 (2006).

Trial court did not err in denying the defendant's motion for a directed verdict of acquittal under O.C.G.A. § 17-9-1(a) in the possession with intent to distribute cocaine in violation of O.C.G.A. § 16-13-30 case; the defendant was seen fleeing into the woods wearing an unmarked black hat, a dog smelled the defendant on the same hat that was found near the defendant and that contained cocaine, and the defendant was not wearing a hat when the defendant was found. Riggins v. State, 281 Ga. App. 266, 635 S.E.2d 867, 2006 Ga. App. LEXIS 1075 (2006).

Despite the defendant's challenge to the sufficiency of the evidence to support a conviction for possession of marijuana with intent to distribute that conviction was upheld on appeal given that: (1) the marijuana found in the defendant's vehicle was packaged in 17 small zip-lock bags, commonly known as a dime bags and used for the purchase and selling of marijuana; (2) no evidence was presented which connected any other person to their possession; and (3) the jury could infer the defendant's intent from the individual packaging and number of bags found. Gerlock v. State, 283 Ga. App. 229, 641 S.E.2d 240, 2007 Ga. App. LEXIS 18 (2007).

Because: (1) the circumstantial evidence was sufficient to support a finding that the defendant intended to distribute the cocaine seized, as the defendant was in possession of a large amount of cash and 12.12 grams of cocaine divided into 33 individual packages; and (2) the arresting officer, who had been involved in thousands of drug arrests, testified that the small bags of crack cocaine ordinarily sold for $20 each, the jury was authorized to infer and find that the defendant possessed the drugs with the intent to distribute the drugs. Harper v. State, 285 Ga. App. 261, 645 S.E.2d 741, 2007 Ga. App. LEXIS 505 (2007).

Given the evidence seized from an athletic bag taken from the back of the vehicle searched, which the defendant was driving, as well as the scales used to weigh the substance out, sufficient evidence existed to authorize a finding that the defendant intended to sell the narcotics stashed in the bag with the cocaine, which included methamphetamine. Stroud v. State, 286 Ga. App. 124, 648 S.E.2d 476, 2007 Ga. App. LEXIS 708 (2007).

Given a police officer's testimony that the drugs found at the scene came from a bag which the defendant removed from a pants pocket, the jury was authorized to find that the defendant trafficked in cocaine, possessed cocaine with intent to distribute, and possessed less than one ounce of marijuana; moreover, the amount of cocaine at issue, as well as the defendant's possession of digital scales typically used to weigh drugs for distribution, permitted the jury to discount the defendant's own testimony and find an intention to distribute the drugs. Lipsey v. State, 287 Ga. App. 835, 652 S.E.2d 870, 2007 Ga. App. LEXIS 1112 (2007).

Sufficient evidence was presented to demonstrate that defendant intended to distribute crack cocaine in violation of O.C.G.A. § 16-13-30(b) based on the amount of individual pieces of crack cocaine found in baggies discovered under a tub in a bathroom to which the defendant fled and the razor blades and plastic baggies found in the defendant's pocket. Marshall v. State, 295 Ga. App. 354, 671 S.E.2d 860, 2008 Ga. App. LEXIS 1374 (2008), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

There was sufficient evidence to support a defendant's conviction of being a party to the crimes of possession of marijuana and cocaine with intent to distribute in violation of O.C.G.A. §§ 16-2-20 and 16-13-30 because the defendant was holding large quantities of drugs for an accomplice in a running car outside a hotel with knowledge that the accomplice was at the hotel to make a sale. Haywood v. State, 301 Ga. App. 717, 689 S.E.2d 82, 2009 Ga. App. LEXIS 1431 (2009).

Evidence sufficient to show intent to distribute cocaine. —

Officer's opinion that the amount of cocaine in the defendant's possession was greater than that normally kept for personal use and was separately packaged for distribution authorized the jury to find that the defendant possessed the cocaine with intent to distribute. Horne v. State, 318 Ga. App. 484, 733 S.E.2d 487, 2012 Ga. App. LEXIS 881 (2012).

Validity of indictment. —

Although the indictment technically was partly inaccurate in that the state was required to prove that the defendant sold a Schedule II drug in violation of O.C.G.A. § 16-13-30(b), not that the defendant violated Schedule II, this inaccuracy did not invalidate the indictment because the facts stated in the indictment clearly indicated that the charged crime was an unlawful sale of methamphetamine, a Schedule II drug, to an undercover agent. Freeman v. State, 201 Ga. App. 216, 410 S.E.2d 749, 1991 Ga. App. LEXIS 1299 (1991), cert. denied, No. S92C0056, 1991 Ga. LEXIS 851 (Ga. Oct. 18, 1991).

Pregnant woman could not have reasonably known that she could have been prosecuted for delivering or distributing cocaine to her fetus if she ingested the controlled substance while pregnant; the fetus was not a "person" within the meaning of the statute. State v. Luster, 204 Ga. App. 156, 419 S.E.2d 32, 1992 Ga. App. LEXIS 796 (1992), cert. denied, No. S92C1020, 1992 Ga. LEXIS 467 (Ga. June 4, 1992).

State was not required to prove that crack cocaine was a Schedule II substance merely because the indictment alleged the defendant sold "Cocaine, a Schedule II Controlled Substance." Wright v. State, 232 Ga. App. 104, 501 S.E.2d 543, 1998 Ga. App. LEXIS 593 (1998).

Opinion evidence not allowed if it invades jury's province. —

Admission of police officer's testimony identifying the defendant in photographs of alleged drug deals established a fact that jurors could decide for themselves was inadmissible and reversible error. Mitchell v. State, 283 Ga. App. 456, 641 S.E.2d 674, 2007 Ga. App. LEXIS 86 (2007).

Instruction on entrapment. —

In a prosecution for trafficking in cocaine, the trial court did not err in refusing to instruct the jury on the affirmative defense of entrapment as: (1) sufficient evidence was presented that the defendant voluntarily committed the offense upon being given the opportunity to do so; and (2) no evidence was presented to show that the informant employed undue persuasion, incitement, or deceit to induce the defendant into selling drugs; thus, the defendant's claim of ineffective assistance of counsel for failing to present evidence to support an entrapment defense was rejected and did not warrant a new trial. Campbell v. State, 281 Ga. App. 503, 636 S.E.2d 687, 2006 Ga. App. LEXIS 1147 (2006).

Trial court did not err in failing to charge the jury on entrapment because there was no evidence that a deputy's undue persuasion, incitement, or deceit induced the defendant to sell cocaine or that the defendant was not predisposed to commit the crime. Quarterman v. State, 305 Ga. App. 686, 700 S.E.2d 674, 2010 Ga. App. LEXIS 793 (2010).

Trial court did not err in failing to define "intent to distribute" in jury charge. —

Trial court's failure to define "intent to distribute" when charging on intent to distribute marijuana under O.C.G.A. § 16-13-30(j)(1) was not error; the term "distribute" possessed only the ordinary and common dictionary meaning and did not need to be specifically defined. The defendant failed to object to the charge without the definition, and the charge as given was not plain error excusing the failure to object under O.C.G.A. § 17-8-58(b). Boring v. State, 303 Ga. App. 576, 694 S.E.2d 157, 2010 Ga. App. LEXIS 370 (2010).

Irrelevant evidence properly excluded. —

In a prosecution for possession of marijuana with intent to distribute, while the defendant was entitled to introduce relevant and admissible testimony tending to show that another person committed the crime, the trial court did not abuse the court's discretion in excluding evidence that an individual the defendant went to go visit on the night of the arrest was a known drug dealer and had been arrested on drug charges as there was no evidence tending to connect that person to the marijuana found in the defendant's vehicle; hence, the evidence failed to raise a reasonable inference of the defendant's innocence, and did not directly connect the other person with the corpus

delicti, or show that the other person recently committed a crime of the same or similar nature. Gerlock v. State, 283 Ga. App. 229, 641 S.E.2d 240, 2007 Ga. App. LEXIS 18 (2007).

Evidence sufficient for conviction of selling heroin. —

See Russell v. State, 226 Ga. App. 574, 486 S.E.2d 704, 1997 Ga. App. LEXIS 662 (1997), cert. dismissed, No. S97C1444, 1998 Ga. LEXIS 212 (Ga. Jan. 30, 1998).

Evidence sufficient for conviction of selling cocaine. —

See Bagby v. State, 178 Ga. App. 282, 342 S.E.2d 731, 1986 Ga. App. LEXIS 2513 (1986); Hubert v. State, 181 Ga. App. 684, 353 S.E.2d 612, 1987 Ga. App. LEXIS 2569 (1987); Golden v. State, 184 Ga. App. 434, 361 S.E.2d 703, 1987 Ga. App. LEXIS 2282 (1987); Flournoy v. State, 186 Ga. App. 774, 368 S.E.2d 538, 1988 Ga. App. LEXIS 513 (1988); Grant v. State, 258 Ga. 299, 368 S.E.2d 737, 1988 Ga. LEXIS 248 (1988); Barrow v. City of Atlanta, 188 Ga. App. 400, 373 S.E.2d 88, 1988 Ga. App. LEXIS 1054 (1988); Cleveland v. State, 192 Ga. App. 659, 386 S.E.2d 169, 1989 Ga. App. LEXIS 1113 (1989); Dublin v. State, 194 Ga. App. 606, 391 S.E.2d 451, 1990 Ga. App. LEXIS 274 (1990); Woods v. State, 210 Ga. App. 172, 435 S.E.2d 464, 1993 Ga. App. LEXIS 1097 (1993); Johnson v. State, 214 Ga. App. 77, 447 S.E.2d 74, 1994 Ga. App. LEXIS 775 (1994), cert. denied, No. S94C1738, 1994 Ga. LEXIS 1146 (Ga. Oct. 28, 1994); Sorrells v. State, 218 Ga. App. 413, 461 S.E.2d 904, 1995 Ga. App. LEXIS 749 (1995); Jackson v. State, 223 Ga. App. 207, 477 S.E.2d 347, 1996 Ga. App. LEXIS 1101 (1996); Copps v. State, 223 Ga. App. 518, 478 S.E.2d 390, 1996 Ga. App. LEXIS 1174 (1996); Jones v. State, 229 Ga. App. 63, 493 S.E.2d 224, 1997 Ga. App. LEXIS 1328 (1997); Clay v. State, 232 Ga. App. 541, 502 S.E.2d 267, 1998 Ga. App. LEXIS 649 (1998); Beard v. State, 242 Ga. App. 742, 531 S.E.2d 168, 2000 Ga. App. LEXIS 330 (2000); Jones v. State, 243 Ga. App. 374, 533 S.E.2d 437, 2000 Ga. App. LEXIS 467 (2000).

Defendant who told an undercover officer that the defendant could procure crack cocaine, took the officer's the money, and attempted to procure the cocaine could be reasonably found to have been a party to the sale. Little v. State, 230 Ga. App. 803, 498 S.E.2d 284, 1998 Ga. App. LEXIS 290 (1998).

Construed most favorably to the verdict, the evidence that defendant sold cocaine to undercover officers was sufficient to allow a rational jury to find defendant guilty of selling a controlled substance, selling a controlled substance within 1,000 feet of a public housing project, and resisting arrest. Mikell v. State, 231 Ga. App. 85, 498 S.E.2d 531, 1998 Ga. App. LEXIS 268 (1998), vacated, 237 Ga. App. 26, 514 S.E.2d 680, 1999 Ga. App. LEXIS 370 (1999), rev'd, 270 Ga. 467, 510 S.E.2d 523, 1999 Ga. LEXIS 17 (1999).

Evidence was sufficient to support the defendant's conviction for sale of a controlled substance, cocaine, as ample evidence supported the jury's verdict that the defendant made a sale of cocaine to a confidential informant and that the substance was cocaine. Dixon v. State, 252 Ga. App. 385, 556 S.E.2d 480, 2001 Ga. App. LEXIS 1289 (2001).

Evidence was sufficient to sustain the defendant's convictions for selling cocaine because, regardless of the name the defendant used, the fact remained that the confidential informant identified the defendant as the man who sold the cocaine on two occasions and the white powdered substance that was immediately turned over to police after each buy was scientifically analyzed and determined to be cocaine. Johnson v. State, 259 Ga. App. 452, 576 S.E.2d 911, 2003 Ga. App. LEXIS 147 (2003).

Defendant's conviction of possession of cocaine with intent to distribute, O.C.G.A. § 16-13-30, was supported by sufficient evidence as testimony by a police officer indicated that the defendant acted as a lookout during drug sales and took the money from the sales; the jury was free to discount testimony by another person involved in the sales that the defendant knew nothing about the sales. Arnold v. State, 260 Ga. App. 287, 581 S.E.2d 601, 2003 Ga. App. LEXIS 341 (2003).

Evidence held sufficient to support the defendant's conviction for selling cocaine when the evidence showed that the defendant directed an undercover agent to a place where a drug sale could be made, that one of the two passengers with the defendant took money from the undercover agent and gave the undercover agent crack cocaine in return, both passengers in the defendant's car testified that the money from the sale was given to defendant, and the money used in the sale, identifiable because the money had been photocopied, was found in

the defendant's pockets during the defendant's arrest a short time after the sale. Zinnamon v. State, 261 Ga. App. 170, 582 S.E.2d 146, 2003 Ga. App. LEXIS 567 (2003).

Comments which an informant made on tape shortly after the defendant sold drugs to the informant and left the informant's car were part of the res gestae; the trial court did not abuse the court's discretion by admitting those comments during the defendant's trial or by allowing the jury to read transcripts of the tape recording police made, and evidence showing that the defendant was the person who sold drugs to the informant was sufficient to sustain the defendant's conviction. Lyons v. State, 266 Ga. App. 89, 596 S.E.2d 226, 2004 Ga. App. LEXIS 307 (2004).

Evidence was sufficient to support the defendant's convictions on two counts of selling cocaine as the evidence showed that the first sale was made after an undercover officer approached the defendant's employee and the employee could only facilitate the transaction after conferring with the defendant and going into the defendant's office with defendant; it also showed that the second, separate sale was made by the defendant when the undercover officer dealt with the defendant directly and that the sale would go forward after the defendant was satisfied that the undercover officer had cash to facilitate the transaction. Simmons v. State, 271 Ga. App. 330, 609 S.E.2d 678, 2005 Ga. App. LEXIS 49 (2005).

Because the police officer witnessed the confidential informant and defendant engage in a hand-to-hand exchange and the informant returned to the officer with a rock of crack cocaine that the informant did not previously possess, sufficient evidence supported the selling cocaine conviction in violation of O.C.G.A. § 16-13-30, even though neither the defendant nor the informant was found with $20.00 that was provided to the informant for the purchase as this went to the weight, not the sufficiency, of the evidence. Hampton v. State, 272 Ga. App. 565, 612 S.E.2d 854, 2005 Ga. App. LEXIS 327 (2005).

There was sufficient evidence to support the defendant's conviction for two counts of selling cocaine, based on two controlled buys conducted by a confidential informant, wherein the defendant was given cash in exchange for cocaine; even assuming that a concealed audio recording device produced a tape which was inadmissible on one such occasion, the evidence was still sufficient for purposes of conviction. Brown v. State, 274 Ga. App. 302, 617 S.E.2d 227, 2005 Ga. App. LEXIS 726 (2005), cert. denied, No. S05C1902, 2005 Ga. LEXIS 734 (Ga. Oct. 24, 2005).

Conviction for sale of cocaine in violation of O.C.G.A. § 16-13-30 was supported by sufficient evidence because the defendant could not argue that the defendant acted as an informant when the defendant had no reason to believe that the buyers were law enforcement officers and knowingly gave the buyers cocaine with the intent to obtain remuneration. Enoch v. State, 277 Ga. App. 164, 626 S.E.2d 160, 2006 Ga. App. LEXIS 21 (2006).

Conviction for selling cocaine was upheld on appeal because sufficient evidence was established, via a positive field test, that defendant was in possession of cocaine that the defendant attempted to sell to an undercover officer and there was no requirement that the state should have tested the substance again at the crime lab. Collins v. State, 278 Ga. App. 103, 628 S.E.2d 148, 2006 Ga. App. LEXIS 241 (2006).

Because the testimony of a single witness was generally sufficient to establish a fact, and there was no requirement that an actual exchange of money for drugs be witnessed by more than one person or be recorded on videotape, the defendant's sale of cocaine conviction was upheld on appeal, based on a law enforcement agent's actions of handing the defendant $40 in exchange for two pieces of a substance that tested positive for cocaine. Hicks v. State, 281 Ga. App. 217, 635 S.E.2d 830, 2006 Ga. App. LEXIS 1053 (2006).

Evidence supported a defendant's conviction of selling cocaine after testimony by an undercover agent that the defendant sold the agent cocaine was corroborated by a videotape; moreover, as the defendant had been charged as a party to the crime, the state had to prove only that the defendant, as opposed to a passenger in the defendant's car and a codefendant, facilitated the sale, and the defendant did not challenge the evidence proving facilitation. Woods v. State, 287 Ga. App. 268, 651 S.E.2d 188, 2007 Ga. App. LEXIS 932 (2007).

Evidence supported the defendant's conviction of selling crack cocaine after a confidential informant testified at trial that the defendant had twice sold the informant crack cocaine, a police officer checked the informant before and after the videotaped sales, and a forensic chemist testified that the substance sold was cocaine. Ingram v. State, 286 Ga. App. 662, 650 S.E.2d 743, 2007 Ga. App. LEXIS 843 (2007), overruled, State v. Lane, 308 Ga. 10, 838 S.E.2d 808, 2020 Ga. LEXIS 98 (2020).

overruled, State v. Lane, 308 Ga. 10, 838 S.E.2d 808, 2020 Ga. LEXIS 98 (2020).

Evidence was sufficient to support a defendant's conviction for violating the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., by selling cocaine, in violation of O.C.G.A. § 16-13-30(b), based on an undercover officer's testimony as well as a corroborative tape recording of the drug sale transaction with the defendant; there was no requirement that the audio recording conclusively identify the defendant's voice. McSears v. State, 292 Ga. App. 804, 665 S.E.2d 890, 2008 Ga. App. LEXIS 866 (2008).

Evidence was sufficient to convict defendant of selling cocaine rather than merely being present while the defendant's stepsibling sold the cocaine because both confidential informants testified that the informants negotiated the purchase of cocaine from defendant, not from the defendant's stepsibling, and this was reflected in a videotape of the transaction that was played for the jury. Additionally, the stepsibling testified that the defendant gave the stepsibling the cocaine to give to the informants, and that the defendant received the money. Duffie v. State, 301 Ga. App. 607, 688 S.E.2d 389, 2009 Ga. App. LEXIS 1419 (2009).

Defendant abandoned any challenge to the sufficiency of the evidence with regard to defendant's conviction for selling cocaine because the defendant offered no substantive argument to support the defendant's argument as required under Ga. Ct. App. R. 25(a)(3) and (c)(2); nevertheless, there was sufficient evidence for a rational trier of fact to find the defendant guilty beyond a reasonable doubt of selling cocaine. Quarterman v. State, 305 Ga. App. 686, 700 S.E.2d 674, 2010 Ga. App. LEXIS 793 (2010).

Defendant's claim that the evidence was insufficient to support the defendant's convictions because the state relied on hearsay testimony of a forensic scientist who did not personally conduct the chemical tests failed because, even assuming the testimony was inadmissible, the state submitted sufficient evidence, including testimony from the police, the informant, and the defendant, establishing that the drugs recovered, with one exception, constituted cocaine. Cooper v. State, 324 Ga. App. 451, 751 S.E.2d 102, 2013 Ga. App. LEXIS 863 (2013).

Confidential informant working for law enforcement in an undercover operation purchased crack cocaine from the defendant on two separate occasions. Therefore, the evidence was clearly sufficient to allow the jury to convict the defendant of selling and possessing cocaine. McDougler v. State, 323 Ga. App. 828, 748 S.E.2d 475, 2013 Ga. App. LEXIS 756 (2013).

Aiding and abetting sale of cocaine. —

Evidence was sufficient to convict the defendant because the defendant aided and abetted the sale of cocaine to the undercover officer pursuant to O.C.G.A. § 16-2-20; the defendant approached an undercover officer, the defendant took money from the officer and went into a hotel room, and the defendant later returned and gave the officer cocaine. Ware v. State, 308 Ga. App. 24, 707 S.E.2d 111, 2011 Ga. App. LEXIS 29 (2011), cert. denied, No. S11C0941, 2011 Ga. LEXIS 441 (Ga. May 31, 2011).

Evidence sufficient for conviction of selling cocaine and marijuana. —

See Smith v. State, 178 Ga. App. 19, 341 S.E.2d 901, 1986 Ga. App. LEXIS 2492 (1986).

Evidence sufficient to sustain conviction of conspiracy to distribute methaqualone. —

See Skinner v. State, 182 Ga. App. 370, 355 S.E.2d 726, 1987 Ga. App. LEXIS 1706 (1987).

Evidence sufficient to convict for sale of and trafficking in cocaine. —

See Thomas v. State, 184 Ga. App. 318, 361 S.E.2d 280, 1987 Ga. App. LEXIS 2768 (1987).

Evidence that the defendant agreed to sell drugs to an informant was sufficient to support defendant's conviction for selling and trafficking in cocaine. Carter v. State, 261 Ga. App. 204, 583 S.E.2d 126, 2003 Ga. App. LEXIS 586 (2003).

Evidence sufficient for conviction of trafficking and possession of controlled substances. —

See Clark v. State, 184 Ga. App. 380, 361 S.E.2d 682, 1987 Ga. App. LEXIS 2777 (1987).

Because the state presented recorded conversations between the defendant and a confidential informant (CI) to set up a drug buy, and evidence that the defendant drove to the meeting place and that the CI dropped the money for the drugs in the defendant's seat, while the defendant did not participate in the actual transaction, there was sufficient evidence to show that the defendant was a party to the transaction, and sufficient evidence to authorize the conviction. Murphy v. State, 272 Ga. App. 287, 612 S.E.2d 104, 2005 Ga. App. LEXIS 269 (2005).

Evidence supported a defendant's conviction for possession with intent to distribute a controlled painkiller as the defendant was hiding 35 painkiller pills in a plastic zip-lock bag without a label indicating a valid prescription in the waistband of the defendant's pants and the defendant gave one pill to the driver of a car; though the defendant might have been authorized to possess the painkiller, the defendant was not authorized to distribute the drug. Atkinson v. State, 280 Ga. App. 635, 634 S.E.2d 828, 2006 Ga. App. LEXIS 922 (2006).

Evidence supported a defendant's conviction for the sale of a controlled painkiller as the jury rejected a third party's testimony that the defendant had given the third party four painkiller pills and believed a police officer's testimony that on the evening of the incident, the third party told the officer that the third party paid the defendant $20 for the four painkiller pills. Atkinson v. State, 280 Ga. App. 635, 634 S.E.2d 828, 2006 Ga. App. LEXIS 922 (2006).

Convictions of manufacture, distribution, and possession of methamphetamine with the intent to distribute under O.C.G.A. § 16-13-30(b), possession of ephedrine/pseudoephedrine under O.C.G.A. § 16-13-30.3(b)(1), and possession of a firearm during the commission of a felony under O.C.G.A. § 16-11-106(b)(4) were supported by the evidence. A panel van belonging to the defendant had been modified as a methamphetamine lab, was located on the defendant's property, and was powered by an electrical cord running from the defendant's trailer; everything necessary to support the production of methamphetamine was present in the vicinity of the vehicle; the defendant's name and that of the defendant's spouse had been scrawled on an interior panel of the vehicle; the defendant offered to provide any methamphetamine that a house guest wanted; uncured methamphetamine and enough ephedrine was present at the scene to make 30 to 33 grams of methamphetamine; and the defendant admitted to giving methamphetamine to others and to owning the sawed-off shotgun recovered from the panel van. Boone v. State, 293 Ga. App. 654, 667 S.E.2d 880, 2008 Ga. App. LEXIS 1041 (2008).

Because a police officer properly stopped defendant's car for a suspended registration, saw what appeared to be a weapon in defendant's fanny pack, and the suspected methamphetamine was found in plain view during a limited protective search and while the officer was engaged in a lawful arrest; accordingly, defendant's constitutional rights were not violated, and defendant was properly convicted of trafficking in methamphetamine and possession of methamphetamine with intent to distribute under O.C.G.A. §§ 16-13-30(b) and 16-13-31(e). Eaton v. State, 294 Ga. App. 124, 668 S.E.2d 770, 2008 Ga. App. LEXIS 1118 (2008).

Because probation officers were authorized to investigate an allegation that the defendant's son possessed drugs in violation of the son's probation, and because the officers were authorized to seize contraband falling in plain view, the evidence was sufficient to sustain the defendant's convictions for possession of methamphetamine with intent to distribute and trafficking in methamphetamine under O.C.G.A. §§ 16-13-30(b) and 16-13-31(e)(1). Prince v. State, 299 Ga. App. 164, 682 S.E.2d 180, 2009 Ga. App. LEXIS 851 (2009).

Evidence was sufficient to support the defendant's conviction of sale of a controlled substance because the person who sold the drugs to the informant for the defendant gave a detailed account of the sale, including the defendant's planning and execution of the crime, the person's testimony was corroborated by the testimony of the informant, and the testimony was further corroborated by the four trash pulls at the defendant's residence, which yielded pill bottles, full prescriptions, and the doctor's notes, and the search of the defendant's residence, which yielded a large number of prescription pills. Thompson v. State, 349 Ga. App. 1, 825 S.E.2d 413, 2019 Ga. App. LEXIS 97 (2019).

Evidence sufficient for conviction of possession of cocaine with intent to distribute. —

See Copeland v. State, 228 Ga. App. 734, 492 S.E.2d 723, 1997 Ga. App. LEXIS 1251 (1997); Morgan v. State, 230 Ga. App. 608, 496 S.E.2d 924, 1998 Ga. App. LEXIS 237 (1998); Stewart v. State, 232 Ga. App. 565, 502 S.E.2d 502, 1998 Ga. App. LEXIS 747 (1998);

S.E.2d 924, 1998 Ga. App. LEXIS 257 (1998); Stewart v. State, 232 Ga. App. 903, 502 S.E.2d 562, 1998 Ga. App. LEXIS 747 (1998); McNair v. State, 240 Ga. App. 324, 523 S.E.2d 392, 1999 Ga. App. LEXIS 1333 (1999).

Evidence was sufficient to support the defendant's conviction for possession of cocaine with intent to distribute after the defendant was arrested on an outstanding warrant and a search of the defendant's residence and person revealed cocaine, which according to the state's expert was packaged for distribution, a razor blade, baggies of the type used to package cocaine, and a cell phone. Taylor v. State, 267 Ga. App. 588, 600 S.E.2d 675, 2004 Ga. App. LEXIS 714 (2004).

Evidence was sufficient to support defendant's conviction for possession of cocaine with intent to distribute after: (1) an informant provided information that defendant was in a certain hotel room waiting for a ride, which was corroborated; (2) the informant also stated that defendant had cocaine that defendant wished to sell; (3) when police officers stopped a car in which defendant was riding, the defendant refused to show the officers defendant's hands, and as the officers thought that defendant was reaching for a weapon, the officers subdued defendant; and (4) a pill bottle in defendant's pocket contained crack cocaine cut into small rocks for distribution, along with cash. Mew v. State, 267 Ga. App. 454, 600 S.E.2d 397, 2004 Ga. App. LEXIS 681 (2004).

Evidence was sufficient to convict the defendant of cocaine trafficking and possession of cocaine with intent to distribute because there was more evidence than the defendant's mere presence in the apartment, which was actually rented by the defendant's sister, that linked the defendant to the cocaine: (1) the jury could infer that the defendant actually lived in the apartment because the defendant claimed ownership of a television and a video game in the apartment; (2) it was a one-bedroom apartment to which the defendant had a key; (3) the defendant was sleeping in the bedroom when the police arrived; (4) the defendant's own statements provided additional evidence demonstrating the defendant's possession of the cocaine hidden in the kitchen cabinets; and (5) the defendant had a lot of cash on the defendant's person with large numbers of denominations that was typically used to purchase drugs. Ballard v. State, 268 Ga. App. 55, 601 S.E.2d 434, 2004 Ga. App. LEXIS 840 (2004).

Evidence supported the defendant's conviction for possession of cocaine with intent to distribute because two investigators saw the defendant put a plastic bag under a beer bottle in the woods, the plastic bag was found to contain crack cocaine, and one investigator testified that the amount in question exceeded that possessed for personal use. Tise v. State, 273 Ga. App. 201, 614 S.E.2d 832, 2005 Ga. App. LEXIS 454 (2005).

Because: (1) the defendant failed to sufficiently prove an entrapment defense, and hence, the need for disclosure of an informant's identity; (2) no error resulted in refusing to strike a juror for cause; and (3) the trial court's entrapment instruction was legally correct and did not mislead the jury, the defendant's convictions for trafficking in cocaine, in violation of O.C.G.A. § 16-13-31(a), possession of cocaine with intent to distribute, contrary to O.C.G.A. § 16-13-30(b), and two counts of use of communication facilities in committing a felony drug offense, under O.C.G.A. § 16-13-32.3, were affirmed on appeal. Griffiths v. State, 283 Ga. App. 176, 641 S.E.2d 169, 2006 Ga. App. LEXIS 1516 (2006), cert. denied, No. S07C0652, 2007 Ga. LEXIS 333 (Ga. Apr. 24, 2007).

Evidence was sufficient to support two defendants' convictions for possession of cocaine with the intent to distribute after officers found a large amount of cash on the first defendant's person, including a recorded bill used in a controlled buy, as well as scales, small plastic bags, and scattered bags of drugs, including five individually wrapped pieces of cocaine. Beck v. State, 286 Ga. App. 553, 650 S.E.2d 728, 2007 Ga. App. LEXIS 827 (2007), vacated in part, 293 Ga. App. 854, 668 S.E.2d 479, 2008 Ga. App. LEXIS 1281 (2008), aff'd in part and rev'd in part, 283 Ga. 352, 658 S.E.2d 577, 2008 Ga. LEXIS 247 (2008).

Defendant's convictions for possessing 28 grams or more of cocaine, possessing cocaine with intent to distribute, and possession of a firearm during the commission of a felony were upheld on appeal as sufficient evidence was presented via the direct testimony of the defendant's live-in girlfriend, which when combined with the evidence showing their joint constructive possession of the drugs and gun tended to connect and identify the defendant with the crimes charged. Allen v. State, 286 Ga. App. 469, 649 S.E.2d 583, 2007 Ga. App. LEXIS 810 (2007).

Despite the defendant's equal access claim, because: (1) the evidence sufficiently showed the defendant's ownership and possession of the vehicle where the contraband was found; (2) the similar transaction evidence showed that the defendant previously admitted possessing an almost identical array of drugs and drug processing paraphernalia; (3) the informant was a mere tipster and not a material or necessary witness; and (4) trial counsel did not render ineffective assistance, the defendant's possession of cocaine with intent to distribute conviction was upheld on appeal; thus, the trial court properly denied the defendant's motion for a directed verdict of acquittal. Cauley v. State, 287

Ga. App. 701, 652 S.E.2d 586, 2007 Ga. App. LEXIS 1071 (2007).

Evidence was sufficient to support the defendant's conviction of possession of cocaine with intent to distribute: (1) crack cocaine and plastic bags were found at a hotel room where the defendant was; (2) a witness testified that the witness and the witness's cousin had gone to

the hotel room and begun looking for someone to bring them cocaine; (3) the defendant brought crack cocaine there; and (4) after some was smoked, the cousin, the defendant, and another person packaged the crack into the small bags found at the scene. Gassett v. State, 289 Ga. App. 792, 658 S.E.2d 366, 2008 Ga. App. LEXIS 110 (2008).

Evidence was sufficient to support a conviction of possession of cocaine with intent to distribute when the defendant was the only person who ran when officers approached a home, an officer saw the defendant toss cocaine into the kitchen, and the defendant was the only person in the house who had a significant amount of money. Although two witnesses testified that the witnesses had tried to buy cocaine from the defendant earlier that evening and had been told by the defendant that the defendant had none, the jury was authorized to believe the officer's testimony over the witnesses. Thomas v. State, 291 Ga. App. 795, 662 S.E.2d 849, 2008 Ga. App. LEXIS 646 (2008).

There was sufficient evidence to show that the defendant distributed cocaine based on the defendant providing a confidential informant cocaine in exchange for cash. Beck v. State, 292 Ga. App. 472, 665 S.E.2d 701, 2008 Ga. App. LEXIS 714 (2008), cert. denied, No. S08C1863, 2008 Ga. LEXIS 922 (Ga. Oct. 6, 2008).

Defendant was properly convicted of possession of cocaine with intent to distribute, O.C.G.A. § 16-13-30(b), as the following evidence was sufficient to prove the cocaine found by police belonged to the defendant rather than a companion: (1) police found two large pieces of cocaine about four feet from where defendant placed the defendant's right hand after police ordered the defendant to lie on the ground; (2) the companion testified that the defendant bought the cocaine just before the police arrived; and (3) the defendant confessed to selling drugs. Neugent v. State, 294 Ga. App. 284, 668 S.E.2d 888, 2008 Ga. App. LEXIS 1171 (2008).

Defendant's conviction for possession of cocaine with the intent to distribute was proper as an accomplice's testimony identifying defendant as the owner of a purse containing the cocaine was corroborated. Smith v. State, 296 Ga. App. 160, 674 S.E.2d 42, 2009 Ga. App. LEXIS 150 (2009).

Trial court did not err in convicting the defendant of distribution of cocaine in violation of O.C.G.A. § 16-13-30(b) and in denying the defendant's motion for directed verdict because it was not an abuse of discretion to admit a deputy's lay opinion testimony identifying the defendant on a surveillance videotape since the testimony was probative of a fact in issue and based on the deputy's observations of the defendant at the time the surveillance photograph was taken; because the deputy's testimony was sufficient to identify the defendant as the perpetrator of the crime pursuant to former O.C.G.A. § 24-4-8 (see now O.C.G.A. § 24-14-8), the evidence was sufficient to find the defendant guilty of distribution of cocaine beyond a reasonable doubt. Strickland v. State, 302 Ga. App. 44, 690 S.E.2d 638, 2010 Ga. App. LEXIS 30 (2010).

Evidence was sufficient to support the defendant's conviction for possession of cocaine with intent to distribute, O.C.G.A. § 16-13-30(b), because the evidence established beyond any reasonable doubt that the defendant had the power and the intent to exercise control over the cocaine, and the state established by overwhelming circumstantial evidence that the defendant was in either constructive or actual possession of the cocaine; the defendant was found kneeling over the contraband, the jury was authorized to infer that the defendant had been "fidgeting" with a piggy bank in which 37 small bags of cocaine were hidden, and pants with the defendant's driver's license and cash were found in the same corner of the bedroom as the cocaine. Jackson v. State, 306 Ga. App. 33, 701 S.E.2d 481, 2010 Ga. App. LEXIS 737 (2010).

Evidence was sufficient to authorize the finding that the defendant was guilty of possession of cocaine with intent to distribute because evidence that cocaine was found on the ground where the defendant had been observed dropping what appeared to officers to be cocaine permitted a rational trier of fact to infer that the defendant had been in possession of the cocaine and had the intent to distribute the cocaine, which the defendant dropped when the defendant was apprehended; moreover, immediately before the defendant's apprehension, an officer had witnessed the defendant appearing to sell crack cocaine to another person. Bush v. State, 305 Ga. App. 617, 699 S.E.2d 899, 2010 Ga. App. LEXIS 763 (2010).

Evidence was sufficient to support the defendants' conviction for possession of cocaine with intent to distribute and marijuana with intent to distribute because: (1) police officers, while executing a search of the defendants' home, found crack cocaine, marijuana, a large number

distribute because: (1) police officers, while executing a search of the defendants' home, found crack cocaine, marijuana, a large number of plastic baggies, digital scales which had cocaine residue on them, a police scanner, and a handgun; (2) one of the defendants told an officer that all of the narcotics belonged to that defendant; (3) a police lieutenant, who was accepted by the trial court as an expert in the field of street level narcotics, opined, based on the large number of packaging supplies that were found, the large amounts of marijuana and crack cocaine that were found, as well as the handgun and police scanner that were found, that the defendants possessed the crack cocaine and marijuana for the purpose of distributing the drugs; and (4) evidence of one defendant's prior arrest and conviction for possession of cocaine with intent to distribute was introduced as a similar transaction. Smith v. State, 309 Ga. App. 889, 714 S.E.2d 593, 2011 Ga. App. LEXIS 484 (2011).

Evidence that the defendant possessed enough crack-cocaine for 30 individual hits, which was consistent with distribution rather than personal use, the defendant was in possession of a scale, and the scale was coated in residue that appeared to be crack-cocaine was sufficient to support the defendant's conviction for possession with intent to distribute. Taylor v. State, 344 Ga. App. 439, 810 S.E.2d 333, 2018 Ga. App. LEXIS 48 (2018).

Evidence supported finding of intent to distribute marijuana. —

Deputy's testimony supported a jury's finding that a defendant possessed marijuana with the intent to distribute in violation of O.C.G.A. § 16-13-30(j)(1); the deputy testified that the packaging and amount of marijuana (7 grams), as well as the digital scales in the defendant's bag, indicated that the defendant was selling the marijuana. Boring v. State, 303 Ga. App. 576, 694 S.E.2d 157, 2010 Ga. App. LEXIS 370 (2010).

Evidence that a defendant participated in a plan for the delivery of a package containing 12 pounds of marijuana to a residence, along with digital scales, a marijuana grinder, and plastic baggies at the residence, and the defendant's admission that the marijuana was the defendant's, was sufficient to convict the defendant as a party to possession of marijuana with intent to distribute, trafficking in marijuana, and possession of marijuana, pursuant to O.C.G.A. § 16-2-20. Salinas v. State, 313 Ga. App. 720, 722 S.E.2d 432, 2012 Ga. App. LEXIS 58 (2012).

Jury was authorized to reject as incredible the defendant's wife's testimony that the couple went to Georgia to take a trip because they were having marital issues and the wife's claim that the defendant had no knowledge of the crimes the wife committed when the wife's step-brother asked the wife to transport some drugs to Ohio and, thus, the evidence was sufficient to support the defendant's convictions for trafficking in cocaine and possession of marijuana with intent to distribute. Calcaterra v. State, 341 Ga. App. 599, 801 S.E.2d 337, 2017 Ga. App. LEXIS 254 (2017).

Evidence insufficient for conviction of possession with intent to distribute. —

Evidence consisting of a reference to a hearsay tip from an unidentified source that defendant was selling drugs and the opinion testimony of the arresting police officer, not qualified as an expert, that 1.2 grams of cocaine would not normally be an amount held by a user was not sufficient to support a conviction of possession with intent to distribute. James v. State, 214 Ga. App. 763, 449 S.E.2d 126, 1994 Ga. App. LEXIS 1046 (1994).

After the state introduced evidence of the defendant's prior guilty pleas for possession with intent to distribute cocaine and the sale of cocaine, but this evidence was offered to impeach the defendant when the defendant took the stand, not as evidence of similar transactions whereby the jury could infer similar motive or bent of mind, the evidence was held insufficient to support a conviction of intent to distribute. Bethea v. State, 220 Ga. App. 800, 470 S.E.2d 328, 1996 Ga. App. LEXIS 351 (1996).

Evidence showing merely that defendant possessed two bags of marijuana and had a prior conviction for possession of marijuana with intent to distribute and possession of cocaine was not sufficient for conviction. Parris v. State, 226 Ga. App. 854, 487 S.E.2d 690, 1997 Ga. App. LEXIS 801 (1997).

Trial court was not authorized to find the defendant intended to distribute drugs since the state produced no evidence that defendant had scales, guns, cash, drug packaging materials, or a large quantity of marijuana, and did not introduce any evidence of prior drug sales by

the defendant, or any testimony that the defendant was observed selling or attempting to sell drugs. Clark v. State, 245 Ga. App. 267, 537 S.E.2d 742, 2000 Ga. App. LEXIS 939 (2000).

State failed to prove defendant was guilty of possession of cocaine with intent to distribute as to a substance found in defendant's car; thus, defendant's conviction was reversed since: (1) defendant did not state that the substance was cocaine in defendant's post-arrest statement; (2) the police expert did not identify the substance as cocaine, but as suspected cocaine; (3) no tests were performed on the substance; (4) the photographs admitted into evidence did not establish that the substance was cocaine; and (5) codefendant's testimony and the purported statement by the confidential informant did not identify the substance found in defendant's car. Cooper v. State, 258 Ga. App. 825, 575 S.E.2d 691, 2002 Ga. App. LEXIS 1535 (2002), cert. denied, 540 U.S. 888, 124 S. Ct. 270, 157 L. Ed. 2d 160, 2003 U.S. LEXIS 6399 (2003), cert. denied, No. S03C0553, 2003 Ga. LEXIS 343 (Ga. Mar. 28, 2003).

Evidence did not support the defendant's conviction for possession of marijuana with intent to distribute as the mere fact that a package of marijuana was addressed, but not delivered, to an apartment leased by defendant did not tie the defendant to the drugs; the evidence was circumstantial and it was equally plausible that the codefendants were independently dealing in marijuana. Patten v. State, 275 Ga. App. 574, 621 S.E.2d 550, 2005 Ga. App. LEXIS 1040 (2005).

There was insufficient evidence of intent to convict the defendant of possession of cocaine with intent to distribute under O.C.G.A. § 16-13-30, as there was no evidence that the cocaine had been divided and packaged for individual sale or as to a personal use quantity; thus, the circumstantial evidence did not permit a rational trier to exclude the reasonable hypothesis, pursuant to former O.C.G.A. § 24-4-6 (see now O.C.G.A. § 24-14-6), that the defendant intended to use the cocaine. Florence v. State, 282 Ga. App. 31, 637 S.E.2d 779, 2006 Ga. App. LEXIS 1306 (2006).

While the evidence was sufficient to convict the defendant of possession of cocaine found in a pill bottle in the defendant's vehicle, it was insufficient to prove that the defendant intended to distribute the cocaine under O.C.G.A. § 16-13-30(b) because the state produced no evidence that the defendant had scales, cutting implements, weapons, a large amount of cash, a customer list, or drug packaging materials; there was no evidence of prior convictions of drug possession with intent to distribute, no testimony that the defendant was seen selling or trying to sell drugs, no expert testimony that the amount of drugs seized was inconsistent with personal use, and no evidence as to the amount of cocaine seized. Under former O.C.G.A. § 24-4-6 (see now O.C.G.A. § 24-14-6), storing drugs in a pill bottle, and possessing an unidentified number of sales-size pieces of the drug, without more, equally supported the hypothesis that the person found with the drugs was a user rather than a dealer. Hicks v. State, 293 Ga. App. 830, 668 S.E.2d 474, 2008 Ga. App. LEXIS 1226 (2008).

