

PLANNING COMMISSION
MEETING
Stonecrest City Hall* - 6:00 p.m.
*In-Person Meeting
October 1, 2024



A G E N D A

As set forth in the Americans with Disabilities Act of 1990, the City of Stonecrest will assist citizens with special needs given notice (7 working days) to participate in any open meetings of the City of Stonecrest. Please contact the City Clerk's Office via telephone (770-224-0200).

Citizen Access: [Stonecrest YouTube Live Channel](#)

Citizens wishing to make a comment during the public hearing portion of the meeting can do so by attending the hearing in-person or submitting their comment(s) to Planning and Zoning Staff via email Planning-Zoning@stonecrestga.gov on the day of hearing, no later than 2:00 PM, to be read into the record at the hearing.

When it is your turn to speak, please place your comment card on the podium, state your name, address, and relationship to the case. There is a ten (10) minutes time limit for each item per side during all public hearings. Only the applicant may reserve time for rebuttal.

- I. CALL TO ORDER
- II. ROLL CALL
- III. APPROVAL OF THE AGENDA
- IV. APPROVAL OF MEETING MINUTES: *Planning Commission meeting minutes dated August 6, 2024.*
- V. ANNOUNCEMENT(S)
- VI. OLD BUSINESS
- VII. NEW BUSINESS:
 1. **PUBLIC HEARING**
CASE #: ZM24-002
APPLICANT: George Booker of GB General Contracting LLC / Construction Works Inc.
LOCATION: 6513 Marshall Blvd
The applicant is requesting to modify a zoning condition to construct an automotive windshield repair shop.

2. **DECISION**
CASE #:ZM24-002
APPLICANT: George Booker of G B General Contracting LLC / Construction Works, Inc.
LOCATION: 6513 Marshall Blvd
The applicant is requesting to modify a zoning condition to construct an automotive windshield repair shop.
3. **PUBLIC HEARING**
CASE # TMOD 24-001
APPLICANT: The City of Stonecrest
LOCATION: City-Wide
The City of Stonecrest is seeking approval to amend Section 6.1.3 Parking Regulations Off Street Parking Spaces to add parking regulations for commercial trucks and/or trailers.
4. **DECISION**
CASE # TMOD 24-001
APPLICANT: The City of Stonecrest
LOCATION: City-Wide
The City of Stonecrest is seeking approval to amend Section 6.1.3 Parking Regulations Off Street Parking Spaces to add parking regulations for commercial trucks and/or trailers
5. **PUBLIC HEARING**
CASE # TMOD 24-002
APPLICANT: The City of Stonecrest
LOCATION: City-Wide
The City of Stonecrest is seeking approval to amend Chapter 4 Alcoholic Beverages / Chapter 16 Miscellaneous Provisions and Offenses to specify hours of operation for businesses operating in the City of Stonecrest.
6. **DECISION**
CASE # TMOD 24-002
APPLICANT: The City of Stonecrest
LOCATION: City-Wide
The City of Stonecrest is seeking approval to amend Chapter 4 Alcoholic Beverages / Chapter 16 Miscellaneous Provisions and Offenses to specify hours of operation for businesses operating in the City of Stonecrest.
7. **PUBLIC HEARING**
CASE # TMOD 24-003
APPLICANT: The City of Stonecrest
LOCATION: City-Wide
The City of Stonecrest is seeking approval to amend Chapter 4 Alcoholic Beverages / Chapter 16 Miscellaneous Provisions and Offenses to specify hours of operation for businesses operating in the City of Stonecrest.
8. **DECISION**
CASE # TMOD 24-003
APPLICANT: The City of Stonecrest
LOCATION: City-Wide
The City of Stonecrest is seeking approval to amend Chapter 4 Alcoholic Beverages / Chapter 16 Miscellaneous Provisions and Offenses to specify hours of operation for businesses operating in the City of Stonecrest.

9. **PUBLIC HEARING**

CASE # TMOD 24-004

APPLICANT: The City of Stonecrest

LOCATION: City-Wide

The City of Stonecrest is seeking approval to modify Chapter 14 – Land Development Article VI Tree Protection.