Codefendant's convictions for possession of cocaine with intent to distribute, O.C.G.A. § 16-13-30(b), and possession with intent to distribute a controlled substance within 1,000 feet of a housing project, O.C.G.A. § 16-13-32.5(b), was unsupportable as a matter of law, and the trial court erred by denying the defendant's motion for a directed verdict of acquittal because the circumstantial evidence and the reasonable inferences derived therefrom were insufficient to connect the codefendant to the cocaine, which was found in an upstairs bedroom occupied by the codefendants; no evidence was introduced to show that the codefendant resided in the apartment where the cocaine was found, which could authorize an inference that the codefendant possessed the property therein. Jackson v. State, 306 Ga. App. 33, 701 S.E.2d 481, 2010 Ga. App. LEXIS 737 (2010).

Evidence that the defendant kicked in a door and entered an occupied apartment with others, the defendant provided the guns used, the defendant placed a gun to one victim's head, a victim's wallet and key were taken, and marijuana, digital scales, and a device used to grind marijuana were found at the defendant's house was sufficient to support the defendant's convictions for four counts of aggravated assault, three counts of false imprisonment, and one count each of armed robbery, burglary, possession of marijuana with intent to distribute, and possession of a firearm during the commission of a felony. Thompson v. State, 320 Ga. App. 150, 739 S.E.2d 434, 2013 Ga. App. LEXIS 141 (2013).

Defendant was entitled to reversal of the convictions for possession with intent to distribute and trafficking drugs because the defendant was merely present at a residence, which the defendant did not own or lease, when a search warrant was executed, there was no evidence the defendant had actual or constructive possession of the drugs, and there was no evidence the defendant was a party to these crimes. Scott v. State, 326 Ga. App. 115, 756 S.E.2d 220, 2014 Ga. App. LEXIS 133 (2014).

Since the evidence only showed that the defendant had been a visitor at the residence where the drugs were found and there was no evidence that the officers found drugs, cash, or other evidence on the defendant's person linking the defendant to the contents of the residence in question, the evidence was insufficient to support the defendant's convictions for trafficking, possession, and possession with intent to distribute the drugs. Morales v. State, 332 Ga. App. 794, 775 S.E.2d 168, 2015 Ga. App. LEXIS 400 (2015).

Supplying drugs for sex with minor supported conviction. —

Evidence was sufficient to support a conviction of distribution of cocaine under O.C.G.A. § 16-13-30 because the 15-year-old victim admitted that, on several of the occasions when having sex with defendant, the defendant had supplied the victim with crack cocaine, which they had smoked together. Watson v. State, 302 Ga. App. 619, 691 S.E.2d 378, 2010 Ga. App. LEXIS 195, cert. denied, 562 U.S. 932, 131 S. Ct. 328, 178 L. Ed. 2d 213, 2010 U.S. LEXIS 7482 (2010).

Evidence sufficient to support convictions for both sale of cocaine and possession of cocaine with intent to distribute. —

Because the state presented sufficient evidence through: (1) the testimony of an informant and the agent conducting a controlled buy from the defendant involving the informant; (2) the field tests done on the substance purchased and seized as a result of a search warrant; and (3) the results of the state's crime lab tests, the defendant's convictions for the sale of cocaine and possession with intent to distribute cocaine were upheld on appeal. Moreover, the latter conviction was further supported by testimony from the agent that the quantity and unique packaging of the cocaine found in the location searched were inconsistent with mere personal consumption. Johnson v. State, 289 Ga. App. 206, 656 S.E.2d 861, 2008 Ga. App. LEXIS 36 (2008).

Charge on "specific intent" not required. —

In a prosecution for possession of cocaine with intent to distribute, the trial court correctly rejected a requested charge necessitating that the state prove a "specific intent" to commit the crime. Price v. State, 223 Ga. App. 807, 478 S.E.2d 915, 1996 Ga. App. LEXIS 1282 (1996).

Similar transaction evidence properly admitted. —

In a prosecution for possession of cocaine with intent to distribute, the trial court properly admitted similar transaction evidence as the evidence showed that the defendant previously admitted possessing an almost identical array of drugs and drug processing paraphernalia. Cauley v. State, 287 Ga. App. 701, 652 S.E.2d 586, 2007 Ga. App. LEXIS 1071 (2007).

Defendant's three prior drug offenses involved the sale of $20 worth of crack cocaine to undercover officers or informants during drug investigations in the same neighborhood. Therefore, these similar transactions were admissible to show the defendant's bent of mind, course of conduct, and intent to sell cocaine in violation of O.C.G.A. § 16-13-30(b). Morrison v. State, 300 Ga. App. 405, 685 S.E.2d 413, 2009 Ga. App. LEXIS 1187 (2009).

Trial court did not abuse the court's discretion in admitting similar transaction evidence that the defendant had sold cocaine to a confidential informant because the trial court expressly found that the similar transaction was admissible for the purpose of showing the defendant's intent, that the defendant had committed the similar transaction, and that there was sufficient connection between the similar transaction and the charged offense, possession of cocaine with intent to distribute in violation of O.C.G.A. § 16-13-30(b). Wright v. State, 313 Ga. App. 829, 723 S.E.2d 59, 2012 Ga. App. LEXIS 86 (2012).

Trial court did not abuse the court's discretion in admitting similar transaction evidence because the evidence was sufficient for a rational trier of fact to have found the defendant guilty beyond a reasonable doubt of possession of cocaine with intent to distribute, O.C.G.A. § 16-13-30(b), even without the similar transaction evidence; the defendant testified on direct examination that the defendant was on parole at the time of a traffic stop and had previously pled guilty to a drug charge, and the trial court properly instructed the jury to limit the jury's consideration of the similar transaction evidence to the appropriate purpose. Wright v. State, 313 Ga. App. 829, 723 S.E.2d 59, 2012 Ga. App. LEXIS 86 (2012).

New trial ordered after evidence improperly admitted. —

Because the seizure of cash found on the defendant's person was conducted based on a lawful arrest for a domestic violence act of assault, given information by the defendant's girlfriend, the girlfriend's obvious injuries, and the defendant's attempt to flee, the trial court properly denied suppression of the evidence; however, because the defendant maintained a reasonable expectation of privacy in the curtilage surrounding the defendant's residence, absent a warrant or exigent circumstances, suppression of cocaine found in that area was erroneously denied, and as such the defendant was erroneously denied a new trial. Rivers v. State, 287 Ga. App. 632, 653 S.E.2d 78, 2007 Ga. App. LEXIS 1046 (2007).

Custodial statement by defendant properly admitted. —

Custodial statement in which the defendant admitted having turned over an electric meter used in the manufacture of drugs was properly admitted at the defendant's trial and did not improperly introduce character evidence against the defendant since even though a defendant is not charged with every crime committed during a criminal transaction, every aspect relevant to the crime charged may be presented at trial. Ward v. State, 285 Ga. App. 574, 646 S.E.2d 745, 2007 Ga. App. LEXIS 583 (2007).

Conflicting descriptions of the defendant in officer's report. —

Conflicting descriptions of the defendant given by a deputy in reports summarizing incidents where the deputy purchased drugs affected the weight of the deputy's testimony, not the testimony's admissibility, and the jury was entitled to overlook the discrepancies and believe the deputy when the deputy testified that the deputy bought cocaine from the defendant. Mathis v. State, 265 Ga. App. 541, 594 S.E.2d 737, 2004 Ga. App. LEXIS 176 (2004).

Even though an officer had not been qualified as an expert at trial, the officer's testimony was admissible to prove that the substance found in the defendant's pickup truck was marijuana because at the time of the defendant's arrest, the officer who discovered the substance in the defendant's truck was certified to recognize the odor of marijuana and to identify and test marijuana, and the officer was subject to cross-examination by defense counsel; it was then for the jury to decide the weight and credibility the jury would give to the officer's testimony. Bass v. State, 309 Ga. App. 601, 710 S.E.2d 818, 2011 Ga. App. LEXIS 408 (2011).

Chain of custody of methamphetamine sufficiently established. —

Because the state met the state's burden in establishing a chain of custody by sufficiently demonstrating that the evidence seized was the same as that which was admitted at trial, the defendant was not entitled to a directed verdict as to a charge of possession of methamphetamine with intent to distribute based on this ground. Cook v. State, 287 Ga. App. 81, 650 S.E.2d 757, 2007 Ga. App. LEXIS 879 (2007), cert. denied, No. S07C1874, 2008 Ga. LEXIS 127 (Ga. Jan. 28, 2008).

Evidence sufficient to support conviction for possession of methamphetamine with intent to distribute. —

Defendant's conviction for possession of methamphetamine with intent to distribute was upheld on appeal since sufficient evidence showed that: (1) the trial court properly admitted similar transaction evidence despite addressing all of the Williams factors, but preserving the defendant's confrontation rights; (2) the defendant's trial counsel was not ineffective; and (3) no Brady violation occurred. Hinton v. State, 290 Ga. App. 479, 659 S.E.2d 841, 2008 Ga. App. LEXIS 353 (2008).

Evidence that when a defendant's vehicle was stopped, the defendant was in possession of 14 grams of methamphetamine packaged in small plastic bags, other illegal drugs, and a digital scale, along with testimony from an experienced officer that the packaging indicated an intent to sell the methamphetamine, was sufficient to support the defendant's conviction for possession with intent to distribute under O.C.G.A. § 16-13-30(b). Driscoll v. State, 295 Ga. App. 5, 670 S.E.2d 824, 2008 Ga. App. LEXIS 1332 (2008).

State presented evidence that the officers found about 14 grams of methamphetamine crystals hidden in the defendant's shoe, which was a large amount of methamphetamine, and the state showed the defendant's intention to sell or distribute the methamphetamine; the defendant also gave a statement to a police officer admitting that the defendant possessed the methamphetamine and intended to sell the methamphetamine. Thus, the evidence was sufficient for the trial court to find beyond a reasonable doubt that the defendant was guilty of possession of methamphetamine with intent to distribute in violation of O.C.G.A. § 16-13-30(b). Boyd v. State, 300 Ga. App. 455, 685 S.E.2d 319, 2009 Ga. App. LEXIS 1120 (2009), cert. denied, No. S10C0309, 2010 Ga. LEXIS 204 (Ga. Mar. 1, 2010).

Evidence was sufficient to convict the defendant of trafficking in methamphetamine under O.C.G.A. § 16-13-30(a) because testimony of drug enforcement agents and co-indictees as well as drugs, money, and drug paraphernalia obtained during a search established that the defendant engaged in three sales of this contraband. Williamson v. State, 300 Ga. App. 538, 685 S.E.2d 784, 2009 Ga. App. LEXIS 1218 (2009), cert. denied, No. S10C0387, 2010 Ga. LEXIS 191 (Ga. Mar. 1, 2010).

Evidence was sufficient to convict the defendant of conspiracy to distribute methamphetamine in violation of O.C.G.A. § 16-13-30(b) because methamphetamine was found in a trailer on the defendant's property, which the defendant occupied and controlled, a known drug dealer was found on the defendant's premises, who had been "fronting" the defendant and the defendant's spouse methamphetamine on a weekly basis, and the defendant's spouse kept a book regarding their sales from the drugs supplied by the dealer. Peacock v. State, 301 Ga. App. 873, 689 S.E.2d 853, 2010 Ga. App. LEXIS 12 (2010).

Evidence was sufficient to find beyond a reasonable doubt that the defendant was guilty of manufacturing methamphetamine, O.C.G.A. § 16-13-30(b), conspiring to possess methamphetamine, O.C.G.A. § 16-13-3, and possessing methamphetamine, § 16-13-30(a) because the state was not required to show that the defendant was in sole or actual possession of the methamphetamine but could establish the element of possession by showing that the defendant was in joint constructive possession of the contraband; the evidence allowed for a finding that the defendant lived at the residence where the methamphetamine was found, that methamphetamine was found in the master bedroom atop the same dresser as a driver's license bearing the defendant's name and the residential address, that stored in a lockbox underneath the bed in that room were recipes for producing methamphetamine or a similar substance, along with digital scales associated with the drug trade, and that the defendant's residential premises was being used as a clandestine methamphetamine lab. Edwards v. State, 306 Ga. App. 713, 703 S.E.2d 130, 2010 Ga. App. LEXIS 1034 (2010).

Evidence sufficient to show sale of controlled pills. —

Combined evidence established that the defendant actively participated in and was a party to the three separate sales of a controlled substance based on the defendant freely and voluntarily admitting that during the last controlled drug buy, the defendant supplied an informant with 500-600 pills, the pills tested positive for trifluoromethylphenyl piperazine, and that the defendant acted the same during all of the controlled purchases. Walker v. State, 323 Ga. App. 685, 747 S.E.2d 691, 2013 Ga. App. LEXIS 707 (2013).

Sufficient evidence prison guard intended to distribute drugs in prison. —

Evidence supported convictions of possession of cocaine with intent to distribute, possession of marijuana with intent to distribute, and crossing a prison guard line with drugs when the defendant, a corrections officer, was found with a cookie box containing drugs. Although the defendant claimed to be unaware of the contents of the package, none of the people the defendant named as being involved in the transaction were proven to exist, and the jury was authorized to infer that it was unreasonable for a corrections officer to take a suspicious package from an unknown person into a prison to give to an unknown recipient; furthermore, given the large amount and variety of contraband, the contraband's high street value, and that the defendant was taking the contraband inside a heavily guarded prison facility, the jury was authorized to infer that the defendant intended to distribute the contraband to others instead of using the contraband personally. Bradley v. State, 292 Ga. App. 737, 665 S.E.2d 428, 2008 Ga. App. LEXIS 850 (2008).

Marijuana

"Manufacture." —

O.C.G.A. § 16-13-30(j)(1) applies to the cultivation or planting of marijuana, and it is therefore error for a trial court to conclude that "one

O.C.G.A. § 16-13-30(j)(1) applies to the cultivation or planting of marijuana, and it is therefore error for a trial court to conclude that "one cannot manufacture marijuana by growing same." State v. Hunt, 201 Ga. App. 327, 411 S.E.2d 273, 1991 Ga. App. LEXIS 1362 (1991), cert. denied, No. S92C0094, 1991 Ga. LEXIS 987 (Ga. Nov. 21, 1991).

Marijuana is not a controlled substance for the purpose of a prosecution under O.C.G.A. § 16-11-106 for possession of a firearm during the commission of a "crime involving the possession, manufacture, delivery, distribution, dispensing, administering, selling, or possession with intent to distribute any controlled substance." Asberry v. State, 220 Ga. App. 40, 467 S.E.2d 225, 1996 Ga. App. LEXIS 82 (1996).

Question of whether marijuana is a harmful drug is essentially a scientific one. Blincoe v. State, 231 Ga. 886, 204 S.E.2d 597, 1974 Ga. LEXIS 1269 (1974).

If marijuana is a dangerous drug, state has right to make the drug's sale and use criminal. Blincoe v. State, 231 Ga. 886, 204 S.E.2d 597, 1974 Ga. LEXIS 1269 (1974).

Legal capability of certain pharmacists to sell marijuana to certain customers is not an element of the offense of selling marijuana. May v. State, 179 Ga. App. 736, 348 S.E.2d 61, 1986 Ga. App. LEXIS 2002 (1986).

To authorize felony punishment, jury must find possession of more than one ounce of marijuana. —

When the evidence is in dispute as to the amount of marijuana defendant possessed, the jury must be instructed that to authorize felony punishment the jury must find possession of more than one ounce. Jones v. State, 151 Ga. App. 562, 260 S.E.2d 555 (1979).

Weight of plants. —

Testimony of expert as to the weight of the marijuana produced by a given quantity of marijuana plants which were seized, together with photographs of the plants, is sufficient to establish the weight of the plants which had been destroyed upon confiscation. Evans v. State, 176 Ga. App. 818, 338 S.E.2d 48, 1985 Ga. App. LEXIS 2907 (1985).

Proof of weight. —

To discharge the burden of proving that the weight of the marijuana exceeded one ounce, it is not necessary for the state to come forward with evidence of how many grams equal an ounce, even if the state's witnesses testify about the weight of the marijuana in terms of grams; when O.C.G.A. § 16-13-2(b) refers to an "ounce" of marijuana, the statute refers, as a matter of law, to an avoirdupois ounce, which is the equivalent of, when rounded up to the nearest hundredth of a gram, 28.35 grams, and the number of grams in an ounce is not something that varies from case to case or is open to reasonable dispute. Gaudlock v. State, 310 Ga. App. 149, 713 S.E.2d 399, 2011 Ga. App. LEXIS 453 (2011), cert. denied, No. S11C1610, 2011 Ga. LEXIS 851 (Ga. Oct. 17, 2011).

Identification of marijuana. —

Identification testimony regarding the identity of illegal drugs, when made by experienced officers, is admissible, and expert testimony based on scientific tests is not required to establish that a substance is marijuana. Jones v. State, 268 Ga. App. 246, 601 S.E.2d 763, 2004 Ga. App. LEXIS 897 (2004).

During testimony, the defendant referred to a substance as marijuana, and this, together with an officer's testimony, established the evidence was marijuana beyond a reasonable doubt and was sufficient for the jury to find the defendant guilty of possession of marijuana. Dulcio v. State, 297 Ga. App. 600, 677 S.E.2d 758, 2009 Ga. App. LEXIS 488 (2009).

Sufficiency of evidence. —

Trial court did not err in denying defendant's motion for a directed verdict on the charge of possession of marijuana with intent to distribute, a codefendant testified that the marijuana belonged to defendant, and no other evidence showed that the large amount of marijuana, contained in five bags total, was for defendant's personal use. Pitts v. State, 260 Ga. App. 553, 580 S.E.2d 618, 2003 Ga. App. LEXIS 419 (2003).

Convictions for trafficking in cocaine and possession of marijuana with intent to distribute were supported by sufficient evidence which showed that defendant was the sole lessee and resident of an apartment where nearly 500 grams of cocaine were found, along with several bags of marijuana packaged for resale, and that defendant had recently sold cocaine, which came from a blue bag holding 111 grams of cocaine, which was also found in the apartment. Vance v. State, 268 Ga. App. 556, 602 S.E.2d 276, 2004 Ga. App. LEXIS 956 (2004).

There was sufficient evidence to support convictions of possession of marijuana with intent to distribute and possession of a handgun during commission of a crime after an undercover officer met the defendant in the defendant's car, the defendant had a handgun beside the defendant, the officer showed the defendant the money that the officer showed brought to buy ten pounds of marijuana, and the defendant showed the officer a sample of the marijuana and told the officer that the marijuana was in a nearby van; after the transaction was called off because the officer would not give the defendant the money before receiving the marijuana, police found ten pounds of marijuana in the van and the handgun in the defendant's car. Davis v. State, 285 Ga. App. 460, 646 S.E.2d 342, 2007 Ga. App. LEXIS 547 (2007).

There was sufficient evidence to support a defendant's conviction for possession of more than an ounce of marijuana as although the evidence of the defendant's constructive possession of the marijuana found in a shoebox in the backseat of the car the defendant was operating was circumstantial, it was within the jury's province to exclude every other reasonable hypothesis other than the defendant's guilt. The car owner testified that the owner did not possess the vehicle for over three months and the defendant's passenger testified that the marijuana did not belong to the passenger, thus, the jury was entitled to find that the proved facts excluded the possibility that the car owner left the marijuana on the backseat where the marijuana had gone unnoticed for several months or that the passenger left the marijuana in the backseat. Prather v. State, 293 Ga. App. 312, 667 S.E.2d 113, 2008 Ga. App. LEXIS 933 (2008), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

In a prosecution for two counts of possession of less than one ounce of marijuana, evidence of the defendant's three prior convictions for the same offense was properly admitted. Given that the defendant denied possessing marijuana in two of the prior cases and in the case at bar, the prior transactions were probative of the defendant's bent of mind and course of conduct. Neal v. State, 297 Ga. App. 223, 676 S.E.2d 864, 2009 Ga. App. LEXIS 414 (2009).

Evidence that a defendant showed officers a can in the defendant's kitchen cupboard with a false bottom that concealed 33.18 grams of cocaine and 19.8 grams of marijuana was sufficient to support the defendant's convictions for trafficking in cocaine and possession of marijuana in violation of O.C.G.A. §§ 16-13-30(j)(1) and 16-13-31(a)(1)(A). The jury was charged on equal access and clearly rejected the defendant's defense that a confidential informant working as a handyman at the defendant's home could have placed the drugs there. Daniel v. State, 306 Ga. App. 48, 701 S.E.2d 499, 2010 Ga. App. LEXIS 816 (2010).

Even though an officer had not been qualified as an expert at trial, the officer's testimony was admissible to prove that the substance found in the defendant's pickup truck was marijuana because at the time of the defendant's arrest, the officer who discovered the substance in the defendant's truck was certified to recognize the odor of marijuana and to identify and test marijuana, and the officer was subject to cross-examination by defense counsel; it was then for the jury to decide the weight and credibility the jury would give to the officer's testimony. Bass v. State, 309 Ga. App. 601, 710 S.E.2d 818, 2011 Ga. App. LEXIS 408 (2011).

Evidence was sufficient to sustain the defendant's conviction for possession of more than one ounce of marijuana in violation of O.C.G.A. §§ 16-13-2(b) and 16-13-30(j) because the state adduced evidence at trial that the defendant had possession of 28.8 grams of marijuana, which was, by definition, more than one ounce of marijuana. Gaudlock v. State, 310 Ga. App. 149, 713 S.E.2d 399, 2011 Ga. App. LEXIS 453 (2011), cert. denied, No. S11C1610, 2011 Ga. LEXIS 851 (Ga. Oct. 17, 2011).

Evidence was sufficient to enable a rational trier of fact to find the defendant guilty beyond a reasonable doubt of malice murder, felony murder while in the commission of armed robbery, armed robbery, and conspiracy to violate the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., through a violation of O.C.G.A. § 16-13-30(j)(1), because: (1) the defendant and another buyer met with the victim and another seller where the defendant and the other buyer inspected marijuana which the victim and the other seller had for sale;

(2) after some discussion about price, the victim told the defendant what the price was and that the defendant could take it or leave it; (3) the defendant said that the defendant would take it, pulled a gun from the defendant's waistband, and fatally shot the victim; and (4) there was conflicting testimony as to whether the defendant took the marijuana and ran away with the marijuana after shooting the victim. Darville v. State, 289 Ga. 698, 715 S.E.2d 110, 2011 Ga. LEXIS 671 (2011).

Trial court did not err in denying the defendant's motion for a directed verdict because the evidence was sufficient for a rational trier of fact to find the defendant guilty beyond a reasonable doubt of distribution of marijuana, O.C.G.A. § 16-13-30(j), and possession of a firearm during the commission of a felony, O.C.G.A. § 16-11-106(b)(4); the testimony of a party to the transaction was corroborated by the observations of the detectives, the marijuana taken into evidence, the written statements of the parties regarding the defendant's involvement, and the defendant's own statement to a detective. Arnett v. State, 311 Ga. App. 811, 717 S.E.2d 312, 2011 Ga. App. LEXIS 859 (2011).

When the police discovered marijuana as the result of an illegal arrest, evidence was insufficient to support the defendant's conviction for possessing less than one ounce of marijuana. Ewumi v. State, 315 Ga. App. 656, 727 S.E.2d 257, 2012 Ga. App. LEXIS 399 (2012).

There was sufficient evidence to support the defendant's conviction for felony possession of marijuana based on the parties' stipulation that the marijuana in question in the case was scientifically determined to be marijuana and that it weighed 29.3 grams and the testimony of an officer that the officer saw the defendant trying to hide the marijuana, that the defendant asked for mercy, and the officer identified the marijuana and the bag as the one the officer recovered from the defendant's car during the traffic stop. Davis v. State, 318 Ga. App. 166, 733 S.E.2d 453, 2012 Ga. App. LEXIS 872 (2012).

Evidence that the defendant lived at the residence where the drugs were found gave rise to a rebuttable presumption that the defendant possessed the contraband and supported the defendant's convictions of possession with intent to distribute and possession of more than one ounce of marijuana. Evans v. State, 318 Ga. App. 706, 734 S.E.2d 527, 2012 Ga. App. LEXIS 979 (2012), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Evidence there was a path between the closest residence and the marijuana plants; one of the tires on the vehicle the defendant drove was the same as the tire the plants were grown in; the defendant had a relationship with the owner of the house near which the plants were found; the owner denied knowing marijuana was growing there; and the defendant's car contained rolling papers, fertilizer, and a book about marijuana authorized the jury to find the defendant guilty of manufacturing marijuana. Ross v. State, 323 Ga. App. 28, 747 S.E.2d 81, 2013 Ga. App. LEXIS 647 (2013).

Defendant's admission to staying at the apartment with the defendant's girlfriend, and the presence of the defendant's clothing and a picture of the defendant and girlfriend in a bedroom supported the jury's determination that the defendant committed the offenses of trafficking in cocaine and possession of marijuana with the intent to distribute, and the defendant's experience in handling cocaine established that the defendant knew the weight of the cocaine was more than 28 grams. Griffin v. State, 331 Ga. App. 550, 769 S.E.2d 514, 2015 Ga. App. LEXIS 41 (2015), cert. denied, No. S15C1138, 2015 Ga. LEXIS 473 (Ga. June 15, 2015).

Evidence was insufficient to support the defendant's convictions for trafficking in cocaine or possession of marijuana with intent to distribute as the state failed to show that the defendant owned or rented the house where the drugs were found, lived at the house, occupied the master bedroom or kept personal belongings there, had keys to the house, or received mail at the house. Holland v. State, 334 Ga. App. 600, 780 S.E.2d 40, 2015 Ga. App. LEXIS 689 (2015).

Evidence was sufficient to support the defendant's conviction of conspiracy to purchase marijuana because the defendant had previously gone to the seller's home to purchase marijuana, the defendant accompanied the codefendant to the seller's home when the latter went to purchase marijuana, the defendant entered the neighbor's porch with the codefendant where the seller was selling marijuana, drugs and money were visible on the porch, the defendant remained with the seller and the codefendant as they discussed the sale of marijuana for $20 and $10, and the defendant blocked the seller's friend's exit as the friend was leaving the residence. Hunter v. State, 355 Ga. App. 520, 844 S.E.2d 858, 2020 Ga. App. LEXIS 346 (2020).

Constructive possession. —

Because the state showed that, in addition to a juvenile's close proximity to a bag of marijuana, the juvenile confessed to an intent to

purchase the marijuana, and had money equal to the marijuana's approximate street value, such established a sufficient connection between the juvenile and the marijuana to support an adjudication for the marijuana's constructive possession, contrary to O.C.G.A. § 16-13-30. In the Interest of B.J.C., 281 Ga. App. 228, 635 S.E.2d 833, 2006 Ga. App. LEXIS 1058 (2006).

Sufficient evidence supported the defendant's convictions of trafficking in cocaine, possession of marijuana with intent to distribute, and possession of cocaine with intent to distribute within 1,000 feet of a school, despite an argument on appeal that no evidence of either actual or constructive possession was presented as: (1) sufficient additional evidence, albeit circumstantial, tied the defendant to those crimes and established more than the defendant's mere presence to the drugs seized; and (2) the proved facts excluded any reasonable hypotheses that a crime could have been committed by anyone else. Slaughter v. State, 282 Ga. App. 276, 638 S.E.2d 417, 2006 Ga. App. LEXIS 1365 (2006).

Evidence supported an adjudication of juvenile delinquency based on possession of marijuana; an officer saw the juvenile defendant searching the floorboard of a car, and marijuana was later found on the floorboard in the area where the defendant had been searching. In the Interest of Q.P., 286 Ga. App. 225, 648 S.E.2d 731, 2007 Ga. App. LEXIS 740 (2007).

Trial court did not err in convicting the defendants of felony possession of more than one ounce of marijuana in violation of O.C.G.A. § 16-13-30(j)(1) because the trial court was authorized to conclude that the defendants had equal access to and joint constructive possession of the marijuana that was found in a minivan and that the defendants participated as parties to the drug possession offense; the defendants, who were passengers in the back of the minivan, knew that marijuana was inside the minivan, and the driver informed an officer that the passengers were hiding marijuana inside the minivan. Dennis v. State, 313 Ga. App. 595, 722 S.E.2d 190, 2012 Ga. App. LEXIS 31 (2012).

Definition of marijuana under § 16-13-25. —

Since a prosecution for misdemeanor possession of marijuana cannot be instituted on the basis of a blood or urine test which shows "positive" for marijuana, because such positive showings will be based upon the presence of THC "without the morphological features" of the marijuana plant and are thus excluded from the definition of "marijuana" under O.C.G.A. § 16-13-25, prosecutions for possession of marijuana based upon positive blood or urine samples must be brought as a felony prosecution for possession of a Schedule I drug, i.e. THC. Cronan v. State, 236 Ga. App. 374, 511 S.E.2d 899, 1999 Ga. App. LEXIS 168 (1999).

Marijuana and THC distinquished. —

Georgia law distinguishes marijuana from THC (tetrahydrocannabinol) as O.C.G.A. § 16-13-21(16) provides that marijuana means all parts of the plant of the genus Cannabis, whereas O.C.G.A. § 16-13-30(a) and (j) separately addresses any controlled substance and marijuana. C. W. v. Department of Human Services, 353 Ga. App. 360, 836 S.E.2d 836, 2019 Ga. App. LEXIS 698 (2019).

Jury need not make special finding as to amount where evidence not in conflict. —

When evidence is not in conflict as to amount, it is not necessary for the court to charge the jury that the jury must find amount specially. Coffey v. State, 141 Ga. App. 254, 233 S.E.2d 243, 1977 Ga. App. LEXIS 1857 (1977).

Pleading amount of marijuana possessed and first offender status. —

While it is necessary to plead amount of marijuana possessed and whether the defendant is a first offender when trial is to be had in an inferior court having jurisdiction over misdemeanors only, there is no requirement to plead this matter in an indictment or accusation when trial is to be had in a superior court which has concurrent jurisdiction over felonies and misdemeanors. Stinnett v. State, 132 Ga. App. 261, 208 S.E.2d 16, 1974 Ga. App. LEXIS 1666 (1974).

When the jury asked the court to distinguish possession of marijuana from the sale of marijuana, and the trial court responded that the defendant was accused of selling marijuana and then read O.C.G.A. § 16-13-30(j)(1) to the jury, it was held that it is not usually cause for a new trial that an entire Code Section is given, even though a part of the charge may be inapplicable under the facts in

evidence, and the conviction of selling marijuana was affirmed. McBurse v. State, 182 Ga. App. 759, 357 S.E.2d 144, 1987 Ga. App. LEXIS 1811 (1987).

Proof that proffered marijuana same as that seized. —

State showed with "reasonable certainty" that marijuana offered into evidence was same as that seized. Williams v. State, 165 Ga. App. 708, 302 S.E.2d 609, 1983 Ga. App. LEXIS 1993 (1983).

Testimony of arresting officer sufficient for felony possession of marijuana sufficient. —

Defendant was properly convicted of felony possession of marijuana as a deputy sheriff testified that the defendant admitted that the marijuana found in the trunk of a rental car belonged to the defendant. Even though the defendant denied saying this, or possessing the drugs, the credibility of witnesses was for the jury to determine, and under former O.C.G.A. § 24-4-8 (see now O.C.G.A. § 24-14-8), the testimony of a single witness was sufficient to establish the facts. McKinney v. State, 293 Ga. App. 419, 667 S.E.2d 210, 2008 Ga. App. LEXIS 958 (2008).

As a defendant's landlord could not give valid consent to search the defendant's trailer to find the subject of an arrest warrant who did not live there, and no emergency required the subject's immediate arrest, an officer's warrantless entry into the defendant's trailer violated the Fourth Amendment. Therefore, the plain view doctrine did not apply, and the officer could not seize marijuana plants found in the trailer. Looney v. State, 293 Ga. App. 639, 667 S.E.2d 893, 2008 Ga. App. LEXIS 1039 (2008).

Evidence sufficient for conviction of possession of marijuana. —

See Johnston v. State, 178 Ga. App. 219, 342 S.E.2d 706, 1986 Ga. App. LEXIS 2516 (1986); Kelly v. State, 181 Ga. App. 605, 353 S.E.2d 92, 1987 Ga. App. LEXIS 2554 (1987); Akins v. State, 184 Ga. App. 441, 361 S.E.2d 707, 1987 Ga. App. LEXIS 2798 (1987); Rich v. State, 188 Ga. App. 287, 372 S.E.2d 670, 1988 Ga. App. LEXIS 956 (1988); Crawford v. State, 233 Ga. App. 323, 504 S.E.2d 19, 1998 Ga. App. LEXIS 888 (1998); Driver v. State, 240 Ga. App. 513, 523 S.E.2d 919, 1999 Ga. App. LEXIS 1395 (1999), cert. denied, No. S00C0321, 2000 Ga. LEXIS 205 (Ga. Feb. 25, 2000); Brown v. State, 244 Ga. App. 440, 535 S.E.2d 785, 2000 Ga. App. LEXIS 752 (2000).

When there was more evidence to connect defendant to the marijuana than that of mere spatial proximity or presence as the marijuana was hidden during the transport in the patrol vehicle to the station by one of the three codefendants, and when defendant admitted that defendant knew the owner of the marijuana, although the defendant refused to identify such person and there was evidence that marijuana had been used in defendant's vehicle and that defendant had recently used marijuana there was sufficient evidence to find defendant guilty of joint constructive possession, or at least as a party to the crime. Harvey v. State, 212 Ga. App. 632, 442 S.E.2d 478, 1994 Ga. App. LEXIS 328 (1994), cert. denied, No. S94C1123, 1994 Ga. LEXIS 739 (Ga. May 27, 1994).

Based on the defendant's statements regarding the "dope" in the defendant's apartment and the fact that the defendant waived the defendant's claim that the state failed to prove that the substance was marijuana by failing to object to the state's alleged failure to lay a foundation for the officer's testimony that it was marijuana, the evidence was sufficient to support the defendant's conviction for possession-of-marijuana. Ballard v. State, 268 Ga. App. 55, 601 S.E.2d 434, 2004 Ga. App. LEXIS 840 (2004).

Evidence was sufficient to sustain defendant's convictions for possession of marijuana and possession of cocaine with intent to distribute; officers testified that they recovered the 34 bags of cocaine and one bag of marijuana that the defendant threw out the window of a car, as well as two bags of cocaine the defendant still had and that such a large amount of cocaine individually wrapped was consistent with an intent to distribute. Mayo v. State, 277 Ga. App. 282, 626 S.E.2d 245, 2006 Ga. App. LEXIS 62 (2006).

Evidence supported a defendant's conviction of bringing stolen property to Georgia, eluding an officer, and possessing marijuana as a party, if not as a conspirator, since: (1) the defendant discussed with the defendant's boyfriend what would happen if they were apprehended by the police; (2) the boyfriend gave the defendant a handgun after the boyfriend stole a new gun and the defendant packed two guns with the defendant's personal items and the ski masks; (3) the defendant suspected that the truck was stolen, refused to ask about the truck's

the defendant's personal items and the ski masks; (3) the defendant suspected that the truck was stolen, refused to ask about the truck's origin, saw the stolen gun on the seat of the truck, observed two gas drive-offs, ate stolen food, smoked shared marijuana repeatedly, and sat next to the glove compartment where the marijuana lay; and (4) the defendant was silent during the police pursuits, saw the defendant's boyfriend retrieve a stolen handgun just prior to an assault of a police officer, did not hinder the boyfriend or warn the police, lied to the police to cover up the matter, and referred to the entire affair as having "fun for a minute." Michael v. State, 281 Ga. App. 289, 635 S.E.2d 790, 2006 Ga. App. LEXIS 989 (2006), cert. denied, No. S07C0097, 2006 Ga. LEXIS 950 (Ga. Nov. 6, 2006), overruled in part, Gibbs v. State, 340 Ga. App. 723, 798 S.E.2d 308, 2017 Ga. App. LEXIS 126 (2017).

Evidence supported the defendant's conviction of possession of less than one ounce of marijuana, O.C.G.A. § 16-13-30(a), as the state presented direct evidence of the defendant's admission that the contraband belonged to the defendant and that some marijuana was found in the defendant's bedroom; the conflicts in the evidence in this regard presented a question for the jury's resolution. Wheeler v. State, 307 Ga. App. 585, 705 S.E.2d 686, 2011 Ga. App. LEXIS 18 (2011), overruled in part, Maddox v. State, 322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Evidence was sufficient to conclude beyond a reasonable doubt that the defendant was guilty of possession of less than one ounce of marijuana because, at trial, the sergeant testified that marijuana was taken from the defendant's pocket and entered into evidence; the defendant did not object to that testimony; and the marijuana was later admitted into evidence over the defendant's objection. Harvey v. State, 344 Ga. App. 7, 806 S.E.2d 302, 2017 Ga. App. LEXIS 528 (2017), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Evidence sufficient for conviction. —

Evidence was sufficient to support the defendant's conviction for possession with intent to distribute marijuana because the defendant was in possession of clear plastic baggies, smaller baggies of suspected marijuana, a digital scale, and cash, and a police officer testified that in the officer's capacity as a marijuana tester for the county sheriff's office, the officer tested a total of 11 bags, containing approximately 190 grams of a substance that tested positive for marijuana; possession of a scale, baggies, and large amounts of currency along with drugs can constitute circumstantial evidence of intent to distribute. Hardaway v. State, 309 Ga. App. 432, 710 S.E.2d 634, 2011 Ga. App. LEXIS 353 (2011).

Evidence was sufficient to permit a rational trier of fact to find the defendant guilty beyond a reasonable doubt of possession of cocaine with intent to distribute because a chemist testified that in the chemist's opinion, the substance found in the defendant's pocket consisted of cocaine; a drug task force officer testified about a field test indicating the presence of cocaine. White v. State, 310 Ga. App. 386, 714 S.E.2d 31, 2011 Ga. App. LEXIS 564 (2011).

Trial court did not err in denying the defendant's motion for a directed verdict of acquittal as to the charge of possession of methamphetamine because the trier of fact was presented with sufficient evidence to determine beyond a reasonable doubt that the defendant was guilty of possessing methamphetamine since the court was authorized to conclude that the defendant either dropped or discarded the methamphetamine during the struggle with police when the defendant fled from a traffic stop; the evidence included the officer's testimony that the officer saw the defendant tuck something into a waistband while in a car, the defendant's flight from law enforcement after being stopped for a minor traffic offense, the proximity of the methamphetamine to the location where the defendant fell to the ground, and the defendant's statement to the officer that the defendant had exchanged drugs for use of the car. Bone v. State, 311 Ga. App. 390, 715 S.E.2d 789, 2011 Ga. App. LEXIS 739 (2011), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Evidence was sufficient to authorize the defendant's conviction for possessing more than one ounce of marijuana because the defendant was presumed to have exclusive possession and control of the marijuana that a police officer found in the car the defendant was driving; as the factfinder, the jury was entitled to reject the testimony of the defendant's friend that the marijuana was the friend's and to determine that the presumption of the defendant's possession of the marijuana had not been rebutted. Nix v. State, 312 Ga. App. 43, 717 S.E.2d 550, 2011 Ga. App. LEXIS 880 (2011).

Defendant's convictions for possession of marijuana and a firearm were affirmed because, although circumstantial, the evidence was sufficient to show that the weapon was within arm's reach of the defendant during the commission of a crime. Under the circumstances

sufficient to show that the weapon was within arm's reach of the defendant during the commission of a crime. Under the circumstances, the trial court could find that, given the close proximity, the defendant passed within reach of the handgun while handling the marijuana. Carter v. State, 319 Ga. App. 609, 737 S.E.2d 714, 2013 Ga. App. LEXIS 20 (2013), cert. denied, No. S13C0836, 2013 Ga. LEXIS 525 (Ga. June 3, 2013).

Combined evidence was sufficient to enable a rational trier of fact to find the defendant guilty beyond a reasonable doubt of possession of marijuana with intent to distribute because the owner of the residence where the police found drugs and drug paraphernalia testified that the defendant brought marijuana to the residence along with digital scales and assisted in picking the stems out of the marijuana; the testimony of a witness who saw the defendant where the marijuana, scales, and marijuana stems were located in plain view and the testimony of the deputies who participated in the execution of the search warrant served to corroborate the owner's testimony. Kegler v. State, 317 Ga. App. 427, 731 S.E.2d 111, 2012 Ga. App. LEXIS 726 (2012), overruled in part, Hamm v. State, 294 Ga. 791, 756 S.E.2d 507, 2014 Ga. LEXIS 222 (2014).

Evidence was sufficient to establish that the defendant possessed marijuana with intent to distribute under a conspiracy theory because the defendant admitted to agreeing to drive a passenger to pick up the marijuana in exchange for the crack cocaine, which demonstrated an agreement between the defendant and the passenger; both the defendant and the passenger committed acts in furtherance of the agreement because the defendant drove the passenger to pick up the marijuana, and the passenger acquired the marijuana. Stokes v. State, 317 Ga. App. 435, 731 S.E.2d 118, 2012 Ga. App. LEXIS 725 (2012), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Evidence sufficient to sustain conviction for possession with intent to distribute marijuana. —

See Wiley v. State, 178 Ga. App. 136, 342 S.E.2d 342, 1986 Ga. App. LEXIS 2508 (1986); Rivers v. State, 178 Ga. App. 310, 342 S.E.2d 781, 1986 Ga. App. LEXIS 2510 (1986); Brooks v. State, 190 Ga. App. 430, 379 S.E.2d 228, 1989 Ga. App. LEXIS 250 (1989); Ward v. State, 195 Ga. App. 166, 393 S.E.2d 21, 1990 Ga. App. LEXIS 432 (1990); King v. State, 238 Ga. App. 575, 519 S.E.2d 500, 1999 Ga. App. LEXIS 873 (1999); Buckholts v. State, 247 Ga. App. 697, 545 S.E.2d 99, 2001 Ga. App. LEXIS 92 (2001).

Presence of the marijuana in defendant's home, coupled with the quantity of marijuana and the presence of scales used to weigh drugs, was sufficient evidence of possession of marijuana with an intent to distribute. Midura v. State, 183 Ga. App. 523, 359 S.E.2d 416, 1987 Ga. App. LEXIS 2036 (1987).

When drugs were found in the area of a car where the defendant sat, when the evidence showed that the driver of the car was trying to buy drugs from the defendant, and when the driver denied to an officer that the seized drugs belonged to the defendant, the defendant's conviction of possessing drugs with intent to distribute was supported by the evidence. Johnson v. State, 268 Ga. App. 808, 602 S.E.2d 840, 2004 Ga. App. LEXIS 1024 (2004).

Evidence was sufficient to convict defendant of possession of marijuana with the intent to distribute based on the testimony of an officer and a forensic chemist that the leafy substance that was found on the floorboard of the truck that defendant used was in fact marijuana. Marion v. State, 268 Ga. App. 699, 603 S.E.2d 321, 2004 Ga. App. LEXIS 989 (2004).

Evidence was sufficient to support a conviction for possession of marijuana with the intent to distribute given that the defendant was riding as a passenger in a vehicle that was stopped, the defendant immediately informed the police where individually packaged bags of marijuana could be found within the car, the defendant had been previously convicted of a similar offense a few months earlier, and the driver indicated that the drugs belonged to the defendant. Williams v. State, 277 Ga. App. 106, 625 S.E.2d 509, 2005 Ga. App. LEXIS 1399 (2005).

There was sufficient evidence that the defendant was guilty of possessing with intent to distribute 40.1 pounds of marijuana in violation of O.C.G.A. § 16-13-30(j); the defendant's intent to distribute was proved by evidence that the amount of marijuana was far in excess of that possessed for personal use, and the circumstantial evidence showed a connection between defendant and the marijuana other than spatial proximity. Taylor v. State, 285 Ga. App. 697, 647 S.E.2d 381, 2007 Ga. App. LEXIS 629 (2007), cert. denied, No. S07C1515, 2007 Ga. LEXIS 655 (Ga. Sept. 10, 2007).

Evidence, although circumstantial, was sufficient to connect the defendant to the house where drugs were found; thus, it was sufficient to

support convictions of trafficking in cocaine and possession of marijuana with intent to distribute. Although others might have been present on the property on various unspecified occasions, the defendant was allowed by the owner to use the house, had been seen at the residence by police on previous occasions, had a vehicle on the premises, and hurriedly walked away from officers when the officers arrived; the evidence also showed that no other persons were present when officers executed the search warrant. Clyde v. State, 298 Ga. App. 283, 680 S.E.2d 146, 2009 Ga. App. LEXIS 649 (2009).

Evidence was sufficient to establish the defendant's conviction for possession of marijuana with intent to distribute in violation of O.C.G.A. § 16-13-30(j)(1) because during the execution of a search warrant at the defendant's residence, police officers seized eighteen baggies of marijuana individually packaged in a manner that was indicative of possession with intent to distribute, and the residence belonged to the defendant, which permitted an inference that the defendant controlled the premises and was in constructive possession of the drug contraband; the circumstantial evidence implied the defendant's consciousness of guilt and further supported the defendant's conviction because, when the officers approached the residence, the defendant fled inside to the closet area where the drugs were later located, and when the officers searched the closet, the officers discovered that the jacket the defendant had been wearing was placed over the box containing the drugs. Williams v. State, 303 Ga. App. 222, 692 S.E.2d 820, 2010 Ga. App. LEXIS 321 (2010).

Trial court did not err in denying the defendant's motion for a directed verdict after a jury found the defendant guilty of trafficking in cocaine, O.C.G.A. § 16-13-31(a)(1)(A), and possession of marijuana with intent to distribute, O.C.G.A. § 16-13-30(j), because the verdict was not insupportable as a matter of law; in addition to evidence that the defendant rented a hotel room where illegal drugs were found, had a key to the suite, and was going to the suite at a time when a great quantity and variety of drugs were in open view, there was other evidence linking the defendant to the contraband found there, including the defendant's suspicious behavior upon seeing officers near the suite and the presence of the defendant's personal property inside the suite. Glass v. State, 304 Ga. App. 414, 696 S.E.2d 140, 2010 Ga. App. LEXIS 540 (2010).

Evidence was sufficient to find the defendant guilty of possession of marijuana with intent to distribute, O.C.G.A. § 16-13-30(j)(1), and possession of marijuana with intent to distribute within 1,000 feet of a housing project, O.C.G.A. § 16-13-32.5(b), because it appeared that the jury accepted that version of the events most unfavorable to the defendant after hearing all of the evidence and resolving the credibility of all of the witnesses, and the jury was solely authorized to make such determinations. Bass v. State, 309 Ga. App. 601, 710 S.E.2d 818, 2011 Ga. App. LEXIS 408 (2011).

Evidence was sufficient to support the defendant's conviction for possession with intent to distribute marijuana as over a pound of marijuana was found in the defendant's vehicle, and the marijuana was found with a trafficking amount of 3,4 methylenedioxymethamphetamine (MDMA) and a loaded weapon, constituting evidence of involvement in the drug trade. Jackson v. State, 314 Ga. App. 272, 724 S.E.2d 9, 2012 Ga. App. LEXIS 179 (2012).

Evidence that the defendant was in possession of the marijuana during a pat-down search prior to being transported in the patrol car, but the pat-down failed to discover the marijuana on the defendant's person, that the defendant placed the marijuana under the backseat while being transported, and the marijuana found in the backseat was packaged in seven individual bags supported a conviction for possession with intent to distribute. Wiggins v. State, 323 Ga. App. 754, 748 S.E.2d 120, 2013 Ga. App. LEXIS 733 (2013).

Evidence sufficient to convict for manufacture of marijuana. —

Evidence supported conviction for manufacture of marijuana even though laboratory expert could not definitively state that certain alleged marijuana plants on the manufacturing premises were marijuana. Burch v. State, 213 Ga. App. 392, 444 S.E.2d 370, 1994 Ga. App. LEXIS 558 (1994), cert. denied, No. S94C1446, 1994 Ga. LEXIS 936 (Ga. Sept. 8, 1994).

Evidence sufficient to support conviction for selling marijuana. —

See Puckett v. State, 178 Ga. App. 143, 342 S.E.2d 487, 1986 Ga. App. LEXIS 2502 (1986); Byrd v. State, 182 Ga. App. 284, 355 S.E.2d 666, 1987 Ga. App. LEXIS 2608 (1987).

Evidence supported the defendant's conviction for selling marijuana after undercover officers saw the defendant sell marijuana from a distance of 10-15 feet, the buyer dropped a bag of marijuana when arrested, and when officers later approached the defendant, defendant said, "I didn't sell my man no weed." McKay v. State, 234 Ga. App. 556, 507 S.E.2d 484, 1998 Ga. App. LEXIS 1300 (1998), cert. denied, No. S99C0220, 1999 Ga. LEXIS 205 (Ga. Feb. 19, 1999).

Defendant's convictions for simple battery and the sale of marijuana were upheld on appeal as sufficient evidence was presented that the defendant spat in the face of another and the undercover officer who the defendant sold the marijuana to testified regarding the sale; further, the trial court properly admitted similar transaction evidence as the evidence was probative of defendant's bent of mind to become belligerent with police officers when arrested. Williams v. State, 287 Ga. App. 40, 651 S.E.2d 347, 2007 Ga. App. LEXIS 868 (2007).

Evidence insufficient to convict for selling marijuana. —

Prior inconsistent statement by marijuana dealer charged with selling marijuana in violation of O.C.G.A. § 16-13-30(j)(1) that defendants were involved in selling marijuana, and evidence that the defendants were in close proximity to seized marijuana did not establish that the defendants were a party to the crime of violating paragraph (j)(1). Oldwine v. State, 184 Ga. App. 173, 360 S.E.2d 915, 1987 Ga. App. LEXIS 2756 (1987).

Evidence insufficient for conviction for possession with intent to distribute. —

Although the trial court properly admitted evidence of similar transactions, given the quantity of marijuana and methamphetamine found, the evidence was insufficient to convict defendant of possession with intent to distribute under O.C.G.A. § 16-13-30(b). Ryan v. State, 277 Ga. App. 490, 627 S.E.2d 128, 2006 Ga. App. LEXIS 132 (2006).

Evidence insufficient for possession conviction. —

Evidence did not support a defendant juvenile's adjudication of delinquency for possession of marijuana as: (1) a substance an officer said was marijuana was found in a truck in which the defendant juvenile was riding; (2) the defendant juvenile did not own the truck; (3) the marijuana was not found where the defendant juvenile had been sitting; and (4) the state did not have the bag tested at the crime lab and therefore there was no testimony that the substance found in the truck had actually tested positive for marijuana. In the Interest of C.C., 280 Ga. App. 590, 634 S.E.2d 532, 2006 Ga. App. LEXIS 905 (2006).

Evidence was insufficient to support the defendant's conviction of possession of marijuana as there was no evidence connecting the defendant to the drugs other than the defendant's own equal access. The drugs and paraphernalia were not found in an area exclusively used by the defendant, and the defendant's cousin had the same access to the drugs and paraphernalia. Xiong v. State, 295 Ga. App. 697, 673 S.E.2d 86, 2009 Ga. App. LEXIS 96 (2009), overruled in part, Maddox v. State, 322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013).

Evidence sufficient to convict for attempt to possess marijuana. —

There was sufficient evidence to support a defendant's conviction for attempting to possess marijuana based on the evidence that the defendant solicited undercover officers and asked for marijuana and attempted to pay for the marijuana. The defendant's rejection of the first bag the undercover officers gave did not establish abandonment of the crime since the defendant asked for a second bag. Collins v. State, 297 Ga. App. 364, 677 S.E.2d 407, 2009 Ga. App. LEXIS 434 (2009).

Confrontation clause violation was harmless error in light of other evidence of marijuana. —

Although a trial court erred in excluding evidence that a witness had pending unrelated drug charges, violating the defendant's right to confrontation, the error was harmless given the overwhelming evidence of the defendant's possession of marijuana, scales, and plastic bags in a car the defendant had rented and was driving. Shelton v. State, 323 Ga. App. 798, 748 S.E.2d 278, 2013 Ga. App. LEXIS 749 (2013).

Necessity of jury instruction on lesser included offense of misdemeanor possession. —

Defendant was improperly convicted of purchasing marijuana under O.C.G.A. § 16-13-30(j)(1) because the trial court should have given a jury instruction on the lesser included offense of misdemeanor possession of less than one ounce of marijuana under O.C.G.A. § 16-13-2(b) as the defendant did not pay for the marijuana and testified that the defendant did not intend to purchase the marijuana. Johnson v. State, 296 Ga. App. 697, 675 S.E.2d 588, 2009 Ga. App. LEXIS 317 (2009), cert. denied, No. S09C1191, 2009 Ga. LEXIS 420 (Ga. June 29, 2009).

Objection to jury instruction on possession of firearm in conjunction with marijuana possession. —

Trial counsel was not ineffective for failing to object to the trial court's jury instruction on possession of a firearm during the commission of a crime that referenced possession of marijuana as a potential predicate felony offense because there was sufficient evidence to support the defendant's felony conviction for possession of marijuana with intent to distribute, which could serve as the predicate felony offense for the defendant's conviction of possession of a firearm during the commission of a crime; and there was not a reasonable probability that, if the trial court had omitted the reference to simple possession of marijuana from the instruction, the outcome of the trial would have been more favorable to the defendant. McNorrill v. State, 338 Ga. App. 466, 789 S.E.2d 823, 2016 Ga. App. LEXIS 472 (2016).

Jury instruction with reference to marijuana possession. —

Although the trial court's jury instruction included a reference to simple possession of marijuana, the jury instruction did not prejudice the defendant's case because the trial court read the indictment to the jury that charged the defendant with possession of marijuana with intent to distribute, instructed the jury that the state had the burden of proving every material allegation of the indictment beyond a reasonable doubt, instructed the jury that the jury could find the defendant guilty if the jury found beyond a reasonable doubt that the defendant committed the offenses alleged in the indictment, and provided the indictment to the jury during the jury's deliberations; thus, the defendant could not succeed on an ineffective assistance of counsel claim. McNorrill v. State, 338 Ga. App. 466, 789 S.E.2d 823, 2016 Ga. App. LEXIS 472 (2016).

Jury instructions on mere association and mere presence. —

Trial court's instructions on "mere association" and "mere presence" with regard to charging a defendant as a party to a crime under O.C.G.A. § 16-2-20(a) were misstatements of the law and also directly conflicted with other closely related instructions, and were harmful error requiring reversal of the defendant's convictions for possession of marijuana with intent to distribute in violation of O.C.G.A. § 16-13-30(j)(1). Able v. State, 312 Ga. App. 252, 718 S.E.2d 96, 2011 Ga. App. LEXIS 936 (2011).

Inconsistent verdict. —

Guilty verdict for charge of possession of marijuana with intent to distribute was not inconsistent where the jury simply broke down the verdict into the two primary findings necessary to find defendant guilty of the offense; in any event, simple possession of marijuana is a lesser-included offense of possession of marijuana with the intent to distribute, and there is nothing improper with a jury finding a defendant guilty of both the charged offense and a lesser-included offense. Ellison v. State, 265 Ga. App. 446, 594 S.E.2d 675, 2004 Ga. App. LEXIS 140 (2004), overruled, Middleton v. State, 309 Ga. 337, 846 S.E.2d 73, 2020 Ga. LEXIS 476 (2020).

No speedy trial violation. —

Upon the appellate court's analysis of the four Barker v. Wingo factors, given the negative weight of one of two factors against the state, specifically, the reason for the delay, and the defendant's failure to show prejudice and timely assertion of a speedy trial right, no abuse of discretion resulted by the trial court's denial of a motion to dismiss the indictments filed against the defendant, charging the sale of cocaine

and marijuana, on speedy trial grounds. Simmons v. State, 290 Ga. App. 315, 659 S.E.2d 721, 2008 Ga. App. LEXIS 302 (2008).

No double jeopardy violation. —

Because the reduced possession of marijuana charge to which the defendant pled guilty in Forsyth County arose from the seizure of 11 pounds of marijuana in the parking lot of a hotel in Forsyth County on the morning of April 4, 2018, while Count 2 of the Fulton County indictment arose from the discovery of additional marijuana at defendant's home pursuant to the execution of a search warrant later that same day, it was proper to charge each offense separately. Laghaeifar v. State, 360 Ga. App. 843, 861 S.E.2d 808, 2021 Ga. App. LEXIS 403 (2021).

Maximum punishment provisions of section apply to charge of conspiracy. —

If defendants are indicted under general conspiracy statute, maximum punishment provisions of it apply, but if indictment charges, "Conspiracy to Possess and Sell Marijuana," a violation of provisions of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., is properly charged and the maximum punishment provisions of it apply. Jones v. State, 135 Ga. App. 893, 219 S.E.2d 585, 1975 Ga. App. LEXIS 1864 (1975).

Marijuana conviction not aggravated felony under Immigration and Nationality Act. —

Because petitioner alien's O.C.G.A. § 16-13-30(j)(1) conviction for marijuana distribution failed to establish that the conviction involved either remuneration or more than a small amount of marijuana, it was not an aggravated felony under the Immigration and Nationality Act, 8 U.S.C.S. § 1101 et seq. Moncrieffe v. Holder, 569 U.S. 184, 133 S. Ct. 1678, 185 L. Ed. 2d 727, 2013 U.S. LEXIS 3313 (2013).

Opinion Notes

OPINIONS OF THE ATTORNEY GENERAL

Access to database. —

Registered nurses and licensed practical nurses cannot access the GAPDMP database as dispensers or as practitioners authorized to dispense under the Georgia Prescription Drug Monitoring Program, but nurses may be able to access the GAPDMP database as delegates of physicians who do have the authority to prescribe or dispense. 2016 Op. Att'y Gen. No. 16-7.

Reporting of convictions. —

Convictions for violations of O.C.G.A. §§ 40-6-391(2), (4), (6), and 40-5-151 should be reported by the superior court clerk to Department of Driver Services (DDS) and violations of O.C.G.A. §§ 16-13-30(b), 16-13-31, and 16-13-31.1 should be reported to DDS only upon the clerk's determination that the conviction meets the mandate of O.C.G.A. § 40-5-54(a)(2). 2017 Op. Att'y Gen. No. 17-4.

Research References & Practice Aids

Cross references.

Jurisdiction in marijuana possession cases; retention of fines and forfeitures; transfer of cases, § 36-32-6.

Use of marijuana for treatment of cancer and glaucoma, § 43-34-120 et seq.

Law reviews.

For article surveying judicial developments in Georgia Criminal Law, see 31 Mercer L. Rev. 59 (1979).

For survey article on criminal law and procedure, see 34 Mercer L. Rev. 89 (1982).

For article, "Criminal Law," see 53 Mercer L. Rev. 209 (2001).

For article on the 2012 amendment of this Code section, see 29 Ga. St. U. L. Rev. 290 (2012).

For article, "Taxing Marijuana: Earmarking Tax Revenue from Legalized Marijuana," see 33 Ga. St. U. L. Rev. 659 (2017).

For article on the 2017 amendment of this Code section, see 34 Ga. St. U.L. Rev. 61 (2017).

For annual survey on criminal law, see 69 Mercer L. Rev. 73 (2017).

For note, "Substantive Due Process and Felony Treatment of Pot Smokers: The Current Conflict," see 2 Ga. L. Rev. 247 (1968).

For note on airport searches of drug couriers, see 33 Mercer L. Rev. 433 (1981).

For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 212 (1992).

For note, "Comparative Analysis of Democracy and Sentencing in the United States as a Model for Reform in Iraq," see 33 Ga. J. Int'l & Comp. L. 303 (2004).

RESEARCH REFERENCES

Am. Jur. 2d. —

25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 19 et seq., 40, 141 et seq., 180, 197 et seq.

C.J.S. —

28 C.J.S., Drugs and Narcotics, §§ 210 et seq., 263 et seq., 342 et seq.

U.L.A. —

Uniform Controlled Substances Act (U.L.A.) § 401.

ALR. —

What constitutes "possession" of a narcotic drug proscribed by § 2 of the Uniform Narcotic Drug Act, 91 A.L.R.2d 810.

Construction and effect of "sale" or "sell" in Uniform Narcotic Drug Act, 93 A.L.R.2d 1008.

Admissibility, in prosecution for illegal sale of narcotics, of evidence of other sales, 93 A.L.R.2d 1097.

Homicide: criminal liability for death resulting from unlawfully furnishing intoxicating liquor or drugs to another, 32 A.L.R.3d 589.

Offense of aiding and abetting illegal possession of drugs or narcotics, 47 A.L.R.3d 1239.

Marijuana, psilocybin, peyote, or similar drugs of vegetable origin as narcotics for purposes of drug prosecution, 50 A.L.R.3d 1164.

LSD, STP, MDA, or other chemically synthesized hallucinogenic or psychedelic substances as narcotics for purposes of drug prosecution, 50 A.L.R.3d 1284.

Permitting unlawful use of narcotics in private home as criminal offense, 54 A.L.R.3d 1297.

Conviction of possession of illicit drugs found in automobile of which defendant was not sole occupant, 57 A.L.R.3d 1319.

Validity and construction of statute creating presumption or inference of intent to sell from possession of specified quantity of illegal drugs, 60 A.L.R.3d 1128.

Modern status of the law concerning entrapment to commit narcotics offense — state cases, 62 A.L.R.3d 110.

Sufficiency of prosecution proof that substance defendant is charged with possessing, selling, or otherwise unlawfully dealing in, is marijuana, 75 A.L.R.3d 717.

What constitutes such discriminatory prosecution or enforcement of laws as to provide valid defense in state criminal proceedings, 95 A.L.R.3d 280.

Constitutionality of state legislation imposing criminal penalties for personal possession or use of marijuana, 96 A.L.R.3d 225.

Narcotics conviction as crime of moral turpitude justifying disbarment or other disciplinary action against attorney, 99 A.L.R.3d 288.

Criminal responsibility for physical measures undertaken in connection with treatment of mentally disordered patient, 99 A.L.R.3d 854.

Admissibility, in criminal prosecution, of expert opinion allegedly stating whether drugs were possessed with intent to distribute — state cases, 83 A.L.R.4th 629.

Minimum quantity of drug required to support claim that defendant is guilty of criminal "possession" of drug under state law, 4 A.L.R.5th 1.

State law criminal liability of licensed physician for prescribing or dispensing drug or similar controlled substance, 13 A.L.R.5th 1.

Criminality of act of directing to, or recommending, source from which illicit drugs may be purchased, 34 A.L.R.5th 125.

Propriety of lesser-included-offense charge in state prosecution of narcotics defendant — Marijuana cases, 1 A.L.R.6th 549.

Propriety of lesser-included-offense charge in state prosecution of narcotics defendant — Cocaine cases, 2 A.L.R.6th 551.

Evidence considered in tracing currency, bank account, or cash equivalent to illegal drug trafficking so as to permit forfeiture, or declaration as contraband, under state law — factors other than proximity, explanation, amount, packaging, and odor, 101 ALR 6th 1.

Drug abuse: what constitutes illegal constructive possession under 21 USCS § 841(a)(1), prohibiting possession of a controlled substance with intent to manufacture, distribute, or dispense the same, 87 A.L.R. Fed. 309.

Admissibility of expert evidence concerning meaning of narcotics code language in federal prosecution for narcotics dealing — modern cases, 104 A.L.R. Fed. 230.

cases, 164 A.L.R. Fed. 250.

What constitutes "aggravated felony" for which alien can be deported or removed under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — marijuana offenses under 8 U.S.C.A. § 1101(a)(43)(B), 76 ALR Fed. 2d 1.

What constitutes "aggravated felony" for which alien can be deported or removed under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — cocaine and crack cocaine offenses under 8 U.S.C.A. § 1101(a)(43)(B), 76 ALR Fed. 2d 61.

What constitutes "aggravated felony" for which alien can be deported or removed under § 237(a)(2)(A)(iii) of the Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — heroin offenses under 8 U.S.C.A. § 1101(a)(43)(B), 78 ALR Fed. 2d 133.

What constitutes "aggravated felony" for which aliens can be deported or removed under § 237(a)(2)(A)(iii) of the Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — illicit methamphetamine offenses under 8 U.S.C.A. § 1101(a)(43)(B), 78 ALR Fed. 2d 151.

What constitutes "aggravated felony" for which alien can be deported or removed under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — Miscellaneous or unspecified narcotics offenses under 8 U.S.C.A. § 1101(a)(43)(B), 79 ALR Fed. 2d 335.

Hierarchy Notes:

O.C.G.A. Title 16

O.C.G.A. Title 16, Ch. 13

O.C.G.A. Title 16, Ch. 13, Art. 2

O.C.G.A. Title 16, Ch. 13, Art. 2, Pt. 1

Official Code of Georgia Annotated

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(a) *Legislative findings and intent.*

(1) The governing authority of the city finds that the increase throughout the city of loitering in public places for the purposes of unlawful drug-related activity, or in effect, open air drug dealing, has become extremely disturbing and disruptive to residents and businesses. This activity has contributed not only to the loss of access to and enjoyment of public places, but also to an enhanced sense of fear and intimidation and disorder.

(2) Loitering for the purposes of unlawful drug-related activity usually includes a dominate presence of those persons engaging in such activity by approaching pedestrians, encouraging the presence of vehicle and pedestrian traffic for the purpose of unlawful drug-related activity in and out of residential areas, to or from motor vehicles or in parking lots. Such presence carries with it an implicit threat to visitors and residents to avoid the use of these public places. The avoidance of such places by law-abiding citizens leads to an increased opportunity for the unlawful criminal activity and furthers the decay of the neighborhood.

(3) The city has a strong interest in ensuring that citizens feel safe in their neighborhoods, in safeguarding the economic vitality of its business districts, and in preserving public places for their intended purposes.

(4) This section is not intended to limit any person from exercising their right to assemble or engage in any other constitutionally protected activity. This section applies to all persons with the requisite intent to induce another to engage in unlawful drug-related activity.

(b) It shall be unlawful for any person to loiter, as defined in this chapter, in or near any thoroughfare, place open to the public, or any public or private place in order to induce, entice, solicit or procure another to engage in unlawful drug-related activity.

(1) The term "unlawful drug-related activity" means conduct which constitutes an offense defined in O.C.G.A. § Tit. 16, Ch. 13, as amended; conduct which constitutes complicity to commit such an offense by, for example, acting as a lookout; or conduct which constitutes conspiracy to commit such an offense.

(2) The term "public place" means an area open to the public or exposed to public view and includes streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, automobiles, whether moving or not, and buildings open to the general public, including those which serve food or drink, or provide entertainment, and the doorways and entrances to buildings or dwellings and the grounds enclosing them.

(c) A police officer who observes a person loitering under circumstances that provide the officer with a reasonable basis to believe unlawful drug-related activity is occurring or has occurred may detain the individual for the purpose of investigating whether the person is in violation of this section.

(d) A police officer may not detain an individual under this Code section unless both of the following elements are satisfied:

(1) The person engages in one or more of the following behaviors:

a. The person passes or receives from a passer-by, bystander or person in a motor vehicle money, objects having characteristics consistent with controlled substances, and/or an envelope, bag or other container that could reasonably contain such objects or money;

b. The person conceals or attempts to conceal an object having characteristics consistent with controlled substances and/or an envelope, bag, clear plastic baggie or other container that could reasonably contain such objects;

c. The person flees or obscures himself upon seeing law enforcement officers;

d. The person communicates the fact that law enforcement officers are in the vicinity to another person in a manner that suggests that the communication is a warning; or

e. The officer observes the person in possession of any instrument or object that is designed or marketed as useful primarily for one or more of the following purposes:

1. To inject, ingest, inhale or otherwise introduce marijuana or a controlled substance into the human body;
2. To enhance the effect of marijuana or a controlled substance on the human body;
3. To test the strength, effectiveness, or purity of marijuana or a controlled substance;
4. To process or prepare marijuana or a controlled substance for introduction into the human body;
5. To conceal any quantity of marijuana or a controlled substance; or
6. To contain or hold marijuana or a controlled substance while it is being introduced into the human body.

(2) One of the following factors applies:

a. The officer is aware that, within the preceding three years, the person has been convicted of an offense defined in O.C.G.A. § Tit. 16, Ch. 13, or of complicity to commit such an offense, or of conspiracy to commit such an offense with in the preceding three years;

b. The officer has knowledge of a specific reliable tip concerning unlawful drug-related activity at a specific location, and the person who is found loitering is doing so at a time, in a place or in a manner that is otherwise consistent with the details provided in the tip;

c. The person is loitering in an area that has been designated a notorious drug-related activity area, as defined in subsection (g) of this section;

d. The person is in an area where he is prohibited by court order from being, and the officer is aware of the court order;

e. The officer knows that the person has been previously convicted of loitering with the intention of engaging in unlawful drug-related activity under this section; or

f. Any vehicle the person has approached or communicated through is registered to an individual who has been convicted of an unlawful drug-related activity in the previous three years, and the officer is aware of that fact.

(e) No arrest may be made for a violation of this section unless the arresting officer first affords the person an opportunity to explain the person's presence and conduct, unless flight by the person or other circumstances make it impracticable to afford such an opportunity, and no one shall be convicted of violating this section if it appears at trial that the explanation given at the scene was true and disclosed a lawful purpose.

(f) If a police officer who detains a person pursuant to this Code section develops probable cause to believe that the person is in violation of this Code section, the officer may order the person to immediately leave the location and to remain at least 500 feet away from the location for at least five hours. In the event that person refuses to comply with such an order, the police officer may arrest the person and charge him with a violation of this section.

(g) The City may, by written directive, clearly and publicly designate areas of the City that are frequently associated with excessive incidents of drug-related offenses, including offenses involving controlled substances, as defin

in O.C.G.A. § Tit. 16, Ch. 13, or marijuana, subject to any requirements of state law.

(Ord. No. 2018-10-03, § 16-29.2, 10-15-2018)

CITY COUNCIL AGENDA ITEM

SUBJECT: Participation in the Community Service Program

AGENDA SECTION: (*check all that apply*)

☐ **PRESENTATION** ☐ **PUBLIC HEARING** ☐ **CONSENT AGENDA** ☐ **OLD BUSINESS**
☒ **NEW BUSINESS** ☐ **OTHER, PLEASE STATE: PUBLIC NOTICE**

CATEGORY: (*check all that apply*)

☐ **ORDINANCE** ☐ **RESOLUTION** ☒ **CONTRACT** ☐ **POLICY** ☐ **STATUS REPORT**

☐ **OTHER, PLEASE STATE:** Click or tap here to enter text.

ACTION REQUESTED: ☒ **DECISION** ☐ **DISCUSSION,** ☐ **REVIEW, or** ☐ **UPDATE ONLY**

Previously Heard Date(s): 07/11/22 & Click or tap to enter a date.

Current Work Session: Click or tap to enter a date.

Current Council Meeting: Monday, July 25, 2022

SUBMITTED BY: Mallory Minor, Municipal Court Clerk

PRESENTER: Mallory Minor

PURPOSE: Participation in the Communicty Service Program

FACTS: After appearing in Municipal Court to answer charges, the Judge may sentence a defendant to complete community service. Community service can be completed at approved local non-profit organizations for those probationers with recently documented medical and/or physical limitations. For those probationers that reside out-of-state, community service can be completed at approved locations run by the city or county in which they reside (examples include parks and recreation departments, animal shelters, recycling centers, police/fire departments, libraries, etc.). For those probationers having financial difficulties and are unable to pay their fine, it is within the Court's discretion to approve the completion of community service in lieu of the fine. Credit of $7.25/hour worked will be given for each hour of community service worked. Credit of $14.50/hour worked will be given to each hour of community service worked within the City Limits of Stonecrest. Probationers are required to submit a signed work log to the Probation Office in order to receive credit for hours worked.

CITY COUNCIL AGENDA ITEM

OPTIONS: Discussion only Click or tap here to enter text.

RECOMMENDED ACTION: N/A

ATTACHMENTS:

(1) Attachment 1 - Community Service Agency Letter of Application for Participation in the Community Service Program
(2) Attachment 2 - Community Service Intake Form – "Waiver"
(3) Attachment 3 - Contract for Probation Supervision and Rehabilitation Services
(4) Attachment 4 - 42-8-101 Agreements for probation services; termination of contract for probation services.
(5) Attachment 5 - Click or tap here to enter text.

Community Service Agency
Letter of Application for Participation in the Community Service Program

TO: The _____Municipal Court

The _____ is submitting this Letter of Application to be approved as a Community Service Agency as defined by O.C.G.A. § 42-3-50 and
§42-3-51. This agency is eligible to become a community service agency because (Identify appropriate reason):

- It is a federal, state, or local funded government agency (please specify)
- It is a nonprofit organization
- It is charitable organization
- Other (describe)_____

This agency can supervise and effectively use _____offenders per _____ .

The type of work to be performed by offenders will be _____
(Please identify type: Grounds maintenance, custodial and building maintenance, general labor, human services, clerical, office work, other).

The main contact person for this agency is:

Name:_____Position/Title:_____Telephone#: _____

Address:_____

Work by the offenders will be primarily performed during the following hours (Please identify):

8AM-5PM (M-F) 8AM-12PM(Sat, & Sun) 8AM-5PM(Sat, & Sun) Negotiable

O.C.G.A. §42-3-51(d) states:

> No agency or community service officer shall be liable at law as a result of any of such agency's or community service officer's acts performed while participating in a community service program. This limitation of liability shall not apply to actions on the part of any agency or community service officer which constitute gross negligence, recklessness, or willful misconduct.

_____

This application presented above is hereby: Approved Denied

This _____ day of _____, 20____.

Chief Judge_____Municipal Court

State of Georgia
County of _____

Professional Probation Services, Inc.
_____Probation Office
Community Service Agency Agreement

For Purpose of this Agreement, AUTHORITY means:
(Agency) _____ , its employees,

agents, and officials, and _____ (Supervisor), including his/her successors in office.

1.) The AUTHORITY understands that the probationers covenant, agree, and promise the following:
- To perform community service in proper and work like manner.
- To assume liability for any bodily and personal injury received as a result of performing this community service.
- To notify the AUTHORITY and probation officer promptly of any disability or handicap which interferes with the performance of the assigned community service hours.
- Understands that the failure to perform community service hours as directed may result in revocation of probation.

2.) For and in consideration of community service rendered through probationers s supervised by the _____Office of Professional Probation Services, Inc., the AUTHORITY understands, covenants, agrees, and promises the following:
- To promptly report to the probation officer any offender in violation of a court order or work agreements.
- To provide all proper and adequate work supervision for the offenders and to assure that duties or tasks assigned to offenders are not hazardous or conspicuously unsafe.
- To assure the offenders are treated in a fair manner by all employees of the AUTHORITY.
- To provide all necessary required reports concerning community service performance to the probation officer.
- Awareness by the AUTHORITY that violation of any court order or work agreement will result in the AUTHORITY losing eligibility to participate in the Community Service Program.

3.) The AUTHORITY approves of and enters into this Agreement by signing of this document by the undersigned, authorized agent.

IN WITNESS WHEREOF, Agent of AUTHORITY has here on to set his/her hand this day of_____, 20___.

_____ Signed in the presence of:_____
Agent of AUTHORITY Witness

Community Service Intake Form

Name _____ DOB _____

Medical Disabilities/Problems

_____

Offense _____ Citation _____

Community Service Responsibilities and Requirements

1. You must complete no less than (8) hours of community service work each consecutive week. Of course, you may do more each week to finish sooner.
2. Your community service must be accomplished with a positive and cooperative attitude and the work should be accomplished on the established schedule with quality workmanship.
3. Failure to show up for community service will not be tolerated without prior approval. This includes being late or leaving early. You must report to the on-site supervisor when you arrive or leave site.
4. Any unexcused absence, failure to perform work as instructed, insubordination, intoxication, illegal drug use, or any act disruptive to the work crew will result in you being immediately dismissed from the work detail, and the reason for dismissal reported to the sentencing Judge.
5. No one except the sentencing Judge and the Probation Officer has the authority to excuse you from community service work.
6. The only acceptable excuse is a written doctor's excuse that has been verified by your Probation Officer. Other excuses will only be accepted after the facts have been verified.
7. You are responsible for providing your own transportation to your community service site.
8. Clothing requirements should be based on weather, type of service, and site location.
9. Problems that arise while performing community service should be brought to the attention of the on-site supervisor.

I certify that the information in this document is true to the best of my knowledge. I further certify that I accept placement in a community service agency to perform community service and I understand my responsibilities for proper performance of community service work. I authorize PPS, Inc. to release the above information to the agency to which I am assigned to perform community service work. I understand that this consent shall expire upon my satisfactory performance and completion of court-ordered community service hours. I further, understand that this consent may not be revoked by me until there has been a formal and effective termination or revocation of my probation.

Consented on _____

_____ _____

Probationer Witness

State of Georgia
Stonecrest Municipal Court

Community Service Agreement

1. Probationer agrees to perform community service for any court approved agency as part of a c sentence. For the purpose of this Agreement, AUTHORITY means the Stonecrest Municipal Co and its subsidiaries, and any court approved community service agency, its employees, agents, o supervisors including his /her successors in office.

2. The PROBATIONER Covenants, Agrees and Promises the following:

a. I will perform such community service in a proper and workmanlike manner.
b. I will assume liability for any bodily or personal injury received as a result of performing t community service. I will not institute any proceedings against the AUTHORITY or its In Officials, Probation Officials or any Federal Court, Administration Court or Worker's Con Board because of any injury arising out of this community service or because of any injury while going to or from any location where such community service is or is to be performe
c. I will not be considered an employee of said AUTHORITY while performing such commu and understand I am not to be paid any compensation whatsoever for the community servi perform.
d. I herein declare no disability or handicap which will prevent the performance of my assign community service hours. I will promptly provide to the court written documentation whic describes any disability or handicap should such occur in the future. Exemption from com service can only be declared by the Court.
e. I understand that if I do not satisfactorily perform community service, my sentence impose Court may be revoked.
f. I understand and have reviewed the conditions agreed to by the AUTHORITY.
g. I understand that I am to complete of community service.

In witness whereof, Probationer has here onto set his hand

On _____

Signed in the presence of:

_____ _____
Probationer Witness

STATE OF GEORGIA
COUNTY OF DEKALB

CONTRACT FOR PROBATION SUPERVISION AND REHABILITATION SERVICES

THIS CONTRACT made and entered into this 13th day of March, 2018, by and between the City of Stonecrest, Georgia (hereinafter referred to as the "City") and Professional Probation Services, Inc. (hereinafter referred to as "PPSI"), upon the request and consent of the Chief Judge of the Stonecrest Municipal Court (hereinafter referred to as the "Court").

WITNESSETH:

WHEREAS, the City, authorized by O.C.G.A. §42-8-101, wishes to enter into this agreement with PPSI with the consent of the Court, and recognizes its responsibility to provide professional and effective sentencing alternatives for citizenry and offenders of the community; and

WHEREAS, PPSI is uniquely qualified and experienced in providing such comprehensive professional services and is willing to contract with the City with the approval of the Court; and

WHEREAS, the parties hereto deem it in their respective best interests and each will best be served by entering into said Contract for the provision by PPSI of such probation services as ordered by the Court.

NOW THEREFORE, in consideration of the premises and the mutual benefits and covenants provided under the terms and conditions of this Contract, the parties hereto agree as follows:

DESIGNATION BY THE CITY

The City shall designate PPSI as the sole private entity to coordinate, provide and direct probation programs and services to offenders sentenced by and under the jurisdiction of the Court.

SCOPE OF SERVICES

PPSI shall provide the services and programs for the misdemeanor offenders placed on probation by the Court which shall include the following particulars:

A. Comply with the rules, standards, and qualifications as set forth by the Department of Community Supervision (DCS), and any subsequent changes, thereto, and the Laws of the State of Georgia.

B. Operate under the conditions as agreed to by and between PPSI and the City, as more fully set forth in the Specifications for Probation Services attached hereto and incorporated herein by reference.

C. Provide such services as specifically set forth in the Specifications for Probation Services for the provisions of services to offenders under the jurisdiction of the Court.

D. Meet, maintain, and comply with all rehabilitation program offerings as specified in the Specifications for Probation Services.

E. Maintain individual files for each offender participating in PPSI's programs in accordance with DCS Board Rule 105-2-.14. The files will be maintained in a secured area, in a secure file cabinet, or electronically. PPSI shall maintain the confidentiality of all files, records, and papers relative to the supervision of probationers under this agreement.

F. Provide timely and prompt reports as are, or may be required by the Court during the period of the Contract, which include, but are not limited to, statistical reports, caseload data, and other records documenting the types of program services provided and the identity of the offenders receiving such services in accordance with O.C.G.A. §42-8-108 and DCS Board Rule 105-2-.13.

G. Provide counseling and supervision services for all persons ordered by the Court to participate in such programs during the period of the Contract and assure that PPSI is providing program services and maintaining records reflective of good business practice.

H. Make fiscal and program records available within ten (10) working days for review and maintain financial records reflective of good business practice. Records shall be maintained in accordance with O.C.G.A. §42-8-109.2 and DCS Board Rule 105-2-.14.

I. Bill the offender for program services provided on such forms and in such manner to conform to acceptable business practice in accordance with DCS Board Rule 105-2-.14 and 105-2-.15. The accuracy of billing is to be confirmed by providing a copy of the services and attending cost to the offender.

J. Charge each offender participating in rehabilitation programs the reasonable cost of the program as reflected in the Specifications for Probation Services attached hereto and incorporated herein by reference. Each offender shall be charged a maximum not to exceed the program costs as specified in the Specifications for Probation Services unless it is approved in advance by the Court. Those offenders the Court shall determine to be indigent shall be ordered as such and shall be supervised at no cost in accordance with O.C.G.A. §42-8-102.

K. Collect restitution, fines, court costs and fees, program fees, and probation fees as ordered by the Court. PPSI shall prioritize the collection of restitution before the collection of fines and probation fees pursuant to O.C.G.A. §17-14-8. PPSI shall collect funds for the Georgia Crime Victims Emergency Fund, as applicable, and forward them directly to the Georgia Crime Victims Compensation Board by the end of each month along with a corresponding remittance report pursuant to O.C.G.A. §17-15-13(f).

L. Submit a written report to the Court as frequently as the Court requires on the amount of Court fines, costs, fees, and restitution Court ordered and collected from each offender. The report shall include the total dollar amount applied to Court ordered fines, fees, restitution, and other conviction related costs.

M. Tender all Court fines and costs ordered and collected from offenders to the Court as frequently as the Court requires.

N. Comply with all laws regarding confidentiality of offender records in accordance with O.C.G.A. §42-8-109.2 and DCS Board Rule 105-2-.09.

O. Furnish a fidelity bond or letter of credit in the amount of not less than one hundred thousand ($100,000.00) dollars as surety for the satisfactory performance of the Contract.

P. Not profit or attempt to profit from any fines, restitution, or Court cost collected from the offenders.

Q. The Court shall assist PPSI in obtaining access to criminal histories in the Georgia Crime Information Center and National Crime Information Center through local law enforcement in order for PPSI to conduct pre-sentence or probationer investigations as may be requested. PPSI may obtain a Georgia Crime Information Center (GCIC) Originating Agency Identifier (ORI) number. The Federal Bureau of Investigation (FBI) CJIS Security Addendum is, therefore, attached hereto and incorporated herein by reference.

R. PPSI shall employ competent and able personnel to provide services rendered hereunder and to appropriately administer this caseload. All staff shall meet qualifications as prescribed by O.C.G.A. §42-8-107 and DCS Board Rule 105-2-.09.

S. PPSI shall have a criminal history records check made of all staff in accordance with O.C.G.A. §42-8-106.1, O.C.G.A. §42-8-107, and DCS Board Rule 105-2-.10.

T. PPSI staff shall comply with the orientation and continuing education training required per annum as prescribed by O.C.G.A. §42-8-107, DCS Board Rule 105-2-.09, and DCS Board Rule 105-2-.12.

U. PPSI shall make a supervision assessment of each offender and determine the reporting schedule, type of contact(s), and frequency of contact(s) pursuant to the direction of the Court. There are no minimally required contacts for pay-only cases. Probation officers shall supervise no more than 250 probationers under Basic Supervision and no more than 50 probationers under Intensive Supervision. There are no caseload size limitations regarding pay-only cases.

V. PPSI shall coordinate and ensure compliance with community service by each probationer as ordered by the Court. PPSI will maintain records of community service participation and completion.

W. PPSI shall coordinate with certified vendors the evaluation and assessment of probationers for drug/alcohol rehabilitation, mental health, psychological counseling, or educational programs mandated by the Court and shall require probationer's compliance. PPSI shall not specify, directly or indirectly, a particular DUI Alcohol or Drug Use Risk Reduction Program, which a probationer may or shall attend. PPSI shall conduct on-site drug and alcohol screens as determined necessary by the Court, the costs for which shall be paid by the offender as fully set forth in the Specifications for Services, attached hereto.

X. The term "pay-only probation" means a defendant has been placed under probation supervision solely because such defendant is unable to pay the court imposed fine and statutory surcharges when such defendant's sentence is imposed. Such term shall not include circumstances when restitution has been imposed or other probation services are deemed appropriate by the court. When pay-only probation is imposed, the probation supervision fees shall be capped so as not to exceed three months of ordinary probation supervision fees.

Y. Consecutive misdemeanor sentences shall be supervised in accordance with O.C.G.A. §42-8-103 and §42-8-103.1.

Z. PPSI shall prepare probation violation warrants, orders, and petitions for modification/revocation of probation for submission to the Court. PPSI shall recommend the modification or revocation of probation whenever the probationer fails to substantially comply with the terms and conditions of probation. The Court shall determine what constitutes a substantial failure to comply with probation terms and conditions. Modification/Revocation proceedings shall be conducted in accordance with O.C.G.A. §42-8-102 and the Court's Judicial Procedures.