10. **DECISION**

CASE # TMOD 24-004

APPLICANT: The City of Stonecrest

LOCATION: City-Wide

The City of Stonecrest is seeking approval to modify Chapter 14 – Land Development Article VI Tree Protection.

I.ADJOURNMENT



REZONING APPLICATION ANALYSIS

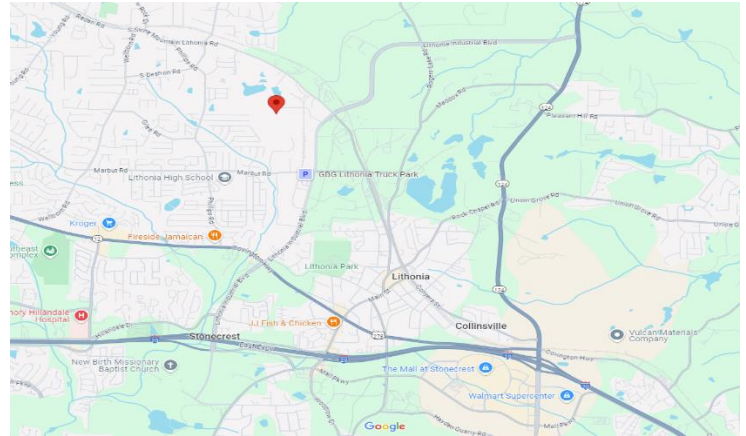
Prepared By:	Ellis Still, Deputy Director of Planning and Zoning
Petition Number:	ZM24-002
Applicant:	George H. Booker 1681 Wellborn Road Lithonia, GA 30058 gb.general@bellsouth.net FOR Amer Madanat Low Price Auto Glass Project 1540 Hernrico Road Conley, GA 30288
Owner:	NNN Reit, LP 450 South Orange Avenue Suite 900 Orlando, FL 32801 jill.fussell@nnnreit.com
Project Location:	6513 Marshall Boulevard, Stonecrest, GA
District:	1 – Councilwoman Tara Graves
Acreage:	+/- 32.04 acres
Existing Zoning:	M-2 (Heavy Industrial) District
Future Land Use:	Heavy Industrial (HIND)
Overlay District:	N/A
Proposed Development/Request:	The applicant is seeking to remove a zoning condition that was approved by a DeKalb County Special Land Use Permit (SLUP) that restricts any additional uses on the property. The applicant is seeking to construct a building for the use of a windshield repair business.
CPIM:	September 12, 2024
Planning Commission (PC):	October 1, 2024
Mayor & City Council:	October 28, 2024
Sign Posted/ Legal Ad(s) submitted:	August 7, 2024
Staff Recommendations:	CONDITIONAL APPROVAL
PC Recommendation:	TBD

PROJECT OVERVIEW

Location

The subject property is located at 6513 Marshall Boulevard with a parcel identification of 16 123 01 019. The subject property is a currently existing Pull A Part, based on the submitted site plan dated April 6, 2007, entitled Preliminary Site Plant # 2R Part.

The property abuts RSM (Small Lot Residential) District to the west, M (Light Industrial) to the north, M (Light Industrial) and M-2 (Heavy Industrial) to the south and M-2 (Heavy Industrial) to the east.



Background

The City of Stonecrest Zoning has the property is zoned M-2 (Heavy Industrial) District. The property has a stream along the western property lines including some floodway or floodplain. The property is currently operating as an automobile parts salvage yard (Pull-A-Part). The applicant is requesting to amend a zoning condition placed on the parcel in 2007 by a DeKalb County Special Land Use Permit (SLUP) that restricts any additional uses on the property.

ZM24-002



Adjacent and Surrounding Properties	Zoning (Petition Number)	Land Use
Applicant	M-2 (Heavy Industrial) District	Vacant Land
Adjacent: North	M & M-2 (Light & Heavy Industrial) District	Design Packaging Inc./Vacant
Adjacent: West	RSM (Small Lot Residential) District	The Woods of Redan and Laurel Post Close Subdivisions
Adjacent: East	M & M-2 (Light & Heavy Industrial) District	C&S Truck & Trailer
Adjacent: South	M-2 (Heavy Industrial) District	True Love Christian Ministries Church/Vacant



DIVISION 32. - M-2 (HEAVY INDUSTRIAL) DISTRICT

Sec. 2.32.1. - Statement of purpose and intent.