PRETRIAL INTERVENTION AND DIVERSION PROGRAM

In accordance with O.C.G.A. §15-18-80, the prosecuting attorney of the Stonecrest Municipal Court is authorized to create and administer a Pretrial Intervention and Diversion Program for offenses within the jurisdiction of the Court. The purpose of such program is to provide an alternative to prosecuting offenders in the criminal justice system. Upon the request of the solicitor and with the advice and express written consent of the solicitor, which is now given, the City designates PPSI as the sole private entity to be used for the purpose of monitoring program participants' compliance with a Pretrial Intervention and Diversion Program. Fees for monitoring services are payable not by the City, but by sentenced offenders at the rate of $40.00 per month. Entry into the Pretrial Intervention and Diversion Program shall be at the discretion of the solicitor.

PERIOD OF SERVICE

The performance of the aforementioned services shall commence on the 1st day of March, 2018 and shall continue with a specific expiration date of December 31, 2018, which shall be the anniversary date of this contract. The contract shall automatically renew for specific one-year terms each year, thereafter, under the same terms and conditions as provided herein, unless written notice to the contrary is directed to the other party not less than thirty (30) days prior to the current term's expiration, in accordance with O.C.G.A. §36-60-13. Said automatic renewals shall continue for a maximum period of four (4) years. Notwithstanding anything herein, either party may terminate this Contract upon thirty (30) days written notice. The City may terminate this Contract immediately for cause, including without limitation material breach of this Contract, insolvency of PPSI, or filing of a voluntary or involuntary case in bankruptcy.

The City shall have the option to renew the contract for five (5) additional one-year intervals provided that the service is satisfactory, both parties are willing to renew, and the renewal is approved with the written consent of the City.

PAYMENTS FOR SERVICES

Fees for basic services are set out in the Specifications for Probation Services, which fees are payable not by the City, but by sentenced offenders. No fees accrued pursuant to the Specifications for Probation Services shall be obligations of the City. The City shall have no obligation for fees incurred during this contract term and none in subsequent renewals in accordance with O.C.G.A. §36-60-13.

DEFICIENCIES IN SERVICE, TERMINATION

In the event the City determines there are deficiencies in the service and work provided by PPSI, the City shall notify PPSI in writing as to the precise nature of any such deficiencies. Within ten (10) working days of receipt of such notice, PPSI shall correct or take reasonable steps to correct the deficiencies complained of, including, if necessary, increasing the work force and/or equipment, or modifying the policies and procedures used by PPSI in performing services pursuant to this Contract. If PPSI fails to correct or take reasonable steps to correct the deficiencies within ten (10) working days, the City may declare PPSI in default and this Contract shall be declared

terminated upon receipt by PPSI of notice thereof. PPSI agrees that in the event it disputes the City's right to invoke the provisions of this paragraph, it will not seek injunctive or other similar relief, but will either negotiate a settlement of the matter with the City or seek, as its remedy, monetary damages in a Court of competent jurisdiction.

DISPUTES

In the event of any controversy, claim or dispute as to the services and work performed or to be performed by PPSI, or the construction or operation of or rights and liabilities of the parties under this Contract, where the City is the complaining party, each such question shall be submitted to the Chief Judge of the Stonecrest Municipal Court for resolution; provided, however, in the event either party disagrees with the decisions of the Judge, that party shall have the right to litigate the matter in its entirety in a Court of competent jurisdiction. The party wishing to submit a matter to the Judge shall do so by written notice to the other party and to the Judge, which shall specify the nature of the controversy, claim or dispute. The Judge shall schedule a hearing within fifteen (15) days of such notice, at which time both parties shall present their positions. The Judge shall render a decision within seven (7) days after the date of the hearing. In the event the Judge is the complaining party, the Presiding Judge of the Dekalb County Superior Court, or his/her designee, shall be asked to resolve the issues presented.

TRANSFER OF OPERATIONS

In the event PPSI defaults for any reason in the service provided for by this Contract, the City may, at its election and upon five (5) working days' prior written notice to PPSI, take possession of all records and other documents generated by PPSI in connection with this Contract, and the City may use the same in the performance of the services described herein. PPSI agrees to surrender peacefully said records and documents. The City shall provide PPSI with a written receipt of those items over which the City assumes exclusive control. PPSI agrees that in the event it disputes the City's right to invoke the provisions of this paragraph, it will not seek injunctive or other similar relief, but will either negotiate a settlement of the matter with the City or seek monetary damages as its remedy in a court of competent jurisdiction.

RIGHT TO REQUIRE PERFORMANCE

The failure of the City at any time to require performance by PPSI of any provisions hereof shall in no way affect the right of the City thereafter to enforce same. Nor shall waiver by the City of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

ACCESS TO BOOKS AND RECORDS

The City's representatives shall have access on a weekday, other than a legal State holiday, upon forty-eight (48) hours prior written notice to PPSI's representative, to all PPSI's books, records, correspondence, instructions, receipts, vouchers, and memoranda of every description pertaining to work under this Contract, for the purpose of conducting a complete independent fiscal audit for any fiscal year within the immediately preceding two (2) years, in accordance with O.C.G.A. §42-8-108, DCS Board Rule 105-2-.14, and DCS Board Rule 105-2-.19.

INSURANCE

PPSI shall provide and maintain during the life of this Contract, workers' compensation insurance and

general liability with the following limits of liability:

Workers' Compensation	- Statutory
Bodily Injury Liability	- $ 100,000 each accident
	- $ 500,000 each occurrence
General Liability	- $1,000,000 each occurrence
Personal & Advertising Injury	- $1,000,000 each occurrence
Professional Liability	- $1,000,000 each occurrence

INDEMNIFICATION/HOLD HARMLESS

With regard to the work to be performed by PPSI, neither the Court nor the City shall be liable to PPSI, or to anyone who may claim a right resulting from any relationship with PPSI, for any negligent act or omission of PPSI, its employees, agents, or participants in the performance of services conducted on behalf of the City. In addition, PPSI agrees to indemnify and hold harmless the Court and the City, their officials, employees, agents, or participants with the Court and the Probation Services described herein, from any and all claims, actions, proceedings, expenses, damages, liabilities or losses (including, but not limited to, attorney's fees and court costs) arising out of or in connection with any negligent act or omission of PPSI, including wrongful criminal acts of PPSI, or PPSI's employees, agents, or representatives. Further, the City is to be named as an additional named insured on PPSI's liability insurance policies.

ASSIGNMENT

The duties and obligations assumed by PPSI are professional services unique to PPSI and are therefore not transferable or assignable without prior consent of the Court and City. Consent, however, shall not be unreasonably withheld.

VALIDITY

This Contract shall be binding on any successor to the undersigned official of the City or Court. The provisions enumerated in this Contract shall be deemed valid insofar as they do not violate any City, State, or Federal laws. In the event any provision of this Contract should be declared invalid, the remainder of this Contract shall remain in full force and effect.

NOTICE

Any notice provided for in this Contract shall be in writing and served by personal delivery or by registered or certified mail addressed to:

As to the City:
The City of Stonecrest
3120 Stonecrest Boulevard
Stonecrest, GA 30038

As to PPSI:
Professional Probation Services, Inc.
1770 Indian Trail Road, Suite 350
Norcross, Georgia 30093
Attn: John C. Cox, President

Notices sent by registered or certified mail shall be deemed delivered/received upon actual receipt or three (3) days from mailing, whichever is shorter. The above addresses may be modified by written notice to the other party.

ENTIRE AGREEMENT

This Contract, including all exhibits attached hereto and incorporated herein by reference, constitutes the entire understanding and agreement between the parties hereto and supersedes any and all agreements, whether written or oral, that may exist between the parties regarding the same. No representations, inducements, promises, or agreements between the parties not embodied herein shall be of any force and effect. No amendment or modification to this Contract or any waiver of any provisions hereof shall be effective unless in writing and signed by the City and PPSI.

In witness whereof, the parties here to have executed this agreement on the 13th day of March, 2018.

THE CITY OF STONECREST

Jason Lary, Mayor

PROFESSIONAL PROBATION SERVICES, INC.

John C. Cox, President

APPROVED BY THE STONECREST MUNICIPAL COURT

Jonathan Weintraub, Chief Judge

Lenny Felgin, Solicitor

Specifications for Probation Services

Pay-Only Probation Supervision	**$0.00 – First Month, then $40.00 per month for months two, three, and four. The probation supervision fees shall be capped so as not to exceed three months of ordinary probation supervision fees, unless otherwise ordered by the Court.**
Basic Probation Supervision	**$40.00 per month**
Intensive Probation Supervision	**$40.00 per month with field visits**
Indigent Supervision	**$0.00** – As determined and ordered by the Court
Pre-Trial/Diversion Supervision	**$40.00 per month**
Electronic Monitoring	**Electronic Monitoring Installation Fee of $50.00 and (see options below):** **Portable Alcohol Wireless Monitoring with GPS and BAC level sampling ($5.50 per day)** **Active GPS Monitoring ($7.00 per day)** **Anklet Monitoring with Curfew Enforcement and Voice Verification ($7.00 per day)** **Anklet Monitoring with Curfew Enforcement, Voice Verification, and Remote Breath Alcohol Testing ($9.25 per day)** **Active GPS Monitoring with Exclusionary Zone and Trans-Dermal Alcohol Testing ($11.00 per day)**
On-Site, Multi-Panel Drug Screen	**$15.00**
Termination Letter Administrative Fee	**$10.00 (If applicable)**
Community Service Work Coordination	**No Cost**
Restitution Collection - Direct Disbursement to Victim	**No Cost**
Court and On-Line Access to the PPSI Offender Management Computer Program	**No Cost** **For 24/7 Internet Access to all Offender Data and Activity**
Transfer of Supervision	**No Cost to any of our more than 40 locations nationwide**
Resume and Interview Skills Development with Job Placement Assistance	**No Cost**
Indemnification of the Court, and Naming the Court as an Additional Insured	**No Cost – Professional and General Liability**

Document: O.C.G.A. § 42-8-101

O.C.G.A. § 42-8-101

Copy Citation

Current through the 2021 Regular and Special Sessions of the General Assembly.

42-8-101. Agreements for probation services; termination of contract for probation services.

(a)

(1) Upon the request of the chief judge of any court within a county and with the express written consent of such judge, the governing authority of such county shall be authorized to enter into written contracts with corporations, enterprises, or agencies to provide probation supervision, counseling, collection services for all moneys to be paid by a defendant according to the terms of the sentence imposed on the defendant as well as any moneys which by operation of law are to be paid by the defendant in consequence of the conviction, and other probation services for persons convicted in such court and placed on probation in such county. In no case shall a private probation corporation or enterprise be charged with the responsibility for supervising a felony sentence. The final contract negotiated by the governing authority of the county with the private probation entity shall be attached to the approval by the governing authority of the county to privatize probation services as an exhibit thereto. The termination of a contract for probation services as provided for in this subsection may be initiated by the chief judge of the court which is subject to such contract and shall be subject to approval by the governing authority of the county which entered into the contract and in accordance with the agreed upon, written provisions of such contract.

(2) Upon the request of the chief judge of any court within a county and with the express written consent of such judge, the governing authority of such county shall be authorized to establish a county probation system to provide probation supervision, counseling, collection services for all moneys to be paid by a defendant according to the terms of the sentence imposed on the defendant as well as any

moneys which by operation of law are to be paid by the defendant in consequence of the conviction, a other probation services for persons convicted in such court and placed on probation in such county.

(b)

(1) Upon the request of the judge of the municipal court of any municipality or consolidated government of a municipality and county of this state and with the express written consent of such judge, the governing authority of such municipality or consolidated government shall be authorized to enter into written contracts with private corporations, enterprises, or agencies to provide probation supervision, counseling, collection services for all moneys to be paid by a defendant according to the terms of the sentence imposed on the defendant as well as any moneys which by operation of law are to be paid by the defendant in consequence of the conviction, and other probation services for persons convicted in such court and placed on probation. The final contract negotiated by the governing authority of the municipality or consolidated government with the private probation entity shall be attached to the approval by the governing authority of the municipality or consolidated government to privatize probation services as an exhibit thereto. The termination of a contract for probation services as provided for in this subsection may be initiated by the chief judge of the court which is subject to such contract and shall be subject to approval by the governing authority of the municipality or consolidated government which entered into the contract and in accordance with the agreed upon, written provisions of such contract.

(2) Upon the request of the judge of the municipal court of any municipality or consolidated government of a municipality and county of this state and with the express written consent of such judge, the governing authority of such municipality or consolidated government shall be authorized to establish a probation system to provide probation supervision, counseling, collection services for all moneys to be paid by a defendant according to the terms of the sentence imposed on the defendant as well as any moneys which by operation of law are to be paid by the defendant in consequence of the conviction, and other probation services for persons convicted in such court and placed on probation.

History

Code 1981, § **42-8-100**, enacted by Ga. L. 1991, p. 1135, § 2; Ga. L. 1992, p. 3221, § 7; Ga. L. 1995, p. 396, § 2; Ga. L. 1996, p. 1107, § 2; Ga. L. 2000, p. 1554, § 2; Ga. L. 2001, p. 813, § 2; Ga. L. 2006, p. 727, § 2/SB 44; Code 1981, § 42-8-101, as redesignated by Ga. L. 2015, p. 422, § 3-2/HB 310; Ga. L. 2016, p. 443, § 7-2/SB 367.

Annotations

Notes

The 2015 amendment, effective July 1, 2015, redesignated former subsections (g) and (h) of Code Section **42-8-100** as present subsections (a) and (b) of Code Section 42-8-101; and rewrote the section. See Editor's notes for applicability.

The 2016 amendment, effective July 1, 2016, rewrote this Code section.

Editor's notes.

Ga. L. 1995, p. 396, § 4, not codified by the General Assembly, provides in subsection (b): "No local funds shall be used to implement Sections 1 and 2 of this Act without the consent of the local governing authority."

Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

JUDICIAL DECISIONS

Constitutionality. —

In a suit brought by misdemeanor defendants challenging the privatization of probation services under O.C.G.A. § **42-8-100**(g)(1), the Georgia Supreme Court agreed with the trial court that § **42-8-100**(g)(1) was not unconstitutional on the statute's face and did not offend due process or equal protection nor condone imprisonment for debt. Sentinel Offender Services, LLC v. Glover, 296 Ga. 315, 766 S.E.2d 456, 2014 Ga. LEXIS 940 (2014).

Requirement for payment of probation supervision fees by probationers to private probation services company did not violate the separation of powers since the imposition of the fees pursuant to contract constituted a civil fee for services, not a criminal punishment. Furthermore, the mere act of privatizing probation services did not violate the Georgia Constitution since a probation services company was not authorized to deprive probationers of property or liberty without due process, the private probation services were not fundamentally unfair, and the sentencing court continued to oversee the probation process. Keen v. Judicial Alternatives of Ga., Inc., 124 F. Supp. 3d 1334, 2015 U.S. Dist. LEXIS 110957 (S.D. Ga.), aff'd in part, vacated in part, 637 Fed. Appx. 546, 2015 U.S. App. LEXIS 21961 (11th Cir. 2015).

Collection of electronic monitoring fees by private probation service. —

Trial court erred by finding that electronic monitoring fees imposed by the sentencing court and collected by a private probation service for monitoring services rendered during a probationer's original term of sentence were prohibited because only when electronic monitoring was unlawfully imposed by the court on a misdemeanor probationer after the expiration of the probationers' original sentence would such fees potentially be recoverable. Sentinel Offender Services, LLC v. Glover, 296 Ga. 315, 766 S.E.2d 456, 2014 Ga. LEXIS 967 (2014).

Under current Georgia statutes, the tolling of a misdemeanor probationer's sentence is not permitted and courts utilizing probation systems established pursuant to O.C.G.A. § **42-8-100**(g)(1) are specifically precluded from applying the provisions of the State-wide Probation Act, O.C.G.A. § 42-8-20 et seq., including those pertaining to tolling, to the defendants the courts sentence. Sentinel Offender Services, LLC v. Glover, 296 Ga. 315, 766 S.E.2d 456, 2014 Ga. LEXIS 967 (2014).

Validity of private probation services. —

Under Georgia law, a private probation company can act as a probation provider and the company's employees may serve as probation officers only if the company complies with the terms and provisions of O.C.G.A. § **42-8-100**(g)(1). Sentinel Offender Services, LLC v. Glover, 296 Ga. 315, 766 S.E.2d 456, 2014 Ga. LEXIS 967 (2014).

766 S.E.2d 456, 2014 Ga. LEXIS 967 (2014).

Contract between a court and a probation services company was valid since the contract was not formally terminated and was thus automatically renewed year to year regardless of the lack of

express approval by the governing authority of the county. Keen v. Judicial Alternatives of Ga., Inc., 124 F. Supp. 3d 1334, 2015 U.S. Dist. LEXIS 110957 (S.D. Ga.), aff'd in part, vacated in part, 637 Fed. Appx. 546, 2015 U.S. App. LEXIS 21961 (11th Cir. 2015).

Class certification in suit challenging private probation services. —

In a suit challenging private probation services, the trial court's orders conditionally certifying class actions on behalf of misdemeanor probationers were reversed and the cases remanded to the trial court for reconsideration of the class certification issues in light of the Georgia Supreme Court's opinion and its requirement that the trial court carefully consider issues of justiciability with respect to the scope of any class certified and the relief available to potential class members. Sentinel Offender Services, LLC v. Glover, 296 Ga. 315, 766 S.E.2d 456, 2014 Ga. LEXIS 967 (2014).

Tolling of probationer's sentence prohibited. —

Georgia Supreme Court held that the private probation statutory framework did not allow for the tolling of misdemeanor probationers' sentences and to the extent Georgia courts have recognized O.C.G.A. § 42-8-36 as a basis for allowing courts utilizing probation systems established pursuant to O.C.G.A. § **42-8-100**(g)(1) to toll a probationer's sentence, such analysis was in error and was disapproved. Sentinel Offender Services, LLC v. Glover, 296 Ga. 315, 766 S.E.2d 456, 2014 Ga. LEXIS 940 (2014).

Opinion Notes

OPINIONS OF THE ATTORNEY GENERAL

Intergovernmental agreements for probation services are legal

in instances in which the contracting parties are authorized by law to provide probation services. Also, when providing probation services for a judicial circuit, a probation entity must be authorized to provide the service and must enter into separate agreements with the court of each county that composes that judicial circuit. 2012 Op. Att'y Gen. No. 12-7.

Research References & Practice Aids

Law reviews.

For annual survey of local government law, see 56 Mercer L. Rev. 351 (2004).

For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 159 (2014).

For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 231 (2015).

For article on the 2016 amendment of this Code section, see 33 Ga. St. U. L. Rev. 139 (2016).

For note, "Safe Haven No Longer: The Role of Georgia Courts and Private Probation Companies in Sustaining a De Facto Debtors' Prison System," see 48 Ga. L. Rev. 227 (2013).

Hierarchy Notes:

O.C.G.A. Title 42

O.C.G.A. Title 42, Ch. 8

O.C.G.A. Title 42, Ch. 8, Art. 6

Official Code of Georgia Annotated

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CITY COUNCIL AGENDA ITEM

SUBJECT: 2022 Street Resurfacing Contracts Resolution

AGENDA SECTION: (*check all that apply*)

☐ **PRESENTATION** ☐ **PUBLIC HEARING** ☐ **CONSENT AGENDA** ☒ **OLD BUSINESS**
☐ **NEW BUSINESS** ☐ **OTHER, PLEASE STATE:** Click or tap here to enter text.

CATEGORY: (*check all that apply*)

☐ **ORDINANCE** ☒ **RESOLUTION** ☐ **CONTRACT** ☐ **POLICY** ☐ **STATUS REPORT**

☐ **OTHER, PLEASE STATE:** Click or tap here to enter text.

ACTION REQUESTED: ☒ **DECISION** ☐ **DISCUSSION,** ☐ **REVIEW, or** ☐ **UPDATE ONLY**

Previously Heard Date(s): 06/29/22 & Click or tap to enter a date.

Current Work Session: Click or tap to enter a date.

Current Council Meeting: Monday, July 25, 2022

SUBMITTED BY: Gia Scruggs, Finance Director

PRESENTER: Gia Scruggs

PURPOSE: The Georgia Municipal code section 32-4-111 requires any contract for work on all or part of the municipal road system to be in writing and be approved by resolution which shall be entered in the minutes of such municipality. In order to meet this requirement, the Finance Department is bringing before Council the draft agreements for the 2022 Street Resurfacing that were approved at the June 29, 2022 Council meeting.

FACTS: Click or tap here to enter text.

OPTIONS: Approve, Deny, Defer Click or tap here to enter text.

RECOMMENDED ACTION: Approve

ATTACHMENTS:

(1) Attachment 1 - Resolution
(2) Attachment 2 - Draft Agreement

CITY COUNCIL AGENDA ITEM

(3) Attachment 3 - Click or tap here to enter text.
(4) Attachment 4 - Click or tap here to enter text.
(5) Attachment 5 - Click or tap here to enter text.

STATE OF GEORGIA
COUNTY OF DEKALB
CITY OF STONECREST

RESOLUTION NO. _____

A RESOLUTION BY THE MAYOR AND CITY COUNCIL OF THE CITY OF STONECREST, GEORGIA AUTHORIZING THE EXECUTION OF ITB NO. 2022-006 2022 STREET RESURFACING PROJECT CONTRACT WITH STEWART BROTHERS, INC. FOR A TERM ENDING ON JULY 17, 2023, IN AN AMOUNT NOT TO EXCEED SIX MILLION NINE HUNDRED SEVENTY-SIX THOUSAND SIX HUNDRED FIFTY DOLLARS AND 00/100 CENTS. ($6,976,650); AND FOR OTHER PURPOSES.

WHEREAS, the City of Stonecrest, Georgia (the "City") is a municipal corporation duly organized and existing under the laws of the State of Georgia, and is charged with providing public services to its residents; and

WHEREAS, the City wishes to enter into a contract with Stewart Brothers, Inc. (the "Contractor"), a corporation created and existing under the laws of the State of Georgia for the resurfacing of certain municipal streets within the City of Stonecrest ("Contract"); and

WHEREAS, the Contract shall be governed by the law of the State of Georgia, exclusive of its choice of law provisions; and

WHEREAS, any contract for work on all or part of the municipal road system shall be in writing and be approved by resolution which shall be entered on the minutes of such municipality pursuant to O.C.G.A. § 32-4-111; and

WHEREAS, pursuant to O.C.G.A. § 32-4-118 where a contract has been let for bid, a municipality, by resolution entered in its minutes, shall award the contract to the lowest dependable bidder; and

WHEREAS, the City advertised ITB 2022-006, 2022 STREET RESURFACING, Contract for the resurfacing of streets within the city; and

WHEREAS, following a review and evaluation of the proposals submitted in response to the solicitation, Stewart Brothers, Inc. was determined to be one of the most responsive and responsible offerors; and

WHEREAS, the City and the Contractor hereby agree the Contractor will be responsible for providing all labor, materials, and equipment necessary to patch, mill, resurface, and/or re-stripe 140 streets within the City ("Project"); and

WHEREAS, the total cost of the Project shall not exceed SIX MILLION NINE HUNDRED SEVENTY-SIX THOUSAND SIX HUNDRED FIFTY DOLLARS AND 00/100 CENTS. ($6,976,650); and

WHEREAS, The Contractor shall perform and complete its duties under the Contract including the following: construction of the whole or a designated part of the Project; furnishing of any required surety bonds and insurance; and the provision or furnishing of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, permits and licenses required of the Contractor, fuel, heat, light, cooling and all other utilities as required by the Agreement.; and

WHEREAS, The Contractor shall achieve Substantial Completion of the Work by **July 17, 2023**, unless another date is provided within the written Notice to Proceed.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF STONECREST, GEORGIA, HEREBY RESOLVES, that the Mayor, on behalf of the City, is hereby authorized to execute the contract attached hereto as Exhibit A with Stewart Brothers, Inc. for the resurfacing of certain municipal streets within the City of Stonecrest.

BE IT FURTHER RESOLVED, Stewart Brothers, Inc. shall achieve Substantial Completion of the work by July 17, 2023.

BE IT FURTHER RESOLVED, that the cost of the work shall not exceed SIX MILLION NINE HUNDRED SEVENTY-SIX THOUSAND SIX HUNDRED FIFTY DOLLARS AND 00/100 CENTS. ($6,976,650).

BE IT FURTHER RESOLVED, that the City Attorney or his designee is directed to negotiate, prepare, and/or review the contract attached in Exhibit A, to affect the intent of this resolution provided that such agreement is in compliance with the conditions set forth herein.

BE IT FURTHER RESOLVED, that the agreement will not become binding upon the City and the City will incur no obligation or liability under it until it has been executed by the Mayor, attested to by the City Clerk and approved by the City Attorney as to form.

BE IT FURTHER RESOLVED, to the extent any portion of this Resolution is declared to be invalid, unenforceable, or nonbinding, that shall not affect the remaining portions of this Resolution.

BE IT FURTHER RESOLVED, all City resolutions are hereby repealed to the extent they are inconsistent with this Resolution.

BE IT FINALLY RESOLVED, this Resolution shall take effect immediately.

RESOLVED this _____ day of _____, 2022.

CITY OF STONECREST, GEORGIA

_____

Jazzmin Cobble, Mayor

ATTEST:

_____

City Clerk

APPROVED AS TO FORM:

_____

City Attorney

EXHIBIT A

Exhibit

A

THE CITY OF STONECREST, GEORGIA

CONTRACT FOR 2022 STREET RESURFACING PROJECT

AND INCORPORATED GENERAL CONDITIONS

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CONTRACT FOR 2022 STREET RESURFACING PROJECT AND INCORPORATED GENERAL CONDITIONS

This Agreement is made by and between the **CITY OF STONECREST, GEORGIA**, a municipal corporation of the State of Georgia (the "Owner"), and **STEWART BROTHERS, INC.**, a corporation created and existing under the laws of the State of Georgia (the "Contractor"), under seal for the resurfacing of certain municipal streets within the City of Stonecrest (the "Project"). For and in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner and the Contractor hereby agree as follows:

ARTICLE I
THE CONTRACT AND THE CONTRACT DOCUMENTS

1.1 The Contract

1.1.1 The Contract between the Owner and the Contractor, of which this Agreement is a part, consists of the Contract Documents. It shall be effective on the date this Agreement is executed by the last party to execute it.

1.2 The Contract Documents

1.2.1 The Contract Documents consist of this Agreement, any and all Exhibits attached hereto, the Specifications, the Drawings, all Change Orders and Task Orders issued hereafter, any other amendments hereto executed by the parties hereafter, together with the following (if any):

> Advertisement for Competitive Sealed Bids/Proposals; Instructions to Offerors; Bid/Proposal Form; Bid Bond; Payment Bond; Performance Bond; Notice of Award; Change Order; Certificate of Substantial Completion; Notice to Proceed.

Documents not enumerated in this Paragraph 1.2 or not otherwise incorporated by reference hereunder are not Contract Documents and do not form part of this Contract.

1.3 Entire Agreement

1.3.1 This Contract, together with the Contractor's performance and payment bonds for the Project, Contract Documents, constitute the entire and exclusive agreement between the Owner and the Contractor with reference to the Project. Specifically, but without limitation, this Contract supersedes any bid documents and all prior written or oral communications, representations and negotiations, if any, between the Owner and Contractor.

1.4 No Privity with Others

1.4.1 Nothing contained in this Contract shall create or be interpreted to create privity or any other contractual agreement between the Owner and any person or entity other than the Contractor.

1.5 Intent and Interpretation

1.5.1 The intent of this Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result shall be provided by the Contractor for the Contract Price.

1.5.2 This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

1.5.3 When a word, term or phrase is used in this Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

1.5.4 The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation."

1.5.5 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

1.5.6 Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms unless the context of their usage clearly requires a contrary meaning.

1.5.7 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents, the Shop Drawings and the Product Data and shall give written notice to the Owner of any inconsistency, ambiguity, error or omission which the Contractor may discover with respect to these documents before proceeding with the affected Work. The issuance, or the express or implied approval by the Owner or the Engineer of the Contract Documents, Shop Drawings or Product Data shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The Owner has requested the Engineer to only prepare documents for the Project, including the Drawings and Specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. HOWEVER, THE OWNER MAKES NO REPRESENTATION

OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS. By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the Owner concerning such documents as no such representation or warranties have been or are hereby made.

1.5.8 Neither the organization of any of the Contract Documents into divisions, sections, paragraphs, articles, (or other categories), nor the organization or arrangement of the Design, shall control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.

1.6 Ownership of Contract Documents

1.6.1 The Contract Documents, and each of them, shall remain the property of the Owner. The Contractor shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided, however, that in no event shall Contractor use, or permit to be used, any or all of such Contract Documents on other projects without the Owner's prior written authorization.

1.7 Hierarchy of Contract Documents

1.7.1 In the event of any conflict, discrepancy, or inconsistency among any of the Contract Documents, the following hierarchy shall control: (a) as between figures given on drawings and the scaled measurements, the figures shall govern; (b) as between large scale drawings and small scale drawings, the large scale shall govern; (c) as between drawings and specifications, the requirements of the specifications shall govern; (d) as between the Contract for Construction and Incorporated General Conditions and the specifications, the requirements of the Contract for Construction and Incorporated General Conditions shall govern. As set forth hereinabove, any and all conflicts, discrepancies, or inconsistencies shall be immediately reported to the Engineer in writing by the Contractor.

ARTICLE II
THE WORK

2.1 The Contractor shall perform all of the Work required, implied or reasonably inferable from, this Contract.

2.2 The term "Work" shall mean whatever is done by or required of the Contractor to perform and complete its duties under this Contract, including the following: construction of the whole or a designated part of the Project; furnishing of any required surety bonds and insurance; and the provision or furnishing of labor, supervision, services, materials, supplies, equipment, fixtures,

appliances, facilities, tools, transportation, storage, power, permits and licenses required of the Contractor, fuel, heat, light, cooling and all other utilities as required by this Contract. The Work to be performed by the Contractor is generally described as follows: See **Exhibit A**, which is attached hereto and is incorporated herein by reference.

ARTICLE III
CONTRACT TIME

3.1 Contract Term

3.1.1 This Agreement shall commence on the effective date of this Agreement and shall terminate absolutely and without further obligation on the part of the Owner at the close of the calendar year in which it was executed, unless renewed pursuant to Paragraph 12.3.

3.2 Time and Liquidated Damages

3.2.1 The Contractor shall commence the Work under this Agreement on the date established by a written Notice to Proceed given by the Owner to the Contractor fixing the date on which the Contract time will commence to run. The Contractor shall achieve Substantial Completion of the Work by **July 17, 2023,** unless another date is provided within the written Notice to Proceed. The number of consecutive calendar days from the date on which the Work is permitted to proceed, through the date set forth for Substantial Completion, shall constitute the "Contract Time."

3.2.2 The Contractor shall pay the Owner the sum of two hundred ($200.00) per day for each and every business day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

3.3 Substantial Completion

3.3.1 "Substantial Completion" shall mean that stage in the progression of the Work when the Work is sufficiently complete in accordance with this Contract that the Owner can enjoy beneficial use and occupancy of the Work and can utilize the Work for its intended purpose. Partial use or occupancy of the Project shall not result in the Project being deemed

substantially complete, and such partial use or occupancy shall not be evidence of Substantial completion.

3.4 Time is of the Essence

3.4.1 All limitations of time set forth in the Contract Documents are of the essence of this Contract.

ARTICLE IV
CONTRACT PRICE

4.1 The Contract Price

4.1.1 The Owner shall pay, and the Contractor shall accept, as full and complete payment for the Contractor's timely and full performance of its obligations hereunder, the total lump sum amount set forth in Paragraph 4.1.2. The lump sum amount set forth in Paragraph 4.1.2 shall not be modified except by Change Order(s) as provided in this Agreement.

4.1.2 The total lump sum amount to be paid by the Owner to the Contractor for the Contractor's limitedly and full performance of its obligations under the Agreement shall not exceed SIX MILLION NINE HUNDRED SEVENTY-SIX THOUSAND SIX HUNDRED FIFTY DOLLARS AND 00/100 CENTS. ($6,976,650). See **Exhibit B** (Cost Estimate) attached hereto and incorporated by reference herein.

ARTICLE V
PAYMENT OF THE CONTRACT PRICE

5.1 Schedule of Values

5.1.1 For all portions of this Agreement not payable in unit values, within ten (10) calendar days of the effective date hereof, the Contractor shall submit to the Owner and to the Engineer a Schedule of Values allocating the Contract Price to the various portions of the Work. The Contractor's Schedule of Values shall be prepared in such form, with such detail, and supported by such data as the Engineer or the Owner may require to substantiate its accuracy. The Contractor shall not imbalance its Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the Contractor shall constitute a material breach of this Contract. The Schedule of Values shall be used only as a basis for the Contractor's Applications for Payment and shall only constitute such basis after it has been acknowledged in writing by the Engineer and the Owner.

5.2 Payment Procedure

5.2.1 The Owner shall pay the Contract Price to the Contractor as provided below.

5.2.2 *Progress Payments* -- Based upon the Contractor's Applications for Payment submitted to the Engineer and upon Certificates for Payment subsequently issued to the Owner by the Engineer, the Owner shall make progress payments to the Contractor on account of the Contract Price.

5.2.3 On or before the 1st day of each month after commencement of the Work, the Contractor shall submit an Application for Payment for the period ending the 30th day of the month to the Engineer in such form and manner, and with such supporting data and content, as the Owner or the Engineer may require. Therein, the Contractor may request payment for ninety percent (90%) of that portion of the Contract Price properly allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Work plus ninety percent (90%) of that portion of the Contract Price properly allocable to materials or equipment properly stored on-site (or elsewhere if approved in advance in writing by the Owner) for subsequent incorporation in the Work, less the total amount of previous payments received from the Owner. Payment for stored materials and equipment shall be conditioned upon the Contractor's proof satisfactory to the Owner, that the Owner has title to such materials and equipment and shall include proof of required insurance. Such Application for Payment shall be signed by the Contractor and shall constitute the Contractor's representation that the Work has progressed to the level for which payment is requested in accordance with Articles 4 and 5 of this Agreement, that the Work has been properly installed or performed in full accordance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. Thereafter, the Engineer will review the Application for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by this Contract. The Engineer shall determine and certify to the Owner the amount properly owing to the Contractor.

5.2.4 The Owner shall make partial payments on account of the Contract Price to the Contractor within thirty (30) days following the Engineer's receipt of each Application for Payment. The amount of each partial payment shall be the amount certified for payment by the Engineer less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by this Contract. The Engineer's certification of the Contractor's Application for Payment shall not preclude the Owner from the exercise of any of its rights as set forth in Paragraph 5.3 hereinbelow. PROVIDED, HOWEVER, that when fifty (50) percent of the contract value, including change orders and other additions to the contract value, provided for by the Contract Documents is due, and the manner of completion of the contract Work and its progress are reasonably satisfactory to the Owner, the Owner shall withhold no more retainage. At the discretion of the Owner, and with the approval of the Contractor, the retainage of any subcontractor may be released separately as the subcontractor completes its work. If, however, after discontinuing the retention, the Owner determines that the Work is unsatisfactory or has fallen behind schedule, retention may be resumed at the previous level. If retention is

resumed by the Owner, the Contractor and subcontractors shall be entitled to resume withholding retainage accordingly. The rights of the Owner set forth herein to retainage are in addition to all of the other rights and remedies of the Owner set forth in this Agreement.

5.2.5 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which payments have been received from the Owner shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.

5.2.6 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which such Subcontractor is entitled. In the event the Owner becomes informed that the Contractor has not paid a Subcontractor as herein provided, the Owner shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed commit the Owner to repeat the procedure in the future.

5.2.7 No progress payment, nor any use or occupancy of the Project by the Owner, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.

5.3 Withheld Payment

5.3.1 To the extent permitted by Georgia law, the Owner may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the Owner from loss because of:

(a) defective Work not remedied by the Contractor nor, in the opinion of the Owner, likely to be remedied by the Contractor;

(b) claims of third parties against the Owner or the Owner's property;

(c) failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;

(d) evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;

(e) evidence that the Work will not be completed in the time required for substantial or final completion;

(f) persistent failure to carry out the Work in accordance with the Contract;

(g) damage to the Owner or third party to whom the Owner is, or may be, liable.

In the event that the Owner makes written demand upon the Contractor for amounts previously paid by the Owner as contemplated in this Subparagraph 5.3.1, the Contractor shall promptly comply with such demand.

5.4 Unexcused Failure to Pay

5.4.1 If within forty-five (45) days after the date established herein for payment to the contractor by the Owner, the Owner, without cause or basis hereunder, fails to pay the Contractor any amount then due and payable to the Contractor, then the Contractor may, after seven (7) additional days' written notice to the Owner and Engineer, and without prejudice to any other available rights or remedies it may have, stop the Work until payment of those amounts due from the Owner has been received. Any payment not made within forty-five (45) days after the date due shall bear interest at the rate of three percent (3%) per annum.

5.5 Substantial Completion

5.5.1 When the Contractor believes that the Work is substantially complete, the Contractor shall submit to the Engineer and Owner notice that it believes the project has been completed. The Engineer shall then cause the project to be inspected and provide the Contractor with either (1) a list of items to be completed or corrected by the Contractor, or (2) a Certificate of Substantial Completion. When the Engineer on the basis of an inspection determines that the Work is in fact substantially complete, it will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for Project security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. The Certificate of Substantial Completion shall be submitted to the Contractor for its written acceptance of the responsibilities assigned to it in such certificate. Upon Substantial Completion of the Work, and execution by both the Owner and Contractor of the Certificate of Substantial Completion, the Owner shall pay the Contractor an amount sufficient to increase total payment to the Contractor to one hundred percent (100%) of the Contract Price less two hundred percent (200%) of the reasonable cost as determined by the Owner for completing all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, and handling all unsettled claims.

5.6 Completion and Final Payment

5.6.1 When all of the Work is finally complete, and the Contractor is ready for a final inspection, it shall notify the Owner and the Engineer thereof in writing. Thereupon, the Engineer will make final inspection of the Work and, if the Work is complete in full

accordance with this Contract and all Contract Documents, and this Contract has been fully performed, the Engineer will promptly issue a final Certificate for Payment certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. Guarantees required by the Contract shall commence on the date of Final Completion of the Work. If the Engineer is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

5.6.1.1 If the Contractor fails to achieve final completion within the time fixed therefore by the Engineer in its Certificate of Substantial Completion, the Contractor shall pay the Owner the sum of One Thousand Dollars ($1,000.00) per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth herein for final completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that final completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving final completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

5.6.2 The Contractor shall not be entitled to final payment unless and until it submits to the Engineer and Owner all documents required by the Contract, including, but not limited to, its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner, or the Owner's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors of the Contractor and of any and all other parties required by the Engineer or the Owner; consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the Owner, the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

5.6.3 The Owner shall make final payment of all sums due the Contractor within thirty (30) days of the Engineer's execution of a final Certificate for Payment.

5.6.4 Acceptance of final payment shall constitute a waiver of all claims against the Owner by the Contractor except for those claims previously made in writing against the Owner by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final payment.

5.6.5 The Owner and Contractor expressly agree that the terms of payment, payment periods, and rates of interest herein shall control to the exclusion of any provisions set forth in the Georgia Prompt Pay Act, O.C.G.A. Section 13-11-1 *et al*., and the provisions of said Act are herein waived.

ARTICLE VI
THE OWNER

6.1 Information, Services and Things Required from Owner

6.1.1 If the Contractor requests in writing, the Owner shall furnish to the Contractor, prior to the execution of this Contract, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the Owner does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability, therefore. The Owner shall also furnish surveys, legal limitations and utility locations (if known), and a legal description of the Project site.

6.1.2 Excluding permits and fees normally the responsibility of the Contractor, the Owner shall obtain all approvals, easements, and the like required for construction and shall pay for necessary assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

6.1.3 The Owner shall furnish the Contractor, free of charge, three (3) copies of the Contract Documents for execution of the Work (if applicable). The Contractor will be charged, and shall pay the Owner, Fifty Dollars ($50.00) per additional set of Contract Documents which it may require.

6.2 Right to Stop Work

6.2.1 If the Contractor persistently fails or refuses to perform the Work in accordance with this Contract, the Owner may order the Contractor to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the Owner orders that Work be resumed. In such event, the Contractor shall immediately obey such order.

6.3 Owner's Right to Perform Work

6.3.1 If the Contractor's Work is stopped by the Owner under Paragraph 6.2, and the Contractor fails within seven (7) days of such stoppage to provide adequate assurance to the Owner that the cause of such stoppage will be eliminated or corrected, then the Owner may, without prejudice to any other rights or remedies the Owner may have against the Contractor, proceed to carry out the subject Work. In such a situation, an appropriate Change Order shall

be issued deducting from the Contract Price the cost of correcting of the subject deficiencies, plus compensation for the Engineer's additional services and expenses necessitated thereby, if any. If the unpaid portion of the Contract Price is insufficient to cover the amount due to the Owner, the Contractor shall pay the difference to the Owner.

ARTICLE VII
THE CONTRACTOR

7.1 The Contractor

7.1.1 The Contractor is again reminded of its continuing duty set forth in Subparagraph 1.5.7. The Contractor shall perform no part of the Work at any time without adequate Contract Documents or, as appropriate, approved shop Drawings, Product Data or Samples for such portion of the Work. If the Contractor performs any of the Work knowing it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to the Engineer, the Contractor shall bear responsibility for such performance and shall bear the cost of correction.

7.2 Compliance with Contract

7.2.1 The Contractor shall perform the work strictly in accordance with this Contract.

7.3 Reasonable Care and Skill

7.3.1 The Contractor shall supervise and direct the Work and warrants that it will perform all services or Work using reasonable care and skill and in workmanlike manner consistent with industry standards. The Contractor shall be responsible to the Owner for any and all acts or omissions of the Contractor, its employees and others engaged in the Work on behalf of the Contractor.

7.4 Warranty

7.4.1 The Contractor warrants to the Owner that all labor furnished to progress the Work under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality free from faults and defects and in strict conformance with this Contract. All Work not conforming to these requirements may be considered defective.

7.4.2 The standard of care applicable to the Contractor's services shall be the standard of skill and diligence normally employed by businesses performing the same or similar services at the time the Contractor's services are performed. For a twelve (12) month period commencing with the completion of the Work, the Contractor shall re-perform, solely at its

own cost and without additional compensation due from the Owner, any services not meeting this standard. The Contractor further warrants that any service it undertakes in the performance of the Work will be adequate and sufficient to accomplish the purposes for which they are performed, and no review or approval thereof by the City shall be deemed to diminish this warranty in any way.

7.5 Permits

7.5.1 The Contractor shall obtain and pay for all permits, inspections, fees and licenses necessary and ordinary for the Work. The Contractor shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law, ordinance, or regulation pertaining to the Work.

7.6 Supervision

7.6.1 The Contractor shall employ and maintain at the Project site only competent supervisory personnel. Absent written instruction from the Contractor to the contrary, the superintendent shall be deemed the Contractor's authorized representative at the site and shall be authorized to receive and accept any and all communications from the Owner or the Engineer.

7.6.2 Key supervisory personnel assigned by the Contractor to this Project are as follows:

Name	**Function**
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the Owner agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assumes one or more of those functions listed above, the Contractor shall be bound by the provisions of this Subparagraph 7.6.2 as though such individuals had been listed above.