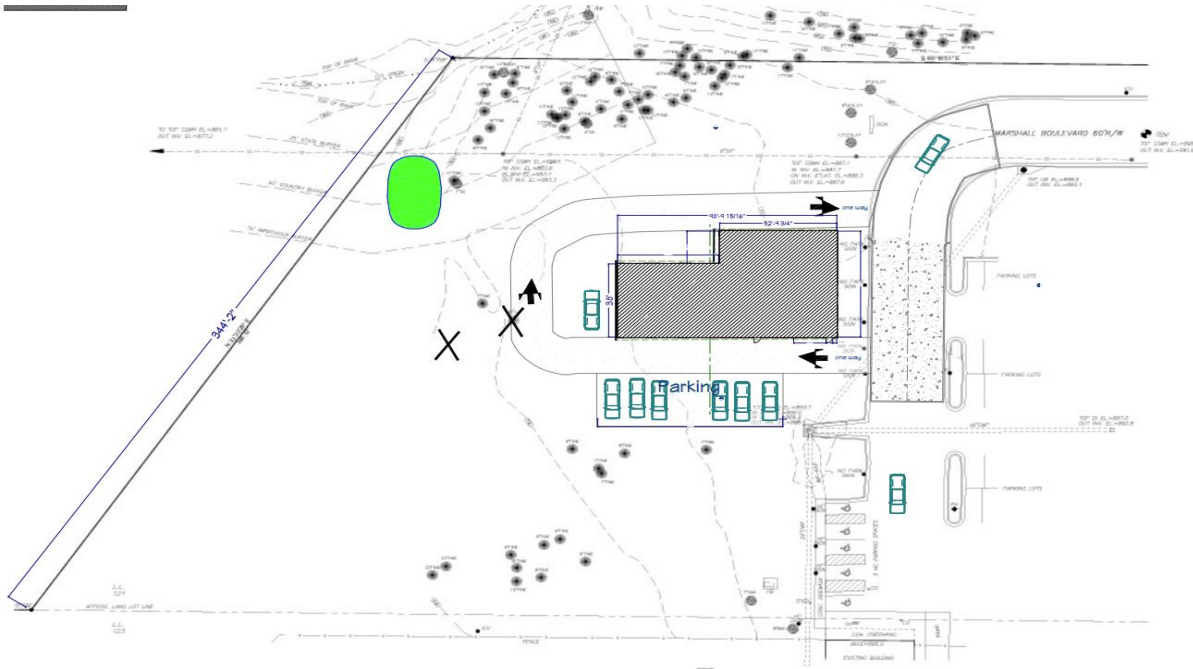
The purpose and intent of the City Council in establishing the M-2 (Heavy Industrial) District is as follows:

- 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 and that any negative noise impact resulting from the use of land within the M-2 (Heavy Industrial) District is contained within the boundaries of said district and does not create noise problems for adjoining residential, office or commercial districts;
- 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.

Public Participation

Property owners within 1,000 feet of the subject property were mailed notices of the proposed rezoning in August 2024. There was a Community Planning Information Meeting (CPIM) held on September 12, 2024, at 6:00 p.m. at city hall. There were no attendees that spoke on the request.

Submitted Site Plans



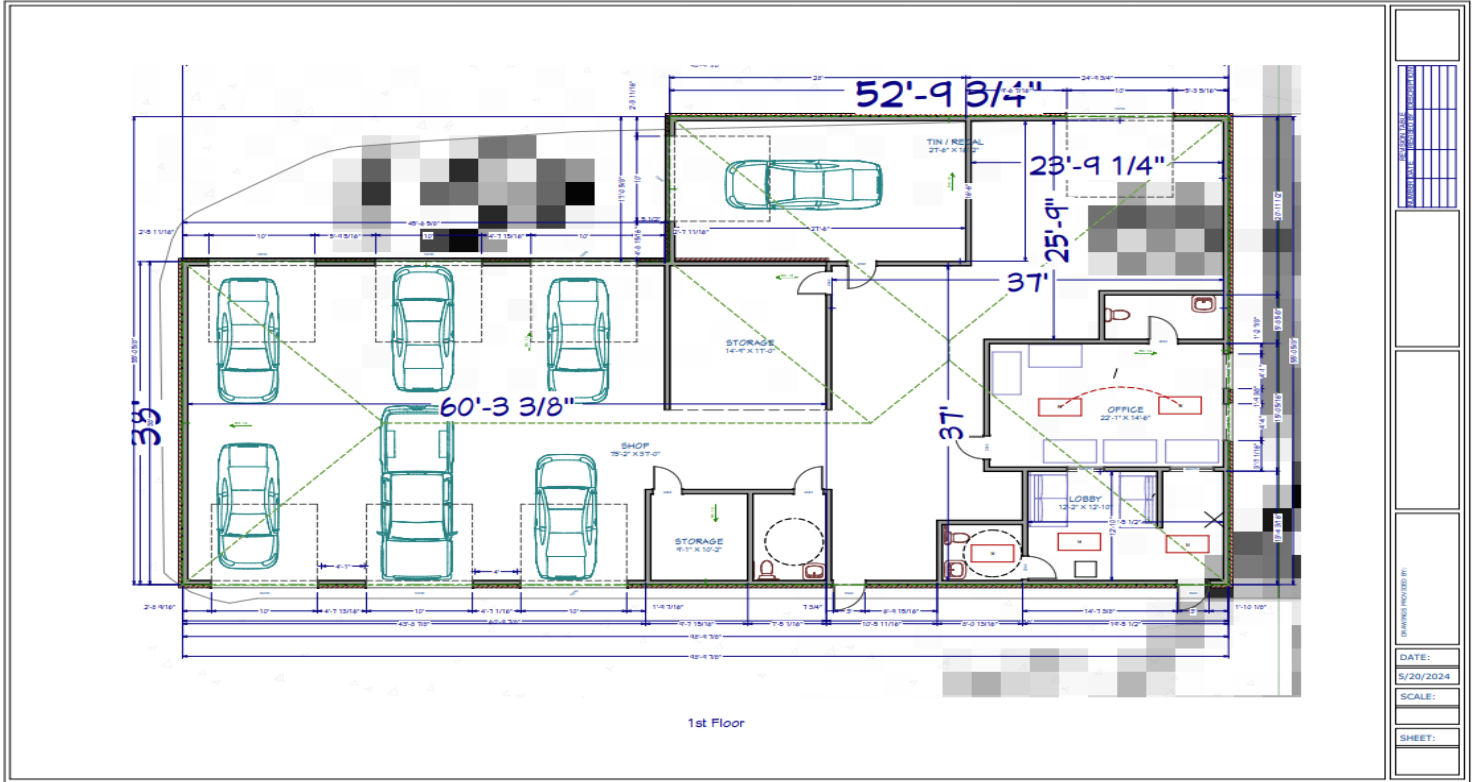
Site plan / scale 1"=20'

PROJECT TITLE	
DATE	
SCALE	
SHEET	
Project Overview	
DRAWINGS PROVIDED BY:	
DATE:	5/20/2024
SCALE:	
SHEET:	