7.7 Schedules

7.7.1 The Contractor, within fifteen (15) days of commencing the Work, shall submit to the Owner for their information the Contractor's schedule for completing the Work. Additionally,

within fifteen (15) days of commencing the Work, the Contractor shall submit to the Owner and the Engineer a separate shop drawing and submittal schedule detailing the schedule for the submission to the Engineer of all shop drawings (if applicable) submittals, product data and other similar documents. Each of the schedules required herein shall be revised no less frequently than monthly (unless the parties otherwise agree in writing) and shall be revised to reflect conditions encountered from time-to time and shall be related to the entire Project. Each such revision shall be furnished to the Owner and the Engineer. The schedules, and all revisions, shall be in such form, and shall contain such detail, as the Owner or the Engineer may require. THE PARTIES SPECIFICALLY AGREE THAT ANY FLOAT CONTAINED IN THE SCHEDULES SHALL BELONG TO THE PROJECT AND IN NO EVENT SHALL THE CONTRACTOR MAKE CLAIM FOR ANY ALLEGED DELAY, ACCELERATION, OR EARLY COMPLETION SO LONG AS THE PROJECT IS COMPLETED WITHIN THE CONTRACT TIME. Strict compliance with the requirements of this Paragraph is condition precedent for payment to the Contractor, and failure by the Contractor to strictly comply with said requirements shall constitute a material breach of this Contract.

7.8 Required Documents at the Site

7.8.1 The Contractor shall continuously maintain at the site, for the benefit of the Owner and the Engineer, one record copy of this Contract marked to record on a current basis changes, selections and modifications made during construction. Additionally, the Contractor shall maintain at the site for the Owner and the Engineer the approved Shop Drawings (if applicable), Product Data, Samples, and other similar required submittals. Upon final completion of the Work, all of these record documents shall be delivered to the Owner.

7.9 Shop Drawings, Product Data and Samples

7.9.1 Shop Drawings (if applicable), Product Data, Samples and other submittals from the Contractor do not constitute Contract Documents. Their purpose is merely to demonstrate the manner in which the Contractor intends to implement the Work in conformance with information received from the Contract Documents.

7.9.2 The Contractor shall not perform any portion of the Work requiring submittal and review of Shop Drawings (if applicable), Product Data or Samples unless and until such submittal shall have been approved by the Engineer. Approval by the Engineer, however, shall not be evidence that Work installed pursuant thereto conforms with the requirements of this Contract.

7.10 Cleaning the Site and the Project

7.10.1 The Contractor shall keep the site reasonably clean during performance of the Work. Upon final completion of the Work, the Contractor shall clean the site and the Project and remove all waste, together with all of the Contractor’s property therefrom.

7.11 Access to Work

7.11.1 The Owner and the Engineer shall have access to the Work at all times from commencement of the Work through final completion. The Contractor shall take whatever steps necessary to provide access when requested.

7.12 Indemnity

7.12.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, its officials, officers, employees, agents and representatives from and against liability, claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from performance of the Work, provided that such liability, claims, damage, loss or expense is attributable to injury, bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent or willful acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such liability, claim, damage, loss or expense is caused in part by a party indemnified hereunder.

7.12.2 For any claim against any person or entity indemnified under this Paragraph 7.12 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 7.12 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefits acts or other employee benefits acts.

7.13 Means, Methods, Techniques, Sequences, Procedures and Safety

7.13.1 The Contractor is fully responsible for, and shall have control over, all construction means, methods, techniques, sequences, procedures and safety, and shall coordinate all portions of the work required by the Contract Documents. Nothing contained herein, however, shall in any manner whatsoever relieve, release or discharge the Engineer from any of its duties, responsibilities, obligations, or liabilities as set forth in its contract with the Owner, or as provided by law.

7.14 Separate Contracts

7.14.1 The Owner reserves the right to perform work on the premises with its own forces or by the use of other Contractors. In such event, the Contractor shall fully cooperate with the Owner and such other Contractors and shall coordinate, schedule and manage its work so as not to hinder, delay or otherwise interfere with the separate work of the Owner or other Contractors.

ARTICLE VIII

CONTRACT ADMINISTRATION

8.1 Engineering

8.1.1 The Engineer for this project shall be **Lowe Engineers, LLC and CERM, LLC** (the "Engineer"). In the event the Owner should find it necessary or convenient to replace the Engineer, the Owner shall retain a replacement Engineer and the status of the replacement Engineer shall be that of the former Engineer.

8.2 Engineer's Administration

8.2.1 The Engineer, unless otherwise directed by the Owner in writing, will perform those duties and discharge those responsibilities allocated to the Engineer as set forth in this Contract. The Engineer shall be the Owner's representative from the effective date of this Contract until final payment has been made. The Engineer shall be authorized to act on behalf of the Owner only to the extent provided in this Contract.

8.2.2 The Owner and the Contractor shall communicate with each other in the first instance through the Engineer.

8.2.3 The Engineer shall be the initial interpreter of the requirements of the drawings and specifications and the judge of the performance thereunder by the Contractor. The Engineer shall render written or graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.

8.2.4 The Engineer will review the Contractor's Applications for Payment and will certify to the Owner for payment to the Contractor, those amounts then due the Contractor as provided in this Contract.

8.2.5 The Engineer shall have authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Engineer deems it necessary or advisable, the Engineer shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.

8.2.6 The Engineer will review and approve, or take other appropriate action as necessary, concerning the Contractor's submittals including Shop Drawings, Product Data and Samples. Such review, approval or other action shall be for the sole purpose of determining conformance with the design concept and information given through the Contract Documents.

8.2.7 The Engineer will prepare Change Orders and may authorize minor changes in the Work by Field Order as provided elsewhere herein.

8.2.8 The Engineer shall, upon written request from the Contractor, conduct inspections to

determine the date of Substantial Completion and the date of Final Completion, will receive and forward to the Owner for the Owner's review and records, written warranties and related documents required by this Contract and will issue a final Certificate for Payment upon compliance with the requirements of this Contract.

8.2.9 The Engineer's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.

8.2.10 THE DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR UNDER THIS AGREEMENT SHALL IN NO MANNER WHATSOEVER BE CHANGED, ALTERED, DISCHARGED, RELEASED, OR SATISFIED BY ANY DUTY, OBLIGATION OR RESPONSIBILITY OF THE ENGINEER. THE CONTRACTOR IS NOT A THIRD-PARTY BENEFICIARY OF ANY AGREEMENT BY AND BETWEEN THE OWNER AND THE ENGINEER. IT IS EXPRESSLY ACKNOWLEDGED AND AGREED THAT THE DUTIES OF THE CONTRACTOR TO THE OWNER ARE INDEPENDENT OF, AND ARE NOT DIMINISHED BY, ANY DUTIES OF THE ENGINEER TO THE OWNER.

8.3 Claims by the Contractor

8.3.1 All Contractor claims shall be initiated by written notice and claim to the Owner and Engineer. Such written notice and claim must be furnished within seven (7) days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.

8.3.2 Pending final resolution of any claim of the Contractor, the Contractor shall diligently proceed with performance of this Contract and the Owner shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim under this Paragraph 8.3 shall be reflected by a Change Order executed by the Owner, the Engineer, and the Contractor.

8.3.3 *Claims for Concealed and Unknown Conditions* -- Should concealed and unknown conditions encountered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure be at variance with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided for in this Contract, be encountered, the Contract Price shall be equitably adjusted by Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the Owner having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the Owner and the Engineer written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.

8.3.4 *Claims for Additional Costs* -- If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the Owner therefore, the Contractor shall give the Engineer written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.

8.3.4.1 In connection with any claim by the Contractor against the Owner for completion in excess of the Contract Price, any liability of the Owner shall be strictly limited to direct costs incurred by the Contractor and shall in no event include indirect costs or consequential damages of the Contractor. The Owner shall not be liable to the Contractor for claims of third parties, including Subcontractors, unless and until liability of the Contractor has been established therefore in a court of competent jurisdiction.

8.3.5 *Claims for Additional Time* -- If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the Owner or someone acting in the Owner's behalf, or by Changes Ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipatable, fire or any causes beyond the Contractor's control, then the date for achieving Substantial completion of the Work shall be extended upon the written notice and claim of the Contractor to the Owner and the Engineer, for such reasonable time as the Engineer may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven (7) days after the occurrence of the event or the first appearance of the condition giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Project. In the event the delay to the Contractor is continuing, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this Subparagraph, any claim for an extension of time shall be waived.

8.4 Extension of Contract Time for Unusually Adverse Weather Conditions not Reasonably Anticipated

8.4.1 Pursuant to the provisions of subparagraph 8.3.5 of this Contract, the contract time may be extended upon written notice and claim of the Contractor to the Owner and the Engineer as set forth in such subparagraph and as further set forth herein. It is, however, expressly agreed that the time for completion as stated in the Contract Documents includes due allowance for calendar days on which work cannot be performed out-of-doors.

8.4.2 In addition to the notice requirements set forth in the aforesaid subparagraph 8.3.5, the Contractor agrees that it shall provide written notice to the Owner and the Engineer on the day of any adverse weather not anticipated and for which a request for a time extension has been, or will be, made. Said notice shall state with particularity a description of the adverse weather as well as

a description of the nature and extent of any delay caused by such weather. Receipt of this notice by the Owner and the Engineer is a condition precedent to the submission of any claim for an extension of time as provided by subparagraph 8.3.5. Furthermore, as required by subparagraph 8.3.5, the Contractor shall submit a written claim for extension of time within seven (7) days after the occurrence of the adverse weather and such claim shall be supported by such documentation including, but not limited to, official weather reports, as the Owner or the Engineer may be required. To the extent that any of the terms and conditions set forth in this paragraph are in conflict with any of the terms and conditions of subparagraph 8.3.5 as identified herein, the terms and conditions of this paragraph shall govern and control.

ARTICLE IX
SUBCONTRACTORS

9.1 Definition

9.1.1 A Subcontractor is an entity, which has a direct contract with the Contractor to perform a portion of the Work.

9.2 Award of Subcontracts

9.2.1 Upon execution of the Contract, the Contractor shall furnish the Owner, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Project. The Owner shall promptly reply to the Contractor, in writing, stating any objections the Owner may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the Owner has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

9.2.2 All Subcontracts shall afford the Contractor rights against the Subcontractor which correspond to those rights afforded to the Owner against the Contractor herein, including those rights afforded to the Owner by Subparagraph 12.2.1 below.

ARTICLE X
CHANGES IN THE WORK

10.1 Changes Permitted

10.1.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Task/Field Order.

10.1.2 Changes in the Work shall be performed under applicable provisions of this Contract and the Contractor shall proceed promptly with such changes.

10.2 Change Order Defined

10.2.1 Change Order shall mean a written order to the Contractor executed by the Owner and Engineer, issued after execution of this Contract, authorizing, and directing a change in the Work or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and the Contract Time may be changed only by Change Order.

10.3 Changes in the Contract Price

10.3.1 Any change in the Contract Price resulting from a Change Order shall be determined as follows: (a) by mutual agreement between the Owner and the Contractor as evidenced by (1) the change in the Contract Price being set forth in the Change Order, (2) such change in the Contract Price, together with any conditions or requirements related thereto, being initialed by both parties and (3) the Contractor's execution of the Change Order, or (b) if no mutual agreement occurs between the Owner and the Contractor, then, as provided in Subparagraph 10.3.2 below.

10.3.2 If no mutual agreement occurs between the Owner and the Contractor as contemplated in the Subparagraph 10.3.1 above, the change in the Contract Price, if any, shall then be determined by the Engineer on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content as the Owner or Engineer requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies, or equipment including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools whether rented from the contractor or others, reasonable costs of premiums for all bonds and insurance, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and jobsite field office overhead directly attributable to the change. In the event the Contractor performs the Work required by Change Order with its own forces, and not the forces of a Subcontractor, the overhead and profit due the Contractor for such work shall be twenty (20) percent. In the event the Change Order Work is performed by one or more Subcontractors, the Contractor's overhead and profit shall be seven and one-half (7-½) percent. In no event shall any expenditure or savings associated with the Contractor's home office or other non-jobsite overhead expense be included in any change in the Contract Price. Pending final determination of reasonable

expenditures or savings to the Owner, payments on account shall be made to the Contractor on the Engineer's Certificate for Payment.

10.3.3 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that application of such unit prices to the quantities of Work proposed will cause substantial inequity to the Owner, the applicable unit prices shall be equitably adjusted.

10.4 Effect of Executed Change Order

10.4.1 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor by executing the Change Order waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

10.5 Notice to Surety; Consent

10.5.1 The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approval is required by the Contractor's surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the Owner that the surety has been notified of and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

ARTICLE XI
UNCOVERING AND CORRECTING WORK

11.1 Uncovering Work

11.1.1 If any of the Work is covered contrary to the Engineer's request or to any provisions of this Contract, it shall, if required by the Engineer or Owner, be uncovered for the Engineer's inspection, and shall be properly replaced at the Contractor's expense without change in the Contract Time.

11.1.2 If any of the Work is covered in a manner not inconsistent with Subparagraph 11.1.1 above, it shall, if required by the Engineer or Owner, be uncovered for the Engineer's inspection. If such Work conforms strictly to this Contract, costs of uncovering and proper replacement shall by Change Order be charged to the Owner. If such Work does not strictly conform to this Contract, the Contractor shall pay the costs of uncovering and proper replacement.

11.2 Correcting Work

11.2.1 The Contractor shall immediately proceed to correct Work rejected by the Owner as defective or failing to conform to this Contract. The Contractor shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections, and reimbursement to the Owner for any outside contracted services and expenses made necessary thereby.

11.2.2 If within one (1) year after Substantial Completion of the Work any of the Work is found to be defective or not in accordance with this Contract, the Contractor shall correct it promptly upon receipt of written notice from the Owner. This obligation shall survive final payment by the Owner and termination of this Contract. With respect to Work first performed and completed after Substantial Completion, this one-year obligation to specifically correct defective and nonconforming Work shall be extended by the period of time which elapses between Substantial Completion and completion of the subject Work.

11.2.3 Nothing contained in this Paragraph 11.2 shall establish any period of limitation with respect to other obligations which the Contractor has under this Contract. Establishment of the one-year time period in Subparagraph 11.2.2 relates only to the duty of the Contractor to specifically correct the Work.

11.3 Owner May Accept Defective or Nonconforming Work

11.3.1 If the Owner chooses to accept defective or nonconforming Work, the Owner may do so. In such event, the Contract Price shall be reduced by the greater of (a) the reasonable cost of removing and correcting the defective or nonconforming Work, and (b) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Owner for its acceptance of defective or nonconforming Work, the Contractor shall, upon written demand from the Owner, pay the Owner such remaining compensation for accepting defective or nonconforming Work.

ARTICLE XII
CONTRACT TERMINATION

12.1 Termination by the Contractor

12.1.1 If the Work is stopped for a period of ninety (90) days by an order of any court or other public authority, or as a result of an act of the Government, through no fault of the Contractor or any person or entity working directly or indirectly for the Contractor, the Contractor may, upon ten (10) days' written notice to the Owner and the Engineer, terminate performance under this Contract and recover from the Owner payment for the actual

reasonable expenditures of the Contractor (as limited in Subparagraph 10.3.2 above) for all Work executed and for materials, equipment, tools, construction equipment and machinery actually purchased or rented solely for the Work, less any salvage value of any such items.

12.1.2 If the Owner shall persistently or repeatedly fail to perform any material obligation to the Contractor for a period of fifteen (15) days after receiving written notice from the Contractor of its intent to terminate hereunder, the Contractor may terminate performance under this Contract by written notice to the Engineer and the Owner. In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 12.2.1 hereunder.

12.2 Termination by the Owner

12.2.1 *For Convenience*

12.2.1.1 The Owner may for any reason whatsoever terminate performance under this Contract by the Contractor for convenience. The Owner shall give written notice of such termination to the Contractor specifying when termination becomes effective.

12.2.1.2 The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop Work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The Owner may direct the Contractor to assign the Contractor's right, title and interest under terminated orders or subcontracts to the Owner or its designee.

12.2.1.3 The Contractor shall transfer title and deliver to the Owner such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has.

12.2.1.4

(a) The Contractor shall submit a termination claim to the Owner and the Engineer specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Engineer. If the Contractor fails to file a termination claim within six (6) months from the effective date of the termination, the Owner shall pay the Contractor, an amount derived in accordance with sub-paragraph (c) below.

(b) The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.

(c) Absent Agreement to the amount due to the Contractor, the Owner shall pay the Contractor the following amounts:

(i) Contract prices for labor, materials, equipment and other services provided under this Contract;

(ii) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it appears the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 12.2.1.2 of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under this Subparagraph 12.2.1 shall not exceed the total Contract Price, as properly adjusted, reduced by the number of payments otherwise made, and shall in no event include duplication of payment.

12.2.2 *For Cause*

12.2.2.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, supply enough properly skilled workers, supervisory personnel or proper equipment or materials, or if it fails to make prompt payment to Subcontractors for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority that has jurisdiction, or otherwise is guilty of a substantial violation of a material provision of this Contract, then the Owner may by written notice to the Contractor, without prejudice to any other right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

12.2.2.2 If the unpaid balance of the Contract Price exceeds the cost of finishing the work, including compensation for the Engineer's additional services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance,

the Contractor shall pay the difference to the Owner. This obligation for payment shall survive the termination of the Contract.

12.2.2.3 In the event the employment of the Contractor is terminated by the Owner for cause pursuant to Subparagraph 12.2.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph 12.2.1 and the provisions of Subparagraph 12.2.1 shall apply.

12.3 Renewal

12.3.1 Pursuant to O.C.G.A. § 36-60-13, this Agreement shall commence on the effective date of this Agreement and shall terminate absolutely and without further obligation on the part of the Owner at the close of the calendar year in which it was executed, and at the close of each succeeding calendar year for which it may be renewed following the process outlined in subsection 12.2.3.2 below.

12.3.2 The Owner shall determine no less than forty-five (45) days prior to the end of the calendar year in which the Agreement was executed whether or not said contract shall be renewed for the following calendar year. Such determination shall be made at the sole discretion of the Owner and may depend on factors such as budgeted funding for the following calendar year, performance of the Contractor under the Agreement during the current calendar year, or any other such factors the Owner may choose to consider. The Owner shall notify the Contractor in writing of the Owner's decision to either renew or not renew this Agreement no less than thirty (30) calendar days before the end of the current calendar year.

12.3.3 Notwithstanding anything contained in subsection 12.2.3.2 above, this Agreement shall terminate immediately and absolutely at such time as appropriated and otherwise unobligated funds are no longer available to satisfy the obligations of the Owner under the Agreement.

12.3.4 This Agreement is not deemed to create a debt of the Owner for the payment of any sum beyond the calendar year of execution or, in the event of renewal, beyond each calendar year of renewal.

ARTICLE XIII
OWNER'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE

13.1 The Owner shall have the right at any time to direct the Contractor to suspend its performance, or any designated part thereof, for any reason whatsoever, or without reason, for a cumulative period of up to sixty (60) calendar days. If any such suspension is directed by the Owner, the Contractor shall immediately comply with same.

13.2 In the event the Owner directs a suspension of performance under Paragraph 13.1 through no fault of the Contractor, the Owner shall pay the Contractor as full compensation for such suspension the Contractor's reasonable costs, actually incurred and paid, of;

(i) demobilization and remobilization, including such costs paid to Subcontractors;

(ii) preserving and protecting work in place;

(iii) storage of materials or equipment purchased for the Project, including insurance thereon;

(iv) performing in a later, or during a longer time frame than contemplated by this Contract.

ARTICLE XIV
INSURANCE

14.1 Insurance

14.1.1 The Contractor will provide minimum insurance coverage and limits as per the following:

Worker's Compensation – Worker's Compensation coverage on a statutory basis for the State of Georgia with an Employer's Liability limit of $1,000,000. The increased Employer's Liability limit may be provided by an Umbrella or Excess Liability policy.

Automobile Liability - Automobile liability coverage for owned, hired and non-owned vehicles in the amount of $1,000,000 combined single limit. The "City of Stonecrest" and its officials, officers, and employees shall be added as an Additional Insured.

Commercial General Liability – Coverage to be provided on "occurrence" not "claims made" basis. The coverage is to include Owners and Contractors Protective Liability, Contractual Liability, Per Project Limit of Liability, Broad Form Property Damage, Bodily Injury, losses caused by Explosion, Collapse and Underground ("xcu") perils, and Products and Completed Operations coverage is to be maintained for three (3) years following completion of work. The "City of Stonecrest" and its officials, officers, and employees shall be added as an Additional Insured.

Umbrella and/or Excess Liability – Coverage to be provided in the minimum amount of $1,000,000 per occurrence.

LIMITS OF LIABILITY:

$1,000,000 Per Occurrence

$1,000,000	Personal and Advertising Injury
$50,000	Fire Damage*
$5,000	Medical Payments*
$1,000,000	General Aggregate
$1,000,000	Products/Completed Operations per Occurrence and Aggregate

**These are automatic minimums*

14.1.2 The Contractor will file with the Owner Certificates of Insurance, certifying the required insurance coverage below and stating that each policy has been endorsed to provide thirty (30) day notice to the Owner in the event that coverage is cancelled, non-renewed or the types of coverage or limits of liability are reduced below those required. All bonds and insurance coverage must be placed with an insurance company approved by the Owner, admitted to do business in the State of Georgia, and rated Secure ("B+" or better) by A.M. Best Company in the latest edition of Property and Casualty Ratings, or rated by Standard & Poors Insurance Ratings, latest edition as Secure ("BBB" or better). Worker's Compensation self-insurance for individual Contractors must be approved by the Worker's Compensation Board, State of Georgia and/or Self-Insurance pools approved by the Insurance Commissioner, State of Georgia.

ARTICLE XV
MISCELLANEOUS

15.1 Governing Law

15.1.1 The Contract shall be governed by the law of the State of Georgia, exclusive of its choice of law provisions. In the event of any litigation arising from this Contract, venue shall be in any court of competent jurisdiction of the County of DeKalb, Georgia.

15.2 Successors and Assigns

15.2.1 The Owner and the Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract. The Contractor shall not assign this Contract without written consent of the Owner.

15.3 Interpretation

15.3.1 The Parties acknowledge that this Agreement and all the terms and conditions herein have been fully reviewed and negotiated by the Parties. Having acknowledged the foregoing, the Parties agree that any principle of construction or rule of law that provides that, in the event of any inconsistency or ambiguity, an agreement shall be construed against the drafter of the agreement shall have no application to the terms and conditions of this Agreement.

15.4 Severability

15.4.1 If any provision of this Contract shall be deemed invalid or unenforceable by a court of competent jurisdiction, such provision shall be modified to the extent necessary to cure such invalidity or unenforceability; provided, however, if such modification is not possible without creating a material conflict with another provision of this Contract, such invalid or unenforceable provision shall be deemed stricken from this Contract.

15.5 Amendment and Waiver

15.5.1 This Contract may not be amended, modified, or waived except by a writing signed by an authorized representative of each part. No waiver of or any failure or omission to enforce any of the provisions hereof by the Owner shall be construed to be a waiver of the Owner to enforce any such provisions or any other provision(s) of this Contract.

15.6 Notice

15.6.1 Notices. Where a party is required or permitted to give notice to the other pursuant to this Contract, such notice is deemed given: (i) when delivered in hand; (ii) three (3) days after it is mailed by registered or certified United States mail, return receipt requested, postage prepaid to the address listed below; or (iii) one (1) day after it is sent by courier or facsimile transmission if receipt is verified by the receiving party and such notice is addressed to the Party to receive such notice. Any notice required to be given by or on behalf of either party to the other shall be sent to the address specified below, or as such other address as may be specified, from time to time, by notice in the manner herein set forth.

If to the Owner/City:
City Manager
City of Stonecrest
3120 Stonecrest Blvd.
Stonecrest, Georgia 30038

With copies to:
City Attorney
Fincher Denmark, LLC
100 Hartsfield Centre Pkwy.
Ste. 400
Atlanta, Georgia 30354

If to the Contractor:

_____
__
_____
_____

If to the Engineer:

_____
_____
_____
_____

15.7 Time is of the Essence

15.7.1 Time is of the essence for this Contract, the Contract Documents, and all supporting documents.

15.8 Participation in Federal Work Authorization Program

15.8.1 The Contractor shall participate in the federal work authorization program throughout the contract period, as provided in O.C.G.A. §13-10-91. The Contractor shall be required to, at the time of the contract, provide a signed, notarized affidavit, attesting that it has registered with, is authorized to use, and uses the federal work authorization program; it will continue to use the federal work authorization program throughout the contract period; and it will contract for the physical performance of services in satisfaction of such contract only with Subcontractors who present an affidavit containing the above information. Further, to the extent that a Subcontractor is utilized, the Subcontractor's federal work authorization program user identification number and the date of authorization shall be included in the affidavit. Said affidavit shall be attached hereto and incorporated by reference herein as **Exhibit C**.

15.9 Counterparts

15.9.1 This Agreement may be executed in multiple counterparts, each of which shall constitute the original, but all of which taken together shall constitute one and the same Agreement. PDF signatures shall constitute original signatures.

15.10 Captions

15.10.1 The captions appearing herein are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement or any clause or provision hereof.

15.11 Surety

15.11.1 The Contractor shall furnish separate performance and payment bonds to the Owner. Each bond shall set forth a penal sum in an amount not less than the Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased automatically by like amount. The performance and payment bonds furnished by the Contractor shall be in form suitable to the Owner and Owner's legal counsel and shall be executed by a surety, or sureties, reasonably suitable to the Owner.

15.12 Interpretation

15.12.1 The Parties acknowledge that this Agreement and all the terms and conditions herein have been fully reviewed and negotiated by the Parties. Having acknowledged the foregoing, the Parties agree that any principle of construction or rule of law that provides that, in the event of any inconsistency or ambiguity, an agreement shall be construed against the drafter of the agreement shall have no application to the terms and conditions of this Agreement.

[SIGNATURES CONTAINED ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, this Contract has been signed and delivered by a duly authorized representative of each party as of the last date indicated below.

CITY OF STONECREST, GEORGIA	**STEWART BROTHERS, INC.**
By: _____ (Signature)	By: _____ (Signature)
_____ (Printed Name and Title)	_____ (Printed Name and Title)
_____ (Date of Execution)	_____ (Date of Execution)
Attest: _____ **(SEAL)**	Attest: _____ **(SEAL)**

EXHIBIT A
SCOPE OF WORK

PURPOSE, INTENT AND PROJECT DESCRIPTION

This Project shall be for the resurfacing of 140 streets within the City of Stonecrest ("City"). Street locations are attached as Exhibit A-1 hereto. All streets are to be patched, milled, resurfaced, and/or re-striped per the following specifications.

GENERAL CONDITIONS

The contractor shall execute the work according to and meet the requirements of the following:

- Georgia Department of Transportation (GDOT) Specifications, Standards, and Details;
- The Contract Documents including but not limited to the scope of work, and specifications;
- City of Stonecrest ordinances and regulations;
- OSHA standards and guidelines
- Any other applicable codes, laws and regulations including but not limited to Section 45-10-20 through 45-10-28 of the Official Code of Georgia Annotated, Title VI of the Civil Rights Act, Drug-Free Workplace Act, and all applicable requirements of the Americans with Disabilities Act of 1990.

The Contractor will be responsible for providing all labor, materials, and equipment necessary to perform the work. This is a unit price project. Payment will be made based on actual work completed.

The Contractor is responsible for inspecting the jobsite prior to submitting a bid. No change orders will be issued for differing site conditions.

Materials must come from GDOT approved sources. The contractor will be required to submit in writing a list of proposed sources of materials. When required representative samples will be taken for examination and testing prior to approval. The materials used in the work shall meet all quality requirements of the contract. Materials will not be considered as finally accepted until all tests, including any to be taken from the finished work have been completed and evaluated. Standard Specification 106 – Control of Materials will be used as a guide. All materials will be tested according to the GDOT Sampling, Testing, and Inspection Manual by an approved consultant/engineer hired by the City.

10% retainage will be withheld from the total amount due the contractor until Final Acceptance of work is issued by the City. The City will inspect the work as it progresses.

PROSECUTION AND PROGRESS

The Contractor will mobilize with sufficient forces such that all construction identified as part of this contract shall be substantially completed by July 17, 2023. The Contractor will be considered substantially complete when all work required by this contract has been completed (excluding final striping and punch list work). The Contractor will be required to submit a Progress Schedule upon notice of award.

Normal workday for this project shall be 8:00AM to 7:00PM and the normal workweek shall be Monday through Friday. The City will consider extended workdays or workweeks upon written request by the Contractor on a case-by-case basis. No work will be allowed on federal holidays (i.e. July 4th, Labor Day, Veterans Day, Thanksgiving, etc.). No lane closures will be allowed on major streets except between the hours of 9:00AM to 4:00PM as noted in the Special Conditions section below.

The Contractor shall provide all labor, administrative forces, equipment, materials and other incidental items to complete all required work. The City shall perform a Final Inspection upon substantial completion of the work. The Contractor will be allowed to participate in the Final Inspection. All repairs shall be completed by the Contractor at his expense prior to issuance of Final Acceptance.

The Contractor shall be assessed liquidated damages in the amount of $200.00 per calendar day for any contract work (excluding punch list and permanent striping) that is not completed by July 17, 2023. Liquidated damages shall be deducted from the 10% retainage held by the City. The Contractor will also be assessed liquidated damages for not completing any required Punch List work within 45 calendar days.

The Contractor shall provide all material, labor, and equipment necessary to perform the work without delay unto completion.

The standard order of operations for resurfacing shall be as follows:

1. Milling
2. Patching
3. Leveling
4. Resurfacing
5. Thermoplastic Striping
6. Raised Pavement Markers

The Contractor shall provide a project progress schedule prior to or at the pre-construction meeting. This schedule should accurately represent the intended work and cannot be vague or broad such as listing every road in the contract.

The Contractor shall submit a two-week advance schedule every **Friday by 2:00p.m**, detailing scheduled activities for the following week.

PERMITS AND LICENSES

The Contractor shall procure all permits and licenses, pay all charges, taxes and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work.

MATERIALS

The City will provide a Construction Engineering & Inspections (CEI) Consultant to inspect the work and provide materials testing. All materials will meet appropriate GDOT specifications. Materials quality control test types will meet GDOT specifications at a frequency equal to or exceeding that set by those specifications. Contractor will be responsible for replacing any work performed with material from rejected sample lot at no cost to the City.

PUBLIC NOTIFICATION

The Contractor shall be responsible for installing notification signs at all entrances to subdivisions that are to be resurfaced. The notifications are to be installed one week prior to commencement of work. Signs shall be installed on temporary metal stakes driven in the ground or on tripods. Signs are to remain in place until contracted work (except punchlist) has been completed and accepted. No separate payment will be made for this work. The City will be responsible for notification to individual property owners.

EXISTING CONDITIONS / DEVIATION OF QUANTITIES

All information given in this Exhibit concerning quantities, scope of work, existing conditions, etc. is for information purposes only. It is the Contractor's responsibility to inspect the project site to verify existing conditions and quantities prior to submitting their bid. This is a Unit Price Project and no payment will be made for additional work without prior written approval from the City. At no time will Contractor proceed with work outside the prescribed scope of services for which additional payment will be requested without the written authorization of the City.

The City reserves the right to add, modify, or delete quantities. The City may also elect to add or eliminate certain work locations at its discretion. The Contractor will not be entitled to any adjustment of unit prices or any other form of additional compensation because of adjustments made to quantities and/or work locations. The Contractor will be paid for actual in-place quantities completed and accepted for pay items listed in the Bid Schedule. All other work required by this Exhibit A, plans, specs, standards, etc. but not specifically listed in the Bid Schedule shall be considered "incidental work" and included in the bid prices for items on the Bid Schedule.

TRAFFIC CONTROL

The Contractor shall, at all times, conduct the work so as to assure the least possible obstruction of traffic. The safety and convenience of the general public and the residents along the roadway and the protection of persons and property shall be provided for by the Contractor as specified in the State of Georgia, Department of Transportation Standard Specifications Sections 104.05, 107.09 and 150.

Traffic whose origin and destination is within the limits of the project shall be provided ingress and egress at all times unless otherwise specified by the City. The ingress and egress include entrances and exits via driveways at various properties, and access to the intersecting roads and streets. The Contractor shall maintain sufficient personnel and equipment (including flaggers and traffic control signing) on the project at all times, particularly during inclement weather, to insure that ingress and egress are safely provided when and where needed.

Two-way traffic shall be maintained at all times, utilizing pilot vehicles, unless otherwise specified or approved by the City. In the event of an emergency situation, the Contractor shall provide access to emergency vehicles and/or emergency personnel through or around the construction area. Any pavement damaged by such an occurrence will be repaired by the Contractor at no additional cost to the City.

The Contractor shall furnish, install and maintain all necessary and required barricades, signs and other traffic control devices (including suitable lighting for night work) in accordance with the MUTCD and DOT specifications, and take all necessary precautions for the protection of the workers and safety of the public.

All existing signs, markers and other traffic control devices removed or damaged during construction operations will be reinstalled or replaced at the Contractor's expense. At no time will Contractor remove regulatory signing which may cause a hazard to the public. The Contractor shall, within 24 hours place temporary pavement markings (paint or removable tape) to match existing pavement markings. No additional payment will be made for this work.

Pricing for personnel and equipment required for maintaining temporary traffic control, public convenience and safety are to be included in the overall pricing for the project. There is no separate payment item for Traffic Control.

The Contractor shall install temporary pavements markings, where applicable, including paint and/or traffic tape to ensure traffic safety until such time that the permanent thermoplastic markings and raised pavement markers can be installed. The cost for the temporary marking shall be included in the specific item for permanent markings.

The Contractor shall be responsible for providing and installing variable message boards at both ends of each major street to be resurfaced, as defined in the Special Conditions section below. The location and applicability of placing these signs shall be determined by the City. The message boards shall be installed at least one week prior to the commencement of work.
Wording to be used on the message boards shall be provided by the City. The boards shall remain in place until all contract work (excluding punch list) has been completed and accepted. This item shall be included in the Traffic Control pay item.

PROTECTION AND RESTORATION OF PROPERTY AND LANDSCAPE

The Contractor shall be responsible for the preservation of all public and private property, crops, fish ponds, trees, monuments, highway signs and markers, fences, grassed and sodded areas, etc.

along and adjacent to the highway, road or street, and shall use every precaution necessary to prevent damage or injury thereto, unless the removal, alteration, or destruction of such property is provided for under the contract.

When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect or misconduct in the execution of the work, or in consequence of the non-execution thereof by the Contractor, he shall restore, at his/her own expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding or otherwise restoring as may be directed, or she/he shall make good such damage or injury in an acceptable manner. The Contractor shall correct all disturbed areas before retainage will be released.

MILLING

Resurfacing shall be constructed so as to tie into existing streets and driveways with the best possible ride and aesthetic result. A milled paving notch, with a minimum 10 feet transition, shall be provided at each end of the overlay and at intersections, driveways, and side streets. Tie-ins shall be marked on the ground and approved by the City prior to paving.

All milled surfaces are to be resurfaced within one week of the milling operation.

REPAIR OF EXISTING PAVEMENT

This work shall consist of repairing existing pavement areas that have failed or showing signs of distress. The Contractor and CEI inspector shall jointly inspect the roadway and mark all areas to be patched.

Areas marked for patching shall be cut out in a rectangular shape 4 inches below the surface of the existing asphalt pavement, trimmed to vertical sides, and all loose material removed. After the area has been cleaned, it shall be tack coated. The contractor will be allowed to use a milling machine to excavate for patches. The minimum width for the patches will be based on the size of the machine used to excavate but shall not exceed 7’ in width.

Asphaltic concrete patching will be paid for at the Contract Unit Price per ton and shall include pavement removal, trimming, cleaning and all other incidental work. The Contractor shall replace at his expense all patches, which are determined inadequate after inspection. The City reserves the right to change the depth of patching as needed.

BITUMINOUS TACK COAT

This work shall consist of the placement of bituminous tack. AC-20 or AC-30 shall be used. All surfaces shall be cleaned completely and thoroughly dry before any tack is applied. Tack shall not be applied when the pavement is wet. Bituminous tack coat shall be applied between .04 and .06 gallons per square yard. The cost for this item is to be included in the unit price for asphalt.

ASPHALT CONCRETE PAVING

Topping course shall be 12.5mm or 9.5mm Superpave, GP 2 only, including bitum material & H lime. (Corrected Optimum Asphalt Content).

The contract does not include paving of any recreational areas within the subdivisions (i.e. parking lots, asphalt trails, etc.).

The plant mix materials from which the asphaltic pavement is manufactured and the plant at which it is manufactured shall meet the requirements of the State of Georgia Department of Transportation (GDOT), Standard specifications, Articles 820; 802; 883; 831; 828; and 882.

Load tickets that meet Georgia Department of Transportation Specifications must accompany all delivered materials. The Contractor must supply copies of all asphalt tickets to the City.

The Contractor is not required to use an MTV (Shuttle Buggy) when placing the 12.5mm asphalt material on the main roads in this contract.

ADJUSTING UTILITY STRUCTURES TO GRADE

All sewer manholes and water valves are to be adjusted by the DeKalb County Department of Watershed Management. The Contractor shall coordinate required utility adjustments with the CEI inspector.

THERMOPLASTIC PAVEMENT MARKINGS

This work shall consist of placement of Thermoplastic Pavement Markings. Final (thermoplastic) pavement markings shall be placed at least 15 calendar days but no more than 60 calendar days after placement of final asphalt lift. These final pavement markings shall match the original pavement markings including center lines, lane lines, turn arrows, crosswalks, stop bars, etc. unless specifically directed otherwise by the City. Final pedestrian crosswalk markings shall adhere to the latest standards. Pavement marking materials shall meet GDOT standard specifications and be on the qualified products list. This will consist of a solid line to the beginning of tapers with mini skips through the length of the taper followed by a 5-inch solid line.

Until permanent pavement markings can be installed, temporary pavement markings are required. There is no pay item for temporary pavement markings. This cost shall be included in the pricing for permanent pavement markings.

The final pavement markings also include installation of type 1 and type 3 Raised Pavement Markers according to GDOT Specifications, where required. RPM’s shall be spaced every 80’ where required (every 40’ along sharp curves) and as directed by the CEI. RPM materials shall meet GDOT standard specifications and shall be on the GDOT Qualified Products List.

24 in. white permanent solid stripe is to be installed as a stop bar at each stop sign where previously existed, or as directed.

5 in. double yellow permanent double yellow traffic stripe is to be installed at each stop sign of each subdivision entrance approaching main roads for a total centerline length of 50 LF.

SIGNAL SYSTEM REPAIR

This work shall consist of repair and installation of loop detectors damaged as a result of the pulverizing, milling, and paving operations. When operations damage existing traffic signal loops, the Contractor shall replace the loops not more than 7 calendar days after final asphalt lift is placed.

Contractor shall immediately notify the City Engineer at (770) 865-5645 when loops are damaged. When loop replacements at an intersection are complete the contractor shall again notify the City Engineer.

Location of replacement loop detectors and lead-in wire, where practical, shall coincide with original location. If, at the splice location a pull box does not exist, a traffic signal pull box (PB-1) conduit and loop lead-in shall be installed per GDOT specifications and as directed by the Traffic Services Manager. Pull boxes installed shall be on the GDOT qualified products list. Testing of the replacement loop detectors shall be performed at the point where the loop wire is spliced to the existing shielded lead-in wire. There shall be no work or testing required beyond this splice point.

CLEANUP

All restoration and clean-up work shall be performed daily. Operations shall be suspended if the Contractor fails to accomplish restoration and clean-up within an acceptable period of time. Asphalt and other debris shall be removed from gutters, sidewalks, yards, driveways, etc. Failure to perform clean-up activities may result in suspension of the work. Milling operation shall be followed immediately by clean-up at which the contractor is to provide power brooms, vacuum sweepers, power blowers, or other means to remove loose debris or dust. Do not allow dust control to restrict visibility of passing traffic or to disrupt adjacent property owners. All pavement areas shall be clean and dry prior to placing tack coat, asphaltic concrete or other materials.

SAFETY

Beginning with mobilization and ending with acceptance of work, the Contractor shall be responsible for providing a clean and safe work environment at the project site. The Contractor shall comply with all OSHA regulations as they pertain to this project.

SPECIAL CONDITIONS

1. All streets on this project require traffic control. Variable Message Signs are to be installed 1 week in advance of paving operations. The Contractor shall coordinate with City of Stonecrest staff.