Building Elevation



Floor Plan



Streetview



ZM 24-002

ADDRESS: 6513 Marshall Blvd, Stonecrest, GA

CURRENT ZONING: M-2 (Heavy Industrial) District

OVERLAY DISTRICT: N/A

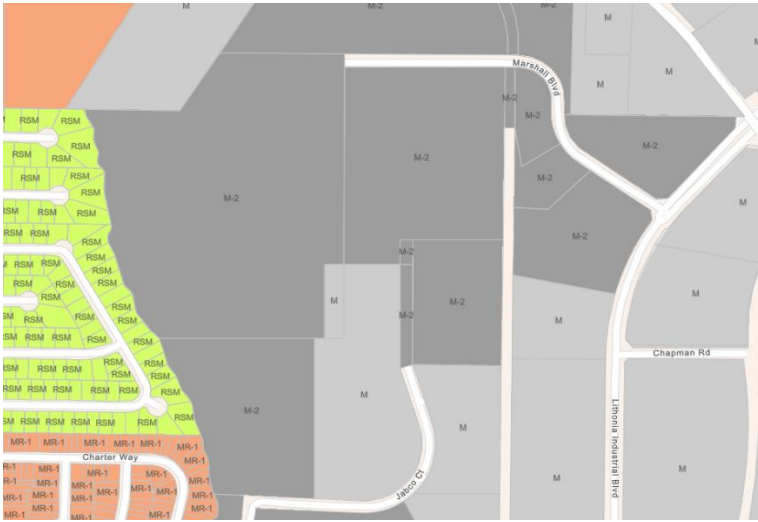
FUTURE LAND USE: **Heavy Industrial**

PROPOSED BUILDING LOCATION: 

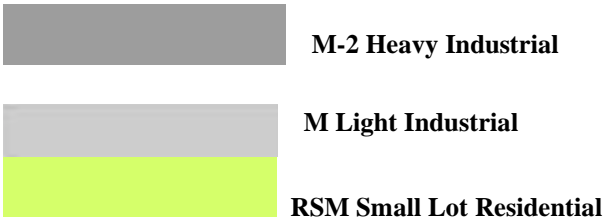
Aerial Map



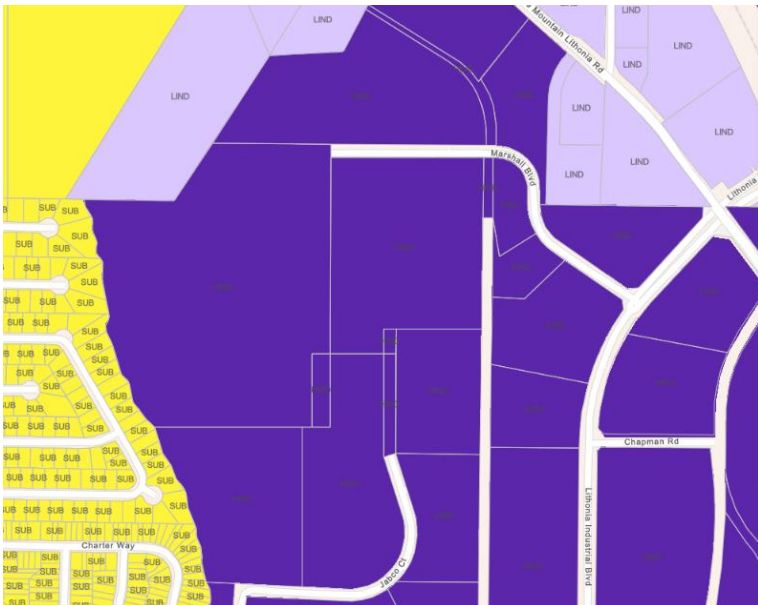
Zoning Map



Legend



Future Land Use Map



Legend





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STANDARDS OF ZONING MODIFICATION REVIEW

Section 7.3.5 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.

A. Whether the zoning proposal is in conformity with the policy and intent of the comprehensive plan.

The subject property is located within the Heavy Industrial character area of the 2038 Stonecrest Comprehensive Plan and is consistent with the following Plan Policies and Strategies: The intent of the Industrial Character Area is to identify areas that are appropriate for more intense land uses that are industrial related. This designation consists of heavy and light industrial classifications. These uses shall be located as such to protect residential and commercial areas from potential disturbances +generated by industrial land uses. This designation consists of land uses for warehouse distribution, manufacturing, wholesale/trade and automotive.

The current surrounding zoning district is industrial, both light and heavy. The zoning modification request to remove a condition to allow for the automotive windshield repair is in alignment with the industrial zoning districts listed in the Heavy Industrial Future Land Use Destination.

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.

The existing zoning is M-2 (Heavy Industrial) and is proposed use is permitted in this zoning district. The proposed use is suitable in view of the existing industrial uses located on and surrounding Marshal Blvd. The proposed use is for an automotive glass repair shop. This proposed use is requesting to co-exist on the property with an existing auto salvage business and would be suitable in view of the use and development of adjacent and nearby properties.

C. Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned.