NO	Street Name	From	To	Length (ft)	Lane-miles (mi)	Area (sq.ft.)	Area (SY.)	MILLING 1.5" (SY)
1	**WINDING GROVE DR**	THOMPSON MILL RD	GROVE FIELD PT	654.7	0.25	18302	2,034	2,034
2	WINDING GROVE DR	GROVE FIELD PT	GROVE FIELD PL	669.1	0.25	25470	2,830	2,830
3	WINDING GROVE DR	GROVE FIELD PL	END	623.9	0.24	20770	2,308	2,308
4	GROVE FIELD PL	WINDING GROVE DR	END	666.3	0.25	21929	2,437	2,437
5	GROVE FIELD PT	WINDING GROVE DR	END	115.7	0.04	6871	763	763
6	**ROLLING MEADOW CT**	THOMPSON MILL RD	END	1167.3	0.44	35672	3,964	3,964
7	**STRATFORD MILL RD**	HOMPSON MILL RD [W	STRATFORD MILL RD	160.1	0.06	3797	422	422
8	STRATFORD MILL RD	STRATFORD MILL RD	THOMPSON MILL RD [E]	364.1	0.14	9956	1,106	1,106
9	STRATFORD MILL RD	STRATFORD MILL RD	STRATFORD MILL CT	432.1	0.16	10322	1,147	1,147
10	STRATFORD MILL RD	STRATFORD MILL CT	HAMLET CT	299	0.11	8672	964	964
11	STRATFORD MILL RD	HAMLET CT	THAMES CT	759.5	0.29	19234	2,137	2,137
12	STRATFORD MILL RD	THAMES CT	END	352.5	0.13	10688	1,188	1,188
13	THAMES CT	STRATFORD MILL RD	END	506.7	0.19	14932	1,659	1,659
14	HAMLET CT	STRATFORD MILL RD	END	569.9	0.22	17653	1,961	1,961
15	STRATFORD MILL CT	STRATFORD MILL RD	END	300.1	0.11	10812	1,201	1,201
16	MILLERS RUN	THOMPSON MILL RD	MILLERS GLN	203.7	0.08	5484	609	609
17	MILLERS RUN	MILLERS GLN	END	380.5	0.14	11733	1,304	1,304
18	**MILLERS GLN**	END	MILLERS RUN	394.3	0.15	11345	1,261	1,261
19	**HAVENWOOD WAY**	THOMPSON MILL RD	HAVENWOOD PL	325.1	0.12	8744	972	972
20	HAVENWOOD WAY	HAVENWOOD PL	END	545.7	0.21	20209	2,245	2,245
21	HAVENWOOD PL	END	HAVENWOOD WAY	367.7	0.14	13314	1,479	1,479
22	ROSEHEATH LN	ROCK SPRINGS RD	CLEETHORPES DR	358.3	0.14	7196	800	800
23	ROSEHEATH LN	CLEETHORPES DR	ROSEHEATH CT	503.2	0.19	12169	1,352	1,352
24	ROSEHEATH LN	ROSEHEATH CT	SUNNYFORD LN	540.9	0.20	12741	1,416	1,416
25	ROSEHEATH LN	SUNNYFORD LN	OXBRIDGE WAY	509.6	0.19	12944	1,438	1,438
26	ROSEHEATH LN	OXBRIDGE WAY	THOMPSON MILL RD	430.5	0.16	13003	1,445	1,445
27	CLEETHORPES DR	THOMPSON MILL RD	ROSEHEATH LN	674.2	0.26	17944	1,994	1,994
28	ROSEHEATH CT	END	ROSEHEATH LN	288.3	0.11	8063	896	896
29	**SUNNYFORD LN**	ROSEHEATH LN	ROCK SPRINGS RD	1480.8	0.56	43041	4,782	4,782
30	OXBRIDGE WAY	ROCK SPRINGS RD	OXBRIDGE WAY	651.8	0.25	18226	2,025	2,025
31	OXBRIDGE WAY	EAST END	OXBRIDGE WAY	108.7	0.04	3436	382	382
32	OXBRIDGE WAY	OXBRIDGE WAY	ROSEHEATH LN	1245.9	0.47	35916	3,991	3,991
33	GLENCROFT ENTRY	THOMPSON MILL RD	WINDING GLEN DR	196.3	0.04	8048	894	
34	WINDING GLEN DR	CENTRAL END	GLENCROFT ENTRY	1619.2	0.61	55627	6,181	6,181
35	**WINDING GLEN DR**	GLENCROFT ENTRY	GLENCROFT PL	414.1	0.16	10360	1,151	1,151
36	WINDING GLEN DR	GLENCROFT PL	NORTH END	1687.1	0.64	133459	14,829	14,829
37	GLENCROFT PL	END	WINDING GLEN DR	325	0.12	12194	1,355	1,355
38	CORKTREE TRL	CLEVELAND RD	GOLDENCHAIN DR	266.8	0.10	7238	804	804
39	CORKTREE TRL	GOLDENCHAIN DR	WILDGINGER RUN	1299.9	0.49	31982	3,554	3,554
40	**GOLDENCHAIN DR**	CORKTREE TRL	WINTERCREEPER DR	350.3	0.13	8413	935	935
41	GOLDENCHAIN DR	WINTERCREEPER DR	WILDGINGER RUN	1547	0.59	38031	4,226	4,226
42	WINTERCREEPER DR	GOLDENCHAIN DR	WILDGINGER RUN	1304.4	0.49	34891	3,877	3,877
43	WILDGINGER RUN	WEST END	GOLDENCHAIN DR	187.4	0.07	4687	521	521
44	WILDGINGER RUN	GOLDENCHAIN DR	WINTERCREEPER DR	450.4	0.17	11150	1,239	1,239
45	WILDGINGER RUN	WINTERCREEPER DR	CORKTREE TRL	348.8	0.13	8032	892	892
46	WILDGINGER RUN	CORKTREE TRL	CLEVELAND RD	883	0.33	23478	2,609	2,609
47	FRAMINGHAM DR	BROWNS MILL RD	E FRAMINGHAM CT	596.9	0.23	17177	1,909	1,909

NO	Street Name	From	To	Length (ft)	Lane-miles (mi)	Area (sq.ft.)	Area (SY.)	MILLING 1.5" (SY)
48	FRAMINGHAM DR	E FRAMINGHAM CT	PORTSMOUTH CIR	940.5	0.36	23169	2,574	2,574
49	FRAMINGHAM DR	PORTSMOUTH CIR	ARDSLEY DR	523.8	0.20	12563	1,396	1,396
50	W FRAMINGHAM CT	WEST END	FRAMINGHAM DR	175.6	0.07	6997	777	777
51	E FRAMINGHAM CT	FRAMINGHAM DR	EAST END	165.5	0.06	8693	966	966
52	ARDSLEY DR	END	EARLHAN CT	241.6	0.09	8605	956	956
53	ARDSLEY DR	EARLHAN CT	FRAMINGHAM DR	1160.1	0.44	29734	3,304	3,304
54	ARDSLEY DR	FRAMINGHAM DR	PORTSMOUTH CIR	388.2	0.15	10220	1,136	1,136
55	EARLHAN CT	END	ARDSLEY DR	276.7	0.10	10415	1,157	1,157
56	PORTSMOUTH CIR	FRAMINGHAM DR	S PORTSMOUTH CIR	523	0.20	13839	1,538	1,538
57	PORTSMOUTH CIR	S PORTSMOUTH CIR	GRACEHILL RD	643.9	0.24	16845	1,872	1,872
58	PORTSMOUTH CIR	GRACEHILL RD	PORTSMOUTH CT	309.1	0.12	7892	877	877
59	PORTSMOUTH CIR	PORTSMOUTH CT	ARDSLEY DR	333.7	0.13	8785	976	976
60	PORTSMOUTH CIR	ARDSLEY DR	GREAT MEADOWS RD	507.3	0.19	13188	1,465	1,465
61	PORTSMOUTH CT	END	PORTSMOUTH CIR	344.4	0.13	12362	1,374	1,374
62	S PORTSMOUTH CIR	PORTSMOUTH CIR	END	119	0.05	6829	759	
63	GRACEHILL RD	PORTSMOUTH CIR	DEER TRCE	452.8	0.17	10830	1,203	1,203
64	GRACEHILL RD	DEER TRCE	OAK RUN DR	360.6	0.14	9342	1,038	1,038
65	GRACEHILL RD	OAK RUN DR	VALLEY OAKS RD	299	0.11	8091	899	899
66	DEER TRCE	GRACEHILL RD	GREAT MEADOWS RD	1173.3	0.44	27147	3,016	3,016
67	OAK RUN DR	GRACEHILL RD	GREAT MEADOWS RD	968.7	0.37	23748	2,639	2,639
68	VALLEY OAKS RD	SALEM RD	GRACEHILL RD	194	0.07	4962	551	551
69	VALLEY OAKS RD	GRACEHILL RD	ANGELA LN	375.3	0.14	10194	1,133	1,133
70	VALLEY OAKS RD	ANGELA LN	GREAT MEADOWS RD	532.9	0.20	12253	1,361	1,361
71	ANGELA LN	VALLEY OAKS RD	VALLEY CHASE CT	427	0.16	8584	954	954
72	VALLEY CHASE CT	END	ANGELA LN	202.3	0.08	8227	914	914
73	VALLEY CHASE CT	ANGELA LN	GREAT MEADOWS RD	413.9	0.16	10955	1,217	1,217
74	**EASTMONT LN**	ENDICOTT LN	GREAT MEADOWS RD	1295.8	0.49	38479	4,275	4,275
75	GREAT MEADOWS RD	EASTMONT LN	ENDICOTT LN	341.1	0.13	9132	1,015	1,015
76	GREAT MEADOWS RD	ENDICOTT LN	HERRENHUT RD	651.3	0.25	17287	1,921	1,921
77	GREAT MEADOWS RD	HERRENHUT RD	PORTSMOUTH CIR	140.5	0.05	3830	426	426
78	GREAT MEADOWS RD	PORTSMOUTH CIR	DEER TRCE	481.4	0.18	13098	1,455	1,455
79	GREAT MEADOWS RD	DEER TRCE	OAK RUN DR	303.1	0.11	7142	794	794
80	GREAT MEADOWS RD	OAK RUN DR	VALLEY OAKS RD	376.9	0.14	10083	1,120	1,120
81	GREAT MEADOWS RD	VALLEY OAKS RD	PETES RD	289	0.11	7120	791	791
82	GREAT MEADOWS RD	PETES RD	VALLEY CHASE CT	143.7	0.05	3542	394	394
83	GREAT MEADOWS RD	VALLEY CHASE CT	GREAT MEADOWS CT	299.6	0.11	8115	902	902
84	GREAT MEADOWS RD	GREAT MEADOWS CT	END	955.6	0.36	32051	3,561	3,561
85	GREAT MEADOWS CT	END	GREAT MEADOWS RD	482.7	0.18	17358	1,929	1,929
86	PETES RD	GREAT MEADOWS RD	END	128.3	0.05	2989	332	332
87	HERRENHUT RD	GREAT MEADOWS RD	HERRENHUT CT	1075.4	0.41	29447	3,272	3,272
88	HERRENHUT RD	HERRENHUT CT	ENDICOTT LN	313.2	0.12	8561	951	951
89	HERRENHUT RD	ENDICOTT LN	END	748.3	0.28	22816	2,535	2,535
90	ENDICOTT LN	GREAT MEADOWS RD	EASTMONT LN	943.2	0.36	25704	2,856	2,856
91	ENDICOTT LN	EASTMONT LN	HERRENHUT RD	359.1	0.14	9866	1,096	1,096
92	HERRENHUT CT	HERRENHUT RD	END	103.4	0.04	5928	659	659
	Package 1				**18.8**		**165,819**	**164,166**

NO	Street Name	From	To	Length (ft)	Lane-miles (mi)	Area (sq.ft.)	Area (SY.)	MILLING 1.5" (SY)
1	CAMDEN OAK WAY	COVINGTON HWY	KINSLAND CT	292.5	0.11	6857	762	762
2	CAMDEN OAK WAY	KINSLAND CT	MCKENNA SQUARE DR	274.7	0.10	6461	718	718
3	MCKENNA SQUARE DR	CAMDEN OAK WAY	KENNONBRIAR CT	332.7	0.13	6573	730	730
4	KINSLAND CT	CAMDEN OAK WAY	END	230.6	0.09	5406	601	601
5	CAMDEN OAK WAY	END	MCKENNA SQUARE DR	359.6	0.14	7331	815	815
6	**KENNONBRIAR CT**	PHILLIPS RD	MCKENNA SQUARE DR	631.9	0.24	13819	1,535	1,535
7	KENNONBRIAR CT	MCKENNA SQUARE DI	END	132.7	0.05	3040	338	338
8	**CHARTER LN**	MARBUT RD	BEDFORD LN	309.5	0.12	7095	788	788
9	CHARTER LN	BEDFORD LN	CHARTER WAY	1064.6	0.40	26469	2,941	2,941
10	BEDFORD LN	WEST END	CHARTER LN	242.9	0.09	10027	1,114	1,114
11	BEDFORD LN	CHARTER LN	EAST END	360.8	0.14	12034	1,337	1,337
12	CHARTER WAY	WEST END	MARBUT TRCE	290.5	0.11	10753	1,195	1,195
13	CHARTER WAY	MARBUT TRCE	CHARTER MNR	351.2	0.13	8073	897	897
14	CHARTER WAY	CHARTER MNR	CHARTER LN	286.1	0.11	6647	739	739
15	CHARTER WAY	CHARTER LN	SOUTH END	773.4	0.29	20248	2,250	2,250
16	MARBUT TRCE	END	CHARTER WAY	241.8	0.09	8832	981	981
17	CHARTER MNR	END	CHARTER WAY	355.3	0.13	11900	1,322	1,322
18	**DAVIDSON DR**	COVINGTON HWY	DAVIDSON CT	425.5	0.16	10135	1,126	1,126
19	DAVIDSON DR	DAVIDSON CT	EVANS MILL RD	1424.1	0.54	36068	4,008	4,008
20	DAVIDSON CT	END	DAVIDSON DR	407.2	0.15	13190	1,466	1,466
21	**EVANS MILL DR**	CHUPP RD	END	1003.1	0.38	26466	2,941	2,941
22	**STABLEWOOD WAY**	PHILLIPS RD	STABLEWOOD CV	230	0.09	5335	593	593
23	STABLEWOOD WAY	STABLEWOOD CV	END	1184.2	0.45	36270	4,030	4,030
24	STABLEWOOD CV	STABLEWOOD WAY	END	168.7	0.06	7549	839	839
25	**MADDOX RD**	ROGERS LAKE RD	ROCK CHAPEL RD	6404.1	2.43	124113	13,790	13,790
26	**WILLIAMS GRANT REYNOLDS DR**	MAGNOLIA ST	KLONDIKE RD	1105.6	0.42	15383	1,709	1,709
27	**COFFEE RD**	END	ROGERS LAKE RD	2585	0.98	46846	5,205	5,205
28	**SPANGLE WAY**	END	COVINGTON HWY	465.7	0.18	12134	1,348	1,348
29	**LITHONIA WEST DR**	END	COVINGTON HWY	1539.9	0.58	47519	5,280	5,280
30	PHILLIPS CREEK DR	PHILLIPS RD	EASTBRIAR DR [W]	1329.4	0.50	32127	3,570	3,570
31	PHILLIPS CREEK DR	EASTBRIAR DR [W]	EASTBRIAR DR [E]	1103.9	0.42	31462	3,496	3,496
32	**LAUREL POST DR**	PHILLIPS RD	LAUREL POST CT	1579.2	0.60	38167	4,241	4,241
33	LAUREL POST DR	LAUREL POST CT	EASTBRIAR DR	257.1	0.10	6102	678	678
34	LAUREL POST CT	LAUREL POST DR	END	667.1	0.25	19130	2,126	2,126
35	EASTBRIAR DR	END	BIG BRANCH CT	204	0.08	7555	839	839
36	EASTBRIAR DR	BIG BRANCH CT	LONGWOOD CT	334.3	0.13	7508	834	834
37	EASTBRIAR DR	LONGWOOD CT	LAUREL POST DR	274.6	0.10	5919	658	658
38	EASTBRIAR DR	LAUREL POST DR	PHILLIPS CREEK DR [E]	1342	0.51	88724	9,858	9,858
39	EASTBRIAR DR	PHILLIPS CREEK DR [E	PHILLIPS CREEK DR [W]	1411.9	0.53	32209	3,579	3,579
40	BIG BRANCH CT	EASTBRIAR DR	END	279.5	0.11	10122	1,125	1,125
41	LONGWOOD CT	EASTBRIAR DR	END	485	0.18	14236	1,582	1,582
42	**DIVIDEND DR**	PARK CENTRAL BLVD	MELLON CT	1440.3	0.55	35456	3,940	3,940
43	DIVIDEND DR	MELLON CT	PANOLA RD	964.9	0.37	27706	3,078	3,078
44	MORSE DR	PARK CENTRAL BLVD	MELLON CT	1363.2	0.52	38736	4,304	4,304
45	MELLON CT	DIVIDEND DR	MORSE DR	658	0.25	18070	2,008	2,008
46	MELLON CT	MORSE DR	END	978.4	0.37	34464	3,829	3,829
47	**EASTERLY PL**	NOLA INDUSTRIAL BL	SNAPFINGER WOODS DI	1089	0.41	33361	3,707	3,707
48	**PHILLIPS CT**	PHILLIPS RD	END	1902	0.72	46273	5,141	5,141
	Package 3				**15.6**		**119,989**	**119,989**

EXHIBIT B
COST ESTIMATE

[attached]

APPENDIX IV
2022 Street Resurfacing Bid Schedule – Bid Package 1

Pay Item	Description	Qty	Unit	Unit Price	Total Price
150-1001	Traffic Control	1	LS	339,000.00	339,000.00
215-0250	Undercut Excavation and Disposal of Materials (As directed by City Engineer)	25	SY	308.00	7,700.00
310-1101	Graded Aggregate Base--including material (As directed by City Engineer)	25	TN	355.40	8,885.00
432-0212	Mill Asphalt Concrete Pavement, 1.5 in. Depth	170,000	SY	5.70	969,000.00
402-1802	Recycled Asphalt Concrete **Patching** using 19 MM Superpave including Bituminous Material & H Lime	1,900	TN	227.00	431,300.00
402-3103	Recycled Asphalt Concrete 9.5 MM Superpave Type II, GP 2 Only, including Bituminous Material and H-Lime	13,600	TN	155.30	2,112,080.00
413-1000	Bitum Tack Coat	6,600	GL	6.20	40,920.00
611-8050	Adjust Manhole to Grade	8	EA	1,750.00	14.000.00
611-8140	Adjust Utility Valve to Grade	8	EA	990.00	7,920.00
653-0110	Thermoplastic PVMT Marking, Arrow TYPE 1	2	EA	170.00	340.00
653-0120	Thermoplastic PVMT Marking, Arrow TYPE 2	2	EA	170.00	340.00
653-1501	Thermoplastic Solid Traffic Stripe, 5 IN White	250	LF	2.80	700.00
653-1502	Thermoplastic Solid Traffic Stripe, 5 IN Yellow	250	LF	2.80	700.00
653-1704	Thermoplastic Solid Traffic Stripe, 24 in., White	25	LF	17.00	425.00
653-1804	Thermoplastic Solid Traffic Stripe, 8 in., White	80	LF	6.00	480.00
653-3501	Thermoplastic Skip Traffic Stripe, 5 IN White	75	GLF	1.70	127.50
653-3502	Thermoplastic Skip Traffic Stripe, 5 IN Yellow	75	GLF	1.70	127.50
	2022 Paving Bid - Package 2 1	**Total**	**Bid**	**Price**	3,934,045.00

Include complete bid schedule with your bid

Invoices will be approved and paid based on measured actual quantities and performed work. Actual quantity may vary from the bid quantities.

Traffic control includes 19 signs at subdivision entrances, no temporary striping or tapes required for residential streets.

APPENDIX IV
2022 Street Resurfacing Bid Schedule – Bid Package 3

Pay Item	Description	Qty	Unit	Unit Price	Total Price
150-1001	Traffic Control	1	LS	257,000.00	257,000.00
215-0250	Undercut Excavation and Disposal of Materials (As directed by City Engineer)	25	SY	308.00	7,700.00
310-1101	Graded Aggregate Base--including material (As directed by City Engineer)	25	TN	355.40	8,885.00
432-0212	Mill Asphalt Concrete Pavement, 1.5 in. Depth	120,000	SY	6.20	744,000.00
402-1802	Recycled Asphalt Concrete **Patching** using 19 MM Superpave including Bituminous Material & H Lime	1,400	TN	242.20	339,080.00
402-3103	Recycled Asphalt Concrete 9.5 MM Superpave Type II, GP 2 Only, including Bituminous Material and H-Lime	9,900	TN	164.20	1,625,580.00
413-1000	Bitum Tack Coat	5,500	GL	6.40	35,200.00
611-8050	Adjust Manhole to Grade	8	EA	1,750.00	14,000.00
611-8140	Adjust Utility Valve to Grade	8	EA	990.00	7,920.00
653-0110	Thermoplastic PVMT Marking, Arrow TYPE 1	2	EA	170.00	340.00
653-0120	Thermoplastic PVMT Marking, Arrow TYPE 2	2	EA	170.00	340.00
653-1501	Thermoplastic Solid Traffic Stripe, 5 IN White	250	LF	2.80	700.00
653-1502	Thermoplastic Solid Traffic Stripe, 5 IN Yellow	250	LF	2.80	700.00
653-1704	Thermoplastic Solid Traffic Stripe, 24 in., White	25	LF	17.00	425.00
653-1804	Thermoplastic Solid Traffic Stripe, 8 in., White	80	LF	6.00	480.00
653-3501	Thermoplastic Skip Traffic Stripe, 5 IN White	75	GLF	1.70	127.50
653-3502	Thermoplastic Skip Traffic Stripe, 5 IN Yellow	75	GLF	1.70	127.50
	2022 Paving Bid - Package 3	**Total**	**Bid**	**Price**	3.042,605.00

Include complete bid schedule with your bid

Invoices will be approved and paid based on measured actual quantities and performed work. Actual quantity may vary from the bid quantities.

Traffic control includes 22 signs at subdivision entrances, no temporary striping or tapes required for residential streets.

EXHIBIT C
E-VERIFY AFFIDAVIT

[attached]

STATE OF GEORGIA
COUNTY OF DEKALB
CITY OF STONECREST

RESOLUTION NO. _____

A RESOLUTION BY THE MAYOR AND CITY COUNCIL OF THE CITY OF STONECREST, GEORGIA AUTHORIZING THE EXECUTION OF THE 2022 STREET RESURFACING PROJECT CONTRACT WITH E.R. SNELL CONTRACTOR, INC. FOR A TERM ENDING ON JULY 17, 2023 IN AN AMOUNT NOT TO EXCEED FOUR MILLION NINE HUNDRED NINETY-FOUR THOUSAND SIX HUNDRED NINETY-SEVEN DOLLARS AND 00/100 CENTS. ($4,994,697.00); AND FOR OTHER PURPOSES.

WHEREAS, the City of Stonecrest, Georgia (the "City") is a municipal corporation duly organized and existing under the laws of the State of Georgia, and is charged with providing public services to its residents; and

WHEREAS, the City wishes to enter into a contract with E.R. Snell Contractor, Inc. (the "Contractor"), a corporation created and existing under the laws of the State of Georgia for the resurfacing of certain municipal streets within the City of Stonecrest ("Contract"); and

WHEREAS, the Contract shall be governed by the law of the State of Georgia, exclusive of its choice of law provisions; and

WHEREAS, any contract for work on all or part of the municipal road system shall be in writing and be approved by resolution which shall be entered on the minutes of such municipality pursuant to O.C.G.A. § 32-4-111; and

WHEREAS, pursuant to O.C.G.A. § 32-4-118 where a contract has been let for bid, a municipality, by resolution entered in its minutes, shall award the contract to the lowest reliable bidder; and

WHEREAS, the City advertised ITB 2022-006, 2022 STREET RESURFACING, Contract for the resurfacing of streets within the city; and

WHEREAS, following a review and evaluation of the proposals submitted in response to the solicitation, E.R. Snell Contractor, Inc. was determined to be one of the most responsive and responsible offerors; and

WHEREAS, the City and the Contractor hereby agree the Contractor will be responsible for providing all labor, materials, and equipment necessary to patch, mill, resurface, and/or re-stripe 95 streets within the City ("Project"); and

WHEREAS, the total cost of the Project shall not exceed FOUR MILLION NINE HUNDRED NINETY-FOUR THOUSAND SIX HUNDRED NINETY-SEVEN DOLLARS AND 00/100 CENTS. ($4,994,697.00); and

WHEREAS, The Contractor shall perform and complete its duties under the Contract including the following: construction of the whole or a designated part of the Project; furnishing of any required surety bonds and insurance; and the provision or furnishing of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, permits and licenses required of the Contractor, fuel, heat, light, cooling and all other utilities as required by the Agreement.; and

WHEREAS, The Contractor shall achieve Substantial Completion of the Work by **July 17, 2023**, unless another date is provided within the written Notice to Proceed.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF STONECREST, GEORGIA, HEREBY RESOLVES, that the Mayor, on behalf of the City, is hereby authorized to execute the contract attached hereto as Exhibit A with E.R. Snell Contractor, Inc. for the resurfacing of certain municipal streets within the City of Stonecrest.

BE IT FURTHER RESOLVED, E.R. Snell Contractor, Inc. shall achieve Substantial Completion of the work by July 17, 2023.

BE IT FURTHER RESOLVED, that the cost of the work shall not exceed FOUR MILLION NINE HUNDRED NINETY-FOUR THOUSAND SIX HUNDRED NINETY-SEVEN DOLLARS AND 00/100 CENTS. ($4,994,697.00).

BE IT FURTHER RESOLVED, that the City Attorney or his designee is directed to negotiate, prepare, and/or review the contract attached in Exhibit A, to affect the intent of this resolution provided that such agreement is in compliance with the conditions set forth herein.

BE IT FURTHER RESOLVED, that the Agreement will not become binding upon the City and the City will incur no obligation or liability under it until it has been executed by the Mayor, attested to by the City Clerk and approved by the City Attorney as to form.

BE IT FURTHER RESOLVED, to the extent any portion of this Resolution is declared to be invalid, unenforceable, or nonbinding, that shall not affect the remaining portions of this Resolution.

BE IT FURTHER RESOLVED, all City resolutions are hereby repealed to the extent they are inconsistent with this Resolution.

BE IT FINALLY RESOLVED, this Resolution shall take effect immediately.

RESOLVED this _____ day of _____, 2022.

CITY OF STONECREST, GEORGIA

_____

Jazzmin Cobble, Mayor

ATTEST:

_____

City Clerk

APPROVED AS TO FORM:

_____

City Attorney

EXHIBIT A

Exhibit

A

THE CITY OF STONECREST, GEORGIA

CONTRACT FOR 2022 STREET RESURFACING PROJECT

AND INCORPORATED GENERAL CONDITIONS

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CONTRACT FOR 2022 STREET RESURFACING PROJECT AND INCORPORATED GENERAL CONDITIONS

This Agreement is made by and between the **CITY OF STONECREST, GEORGIA**, a municipal corporation of the State of Georgia (the "Owner"), and **E.R. SNELL CONTRACTOR, INC.**, a corporation created and existing under the laws of the State of Georgia (the "Contractor"), under seal for the resurfacing of certain municipal streets within the City of Stonecrest (the "Project"). For and in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner and the Contractor hereby agree as follows:

ARTICLE I
THE CONTRACT AND THE CONTRACT DOCUMENTS

1.1 The Contract

1.1.1 The Contract between the Owner and the Contractor, of which this Agreement is a part, consists of the Contract Documents. It shall be effective on the date this Agreement is executed by the last party to execute it.

1.2 The Contract Documents

1.2.1 The Contract Documents consist of this Agreement, any and all Exhibits attached hereto, the Specifications, the Drawings, all Change Orders and Task Orders issued hereafter, any other amendments hereto executed by the parties hereafter, together with the following (if any):

> Advertisement for Competitive Sealed Bids/Proposals; Instructions to Offerors; Bid/Proposal Form; Bid Bond; Payment Bond; Performance Bond; Notice of Award; Change Order; Certificate of Substantial Completion; Notice to Proceed.

Documents not enumerated in this Paragraph 1.2 or not otherwise incorporated by reference hereunder are not Contract Documents and do not form part of this Contract.

1.3 Entire Agreement

1.3.1 This Contract, together with the Contractor's performance and payment bonds for the Project, Contract Documents, constitute the entire and exclusive agreement between the Owner and the Contractor with reference to the Project. Specifically, but without limitation, this Contract supersedes any bid documents and all prior written or oral communications, representations and negotiations, if any, between the Owner and Contractor.

1.4 No Privity with Others

1.4.1 Nothing contained in this Contract shall create or be interpreted to create privity or any other contractual agreement between the Owner and any person or entity other than the Contractor.

1.5 Intent and Interpretation

1.5.1 The intent of this Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result shall be provided by the Contractor for the Contract Price.

1.5.2 This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

1.5.3 When a word, term or phrase is used in this Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

1.5.4 The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation."

1.5.5 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

1.5.6 Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms unless the context of their usage clearly requires a contrary meaning.

1.5.7 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents, the Shop Drawings and the Product Data and shall give written notice to the Owner of any inconsistency, ambiguity, error or omission which the Contractor may discover with respect to these documents before proceeding with the affected Work. The issuance, or the express or implied approval by the Owner or the Engineer of the Contract Documents, Shop Drawings or Product Data shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The Owner has requested the Engineer to only prepare documents for the Project, including the Drawings and Specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. HOWEVER, THE OWNER MAKES NO REPRESENTATION

OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS. By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the Owner concerning such documents as no such representation or warranties have been or are hereby made.

1.5.8 Neither the organization of any of the Contract Documents into divisions, sections, paragraphs, articles, (or other categories), nor the organization or arrangement of the Design, shall control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.

1.6 Ownership of Contract Documents

1.6.1 The Contract Documents, and each of them, shall remain the property of the Owner. The Contractor shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided, however, that in no event shall Contractor use, or permit to be used, any or all of such Contract Documents on other projects without the Owner's prior written authorization.

1.7 Hierarchy of Contract Documents

1.7.1 In the event of any conflict, discrepancy, or inconsistency among any of the Contract Documents, the following hierarchy shall control: (a) as between figures given on drawings and the scaled measurements, the figures shall govern; (b) as between large scale drawings and small scale drawings, the large scale shall govern; (c) as between drawings and specifications, the requirements of the specifications shall govern; (d) as between the Contract for Construction and Incorporated General Conditions and the specifications, the requirements of the Contract for Construction and Incorporated General Conditions shall govern. As set forth hereinabove, any and all conflicts, discrepancies, or inconsistencies shall be immediately reported to the Engineer in writing by the Contractor.

ARTICLE II
THE WORK

2.1 The Contractor shall perform all of the Work required, implied or reasonably inferable from, this Contract.

2.2 The term "Work" shall mean whatever is done by or required of the Contractor to perform and complete its duties under this Contract, including the following: construction of the whole or a designated part of the Project; furnishing of any required surety bonds and insurance; and the provision or furnishing of labor, supervision, services, materials, supplies, equipment, fixtures,

appliances, facilities, tools, transportation, storage, power, permits and licenses required of the Contractor, fuel, heat, light, cooling and all other utilities as required by this Contract. The Work to be performed by the Contractor is generally described as follows: See **Exhibit A**, which is attached hereto and is incorporated herein by reference.

ARTICLE III
CONTRACT TIME

3.1 Contract Term

3.1.1 This Agreement shall commence on the effective date of this Agreement and shall terminate absolutely and without further obligation on the part of the Owner at the close of the calendar year in which it was executed, unless renewed pursuant to Paragraph 12.3.

3.2 Time and Liquidated Damages

3.2.1 The Contractor shall commence the Work under this Agreement on the date established by a written Notice to Proceed given by the Owner to the Contractor fixing the date on which the Contract time will commence to run. The Contractor shall achieve Substantial Completion of the Work by **July 17, 2023,** unless another date is provided within the written Notice to Proceed. The number of consecutive calendar days from the date on which the Work is permitted to proceed, through the date set forth for Substantial Completion, shall constitute the "Contract Time."

3.2.2 The Contractor shall pay the Owner the sum of two hundred ($200.00) per day for each and every business day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

3.3 Substantial Completion

3.3.1 "Substantial Completion" shall mean that stage in the progression of the Work when the Work is sufficiently complete in accordance with this Contract that the Owner can enjoy beneficial use and occupancy of the Work and can utilize the Work for its intended purpose. Partial use or occupancy of the Project shall not result in the Project being deemed

substantially complete, and such partial use or occupancy shall not be evidence of Substantial completion.

3.4 Time is of the Essence

3.4.1 All limitations of time set forth in the Contract Documents are of the essence of this Contract.

ARTICLE IV
CONTRACT PRICE

4.1 The Contract Price

4.1.1 The Owner shall pay, and the Contractor shall accept, as full and complete payment for the Contractor's timely and full performance of its obligations hereunder, the total lump sum amount set forth in Paragraph 4.1.2. The lump sum amount set forth in Paragraph 4.1.2 shall not be modified except by Change Order(s) as provided in this Agreement.

4.1.2 The total lump sum amount to be paid by the Owner to the Contractor for the Contractor's limitedly and full performance of its obligations under the Agreement shall not exceed FOUR MILLION NINE HUNDRED NINETY-FOUR THOUSAND SIX HUNDRED NINETY-SEVEN DOLLARS AND 00/100 CENTS. ($4,994,697.00). See **Exhibit B** (Cost Estimate) attached hereto and incorporated by reference herein.

ARTICLE V
PAYMENT OF THE CONTRACT PRICE

5.1 Schedule of Values

5.1.1 For all portions of this Agreement not payable in unit values, within ten (10) calendar days of the effective date hereof, the Contractor shall submit to the Owner and to the Engineer a Schedule of Values allocating the Contract Price to the various portions of the Work. The Contractor's Schedule of Values shall be prepared in such form, with such detail, and supported by such data as the Engineer or the Owner may require to substantiate its accuracy. The Contractor shall not imbalance its Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the Contractor shall constitute a material breach of this Contract. The Schedule of Values shall be used only as a basis for the Contractor's Applications for Payment and shall only constitute such basis after it has been acknowledged in writing by the Engineer and the Owner.

5.2 Payment Procedure

5.2.1 The Owner shall pay the Contract Price to the Contractor as provided below.

5.2.2 *Progress Payments* -- Based upon the Contractor's Applications for Payment submitted to the Engineer and upon Certificates for Payment subsequently issued to the Owner by the Engineer, the Owner shall make progress payments to the Contractor on account of the Contract Price.

5.2.3 On or before the 1st day of each month after commencement of the Work, the Contractor shall submit an Application for Payment for the period ending the 30th day of the month to the Engineer in such form and manner, and with such supporting data and content, as the Owner or the Engineer may require. Therein, the Contractor may request payment for ninety percent (90%) of that portion of the Contract Price properly allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Work plus ninety percent (90%) of that portion of the Contract Price properly allocable to materials or equipment properly stored on-site (or elsewhere if approved in advance in writing by the Owner) for subsequent incorporation in the Work, less the total amount of previous payments received from the Owner. Payment for stored materials and equipment shall be conditioned upon the Contractor's proof satisfactory to the Owner, that the Owner has title to such materials and equipment and shall include proof of required insurance. Such Application for Payment shall be signed by the Contractor and shall constitute the Contractor's representation that the Work has progressed to the level for which payment is requested in accordance with Articles 4 and 5 of this Agreement, that the Work has been properly installed or performed in full accordance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. Thereafter, the Engineer will review the Application for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by this Contract. The Engineer shall determine and certify to the Owner the amount properly owing to the Contractor.

5.2.4 The Owner shall make partial payments on account of the Contract Price to the Contractor within thirty (30) days following the Engineer's receipt of each Application for Payment. The amount of each partial payment shall be the amount certified for payment by the Engineer less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by this Contract. The Engineer's certification of the Contractor's Application for Payment shall not preclude the Owner from the exercise of any of its rights as set forth in Paragraph 5.3 hereinbelow. PROVIDED, HOWEVER, that when fifty (50) percent of the contract value, including change orders and other additions to the contract value, provided for by the Contract Documents is due, and the manner of completion of the contract Work and its progress are reasonably satisfactory to the Owner, the Owner shall withhold no more retainage. At the discretion of the Owner, and with the approval of the Contractor, the retainage of any subcontractor may be released separately as the subcontractor completes its work. If, however, after discontinuing the retention, the Owner determines that the Work is unsatisfactory or has fallen behind schedule, retention may be resumed at the previous level. If retention is

resumed by the Owner, the Contractor and subcontractors shall be entitled to resume withholding retainage accordingly. The rights of the Owner set forth herein to retainage are in addition to all of the other rights and remedies of the Owner set forth in this Agreement.

5.2.5 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which payments have been received from the Owner shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.

5.2.6 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which such Subcontractor is entitled. In the event the Owner becomes informed that the Contractor has not paid a Subcontractor as herein provided, the Owner shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed commit the Owner to repeat the procedure in the future.

5.2.7 No progress payment, nor any use or occupancy of the Project by the Owner, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.

5.3 Withheld Payment

5.3.1 To the extent permitted by Georgia law, the Owner may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the Owner from loss because of:

(a) defective Work not remedied by the Contractor nor, in the opinion of the Owner, likely to be remedied by the Contractor;

(b) claims of third parties against the Owner or the Owner's property;

(c) failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;

(d) evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;

(e) evidence that the Work will not be completed in the time required for substantial or final completion;

(f) persistent failure to carry out the Work in accordance with the Contract;

(g) damage to the Owner or third party to whom the Owner is, or may be, liable.

In the event that the Owner makes written demand upon the Contractor for amounts previously paid by the Owner as contemplated in this Subparagraph 5.3.1, the Contractor shall promptly comply with such demand.

5.4 Unexcused Failure to Pay

5.4.1 If within forty-five (45) days after the date established herein for payment to the contractor by the Owner, the Owner, without cause or basis hereunder, fails to pay the Contractor any amount then due and payable to the Contractor, then the Contractor may, after seven (7) additional days' written notice to the Owner and Engineer, and without prejudice to any other available rights or remedies it may have, stop the Work until payment of those amounts due from the Owner has been received. Any payment not made within forty-five (45) days after the date due shall bear interest at the rate of three percent (3%) per annum.

5.5 Substantial Completion

5.5.1 When the Contractor believes that the Work is substantially complete, the Contractor shall submit to the Engineer and Owner notice that it believes the project has been completed. The Engineer shall then cause the project to be inspected and provide the Contractor with either (1) a list of items to be completed or corrected by the Contractor, or (2) a Certificate of Substantial Completion. When the Engineer on the basis of an inspection determines that the Work is in fact substantially complete, it will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for Project security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. The Certificate of Substantial Completion shall be submitted to the Contractor for its written acceptance of the responsibilities assigned to it in such certificate. Upon Substantial Completion of the Work, and execution by both the Owner and Contractor of the Certificate of Substantial Completion, the Owner shall pay the Contractor an amount sufficient to increase total payment to the Contractor to one hundred percent (100%) of the Contract Price less two hundred percent (200%) of the reasonable cost as determined by the Owner for completing all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, and handling all unsettled claims.

5.6 Completion and Final Payment

5.6.1 When all of the Work is finally complete, and the Contractor is ready for a final inspection, it shall notify the Owner and the Engineer thereof in writing. Thereupon, the Engineer will make final inspection of the Work and, if the Work is complete in full

accordance with this Contract and all Contract Documents, and this Contract has been fully performed, the Engineer will promptly issue a final Certificate for Payment certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. Guarantees required by the Contract shall commence on the date of Final Completion of the Work. If the Engineer is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

5.6.1.1 If the Contractor fails to achieve final completion within the time fixed therefore by the Engineer in its Certificate of Substantial Completion, the Contractor shall pay the Owner the sum of One Thousand Dollars ($1,000.00) per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth herein for final completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that final completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving final completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

5.6.2 The Contractor shall not be entitled to final payment unless and until it submits to the Engineer and Owner all documents required by the Contract, including, but not limited to, its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner, or the Owner's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors of the Contractor and of any and all other parties required by the Engineer or the Owner; consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the Owner, the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

5.6.3 The Owner shall make final payment of all sums due the Contractor within thirty (30) days of the Engineer's execution of a final Certificate for Payment.

5.6.4 Acceptance of final payment shall constitute a waiver of all claims against the Owner by the Contractor except for those claims previously made in writing against the Owner by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final payment.

5.6.5 The Owner and Contractor expressly agree that the terms of payment, payment periods, and rates of interest herein shall control to the exclusion of any provisions set forth in the Georgia Prompt Pay Act, O.C.G.A. Section 13-11-1 *et al*., and the provisions of said Act are herein waived.

ARTICLE VI
THE OWNER

6.1 Information, Services and Things Required from Owner

6.1.1 If the Contractor requests in writing, the Owner shall furnish to the Contractor, prior to the execution of this Contract, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the Owner does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability, therefore. The Owner shall also furnish surveys, legal limitations and utility locations (if known), and a legal description of the Project site.

6.1.2 Excluding permits and fees normally the responsibility of the Contractor, the Owner shall obtain all approvals, easements, and the like required for construction and shall pay for necessary assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

6.1.3 The Owner shall furnish the Contractor, free of charge, three (3) copies of the Contract Documents for execution of the Work (if applicable). The Contractor will be charged, and shall pay the Owner, Fifty Dollars ($50.00) per additional set of Contract Documents which it may require.

6.2 Right to Stop Work

6.2.1 If the Contractor persistently fails or refuses to perform the Work in accordance with this Contract, the Owner may order the Contractor to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the Owner orders that Work be resumed. In such event, the Contractor shall immediately obey such order.

6.3 Owner's Right to Perform Work

6.3.1 If the Contractor's Work is stopped by the Owner under Paragraph 6.2, and the Contractor fails within seven (7) days of such stoppage to provide adequate assurance to the Owner that the cause of such stoppage will be eliminated or corrected, then the Owner may, without prejudice to any other rights or remedies the Owner may have against the Contractor, proceed to carry out the subject Work. In such a situation, an appropriate Change Order shall

be issued deducting from the Contract Price the cost of correcting of the subject deficiencies, plus compensation for the Engineer's additional services and expenses necessitated thereby, if any. If the unpaid portion of the Contract Price is insufficient to cover the amount due to the Owner, the Contractor shall pay the difference to the Owner.

ARTICLE VII
THE CONTRACTOR

7.1 The Contractor

7.1.1 The Contractor is again reminded of its continuing duty set forth in Subparagraph 1.5.7. The Contractor shall perform no part of the Work at any time without adequate Contract Documents or, as appropriate, approved shop Drawings, Product Data or Samples for such portion of the Work. If the Contractor performs any of the Work knowing it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to the Engineer, the Contractor shall bear responsibility for such performance and shall bear the cost of correction.

7.2 Compliance with Contract

7.2.1 The Contractor shall perform the work strictly in accordance with this Contract.

7.3 Reasonable Care and Skill

7.3.1 The Contractor shall supervise and direct the Work and warrants that it will perform all services or Work using reasonable care and skill and in workmanlike manner consistent with industry standards. The Contractor shall be responsible to the Owner for any and all acts or omissions of the Contractor, its employees and others engaged in the Work on behalf of the Contractor.

7.4 Warranty

7.4.1 The Contractor warrants to the Owner that all labor furnished to progress the Work under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality free from faults and defects and in strict conformance with this Contract. All Work not conforming to these requirements may be considered defective.

7.4.2 The standard of care applicable to the Contractor's services shall be the standard of skill and diligence normally employed by businesses performing the same or similar services at the time the Contractor's services are performed. For a twelve (12) month period commencing with the completion of the Work, the Contractor shall re-perform, solely at its

own cost and without additional compensation due from the Owner, any services not meeting this standard. The Contractor further warrants that any service it undertakes in the performance of the Work will be adequate and sufficient to accomplish the purposes for which they are performed, and no review or approval thereof by the City shall be deemed to diminish this warranty in any way.

7.5 Permits

7.5.1 The Contractor shall obtain and pay for all permits, inspections, fees and licenses necessary and ordinary for the Work. The Contractor shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law, ordinance, or regulation pertaining to the Work.

7.6 Supervision

7.6.1 The Contractor shall employ and maintain at the Project site only competent supervisory personnel. Absent written instruction from the Contractor to the contrary, the superintendent shall be deemed the Contractor's authorized representative at the site and shall be authorized to receive and accept any and all communications from the Owner or the Engineer.

7.6.2 Key supervisory personnel assigned by the Contractor to this Project are as follows:

Name	**Function**
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the Owner agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assumes one or more of those functions listed above, the Contractor shall be bound by the provisions of this Subparagraph 7.6.2 as though such individuals had been listed above.

7.7 Schedules

7.7.1 The Contractor, within fifteen (15) days of commencing the Work, shall submit to the Owner for their information the Contractor's schedule for completing the Work. Additionally,

within fifteen (15) days of commencing the Work, the Contractor shall submit to the Owner and the Engineer a separate shop drawing and submittal schedule detailing the schedule for the submission to the Engineer of all shop drawings (if applicable) submittals, product data and other similar documents. Each of the schedules required herein shall be revised no less frequently than monthly (unless the parties otherwise agree in writing) and shall be revised to reflect conditions encountered from time-to time and shall be related to the entire Project. Each such revision shall be furnished to the Owner and the Engineer. The schedules, and all revisions, shall be in such form, and shall contain such detail, as the Owner or the Engineer may require. THE PARTIES SPECIFICALLY AGREE THAT ANY FLOAT CONTAINED IN THE SCHEDULES SHALL BELONG TO THE PROJECT AND IN NO EVENT SHALL THE CONTRACTOR MAKE CLAIM FOR ANY ALLEGED DELAY, ACCELERATION, OR EARLY COMPLETION SO LONG AS THE PROJECT IS COMPLETED WITHIN THE CONTRACT TIME. Strict compliance with the requirements of this Paragraph is condition precedent for payment to the Contractor, and failure by the Contractor to strictly comply with said requirements shall constitute a material breach of this Contract.

7.8 Required Documents at the Site

7.8.1 The Contractor shall continuously maintain at the site, for the benefit of the Owner and the Engineer, one record copy of this Contract marked to record on a current basis changes, selections and modifications made during construction. Additionally, the Contractor shall maintain at the site for the Owner and the Engineer the approved Shop Drawings (if applicable), Product Data, Samples, and other similar required submittals. Upon final completion of the Work, all of these record documents shall be delivered to the Owner.

7.9 Shop Drawings, Product Data and Samples

7.9.1 Shop Drawings (if applicable), Product Data, Samples and other submittals from the Contractor do not constitute Contract Documents. Their purpose is merely to demonstrate the manner in which the Contractor intends to implement the Work in conformance with information received from the Contract Documents.

7.9.2 The Contractor shall not perform any portion of the Work requiring submittal and review of Shop Drawings (if applicable), Product Data or Samples unless and until such submittal shall have been approved by the Engineer. Approval by the Engineer, however, shall not be evidence that Work installed pursuant thereto conforms with the requirements of this Contract.

7.10 Cleaning the Site and the Project

7.10.1 The Contractor shall keep the site reasonably clean during performance of the Work. Upon final completion of the Work, the Contractor shall clean the site and the Project and remove all waste, together with all of the Contractor's property therefrom.

7.11 Access to Work

7.11.1 The Owner and the Engineer shall have access to the Work at all times from commencement of the Work through final completion. The Contractor shall take whatever steps necessary to provide access when requested.

7.12 Indemnity

7.12.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, its officials, officers, employees, agents and representatives from and against liability, claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from performance of the Work, provided that such liability, claims, damage, loss or expense is attributable to injury, bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent or willful acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such liability, claim, damage, loss or expense is caused in part by a party indemnified hereunder.

7.12.2 For any claim against any person or entity indemnified under this Paragraph 7.12 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 7.12 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefits acts or other employee benefits acts.

7.13 Means, Methods, Techniques, Sequences, Procedures and Safety

7.13.1 The Contractor is fully responsible for, and shall have control over, all construction means, methods, techniques, sequences, procedures and safety, and shall coordinate all portions of the work required by the Contract Documents. Nothing contained herein, however, shall in any manner whatsoever relieve, release or discharge the Engineer from any of its duties, responsibilities, obligations, or liabilities as set forth in its contract with the Owner, or as provided by law.

7.14 Separate Contracts

7.14.1 The Owner reserves the right to perform work on the premises with its own forces or by the use of other Contractors. In such event, the Contractor shall fully cooperate with the Owner and such other Contractors and shall coordinate, schedule and manage its work so as not to hinder, delay or otherwise interfere with the separate work of the Owner or other Contractors.

ARTICLE VIII

CONTRACT ADMINISTRATION

8.1 Engineering

8.1.1 The Engineer for this project shall be **Lowe Engineers, LLC and CERM, LLC** (the "Engineer"). In the event the Owner should find it necessary or convenient to replace the Engineer, the Owner shall retain a replacement Engineer and the status of the replacement Engineer shall be that of the former Engineer.

8.2 Engineer's Administration

8.2.1 The Engineer, unless otherwise directed by the Owner in writing, will perform those duties and discharge those responsibilities allocated to the Engineer as set forth in this Contract. The Engineer shall be the Owner's representative from the effective date of this Contract until final payment has been made. The Engineer shall be authorized to act on behalf of the Owner only to the extent provided in this Contract.

8.2.2 The Owner and the Contractor shall communicate with each other in the first instance through the Engineer.

8.2.3 The Engineer shall be the initial interpreter of the requirements of the drawings and specifications and the judge of the performance thereunder by the Contractor. The Engineer shall render written or graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.

8.2.4 The Engineer will review the Contractor's Applications for Payment and will certify to the Owner for payment to the Contractor, those amounts then due the Contractor as provided in this Contract.

8.2.5 The Engineer shall have authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Engineer deems it necessary or advisable, the Engineer shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.

8.2.6 The Engineer will review and approve, or take other appropriate action as necessary, concerning the Contractor's submittals including Shop Drawings, Product Data and Samples. Such review, approval or other action shall be for the sole purpose of determining conformance with the design concept and information given through the Contract Documents.

8.2.7 The Engineer will prepare Change Orders and may authorize minor changes in the Work by Field Order as provided elsewhere herein.

8.2.8 The Engineer shall, upon written request from the Contractor, conduct inspections to

determine the date of Substantial Completion and the date of Final Completion, will receive and forward to the Owner for the Owner's review and records, written warranties and related documents required by this Contract and will issue a final Certificate for Payment upon compliance with the requirements of this Contract.

8.2.9 The Engineer's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.

8.2.10 THE DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR UNDER THIS AGREEMENT SHALL IN NO MANNER WHATSOEVER BE CHANGED, ALTERED, DISCHARGED, RELEASED, OR SATISFIED BY ANY DUTY, OBLIGATION OR RESPONSIBILITY OF THE ENGINEER. THE CONTRACTOR IS NOT A THIRD-PARTY BENEFICIARY OF ANY AGREEMENT BY AND BETWEEN THE OWNER AND THE ENGINEER. IT IS EXPRESSLY ACKNOWLEDGED AND AGREED THAT THE DUTIES OF THE CONTRACTOR TO THE OWNER ARE INDEPENDENT OF, AND ARE NOT DIMINISHED BY, ANY DUTIES OF THE ENGINEER TO THE OWNER.

8.3 Claims by the Contractor

8.3.1 All Contractor claims shall be initiated by written notice and claim to the Owner and Engineer. Such written notice and claim must be furnished within seven (7) days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.

8.3.2 Pending final resolution of any claim of the Contractor, the Contractor shall diligently proceed with performance of this Contract and the Owner shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim under this Paragraph 8.3 shall be reflected by a Change Order executed by the Owner, the Engineer, and the Contractor.

8.3.3 *Claims for Concealed and Unknown Conditions* -- Should concealed and unknown conditions encountered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure be at variance with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided for in this Contract, be encountered, the Contract Price shall be equitably adjusted by Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the Owner having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the Owner and the Engineer written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.

8.3.4 *Claims for Additional Costs* -- If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the Owner therefore, the Contractor shall give the Engineer written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.

8.3.4.1 In connection with any claim by the Contractor against the Owner for completion in excess of the Contract Price, any liability of the Owner shall be strictly limited to direct costs incurred by the Contractor and shall in no event include indirect costs or consequential damages of the Contractor. The Owner shall not be liable to the Contractor for claims of third parties, including Subcontractors, unless and until liability of the Contractor has been established therefore in a court of competent jurisdiction.

8.3.5 *Claims for Additional Time* -- If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the Owner or someone acting in the Owner's behalf, or by Changes Ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipatable, fire or any causes beyond the Contractor's control, then the date for achieving Substantial completion of the Work shall be extended upon the written notice and claim of the Contractor to the Owner and the Engineer, for such reasonable time as the Engineer may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven (7) days after the occurrence of the event or the first appearance of the condition giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Project. In the event the delay to the Contractor is continuing, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this Subparagraph, any claim for an extension of time shall be waived.

8.4 Extension of Contract Time for Unusually Adverse Weather Conditions not Reasonably Anticipated

8.4.1 Pursuant to the provisions of subparagraph 8.3.5 of this Contract, the contract time may be extended upon written notice and claim of the Contractor to the Owner and the Engineer as set forth in such subparagraph and as further set forth herein. It is, however, expressly agreed that the time for completion as stated in the Contract Documents includes due allowance for calendar days on which work cannot be performed out-of-doors.

8.4.2 In addition to the notice requirements set forth in the aforesaid subparagraph 8.3.5, the Contractor agrees that it shall provide written notice to the Owner and the Engineer on the day of any adverse weather not anticipated and for which a request for a time extension has been, or will be, made. Said notice shall state with particularity a description of the adverse weather as well as

a description of the nature and extent of any delay caused by such weather. Receipt of this notice by the Owner and the Engineer is a condition precedent to the submission of any claim for an extension of time as provided by subparagraph 8.3.5. Furthermore, as required by subparagraph 8.3.5, the Contractor shall submit a written claim for extension of time within seven (7) days after the occurrence of the adverse weather and such claim shall be supported by such documentation including, but not limited to, official weather reports, as the Owner or the Engineer may be required. To the extent that any of the terms and conditions set forth in this paragraph are in conflict with any of the terms and conditions of subparagraph 8.3.5 as identified herein, the terms and conditions of this paragraph shall govern and control.

ARTICLE IX
SUBCONTRACTORS

9.1 Definition

9.1.1 A Subcontractor is an entity, which has a direct contract with the Contractor to perform a portion of the Work.

9.2 Award of Subcontracts

9.2.1 Upon execution of the Contract, the Contractor shall furnish the Owner, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Project. The Owner shall promptly reply to the Contractor, in writing, stating any objections the Owner may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the Owner has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

9.2.2 All Subcontracts shall afford the Contractor rights against the Subcontractor which correspond to those rights afforded to the Owner against the Contractor herein, including those rights afforded to the Owner by Subparagraph 12.2.1 below.

ARTICLE X
CHANGES IN THE WORK

10.1 Changes Permitted

10.1.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Task/Field Order.

10.1.2 Changes in the Work shall be performed under applicable provisions of this Contract and the Contractor shall proceed promptly with such changes.

10.2 Change Order Defined

10.2.1 Change Order shall mean a written order to the Contractor executed by the Owner and Engineer, issued after execution of this Contract, authorizing, and directing a change in the Work or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and the Contract Time may be changed only by Change Order.

10.3 Changes in the Contract Price

10.3.1 Any change in the Contract Price resulting from a Change Order shall be determined as follows: (a) by mutual agreement between the Owner and the Contractor as evidenced by (1) the change in the Contract Price being set forth in the Change Order, (2) such change in the Contract Price, together with any conditions or requirements related thereto, being initialed by both parties and (3) the Contractor's execution of the Change Order, or (b) if no mutual agreement occurs between the Owner and the Contractor, then, as provided in Subparagraph 10.3.2 below.

10.3.2 If no mutual agreement occurs between the Owner and the Contractor as contemplated in the Subparagraph 10.3.1 above, the change in the Contract Price, if any, shall then be determined by the Engineer on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content as the Owner or Engineer requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies, or equipment including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools whether rented from the contractor or others, reasonable costs of premiums for all bonds and insurance, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and jobsite field office overhead directly attributable to the change. In the event the Contractor performs the Work required by Change Order with its own forces, and not the forces of a Subcontractor, the overhead and profit due the Contractor for such work shall be twenty (20) percent. In the event the Change Order Work is performed by one or more Subcontractors, the Contractor's overhead and profit shall be seven and one-half (7-½) percent. In no event shall any expenditure or savings associated with the Contractor's home office or other non-jobsite overhead expense be included in any change in the Contract Price. Pending final determination of reasonable

expenditures or savings to the Owner, payments on account shall be made to the Contractor on the Engineer's Certificate for Payment.

10.3.3 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that application of such unit prices to the quantities of Work proposed will cause substantial inequity to the Owner, the applicable unit prices shall be equitably adjusted.

10.4 Effect of Executed Change Order

10.4.1 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor by executing the Change Order waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

10.5 Notice to Surety; Consent

10.5.1 The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approval is required by the Contractor's surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the Owner that the surety has been notified of and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

ARTICLE XI
UNCOVERING AND CORRECTING WORK

11.1 Uncovering Work

11.1.1 If any of the Work is covered contrary to the Engineer's request or to any provisions of this Contract, it shall, if required by the Engineer or Owner, be uncovered for the Engineer's inspection, and shall be properly replaced at the Contractor's expense without change in the Contract Time.

11.1.2 If any of the Work is covered in a manner not inconsistent with Subparagraph 11.1.1 above, it shall, if required by the Engineer or Owner, be uncovered for the Engineer's inspection. If such Work conforms strictly to this Contract, costs of uncovering and proper replacement shall by Change Order be charged to the Owner. If such Work does not strictly conform to this Contract, the Contractor shall pay the costs of uncovering and proper replacement.

11.2 Correcting Work

11.2.1 The Contractor shall immediately proceed to correct Work rejected by the Owner as defective or failing to conform to this Contract. The Contractor shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections, and reimbursement to the Owner for any outside contracted services and expenses made necessary thereby.

11.2.2 If within one (1) year after Substantial Completion of the Work any of the Work is found to be defective or not in accordance with this Contract, the Contractor shall correct it promptly upon receipt of written notice from the Owner. This obligation shall survive final payment by the Owner and termination of this Contract. With respect to Work first performed and completed after Substantial Completion, this one-year obligation to specifically correct defective and nonconforming Work shall be extended by the period of time which elapses between Substantial Completion and completion of the subject Work.

11.2.3 Nothing contained in this Paragraph 11.2 shall establish any period of limitation with respect to other obligations which the Contractor has under this Contract. Establishment of the one-year time period in Subparagraph 11.2.2 relates only to the duty of the Contractor to specifically correct the Work.

11.3 Owner May Accept Defective or Nonconforming Work

11.3.1 If the Owner chooses to accept defective or nonconforming Work, the Owner may do so. In such event, the Contract Price shall be reduced by the greater of (a) the reasonable cost of removing and correcting the defective or nonconforming Work, and (b) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Owner for its acceptance of defective or nonconforming Work, the Contractor shall, upon written demand from the Owner, pay the Owner such remaining compensation for accepting defective or nonconforming Work.

ARTICLE XII
CONTRACT TERMINATION

12.1 Termination by the Contractor

12.1.1 If the Work is stopped for a period of ninety (90) days by an order of any court or other public authority, or as a result of an act of the Government, through no fault of the Contractor or any person or entity working directly or indirectly for the Contractor, the Contractor may, upon ten (10) days' written notice to the Owner and the Engineer, terminate performance under this Contract and recover from the Owner payment for the actual

reasonable expenditures of the Contractor (as limited in Subparagraph 10.3.2 above) for all Work executed and for materials, equipment, tools, construction equipment and machinery actually purchased or rented solely for the Work, less any salvage value of any such items.

12.1.2 If the Owner shall persistently or repeatedly fail to perform any material obligation to the Contractor for a period of fifteen (15) days after receiving written notice from the Contractor of its intent to terminate hereunder, the Contractor may terminate performance under this Contract by written notice to the Engineer and the Owner. In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 12.2.1 hereunder.

12.2 Termination by the Owner

12.2.1 *For Convenience*

12.2.1.1 The Owner may for any reason whatsoever terminate performance under this Contract by the Contractor for convenience. The Owner shall give written notice of such termination to the Contractor specifying when termination becomes effective.

12.2.1.2 The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop Work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The Owner may direct the Contractor to assign the Contractor's right, title and interest under terminated orders or subcontracts to the Owner or its designee.

12.2.1.3 The Contractor shall transfer title and deliver to the Owner such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has.

12.2.1.4

(a) The Contractor shall submit a termination claim to the Owner and the Engineer specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Engineer. If the Contractor fails to file a termination claim within six (6) months from the effective date of the termination, the Owner shall pay the Contractor, an amount derived in accordance with sub-paragraph (c) below.

(b) The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.

(c) Absent Agreement to the amount due to the Contractor, the Owner shall pay the Contractor the following amounts:

(i) Contract prices for labor, materials, equipment and other services provided under this Contract;

(ii) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it appears the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 12.2.1.2 of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under this Subparagraph 12.2.1 shall not exceed the total Contract Price, as properly adjusted, reduced by the number of payments otherwise made, and shall in no event include duplication of payment.

12.2.2 *For Cause*

12.2.2.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, supply enough properly skilled workers, supervisory personnel or proper equipment or materials, or if it fails to make prompt payment to Subcontractors for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority that has jurisdiction, or otherwise is guilty of a substantial violation of a material provision of this Contract, then the Owner may by written notice to the Contractor, without prejudice to any other right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

12.2.2.2 If the unpaid balance of the Contract Price exceeds the cost of finishing the work, including compensation for the Engineer's additional services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance,

the Contractor shall pay the difference to the Owner. This obligation for payment shall survive the termination of the Contract.

12.2.2.3 In the event the employment of the Contractor is terminated by the Owner for cause pursuant to Subparagraph 12.2.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph 12.2.1 and the provisions of Subparagraph 12.2.1 shall apply.

12.3 Renewal

12.3.1 Pursuant to O.C.G.A. § 36-60-13, this Agreement shall commence on the effective date of this Agreement and shall terminate absolutely and without further obligation on the part of the Owner at the close of the calendar year in which it was executed, and at the close of each succeeding calendar year for which it may be renewed following the process outlined in subsection 12.2.3.2 below.

12.3.2 The Owner shall determine no less than forty-five (45) days prior to the end of the calendar year in which the Agreement was executed whether or not said contract shall be renewed for the following calendar year. Such determination shall be made at the sole discretion of the Owner and may depend on factors such as budgeted funding for the following calendar year, performance of the Contractor under the Agreement during the current calendar year, or any other such factors the Owner may choose to consider. The Owner shall notify the Contractor in writing of the Owner's decision to either renew or not renew this Agreement no less than thirty (30) calendar days before the end of the current calendar year.

12.3.3 Notwithstanding anything contained in subsection 12.2.3.2 above, this Agreement shall terminate immediately and absolutely at such time as appropriated and otherwise unobligated funds are no longer available to satisfy the obligations of the Owner under the Agreement.

12.3.4 This Agreement is not deemed to create a debt of the Owner for the payment of any sum beyond the calendar year of execution or, in the event of renewal, beyond each calendar year of renewal.

ARTICLE XIII
OWNER'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE

13.1 The Owner shall have the right at any time to direct the Contractor to suspend its performance, or any designated part thereof, for any reason whatsoever, or without reason, for a cumulative period of up to sixty (60) calendar days. If any such suspension is directed by the Owner, the Contractor shall immediately comply with same.

13.2 In the event the Owner directs a suspension of performance under Paragraph 13.1 through no fault of the Contractor, the Owner shall pay the Contractor as full compensation for such suspension the Contractor's reasonable costs, actually incurred and paid, of;

(i) demobilization and remobilization, including such costs paid to Subcontractors;

(ii) preserving and protecting work in place;

(iii) storage of materials or equipment purchased for the Project, including insurance thereon;

(iv) performing in a later, or during a longer time frame than contemplated by this Contract.

ARTICLE XIV
INSURANCE

14.1 Insurance

14.1.1 The Contractor will provide minimum insurance coverage and limits as per the following:

Worker's Compensation – Worker's Compensation coverage on a statutory basis for the State of Georgia with an Employer's Liability limit of $1,000,000. The increased Employer's Liability limit may be provided by an Umbrella or Excess Liability policy.

Automobile Liability - Automobile liability coverage for owned, hired and non-owned vehicles in the amount of $1,000,000 combined single limit. The "City of Stonecrest" and its officials, officers, and employees shall be added as an Additional Insured.

Commercial General Liability – Coverage to be provided on "occurrence" not "claims made" basis. The coverage is to include Owners and Contractors Protective Liability, Contractual Liability, Per Project Limit of Liability, Broad Form Property Damage, Bodily Injury, losses caused by Explosion, Collapse and Underground ("xcu") perils, and Products and Completed Operations coverage is to be maintained for three (3) years following completion of work. The "City of Stonecrest" and its officials, officers, and employees shall be added as an Additional Insured.

Umbrella and/or Excess Liability – Coverage to be provided in the minimum amount of $1,000,000 per occurrence.

LIMITS OF LIABILITY:

$1,000,000 Per Occurrence

$1,000,000	Personal and Advertising Injury
$50,000	Fire Damage*
$5,000	Medical Payments*
$1,000,000	General Aggregate
$1,000,000	Products/Completed Operations per Occurrence and Aggregate

**These are automatic minimums*

14.1.2 The Contractor will file with the Owner Certificates of Insurance, certifying the required insurance coverage below and stating that each policy has been endorsed to provide thirty (30) day notice to the Owner in the event that coverage is cancelled, non-renewed or the types of coverage or limits of liability are reduced below those required. All bonds and insurance coverage must be placed with an insurance company approved by the Owner, admitted to do business in the State of Georgia, and rated Secure ("B+" or better) by A.M. Best Company in the latest edition of Property and Casualty Ratings, or rated by Standard & Poors Insurance Ratings, latest edition as Secure ("BBB" or better). Worker's Compensation self-insurance for individual Contractors must be approved by the Worker's Compensation Board, State of Georgia and/or Self-Insurance pools approved by the Insurance Commissioner, State of Georgia.

ARTICLE XV
MISCELLANEOUS

15.1 Governing Law

15.1.1 The Contract shall be governed by the law of the State of Georgia, exclusive of its choice of law provisions. In the event of any litigation arising from this Contract, venue shall be in any court of competent jurisdiction of the County of DeKalb, Georgia.

15.2 Successors and Assigns

15.2.1 The Owner and the Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract. The Contractor shall not assign this Contract without written consent of the Owner.

15.3 Interpretation

15.3.1 The Parties acknowledge that this Agreement and all the terms and conditions herein have been fully reviewed and negotiated by the Parties. Having acknowledged the foregoing, the Parties agree that any principle of construction or rule of law that provides that, in the event of any inconsistency or ambiguity, an agreement shall be construed against the drafter of the agreement shall have no application to the terms and conditions of this Agreement.

15.4 Severability

15.4.1 If any provision of this Contract shall be deemed invalid or unenforceable by a court of competent jurisdiction, such provision shall be modified to the extent necessary to cure such invalidity or unenforceability; provided, however, if such modification is not possible without creating a material conflict with another provision of this Contract, such invalid or unenforceable provision shall be deemed stricken from this Contract.

15.5 Amendment and Waiver

15.5.1 This Contract may not be amended, modified, or waived except by a writing signed by an authorized representative of each part. No waiver of or any failure or omission to enforce any of the provisions hereof by the Owner shall be construed to be a waiver of the Owner to enforce any such provisions or any other provision(s) of this Contract.

15.6 Notice

15.6.1 Notices. Where a party is required or permitted to give notice to the other pursuant to this Contract, such notice is deemed given: (i) when delivered in hand; (ii) three (3) days after it is mailed by registered or certified United States mail, return receipt requested, postage prepaid to the address listed below; or (iii) one (1) day after it is sent by courier or facsimile transmission if receipt is verified by the receiving party and such notice is addressed to the Party to receive such notice. Any notice required to be given by or on behalf of either party to the other shall be sent to the address specified below, or as such other address as may be specified, from time to time, by notice in the manner herein set forth.

If to the Owner/City:
City Manager
City of Stonecrest
3120 Stonecrest Blvd.
Stonecrest, Georgia 30038

With copies to:
City Attorney
Fincher Denmark, LLC
100 Hartsfield Centre Pkwy.
Ste. 400
Atlanta, Georgia 30354

If to the Contractor:

_____
__
_____
_____

If to the Engineer:

_____
_____
_____
_____

15.7 Time is of the Essence

15.7.1 Time is of the essence for this Contract, the Contract Documents, and all supporting documents.

15.8 Participation in Federal Work Authorization Program

15.8.1 The Contractor shall participate in the federal work authorization program throughout the contract period, as provided in O.C.G.A. §13-10-91. The Contractor shall be required to, at the time of the contract, provide a signed, notarized affidavit, attesting that it has registered with, is authorized to use, and uses the federal work authorization program; it will continue to use the federal work authorization program throughout the contract period; and it will contract for the physical performance of services in satisfaction of such contract only with Subcontractors who present an affidavit containing the above information. Further, to the extent that a Subcontractor is utilized, the Subcontractor's federal work authorization program user identification number and the date of authorization shall be included in the affidavit. Said affidavit shall be attached hereto and incorporated by reference herein as **Exhibit C**.

15.9 Counterparts

15.9.1 This Agreement may be executed in multiple counterparts, each of which shall constitute the original, but all of which taken together shall constitute one and the same Agreement. PDF signatures shall constitute original signatures.

15.10 Captions

15.10.1 The captions appearing herein are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement or any clause or provision hereof.

15.11 Surety

15.11.1 The Contractor shall furnish separate performance and payment bonds to the Owner. Each bond shall set forth a penal sum in an amount not less than the Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased automatically by like amount. The performance and payment bonds furnished by the Contractor shall be in form suitable to the Owner and Owner's legal counsel and shall be executed by a surety, or sureties, reasonably suitable to the Owner.

15.12 Interpretation

15.12.1 The Parties acknowledge that this Agreement and all the terms and conditions herein have been fully reviewed and negotiated by the Parties. Having acknowledged the foregoing, the Parties agree that any principle of construction or rule of law that provides that, in the event of any inconsistency or ambiguity, an agreement shall be construed against the drafter of the agreement shall have no application to the terms and conditions of this Agreement.

[SIGNATURES CONTAINED ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, this Contract has been signed and delivered by a duly authorized representative of each party as of the last date indicated below.

CITY OF STONECREST, GEORGIA	**E.R. SNELL CONTRACTOR, INC.**
By: _____ (Signature)	By: _____ (Signature)
_____ (Printed Name and Title)	_____ (Printed Name and Title)
_____ (Date of Execution)	_____ (Date of Execution)
Attest: _____ **(SEAL)**	Attest: _____ **(SEAL)**

EXHIBIT A
SCOPE OF WORK

PURPOSE, INTENT AND PROJECT DESCRIPTION

This Project shall be for the resurfacing of 95 streets within the City of Stonecrest ("City"). Street locations are attached as Exhibit A-1 hereto. All streets are to be patched, milled, resurfaced, and/or re-striped per the following specifications.

GENERAL CONDITIONS

The contractor shall execute the work according to and meet the requirements of the following:

- Georgia Department of Transportation (GDOT) Specifications, Standards, and Details;
- The Contract Documents including but not limited to the scope of work, and specifications;
- City of Stonecrest ordinances and regulations;
- OSHA standards and guidelines
- Any other applicable codes, laws and regulations including but not limited to Section 45-10-20 through 45-10-28 of the Official Code of Georgia Annotated, Title VI of the Civil Rights Act, Drug-Free Workplace Act, and all applicable requirements of the Americans with Disabilities Act of 1990.

The Contractor will be responsible for providing all labor, materials, and equipment necessary to perform the work. This is a unit price project. Payment will be made based on actual work completed.

The Contractor is responsible for inspecting the jobsite prior to submitting a bid. No change orders will be issued for differing site conditions.

Materials must come from GDOT approved sources. The contractor will be required to submit in writing a list of proposed sources of materials. When required representative samples will be taken for examination and testing prior to approval. The materials used in the work shall meet all quality requirements of the contract. Materials will not be considered as finally accepted until all tests, including any to be taken from the finished work have been completed and evaluated. Standard Specification 106 – Control of Materials will be used as a guide. All materials will be tested according to the GDOT Sampling, Testing, and Inspection Manual by an approved consultant/engineer hired by the City.

10% retainage will be withheld from the total amount due the contractor until Final Acceptance of work is issued by the City. The City will inspect the work as it progresses.

PROSECUTION AND PROGRESS

The Contractor will mobilize with sufficient forces such that all construction identified as part of this contract shall be substantially completed by July 17, 2023. The Contractor will be considered substantially complete when all work required by this contract has been completed (excluding final striping and punch list work). The Contractor will be required to submit a Progress Schedule upon notice of award.

Normal workday for this project shall be 8:00AM to 7:00PM and the normal workweek shall be Monday through Friday. The City will consider extended workdays or workweeks upon written request by the Contractor on a case-by-case basis. No work will be allowed on federal holidays (i.e. July 4th, Labor Day, Veterans Day, Thanksgiving, etc.). No lane closures will be allowed on major streets except between the hours of 9:00AM to 4:00PM as noted in the Special Conditions section below.

The Contractor shall provide all labor, administrative forces, equipment, materials and other incidental items to complete all required work. The City shall perform a Final Inspection upon substantial completion of the work. The Contractor will be allowed to participate in the Final Inspection. All repairs shall be completed by the Contractor at his expense prior to issuance of Final Acceptance.

The Contractor shall be assessed liquidated damages in the amount of $200.00 per calendar day for any contract work (excluding punch list and permanent striping) that is not completed by July 17, 2023. Liquidated damages shall be deducted from the 10% retainage held by the City. The Contractor will also be assessed liquidated damages for not completing any required Punch List work within 45 calendar days.

The Contractor shall provide all material, labor, and equipment necessary to perform the work without delay unto completion.

The standard order of operations for resurfacing shall be as follows:

1. Milling
2. Patching
3. Leveling
4. Resurfacing
5. Thermoplastic Striping
6. Raised Pavement Markers

The Contractor shall provide a project progress schedule prior to or at the pre-construction meeting. This schedule should accurately represent the intended work and cannot be vague or broad such as listing every road in the contract.

The Contractor shall submit a two-week advance schedule every **Friday by 2:00p.m**, detailing scheduled activities for the following week.

PERMITS AND LICENSES

The Contractor shall procure all permits and licenses, pay all charges, taxes and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work.

MATERIALS

The City will provide a Construction Engineering & Inspections (CEI) Consultant to inspect the work and provide materials testing. All materials will meet appropriate GDOT specifications. Materials quality control test types will meet GDOT specifications at a frequency equal to or exceeding that set by those specifications. Contractor will be responsible for replacing any work performed with material from rejected sample lot at no cost to the City.

PUBLIC NOTIFICATION

The Contractor shall be responsible for installing notification signs at all entrances to subdivisions that are to be resurfaced. The notifications are to be installed one week prior to commencement of work. Signs shall be installed on temporary metal stakes driven in the ground or on tripods. Signs are to remain in place until contracted work (except punchlist) has been completed and accepted. No separate payment will be made for this work. The City will be responsible for notification to individual property owners.

EXISTING CONDITIONS / DEVIATION OF QUANTITIES

All information given in this Exhibit concerning quantities, scope of work, existing conditions, etc. is for information purposes only. It is the Contractor's responsibility to inspect the project site to verify existing conditions and quantities prior to submitting their bid. This is a Unit Price Project and no payment will be made for additional work without prior written approval from the City. At no time will Contractor proceed with work outside the prescribed scope of services for which additional payment will be requested without the written authorization of the City.

The City reserves the right to add, modify, or delete quantities. The City may also elect to add or eliminate certain work locations at its discretion. The Contractor will not be entitled to any adjustment of unit prices or any other form of additional compensation because of adjustments made to quantities and/or work locations. The Contractor will be paid for actual in-place quantities completed and accepted for pay items listed in the Bid Schedule. All other work required by this Exhibit A, plans, specs, standards, etc. but not specifically listed in the Bid Schedule shall be considered "incidental work" and included in the bid prices for items on the Bid Schedule.

TRAFFIC CONTROL

The Contractor shall, at all times, conduct the work so as to assure the least possible obstruction of traffic. The safety and convenience of the general public and the residents along the roadway and the protection of persons and property shall be provided for by the Contractor as specified in the State of Georgia, Department of Transportation Standard Specifications Sections 104.05, 107.09 and 150.

Traffic whose origin and destination is within the limits of the project shall be provided ingress and egress at all times unless otherwise specified by the City. The ingress and egress include entrances and exits via driveways at various properties, and access to the intersecting roads and streets. The Contractor shall maintain sufficient personnel and equipment (including flaggers and traffic control signing) on the project at all times, particularly during inclement weather, to insure that ingress and egress are safely provided when and where needed.

Two-way traffic shall be maintained at all times, utilizing pilot vehicles, unless otherwise specified or approved by the City. In the event of an emergency situation, the Contractor shall provide access to emergency vehicles and/or emergency personnel through or around the construction area. Any pavement damaged by such an occurrence will be repaired by the Contractor at no additional cost to the City.

The Contractor shall furnish, install and maintain all necessary and required barricades, signs and other traffic control devices (including suitable lighting for night work) in accordance with the MUTCD and DOT specifications, and take all necessary precautions for the protection of the workers and safety of the public.

All existing signs, markers and other traffic control devices removed or damaged during construction operations will be reinstalled or replaced at the Contractor's expense. At no time will Contractor remove regulatory signing which may cause a hazard to the public. The Contractor shall, within 24 hours place temporary pavement markings (paint or removable tape) to match existing pavement markings. No additional payment will be made for this work.

Pricing for personnel and equipment required for maintaining temporary traffic control, public convenience and safety are to be included in the overall pricing for the project. There is no separate payment item for Traffic Control.

The Contractor shall install temporary pavements markings, where applicable, including paint and/or traffic tape to ensure traffic safety until such time that the permanent thermoplastic markings and raised pavement markers can be installed. The cost for the temporary marking shall be included in the specific item for permanent markings.

The Contractor shall be responsible for providing and installing variable message boards at both ends of each major street to be resurfaced, as defined in the Special Conditions section below. The location and applicability of placing these signs shall be determined by the City. The message boards shall be installed at least one week prior to the commencement of work.
Wording to be used on the message boards shall be provided by the City. The boards shall remain in place until all contract work (excluding punch list) has been completed and accepted. This item shall be included in the Traffic Control pay item.

PROTECTION AND RESTORATION OF PROPERTY AND LANDSCAPE

The Contractor shall be responsible for the preservation of all public and private property, crops, fish ponds, trees, monuments, highway signs and markers, fences, grassed and sodded areas, etc.

along and adjacent to the highway, road or street, and shall use every precaution necessary to prevent damage or injury thereto, unless the removal, alteration, or destruction of such property is provided for under the contract.

When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect or misconduct in the execution of the work, or in consequence of the non-execution thereof by the Contractor, he shall restore, at his/her own expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding or otherwise restoring as may be directed, or she/he shall make good such damage or injury in an acceptable manner. The Contractor shall correct all disturbed areas before retainage will be released.

MILLING

Resurfacing shall be constructed so as to tie into existing streets and driveways with the best possible ride and aesthetic result. A milled paving notch, with a minimum 10 feet transition, shall be provided at each end of the overlay and at intersections, driveways, and side streets. Tie-ins shall be marked on the ground and approved by the City prior to paving.

All milled surfaces are to be resurfaced within one week of the milling operation.

REPAIR OF EXISTING PAVEMENT

This work shall consist of repairing existing pavement areas that have failed or showing signs of distress. The Contractor and CEI inspector shall jointly inspect the roadway and mark all areas to be patched.

Areas marked for patching shall be cut out in a rectangular shape 4 inches below the surface of the existing asphalt pavement, trimmed to vertical sides, and all loose material removed. After the area has been cleaned, it shall be tack coated. The contractor will be allowed to use a milling machine to excavate for patches. The minimum width for the patches will be based on the size of the machine used to excavate but shall not exceed 7’ in width.

Asphaltic concrete patching will be paid for at the Contract Unit Price per ton and shall include pavement removal, trimming, cleaning and all other incidental work. The Contractor shall replace at his expense all patches, which are determined inadequate after inspection. The City reserves the right to change the depth of patching as needed.

BITUMINOUS TACK COAT

This work shall consist of the placement of bituminous tack. AC-20 or AC-30 shall be used. All surfaces shall be cleaned completely and thoroughly dry before any tack is applied. Tack shall not be applied when the pavement is wet. Bituminous tack coat shall be applied between .04 and .06 gallons per square yard. The cost for this item is to be included in the unit price for asphalt.

ASPHALT CONCRETE PAVING

Topping course shall be 12.5mm or 9.5mm Superpave, GP 2 only, including bitum material & H lime. (Corrected Optimum Asphalt Content).

The contract does not include paving of any recreational areas within the subdivisions (i.e. parking lots, asphalt trails, etc.).

The plant mix materials from which the asphaltic pavement is manufactured and the plant at which it is manufactured shall meet the requirements of the State of Georgia Department of Transportation (GDOT), Standard specifications, Articles 820; 802; 883; 831; 828; and 882.

Load tickets that meet Georgia Department of Transportation Specifications must accompany all delivered materials. The Contractor must supply copies of all asphalt tickets to the City.

The Contractor is not required to use an MTV (Shuttle Buggy) when placing the 12.5mm asphalt material on the main roads in this contract.

ADJUSTING UTILITY STRUCTURES TO GRADE

All sewer manholes and water valves are to be adjusted by the DeKalb County Department of Watershed Management. The Contractor shall coordinate required utility adjustments with the CEI inspector.

THERMOPLASTIC PAVEMENT MARKINGS

This work shall consist of placement of Thermoplastic Pavement Markings. Final (thermoplastic) pavement markings shall be placed at least 15 calendar days but no more than 60 calendar days after placement of final asphalt lift. These final pavement markings shall match the original pavement markings including center lines, lane lines, turn arrows, crosswalks, stop bars, etc. unless specifically directed otherwise by the City. Final pedestrian crosswalk markings shall adhere to the latest standards. Pavement marking materials shall meet GDOT standard specifications and be on the qualified products list. This will consist of a solid line to the beginning of tapers with mini skips through the length of the taper followed by a 5-inch solid line.

Until permanent pavement markings can be installed, temporary pavement markings are required. There is no pay item for temporary pavement markings. This cost shall be included in the pricing for permanent pavement markings.

The final pavement markings also include installation of type 1 and type 3 Raised Pavement Markers according to GDOT Specifications, where required. RPM’s shall be spaced every 80’ where required (every 40’ along sharp curves) and as directed by the CEI. RPM materials shall meet GDOT standard specifications and shall be on the GDOT Qualified Products List.

24 in. white permanent solid stripe is to be installed as a stop bar at each stop sign where previously existed, or as directed.

5 in. double yellow permanent double yellow traffic stripe is to be installed at each stop sign of each subdivision entrance approaching main roads for a total centerline length of 50 LF.

SIGNAL SYSTEM REPAIR

This work shall consist of repair and installation of loop detectors damaged as a result of the pulverizing, milling, and paving operations. When operations damage existing traffic signal loops, the Contractor shall replace the loops not more than 7 calendar days after final asphalt lift is placed.

Contractor shall immediately notify the City Engineer at (770) 865-5645 when loops are damaged. When loop replacements at an intersection are complete the contractor shall again notify the City Engineer.

Location of replacement loop detectors and lead-in wire, where practical, shall coincide with original location. If, at the splice location a pull box does not exist, a traffic signal pull box (PB-1) conduit and loop lead-in shall be installed per GDOT specifications and as directed by the Traffic Services Manager. Pull boxes installed shall be on the GDOT qualified products list. Testing of the replacement loop detectors shall be performed at the point where the loop wire is spliced to the existing shielded lead-in wire. There shall be no work or testing required beyond this splice point.

CLEANUP

All restoration and clean-up work shall be performed daily. Operations shall be suspended if the Contractor fails to accomplish restoration and clean-up within an acceptable period of time. Asphalt and other debris shall be removed from gutters, sidewalks, yards, driveways, etc. Failure to perform clean-up activities may result in suspension of the work. Milling operation shall be followed immediately by clean-up at which the contractor is to provide power brooms, vacuum sweepers, power blowers, or other means to remove loose debris or dust. Do not allow dust control to restrict visibility of passing traffic or to disrupt adjacent property owners. All pavement areas shall be clean and dry prior to placing tack coat, asphaltic concrete or other materials.

SAFETY

Beginning with mobilization and ending with acceptance of work, the Contractor shall be responsible for providing a clean and safe work environment at the project site. The Contractor shall comply with all OSHA regulations as they pertain to this project.

SPECIAL CONDITIONS

1. All streets on this project require traffic control. Variable Message Signs are to be installed 1 week in advance of paving operations. The Contractor shall coordinate with City of Stonecrest staff.