Currently zoned M-2 (Heavy Industrial) District, the site has a more than reasonable economic use a presently zoned. The current land use is an automobile salvage business. The proposed use is to add an automotive glass repair (shop) use on the property. However, there is an existing condition that prevents any additional uses on the property based on a prior zoning request.

D. Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property or properties.

The property has an existing salvage yard business that is located on the +/-34.02-acre parcel. The proposed use would not adversely affect the existing use or usability of the adjacent or nearby properties. The size of the parcel would allow the construction of an automotive glass repair business with minimum impact on adjacent and nearby properties. The residential development to the west of the property would not be affected due to the proposed use being located more than 750 feet away and is separated by a stream with adherence to the stream buffer.



E. Whether there are other existing or changing conditions affecting the use and development of the property, which gives supporting grounds for either approval or disapproval of the zoning proposal.

The applicant is requesting to locate on a parcel that has an existing automotive salvage business. There is an opportunity for both business owners to work collaboratively. The removal of a zoning condition will allow the opportunity for both business owners to ensure that the use is developed in a manner that is consistent with current development practices. These factors provide supporting grounds to approve the proposed zoning modifications. With no maximum of the number of additional structures on this parcel, respective of the zoning.

F. Whether the zoning proposal will adversely affect historic buildings, sites, districts, or archaeological resources.

There are no known historic buildings, sites, districts, or archaeological resources near or on the subject site that would be affected by the zoning modification request at the time of this application.

G. Whether the zoning proposal will result in a use that will or could cause excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.

The proposed zoning modification should not have a significant impact on existing streets and transportation facilities given the proposed use will be located on a property with access to an existing business. The nature of the use does not require customers to stay for extended periods of time and therefore should not produce a significant increase in traffic or overnight parking. This request will not have an impact on area schools. The applicant shall seek approval for all permitting through the City of Stonecrest with required reviews by external agencies (DeKalb County.)

H. Whether the zoning proposal adversely impacts the environment or surrounding natural resources.

The proposed use should not adversely impact the environment or surrounding natural resources due to the nature of the business. This is an automotive glass repair shop, and all discarded materials will be required to be disposed of in the proper manner meeting all local and state requirements, where applicable. There are no proposed references by the applicant that will reference odor, dust or chemicals that expressed in this application associated with this use.

STAFF RECOMMENDATION

Staff recommends **APPROVAL with conditions.**

- 1. No additional curb cuts shall be allowed on Marshall Blvd. Access shall be from the existing drive of Marshall Blvd used by the current business.**
- 2. No overnight parking or storage of repaired vehicles on the property.**
- 3. Must adhere to the all-applicable stream buffer and setback requirements (as applicable.)**

PLANNING COMMISSION (PC) RECOMMENDATION – October 1, 2024.

TBD



APPLICATION PACKAGE

RZ Application

All applications and plans must be submitted through the [Citizenserve Online Portal](#)



Amendment Application

PROPERTY			
Site Address(es): 6513 Marshall Boulevard Lithonia GA. 30058	Parcel #: 16 123 01019	Zip: 30058	
Project Name (If applicable):			
Current Zoning	Proposed Zoning		
Current Use	Proposed Use		

OWNER INFORMATION			
Name:			
Address:			
Email:	Phone:		

APPLICANT			
Name:	George H. Booker		
Address:	1681 Wellborn Rd. Lithonia GA. 30058		
Email:	Phone:	gb-general@bellsouth.net 678-613-8902	



AFFIDAVIT

To the best of my knowledge, this application form is correct and complete. If additional materials are determined to be necessary, I understand that I am responsible for filing additional materials as specified by the City of Stonecrest Zoning Ordinance. I understand that failure to supply all required information (per the relevant Applicant Checklists and Requirements of the Stonecrest Zoning Ordinance) will result in the rejection of this application. I have read the provisions of the Georgia Code Section 36-67A-3 as required regarding Campaign Disclosures. My Signed Campaign Disclosure Statement is included.