NO	Street Name	From	To	Length (ft)	Lane-miles (mi)	Area (sq.ft.)	Area (SY.)	MILLING 1.5" (SY)
1	**FLAT ROCK RD**	BROWNS MILL RD	SOUTHCREST LN	1934.2	0.73	51912	5,768	5,768
2	FLAT ROCK RD	SOUTHCREST LN	EVANS MILL RD	1121.5	0.42	25589	2,843	2,843
3	**WINCHESTER PL**	EVANS MILL RD	HERITAGE POINTE	334.6	0.13	8997	1,000	1,000
4	WINCHESTER PL	HERITAGE POINTE	END	1514.2	0.57	45459	5,051	5,051
5	HERITAGE POINTE	WINCHESTER PL	END	801	0.30	24619	2,735	2,735
6	**E SADDLERIDGE DR**	BROWNS MILL RD	E SADDLERIDGE CT	1260.1	0.48	40492	4,499	4,499
7	E SADDLERIDGE DR	E SADDLERIDGE CT	E SADDLERIDGE LN	407.9	0.15	10884	1,209	1,209
8	E SADDLERIDGE DR	E SADDLERIDGE LN	END	961.4	0.36	28080	3,120	3,120
9	E SADDLERIDGE LN	E SADDLERIDGE DR	END	141.7	0.05	7439	827	827
10	E SADDLERIDGE CT	E SADDLERIDGE DR	END	199.5	0.08	9414	1,046	1,046
11	**SANDSTONE SHORES DR**	SOUTH END	SANDY SHORES CT	1522	0.58	48476	5,386	5,386
12	SANDSTONE SHORES DR	SANDY SHORES CT	SANDY LK E	1410	0.53	37730	4,192	4,192
13	SANDY SHORES CT	WEST END	ANDSTONE SHORES D	1422.7	0.54	44424	4,936	4,936
14	SANDY LK E	WEST END	ANDSTONE SHORES D	421.2	0.16	15573	1,730	1,730
15	SANDY LK E	ANDSTONE SHORES D	BROWNS MILL RD	1032	0.39	25791	2,866	2,866
16	CAIN MILL DR	WOLVERTON CIR	CAIN MILL CT	678.8	0.26	15327	1,703	1,703
17	CAIN MILL DR	CAIN MILL CT	BUTTON GATE CT	1093.2	0.41	33952	3,772	3,772
18	CAIN MILL DR	BUTTON GATE CT	PANOLA WOODS DR	373.3	0.14	9743	1,083	1,083
19	PANOLA WOODS DR	CAIN MILL DR	PANOLA WOODS CT	355.7	0.13	7974	886	886
20	PANOLA WOODS DR	PANOLA WOODS CT	PANOLA LAKE CIR	658.1	0.25	17738	1,971	1,971
21	PANOLA WOODS CT	PANOLA WOODS DR	END	549.1	0.21	18283	2,031	2,031
22	**BUTTON GATE CT**	CAIN MILL DR	WOLVERTON CIR	1470.9	0.56	39361	4,373	4,373
23	BUTTON GATE CT	WOLVERTON CIR	END	627.7	0.24	19992	2,221	2,221
24	CAIN MILL CT	CAIN MILL DR	END	222.6	0.08	8621	958	958
25	PANOLA LAKE CIR	WEST END	PANOLA WOODS DR	503.9	0.19	14169	1,574	1,574
26	PANOLA LAKE CIR	PANOLA WOODS DR	PANOLA VALLEY DR	658	0.25	16172	1,797	1,797
27	PANOLA LAKE CIR	PANOLA VALLEY DR	EAST END	712.2	0.27	20845	2,316	2,316
28	PANOLA VALLEY DR	PANOLA LAKE CIR	PANOLA RD	723	0.27	15990	1,777	1,777
29	IDLEWOOD GATE	BROWNS MILL RD	IDLEWOOD MNR	178.9	0.07	4546	505	505
30	IDLEWOOD GATE	IDLEWOOD MNR	IDLEWOOD PARK	264.7	0.10	5710	634	634
31	IDLEWOOD MNR	IDLEWOOD GATE	END	148.9	0.06	6940	771	771
32	**IDLEWOOD PARK**	IDLEWOOD GATE	IDLEWOOD PL	1242.6	0.47	33771	3,752	3,752
33	IDLEWOOD PARK	IDLEWOOD PL	IDLEWOOD TRCE	256.1	0.10	5379	598	598
34	IDLEWOOD PARK	IDLEWOOD TRCE	IDLEWOOD PASS	256.1	0.10	6427	714	714
35	IDLEWOOD PARK	IDLEWOOD PASS	IDLEWOOD CIR [E]	255.2	0.10	7119	791	791
36	IDLEWOOD PARK	IDLEWOOD CIR [E]	IDLEWOOD CIR [W]	323.1	0.12	8135	904	904
37	IDLEWOOD PARK	IDLEWOOD CIR [W]	IDLEWOOD PASS	767.5	0.29	19594	2,177	2,177
38	IDLEWOOD PARK	IDLEWOOD PASS	IDLEWOOD TRCE	288.7	0.11	6684	743	743
39	IDLEWOOD PARK	IDLEWOOD TRCE	IDLEWOOD PL	360.6	0.14	8243	916	916
40	IDLEWOOD PARK	IDLEWOOD PL	IDLEWOOD GATE	403.2	0.15	13242	1,471	1,471
41	IDLEWOOD PARK	IDLEWOOD PARK	IDLEWOOD CIR	297.3	0.11	7562	840	840
42	IDLEWOOD CIR	IDLEWOOD PARK [S]	IDLEWOOD PARK [N]	497.9	0.19	12965	1,441	1,441
43	IDLEWOOD PASS	IDLEWOOD PARK [W]	IDLEWOOD PARK [E]	880	0.33	19641	2,182	2,182
44	IDLEWOOD TRCE	IDLEWOOD PARK [W]	IDLEWOOD PARK [E]	948.9	0.36	22874	2,542	2,542
45	IDLEWOOD PL	IDLEWOOD PARK [W]	IDLEWOOD PARK [E]	1054.3	0.40	26506	2,945	2,945
46	**MINERS CREEK RD**	PANOLA RD	LOST DUTCHMAN DR	1265.9	0.48	29674	3,297	3,297
47	MINERS CREEK RD	LOST DUTCHMAN DR	MINERS CREEK WAY	776.1	0.29	16894	1,877	1,877
48	MINERS CREEK RD	MINERS CREEK WAY	LOST DUTCHMAN DR	1835.2	0.70	44494	4,944	4,944

NO	Street Name	From	To	Length (ft)	Lane-miles (mi)	Area (sq.ft.)	Area (SY.)	MILLING 1.5" (SY)
49	MINERS CREEK WAY	MINERS CREEK RD	END	468.8	0.18	10566	1,174	1,174
	Package 2				**12.9**		**108,890**	**108,890**

NO	Street Name	From	To	Length (ft)	Lane-miles (mi)	Area (sq.ft.)	Area (SY.)	MILLING 1.5" (SY)
1	**HUNTERS CROSSING PT**	END	HUNTERS CROSSING CT	315.7	0.12	10468	1,163	1,163
2	HUNTERS CROSSING PT	HUNTERS CROSSING CT	ROCK SPRINGS RD	760	0.29	18280	2,031	2,031
3	HUNTERS CROSSING CT	HUNTERS CROSSING PT	HUNTERS CROSSING FRD	235.9	0.09	5441	605	605
4	HUNTERS CROSSING CT	HUNTERS CROSSING FRD	END	189.7	0.07	7512	835	
5	**E GLEN RD**	END	EVANS MILL RD	1378.2	0.52	20601	2,289	2,289
6	**RAGSDALE RD**	ROCKLAND RD	EVANS MILL RD	2745.5	1.04	62532	6,948	6,948
7	**STONECREST TRCE**	MALL PKWY	MALL RING RD	965.8	0.37	46842	5,205	5,205
8	BUCKINGHAM WAY	W FAIRINGTON PKWY	MAYFAIR CROSSING DR	202.5	0.04	9126	1,014	1,014
9	MAYFAIR CROSSING DR	WEST END	HAMPTON CLUB WAY	395.5	0.15	13288	1,476	1,476
10	MAYFAIR CROSSING DR	HAMPTON CLUB WAY	BUCKINGHAM WAY	213	0.08	4957	551	551
11	MAYFAIR CROSSING DR	BUCKINGHAM WAY	HIGHLAND PARK CIR	557.5	0.21	12028	1,336	1,336
12	MAYFAIR CROSSING DR	HIGHLAND PARK CIR	CLARIDGE CIR [W]	282	0.11	6687	743	743
13	MAYFAIR CROSSING DR	CLARIDGE CIR [W]	CLARIDGE CIR [E]	918.1	0.35	24790	2,754	2,754
14	MAYFAIR CROSSING DR	CLARIDGE CIR [E]	EAST END	179	0.07	8601	956	956
15	HAMPTON CLUB WAY	END	HAMPTON MANOR CT	777.1	0.29	21533	2,393	2,393
16	HAMPTON CLUB WAY	HAMPTON MANOR CT	MAYFAIR CROSSING DR	457.7	0.17	9061	1,007	1,007
17	HAMPTON MANOR CT	END	HAMPTON CLUB WAY	364.9	0.14	13347	1,483	1,483
18	HIGHLAND PARK CIR	END	HIGHLAND PARK LN [S]	106	0.04	5796	644	644
19	HIGHLAND PARK CIR	HIGHLAND PARK LN [S]	HIGHLAND PARK LN [N]	582.9	0.22	15602	1,734	1,734
20	HIGHLAND PARK CIR	HIGHLAND PARK LN [N]	MAYFAIR CROSSING DR	238.8	0.09	5918	658	658
21	**HIGHLAND PARK LN**	HIGHLAND PARK CIR [S]	HIGHLAND PARK CIR [N]	1141.5	0.43	23601	2,622	2,622
22	CLARIDGE CIR	MAYFAIR CROSSING DR [W]	MAYFAIR CROSSING DR [E]	891.3	0.34	23967	2,663	2,663
23	TRENT WALK DR	END	TRENT JONES WAY	207.9	0.08	3908	434	434
24	TRENT WALK DR	TRENT JONES WAY	DOGWOOD MNR	248.4	0.09	6837	760	760
25	TRENT WALK DR	DOGWOOD MNR	SHERWOOD TRCE	242.7	0.09	5828	648	648
26	TRENT WALK DR	SHERWOOD TRCE	FAIRINGTON DR	727.2	0.28	16305	1,812	1,812
27	TRENT JONES WAY	TRENT WALK DR	SHERWOOD TRCE	484.5	0.18	10726	1,192	1,192
28	TRENT JONES WAY	SHERWOOD TRCE	FAIRINGTON DR	196.8	0.07	5318	591	591
29	**FAIRINGTON DR**	TRENT JONES WAY	TRENT WALK DR	1069.1	0.40	21803	2,423	2,423
30	FAIRINGTON DR	TRENT WALK DR	PARC LORRAINE	244.5	0.09	7608	845	845
31	FAIRINGTON DR	PARC LORRAINE	TIBURON DR	301.6	0.11	8286	921	921
32	FAIRINGTON DR	TIBURON DR	CHUPP WAY	265.3	0.10	8072	897	897
33	SHERWOOD TRCE	TRENT WALK DR	DOGWOOD MNR	755.7	0.29	15904	1,767	1,767
34	SHERWOOD TRCE	DOGWOOD MNR	TRENT JONES WAY	334.3	0.13	10138	1,126	1,126
35	DOGWOOD MNR	TRENT WALK DR	SHERWOOD TRCE	507	0.19	13034	1,448	1,448
36	**PLUNKETT RD**	S GODDARD RD	END	2885.5	1.09	45927	5,103	5,103
37	**WADE RD**	ROCKLAND RD	END	1207.4	0.46	13518	1,502	1,502
38	PEARCE CT	SOUTH END	HALSTED WAY	338.8	0.13	11897	1,322	1,322
39	PEARCE CT	HALSTED WAY	MCCROSSIN CIR	289.6	0.11	7328	814	814
40	PEARCE CT	MCCROSSIN CIR	ROCK SPRINGS RD	187.6	0.07	4899	544	544
41	HALSTED WAY	END	PEARCE CT	335.6	0.13	11262	1,251	1,251
42	**MCCROSSIN CIR**	END	PEARCE CT	357.1	0.14	11574	1,286	1,286
43	**FALK TRCE**	CITY LIMIT	FALLS CREEK CT	913.5	0.35	23990	2,666	2,666
44	FALK TRCE	FALLS CREEK CT	END	134.7	0.05	6484	720	720
45	FALLS CREEK CT	FALK TRCE	END	644.4	0.24	16095	1,788	1,788
46	**STONECREST SQ**	MALL PKWY	MALL RING RD	1960.5	0.74	127013	14,113	14,113
	Package 4				**11.0**		**87,081**	**86,247**

EXHIBIT B
COST ESTIMATE

[attached]

APPENDIX IV
2022 Street Resurfacing Bid Schedule – Bid Package 2

Pay Item	Description	Qty	Unit	Unit Price	Total Price
150-1001	Traffic Control	1	LS	81296.00	81,296.00
215-0250	Undercut Excavation and Disposal of Materials (As directed by City Engineer)	25	SY	211.00	5,275.00
310-1101	Graded Aggregate Base--including material (As directed by City Engineer)	25	TN	267.00	6,675.00
432-0212	Mill Asphalt Concrete Pavement, 1.5 in. Depth	110,000	SY	5.35	588,500.00
402-1802	Recycled Asphalt Concrete **Patching** using 19 MM Superpave including Bituminous Material & H Lime	1,260	TN	399.60	503,496.00
402-3103	Recycled Asphalt Concrete 9.5 MM Superpave Type II, GP 2 Only, including Bituminous Material and H-Lime	9,000	TN	154.65	1,391,850.00
413-1000	Bitum Tack Coat	4,500	GL	4.75	21,375.00
611-8050	Adjust Manhole to Grade	8	EA	908.00	7,264.00
611-8140	Adjust Utility Valve to Grade	8	EA	792.00	6,336.00
653-0110	Thermoplastic PVMT Marking, Arrow TYPE 1	2	EA	150.00	300.00
653-0120	Thermoplastic PVMT Marking, Arrow TYPE 2	2	EA	150.00	300.00
653-1501	Thermoplastic Solid Traffic Stripe, 5 IN White	250	LF	2.50	625.00
653-1502	Thermoplastic Solid Traffic Stripe, 5 IN Yellow	250	LF	2.50	625.00
653-1704	Thermoplastic Solid Traffic Stripe, 24 in., White	25	LF	15.00	375.00
653-1804	Thermoplastic Solid Traffic Stripe, 8 in., White	80	LF	5.00	400.00
653-3501	Thermoplastic Skip Traffic Stripe, 5 IN White	75	GLF	1.50	112.50
653-3502	Thermoplastic Skip Traffic Stripe, 5 IN Yellow	75	GLF	1.50	112.50
	2022 Paving Bid - Package 2	**Total**	**Bid**	**Price**	2,614,917.00

Include complete bid schedule with your bid

Invoices will be approved and paid based on measured actual quantities and performed work. Actual quantity may vary from the bid quantities.

Traffic control includes 8 signs at subdivision entrances, no temporary striping or tapes required for residential streets.

APPENDIX IV
2022 Street Resurfacing Bid Schedule – Bid Package 4

Pay Item	Description	Qty	Unit	Unit Price	Total Price
150-1001	Traffic Control	1	LS	81,000.00	81,000.00
215-0250	Undercut Excavation and Disposal of Materials (As directed by City Engineer)	25	SY	211.00	5,275.00
310-1101	Graded Aggregate Base--including material (As directed by City Engineer)	25	TN	267.00	6,675.00
432-0212	Mill Asphalt Concrete Pavement, 1.5 in. Depth	90,000	SY	6.82	613,800.00
402-1802	Recycled Asphalt Concrete **Patching** using 19 MM Superpave including Bituminous Material & H Lime	1,100	TN	399.65	439,615.00
402-3103	Recycled Asphalt Concrete 9.5 MM Superpave Type II, GP 2 Only, including Bituminous Material and H-Lime	7,200	TN	166.45	1,198,440.00
413-1000	Bitum Tack Coat	3,900	GL	4.75	18,525.00
611-8050	Adjust Manhole to Grade	8	EA	908.00	7,264.00
611-8140	Adjust Utility Valve to Grade	8	EA	792.00	6,336.00
653-0110	Thermoplastic PVMT Marking, Arrow TYPE 1	2	EA	150.00	300.00
653-0120	Thermoplastic PVMT Marking, Arrow TYPE 2	2	EA	150.00	300.00
653-1501	Thermoplastic Solid Traffic Stripe, 5 IN White	250	LF	2.50	625.00
653-1502	Thermoplastic Solid Traffic Stripe, 5 IN Yellow	250	LF	2.50	625.00
653-1704	Thermoplastic Solid Traffic Stripe, 24 in., White	25	LF	15.00	375.00
653-1804	Thermoplastic Solid Traffic Stripe, 8 in., White	80	LF	5.00	400.00
653-3501	Thermoplastic Skip Traffic Stripe, 5 IN White	75	GLF	1.50	112.50
653-3502	Thermoplastic Skip Traffic Stripe, 5 IN Yellow	75	GLF	1.50	112.50
	2022 Paving Bid - Package 4	**Total**	**Bid**	**Price**	2,379,780.00

Include complete bid schedule with your bid

Invoices will be approved and paid based on measured actual quantities and performed work.

Actual quantity may vary from the bid quantities. Traffic control includes 13 signs at subdivision entrances, no temporary striping or tapes required for residential streets.

EXHIBIT C
E-VERIFY AFFIDAVIT

[attached]

CITY COUNCIL AGENDA ITEM

SUBJECT: FY23 Budget Calendar

AGENDA SECTION: (*check all that apply*)

☐ **PRESENTATION** ☐ **PUBLIC HEARING** ☐ **CONSENT AGENDA** ☐ **OLD BUSINESS**

☒ **NEW BUSINESS** ☐ **OTHER, PLEASE STATE:** Click or tap here to enter text.

CATEGORY: (*check all that apply*)

☐ **ORDINANCE** ☐ **RESOLUTION** ☐ **CONTRACT** ☐ **POLICY** ☐ **STATUS REPORT**

☒ **OTHER, PLEASE STATE: FY23 Budget Calendar**

ACTION REQUESTED: ☒ **DECISION** ☐ **DISCUSSION,** ☐ **REVIEW, or** ☐ **UPDATE ONLY**

Previously Heard Date(s): Click or tap to enter a date. & Click or tap to enter a date.

Current Work Session: Click or tap to enter a date.

Current Council Meeting: Monday, July 25, 2022

SUBMITTED BY: Janice Allen Jackson, City Manager

PRESENTER: Janice Allen Jackson, City Manager

PURPOSE: To Discuss the FY23 Budget Calendar

FACTS:

OPTIONS: Choose an item. Click or tap here to enter text.

RECOMMENDED ACTION: Click or tap here to enter text.

ATTACHMENTS:

(1) Attachment 1 - FY23 Proposed Budget Calendar
(2) Attachment 2 - Click or tap here to enter text.
(3) Attachment 3 - Click or tap here to enter text.
(4) Attachment 4 - Click or tap here to enter text.
(5) Attachment 5 - Click or tap here to enter text.

FY23 Budget Calendar

July 2022

11th	Present Budget Calendar at Work Session
18TH	Distribution of Budget Instructions, Worksheets, & Revenue projections to department heads
25th	Approve Budget Calendar at Council Meeting

August 2022

August 8th	Staff to update Council on Fiscal Year 2022 Priorities. Council discussion and ranking of FY 2023 Priorities
August 9th-26th	Departmental Meetings with Finance Team & City Manager
August 26th	5-year CIP recommendations finalized (assigned to SPLOST, Transportation, Parks & Rec committees)

September 2022

September 8th	Staff presents budget recommendations to Financial Oversight Committee and SPLOST Committee
September 12-16	Final Department Review and Revisions

October 2022

October 3	Advertise Budget Public Hearing for October 24, 2022
October 10	City Manager & Mayor present official proposed budget at work session
October 24	Budget Public Hearing at the Council Meeting

November 2022

November 14	6pm Special Called Meeting to approve FY23 Budget
November 14	7pm Work session
November 28	7pm Council Meeting

January 2023

January 1	Fiscal Year 2023 begins

CITY COUNCIL AGENDA ITEM

SUBJECT: Service Delivery Strategy Resolution

AGENDA SECTION: (*check all that apply*)

☒ **PRESENTATION** ☐ **PUBLIC HEARING** ☐ **CONSENT AGENDA** ☐ **OLD BUSINESS**
☐ **NEW BUSINESS** ☒ **OTHER, PLEASE STATE:** Click or tap here to enter text.

CATEGORY: (*check all that apply*)

☐ **ORDINANCE** ☒ **RESOLUTION** ☐ **CONTRACT** ☐ **POLICY** ☐ **STATUS REPORT**

☐ **OTHER, PLEASE STATE:** Click or tap here to enter text.

ACTION REQUESTED: ☒ **DECISION** ☐ **DISCUSSION,** ☐ **REVIEW, or** ☐ **UPDATE ONLY**

Previously Heard Date(s): Click or tap to enter a date. & Click or tap to enter a date.

Current Work Session: Click or tap to enter a date.

Current Council Meeting: Monday, July 25, 2022

SUBMITTED BY: Janice Allen Jackson, City Manager

PRESENTER: Janice Allen Jackson, City Manager

PURPOSE: DeKalb County is undertaking the development and adoption of 2050 Unified Plan. This effort will combine two traditional comprehensive planning documents. (The Comprehensive Land Use Plan and The Comprehensive Transportation Plan) The Georgia Department of Community Affairs (DCA), Community & Economic Development Division has advised DeKalb County staff that DeKalb County's Service Delivery Strategy must be updated as a part of the 2050 Unified Plan effort.

FACTS: Previously, Council approved Resolution 2019-01-02, a resolution to adopt the renewed and revised service delivery strategy for DeKalb County, Georgia to include the City of Stonecrest and for other purposes. O.C.G.A.§ 36-70-1 requires counties and municipalities to adopt local government service delivery strategy.

OPTIONS: Choose an item. Click or tap here to enter text.

RECOMMENDED ACTION: Click or tap here to enter text.

CITY COUNCIL AGENDA ITEM

ATTACHMENTS:

(1) Attachment 1 - RESOLUTION_2019-01-02_Adopt_Renew Revised Service Delivery Strategy
(2) Attachment 2 - Fact Sheet 2022
(3) Attachment 3 - Click or tap here to enter text.
(4) Attachment 4 - Click or tap here to enter text.
(5) Attachment 5 -

STATE OF GEORGIA
COUNTY OF DEKALB
CITY OF STONECREST

RESOLUTION 2022 - _____

A RESOLUTION BY THE MAYOR AND CITY COUNCIL OF THE CITY OF STONECREST TO APPROVE THE RENEWED AND REVISED SERVICE DELIVERY STRATEGY FOR DEKALB COUNTY, GEORGIA ON BEHALF OF STONECREST, GEORGIA; AND FOR OTHER PURPOSES.

WHEREAS, the duly elected governing body of the City of Stonecrest, Georgia (the "City") is the Mayor and Stonecrest City Council ("City Council"); and

WHEREAS, O.C.G.A.§ 36-70-1 *et seq.* requires counties and municipalities to adopt a local government service delivery strategy; and

WHEREAS, DeKalb County has worked with the Cities of Atlanta, Avondale Estates, Brookhaven, Chamblee, Doraville, Decatur, Dunwoody, Lithonia, Clarkston, Stone Mountain, Pine Lake, Stonecrest and Tucker (the "Cities") to develop and revise a service delivery strategy; and

WHEREAS, O.C.G.A. § 36-70-25(b) provides that approval of a service delivery strategy shall be accomplished by adoption of a resolution:

(1) By the DeKalb County Governing Authority;

(2) By the governing authority of municipalities within DeKalb County which have a population of9,000 or greater within the county;

(3) By the municipality which serves as the DeKalb County site if not included in paragraph (2) of this subsection; and

(4) By no less than 50% of the remaining municipalities within DeKalb County which contain at least 500 persons within the county if not included in paragraph (2) or (3) of this subsection; and

WHEREAS, a local government service delivery strategy between DeKalb County and the Cities was approved by DeKalb County on August 24, 1999 and renewed on October 25, 2005, October 24, 2006, August 28, 2007, October 23, 2007, October 31, 2008, April 30, 2009, October 31, 2009, April 27, 2010, December 14, 2010, December 9, 2014, October 25, 2016 and April 1, 2019; and

WHEREAS, the service delivery strategy must be reviewed and revised if any of the following occur:

1) Update of the county's comprehensive plan;
2) Change of service delivery arrangements;
3) Change in revenue distribution arrangements (e.g., changes to LOST distribution among the county and its municipalities);
4) Creation, abolition, or consolidation of local governments;
5) Expiration of the existing service delivery strategy agreement; or
6) The county and affected municipalities otherwise agree to revise the strategy.

WHEREAS, DeKalb County is undertaking the development and adoption of 2050 Unified Plan that will combine two traditional comprehensive planning documents. (The Comprehensive Land Use Plan and The Comprehensive Transportation Plan) The Georgia Department of Community Affairs (DCA), Community & Economic Development Division has advised DeKalb County staff that DeKalb County's Service Delivery Strategy must be updated as a part of the 2050 Unified Plan effort; and

WHEREAS, DeKalb County and the Cities have reviewed and revised the previously adopted service delivery strategy and do not seek to adopt the service delivery strategy represented by the summary matrix attached hereto as Exhibit A, but adopt a service delivery strategy representative of current obligations; and

WHEREAS, if an update does not occur DeKalb County and the Cities will become ineligible for state administered financial assistance, grants, loans or permits until the first day of the month following verification of the updated strategy, pursuant to the terms of O.C.G.A § 36-70-27; and

WHEREAS, DeKalb requests that the City complete the service delivery strategy Acknowledgement Form and DCA Form 4 attached hereto as Exhibit B to certify the most recent update to the service delivery strategy.

NOW THEREFORE, BE IT RESOLVED by the governing authority of the City of Stonecrest, and it is hereby resolved by authority of the same that DeKalb County's 2022 Revised Service Delivery Strategy Matrix for the City of Stonecrest, Georgia summarizes the Service Delivery Strategy for DeKalb County as it pertains to the City of Stonecrest. Such strategy shall remain in force and effect until October 31, 2026. The DeKalb County Chief Executive Officer and the City of Stonecrest are authorized to execute all necessary documents so long as they substantially comply with this resolution.

BE IT FURTHER RESOLVED that any and all resolutions or any part thereof in conflict with this resolution is hereby repealed. This resolution shall be effective immediately upon its adoption.

SO RESOLVED THIS _____ DAY OF_____ 2022.

CITY OF STONECREST, GEORGIA

_____
JAZZMIN COBBLE, MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM

_____
CITY ATTORNEY

Exhibit

A

DeKalb County Service Delivery Strategy 2019

Summary of Services in DeKalb County Cities

General Services	Atlanta	Avondale Estates	Brookhaven	Chamblee	Clarkston	Decatur	Doraville	Dunwoody	Lithonia	Pine Lake	Stone Mountain	Tucker	Stonecrest	DeKalb County
Finance	D	D	D	D	D	D	D	D	D	D	D	D	D	D
Purchasing	D	D	D	D	D	D	D	D	D	D	D	D	D	D
Information Technologies	D	D	D	D	D	D	D	D	D	D	D	D	D	D
GIS (Basic)	**Atlanta**	**Avondale Estates**	**Brookhaven**	**Chamblee**	**Clarkston**	**Decatur**	**Doraville**	**Dunwoody**	**Lithonia**	**Pine Lake**	**Stone Mountain**	**Tucker**	**Stonecrest**	**DeKalb County**
Parcel Creation	D/DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	D
Parcel Maintenance	D/DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	D
GIS (Non-Basic)	**Atlanta**	**Avondale Estates**	**Brookhaven**	**Chamblee**	**Clarkston**	**Decatur**	**Doraville**	**Dunwoody**	**Lithonia**	**Pine Lake**	**Stone Mountain**	**Tucker**	**Stonecrest**	**DeKalb County**
Specialized Data/Mapping	D	D	D	D	D	D	D	D	D	D	D	D	D	D
Elections	DC	DC	IG-DC	DC	DC	D/DC	DC	DC	DC	DC	D/DC	DC	DC	D
Personnel	D	D	D	D	D	D	D	D	D	D	D	D	D	D
Property Tax Collections/ Tax Billing	DC	DC	DC	DC	DC	D	DC	DC	DC	DC	DC	DC	DC	D
Legal/Judicial Services	**Atlanta**	**Avondale Estates**	**Brookhaven**	**Chamblee**	**Clarkston**	**Decatur**	**Doraville**	**Dunwoody**	**Lithonia**	**Pine Lake**	**Stone Mountain**	**Tucker**	**Stonecrest**	**DeKalb County**
Public Defender	D	D	D	D	D	D	D	D	D	D	D	D	D	D
Solicitor	D	D	D	D	D	D	D	D	D	D	D	D	D	D
Local Government Attorney	D	D	D	D	D	D	D	D	D	D	D	D	D	D
Public Safety	**Atlanta**	**Avondale Estates**	**Brookhaven**	**Chamblee**	**Clarkston**	**Decatur**	**Doraville**	**Dunwoody**	**Lithonia**	**Pine Lake**	**Stone Mountain**	**Tucker**	**Stonecrest**	**DeKalb County**
Police **(Basic)**	D	D	D	D	D/DC	D	D	D	D/DC	D/DC	D	DC	DC	D
Police **(Non-basic)**	D	DC	D	DC	DC	DC	D	D	DC	DC	DC	DC	DC	D
Animal Control	DC	DC	DC	DC	DC	D/DC	D/DC	DC	DC	DC	DC	DC	DC	D
Fire Services	**Atlanta**	**Avondale Estates**	**Brookhaven**	**Chamblee**	**Clarkston**	**Decatur**	**Doraville**	**Dunwoody**	**Lithonia**	**Pine Lake**	**Stone Mountain**	**Tucker**	**Stonecrest**	**DeKalb County**
Fire & Rescue	D	DC	DC	DC	DC	D	DC	DC	DC	DC	DC	DC	DC	D
Fire Inspections	D	D/DC	D/DC	DC	DC	D	DC	DC	DC	DC	D/DC	DC	DC	D
Fire Prevention/ Marshal	D	D/DC	D/DC	DC	DC	D	DC	D/DC	DC	DC	D/DC	DC	DC	D
EMS	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	D
General	**Atlanta**	**Avondale Estates**	**Brookhaven**	**Chamblee**	**Clarkston**	**Decatur**	**Doraville**	**Dunwoody**	**Lithonia**	**Pine Lake**	**Stone Mountain**	**Tucker**	**Stonecrest**	**DeKalb County**
Sheriff /Jail & Evictions	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	D
Marshal/ Real Estate & Warrants	DC	D/DC	DC	DC	DC	D/DC	DC	DC	DC	D/DC	DC	DC	DC	D
911	D	DC	D	D	DC	D	D	A	DC	DC	DC	DC	DC	D
Dispatch	D	DC	D	D	D	D	D	A/DC	DC	DC	DC	DC	DC	D
Medical Examiner	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	D
Emergency Management	DC	DC	DC	DC	DC	D/DC	D/DC	DC	DC	D/DC	DC	DC	DC	D
Radio System	D	DC	DC	DC	DC	DC	D/DC	D	DC	DC	DC	DC	DC	D
Planning / Development	**Atlanta**	**Avondale Estates**	**Brookhaven**	**Chamblee**	**Clarkston**	**Decatur**	**Doraville**	**Dunwoody**	**Lithonia**	**Pine Lake**	**Stone Mountain**	**Tucker**	**Stonecrest**	**DeKalb County**
Strutural Inspections / Permits	**Atlanta**	**Avondale Estates**	**Brookhaven**	**Chamblee**	**Clarkston**	**Decatur**	**Doraville**	**Dunwoody**	**Lithonia**	**Pine Lake**	**Stone Mountain**	**Tucker**	**Stonecrest**	**DeKalb County**
Plans Review	D	D	D	D	D	D	D	D	D	D	D	D	D	D
Electrical Inspection	D	D	D	D	D	D	D	D	D	D	D	D	D	D
Building Inspection	D	D	D	D	D	D	D	D	D	D	D	D	D	D
Plumbing Inspection	D	D	D	D	D	D	D	D	D	D	D	D	D	D
HVAC Inspection	D	D	D	D	D	D	D	D	D	D	D	D	D	D
Land Development	**Atlanta**	**Avondale Estates**	**Brookhaven**	**Chamblee**	**Clarkston**	**Decatur**	**Doraville**	**Dunwoody**	**Lithonia**	**Pine Lake**	**Stone Mountain**	**Tucker**	**Stonecrest**	**DeKalb County**
Plan Review Coordination	D	D	D	D	D	D	D	D	D	D	D	D	D	D
Land Development Plan Review	D	D	D	D	D	D	D	D	D	D	D	D	D	D
Land Development Inspection	D	D	D	D	D	D	D	D	D	D	D	D	D	D
Final Plat Processing	D	D	D	D	D	D	D	D	D	D	D	D	D	D
Permits and Zoning	**Atlanta**	**Avondale Estates**	**Brookhaven**	**Chamblee**	**Clarkston**	**Decatur**	**Doraville**	**Dunwoody**	**Lithonia**	**Pine Lake**	**Stone Mountain**	**Tucker**	**Stonecrest**	**DeKalb County**
Building Permits	D	D	D	D	D	D	D	D	D	D	D	D	D	D
Plans Review	D	D	D	D	D	D	D	D	D	D	D	D	D	D
Zoning Review	D	D	D	D	D	D	D	D	D	D	D	D	D	D
Trade Permits	D	D	D	D	D	D	D	D	D	D	D	D	D	D
Certificate of Occupancy	D	D	D	D	D	D	D	D	D	D	D	D	D	D

DeKalb County Service Delivery Strategy 2019

Summary of Services in DeKalb County Cities

Planning & Related	Atlanta	Avondale Estates	Brookhaven	Chamblee	Clarkston	Decatur	Doraville	Dunwoody	Lithonia	Pine Lake	Stone Mountain	Tucker	Stonecrest	DeKalb County
Planning / Zoning	D	D	D	D	D	D	D	D	D	D	D	D	D	D
Business & Alcohol License	D	D	D	D	D	D	D	D	D	D	D	D	D	D
Community Development - CDBG	D	D	DC	DC	DC	DC	DC	N/A	DC	N/A	DC	DC	DC	D
Economic Development	D	D	D	D	D	D/A	D/A	D	D	N/A	D	A	D	A
Code Enforcement/Beautification	D	D	D	D	D	D	D	D	D	N/A	D	D	D	D
Public Housing	A	N/A	N/A	N/A	A	A	A	N/A	A	N/A	A	A	A	A
Public Works	**Atlanta**	**Avondale Estates**	**Brookhaven**	**Chamblee**	**Clarkston**	**Decatur**	**Doraville**	**Dunwoody**	**Lithonia**	**Pine Lake**	**Stone Mountain**	**Tucker**	**Stonecrest**	**DeKalb County**
Water Treatment / Water Distribution	DC	These services are provided by DeKalb County as an enterprise fund paid for by users fees. There is no fee differential between customers living in incorporated cities and unincorporated DeKalb County.												D
Wastewater Collection & Treatment	DC													D
Sanitation	**Atlanta**	**Avondale Estates**	**Brookhaven**	**Chamblee**	**Clarkston**	**Decatur**	**Doraville**	**Dunwoody**	**Lithonia**	**Pine Lake**	**Stone Mountain**	**Tucker**	**Stonecrest**	**DeKalb County**
Refuse Collection	D	D	DC	D	D	D	D	DC	DC	DC	DC	DC	DC	D
Landfill	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	D
Recycling Programs	D	D	DC	D	D	D	D	DC	D/DC	DC	DC	DC	DC	D
Roads & Drainage	**Atlanta**	**Avondale Estates**	**Brookhaven**	**Chamblee**	**Clarkston**	**Decatur**	**Doraville**	**Dunwoody**	**Lithonia**	**Pine Lake**	**Stone Mountain**	**Tucker**	**Stonecrest**	**DeKalb County**
Street Construction	D	D	D	D	D	D	D	D	D	D	D	D/DC	D/DC	D
Street Maintenance	D	D	D	D	D	D	D	D	D	D	D	DC	DC	D
Street Cleaning	D	D	D	D	D	D	D	D	D	D	D	DC	DC	D
Traffic Signaling	D	DC	D	D	D	DC	DC	D	DC	DC	DC	DC	DC	D
Street Signage	D	D	D	D	D	D	D	D	D	D	D	DC	DC	D
Storm Water	D	D	D	D	D	D	D	D	D	D	D	DC	DC	D
Cemetery	D	D	DC	DC	DC	D	DC	DC	DC	DC	D	DC	DC	D
Transportation	**Atlanta**	**Avondale Estates**	**Brookhaven**	**Chamblee**	**Clarkston**	**Decatur**	**Doraville**	**Dunwoody**	**Lithonia**	**Pine Lake**	**Stone Mountain**	**Tucker**	**Stonecrest**	**DeKalb County**
Development Permit Reviews	D	D	D	D	D	D	D	D	D	DC	D	D	D	D
Utility Encroachment Permitting	D	D	D	D	DC	D	D	D	DC	DC	D	DC	DC	D
Transportation Planning	D	D	D	D	D	D	D	D	D	D	D	DC	DC	D
Traffic Calming Program	D	D	D	D	D	D	D	D	DC	DC	DC	DC	DC	D
TC - Design and Petition ONLY!	D	D	D	D	D	D	DC	D	DC	DC	D	DC	DC	D
Airport	D	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	D
Leisure Services	**Atlanta**	**Avondale Estates**	**Brookhaven**	**Chamblee**	**Clarkston**	**Decatur**	**Doraville**	**Dunwoody**	**Lithonia**	**Pine Lake**	**Stone Mountain**	**Tucker**	**Stonecrest**	**DeKalb County**
Parks	D	D	D	D	D	D	D	D	D/DC	D	D	D	D	D
Recreation Programs	D	D	D	D	D	D	D	D	DC	D	D	D	D	D
Libraries	DC	DC	DC	DC	DC	DC	D/DC	DC	DC	DC	DC	DC	DC	D
Health and Social Services	**Atlanta**	**Avondale Estates**	**Brookhaven**	**Chamblee**	**Clarkston**	**Decatur**	**Doraville**	**Dunwoody**	**Lithonia**	**Pine Lake**	**Stone Mountain**	**Tucker**	**Stonecrest**	**DeKalb County**
Physical Health / Environmental Health	N/A	These services are provided by DeKalb County and paid for by general funds. There is no fee differential between customers living in incorporated cities and unincorporated DeKalb County.												D
Hospital	N/A													D
Mental Health / Substance Abuse	N/A													D
Welfare	N/A													D
Senior Services	N/A													D

D: Direct (Jurisdiction provides its own service)

DC: DeKalb County (The County is the sole provider of service)

A: Authority

Service Categories / Cities (Groups of like services)

Sub-Categories / Cities (More detailed services that require additional grouping)

Exhibit

B

DeKalb County

Service Delivery Strategy (SDS) City Acknowledgement Form

The purpose of this form is to track changes to the DeKalb County Service Delivery Strategy (SDS). Please complete each of the applicable sections below and sign. Refer to the SDS Summary of Services Matrix as a point of reference prior to making your changes and corrections. To see the entire SDS document, visit our website and click on the SDS link: https://www.dekalbcountyga.gov/sites/default/files/users/user3566/Matrix%20(2019)_REVISED_02062019.pdf

General Contact Information

Today's Date: 7/22/22

Jurisdiction Name: Choose Item City of Stonecrest

Name of Person Preparing Form: Gerald Sanders

Position of Person Preparing Form: Deputy City Manager

Phone Number: 770-843-9119 Email Address: gsanders@stonecrestga.gov

Preferred Contact Method: ☐ Phone ☑ Email

Service Delivery Changes

List all the changes (if any) that have occurred since 2019. If there are any new intergovernmental agreements (IGA) or agreements that have been terminated, update that information in this section.

Based on the 2019 SDS, have there been a change of services (termination or new) in your department related to DeKalb Cities?

- ☐ YES
- ☑ NO
- ☐ MAYBE

View your department's SDS Matrix to answer the questions below. Since 2019, click the status that best represents a change in service (if any) that applies.
Click the following link to view the current 2019 SDS Summary Matrix for reference:
https://www.dekalbcountyga.gov/sites/default/files/users/user3566/Matrix%20(2019)_REVISED_02062019.pdf

Services	No Changes	Change w/ IGA	Change w/ No IGA	Terminated
GIS (Basic/Non-basic)	☑	○	○	○
Police (Basic Uniform / Non-basic special)	☑	○	○	○
Animal Control	☑	○	○	○
Fire and Rescue / Inspections / Prevention	☑	○	○	○
EMS	☑	○	○	○
911	☑	○	○	○
Dispatch	☑	○	○	○
Emergency Management	☑	○	○	○
Radio Systems	☑	○	○	○
Planning Services (Land Use and Zoning)	☑	○	○	○
Development Services (permitting, inspections, C/O, etc.)	☑	○	○	○
Sanitation – Refuse Collection	☑	○	○	○
Sanitation – Recycling Program	☑	○	○	○
Street Construction	☑	○	○	○
Street Maintenance & Cleaning	☑	○	○	○
Traffic Signaling	☑	○	○	○
Street Signage	☑	○	○	○
Storm Water	☑	○	○	○
Cemetery	☑	○	○	○
Transportation Development Permit Reviews	☑	○	○	○
Utility Encroachment Permitting	☑	○	○	○
Traffic Calming (TC) Program	☑	○	○	○
TC- Design and Petition Only	☑	○	○	○
Parks	☑	○	○	○
Recreational Programs	☑	○	○	○

If there are any changes or terminations checked above, list the detail below:

Service	Type of Agreement	Purpose

Are there any new agreements / agreement negotiations in progress?

- [x] YES
- [ ] NO
- [ ] MAYBE

If you answered "Yes" or "Maybe" to the previous question, list the proposed agreements below:

Intergovernmental Agreement for the Provision of Police Services

Intergovernmental Agreement whereby the City of Stonecrest assumes responsibility for providing Public Works services (maybe)

Georgia Department of Community Affairs

SERVICE DELIVERY STRATEGY

FORM 4: Certifications

Instructions:

This form must, at a minimum, be signed by an authorized representative of the following governments: 1) the county; 2) the city serving as the county seat; 3) all cities having a 2000 population of over 9,000 residing within the county; and 4) no less than 50% of all other cities with a 2000 population of between 500 and 9,000 residing within the county. Cities with a 2000 population below 500 and local authorities providing services under the strategy are not required to sign this form, but are encouraged to do so.

COUNTY: DEKALB

We, the undersigned authorized representatives of the jurisdictions listed below, certify that:

1. We have executed agreements for implementation of our service delivery strategy and the attached forms provide an accurate depiction of our agreed upon strategy (O.C.G.A 36-70-21);
2. Our service delivery strategy promotes the delivery of local government services in the most efficient, effective, and responsive manner (O.C.G.A. 36-70-24 (1));
3. Our service delivery strategy provides that water or sewer fees charged to customers located outside the geographic boundaries of a service provider are reasonable and are not arbitrarily higher than the fees charged to customers located within the geographic boundaries of the service provider (O.C.G.A. 36-70-24 (20); and
4. Our service delivery strategy ensures that the cost of any services the county government provides (including those jointly funded by the county and one or more municipalities) primarily for the benefit of the unincorporated area of the county are borne by the unincorporated area residents, individuals, and property owners who receive such service (O.C.G.A. 36-70-24 (3)).

JURISDICTION	TITLE	NAME	SIGNATURE	DATE
DEKALB COUNTY	CEO	Michael Thurmond		
CITY OF ATLANTA	Mayor	Andre Dickens		
AVONDALE ESTATES	Mayor	Jonathan Elmore		
CITY OF BROOKHAVEN	Mayor	John Ernst		
CITY OF CHAMBLEE	Mayor	R. Eric Clarkson		
CITY CLARKSTON	Mayor	Beverly H. Burks		
CITY OF DECATUR	Mayor	Patti Garrett		
CITY OF DORAVILLE	Mayor	Joseph Geierman		
CITY OF DUNWOODY	Mayor	Lynn Deutsch		
CITY OF LITHONIA	Mayor	Shameka Reynolds		
CITY OF PINE LAKE	Mayor	Melanie Hammet		
STONE MOUNTAIN	Mayor	Patricia Wheeler		

CITY OF TUCKER	Mayor	Frank Auman		
CITY OF STONECREST	Mayor Pro Tem	George Turner		

DeKalb County
GEORGIA

DeKalb County Service Delivery Strategy (SDS)

What is it?

In accordance to the Sate of Georgia's Service Delivery Strategy law, local governments are encouraged to keep their Service Delivery Strategy (SDS) accurate and up-to-date. The purpose of the SDS is to provide an action plan for the County, supported by ordinances and intergovernmental agreements, to resolve land use conflicts. Counties and their municipalities are required to periodically amend/revise the existing SDS so it will always be current and reflect the locally preferred delivery arrangements.

Why Update the SDS?

Local governments must review and revise, if necessary, their approved Strategy under the following six conditions:

1. Comprehensive Plan Update
2. Service Changes
3. Revenue Changes
4. Local Government Changes
5. Expirations
6. Revisions

The Process

1. Negotiation
2. Agreement of Services
3. Draft Service Delivery Strategy (SDS)
4. SDS Review and Adoption
5. Submit SDS to GA Department of Community Affairs (DCA)
6. Official Review and Edit
7. SDS Verification
8. Valid Qualified Local Government Status