Applicant's Name:	George H. Booker		
Applicant's Signature:	Date:	5/24/2024	

NOTARY			
Sworn to and subscribed before me this 24 th day of MAY 2024			
Notary Public:	KENDALL GREY		
Signature:	Date:	5/24/24	



RZ Application

All applications and plans must be submitted through the [Citizenserve Online Portal](#)



Applicant(s) Notarized Certification

The petitioner acknowledged that this amendment application form is correct and complete. By completing this form, all applicant of the subject property certifies authorization of the filing of the application for amendment(s), and authorization of an applicant or agent to act on their behalf in the filing of the application including all subsequent application amendments.

Applicant			
Name:	George H. Becker		
Address:	1681 Westborn Rd.	City, State:	Lithonia GA. Zip: 30058
Signature:		Date:	5-24-2024
Sworn to and subscribed before me this <u>24th</u> day of <u>May</u> , 20 <u>24</u>			
Notary Public:	 KENDALL GREY		

Applicant (if applicable)			
Name:			
Address:		City, State:	Zip:
Signature:		Date:	
Sworn to and subscribed before me this _____ day of _____, 20____			
Notary Public:			

Applicant (if applicable)			
Name:			
Address:		City, State:	Zip:
Signature:		Date:	



RZ Application

All applications and plans must be submitted through the [Citizenserve Online Portal](#)

Property Owner(s) Notarized Certification

The owner and petitioner acknowledge that this amendment application form is correct and complete. By completing this form, all owners of the subject property certify authorization of the filing of the application for amendment(s), and authorization of an applicant or agent to act on their behalf in the filing of the application including all subsequent application amendments.

Property Owner

Name:	Ross Kagon		
Address:	6513 MARS HILL BLVD.	City, State:	STONECREST, GA Zip: 30058
Signature:		Date:	5/24/24
Sworn to and subscribed before me this <u>24</u> day of <u>May</u> , 20 <u>24</u>			
Notary Public:			

Additional Property Owner (if applicable)

Name:			
Address:		City, State:	Zip:
Signature:		Date:	
Sworn to and subscribed before me this <u>24</u> day of <u>May</u> , 20 <u>24</u>			
Notary Public:			

Additional Property Owner (if applicable)

Name:			
Address:		City, State:	Zip:
Signature:		Date:	



RZ Application

All applications and plans must be submitted through the [Citizenserve Online Portal](#)

Campaign Disclosure Statement

Have you, within the two years immediately preceding the filing of this application, made campaign contributions aggregating \$250.00 or more to a member of the City of Stonecrest City Council or a member of the City of Stonecrest Planning Commission?

Yes

No

Applicant/Property Owner			
Name:	George H. Booker		
Address:	1681 Wellborn Rd.	City, State:	Lithonia Ga. Zip: 30058
Signature:		Date:	5-23-2024

If the answer above is yes, please complete the following section:

Date	Government Official & Position	Description	Amount



Planning and Zoning Department of Stonecrest
3120 Stonecrest Blvd Suite 190
Stonecrest, GA 30038

Re: Low Price Auto Glass Project
1540 Henrico Road
Conley, GA 30288
Phone:404-243-9989

Dear Planning and Zoning Department of Stonecrest,

The purpose of this letter of intent is to inform you that we would like to build a new glass repair shop at 6513 Marshall Blvd Lithonia, Ga 30058. I, Amer Madanat, George Booker (GB General Contracting), and Pull A Part would like to petition an amendment file SLU-07-13560 for a zoning modification.

With over 25 years of experience in the auto glass repair industry, partnership alongside Pull-A-Part, our family-owned business has proudly served the Greater Atlanta area with unparalleled expertise and dedication.

We take pride in offering swift and efficient auto glass repair services, with a commitment to completing each job within a 45-minute timeframe. Our emphasis on promptness and quality craftsmanship has earned us a reputation as the go-to destination for customers seeking reliable and expedited auto glass repairs.

In addition to our efficient service model, we prioritize delivering exceptional customer experiences. Our knowledgeable staff members are trained to provide personalized attention to each customer, ensuring their needs are met with professionalism and courtesy at every interaction. We understand the importance of earning and maintaining customer trust, and we go above and beyond to exceed expectations with every repair job.

Thank you for considering this proposal, and we look forward to the opportunity.

Sincerely,

Amer Madanat



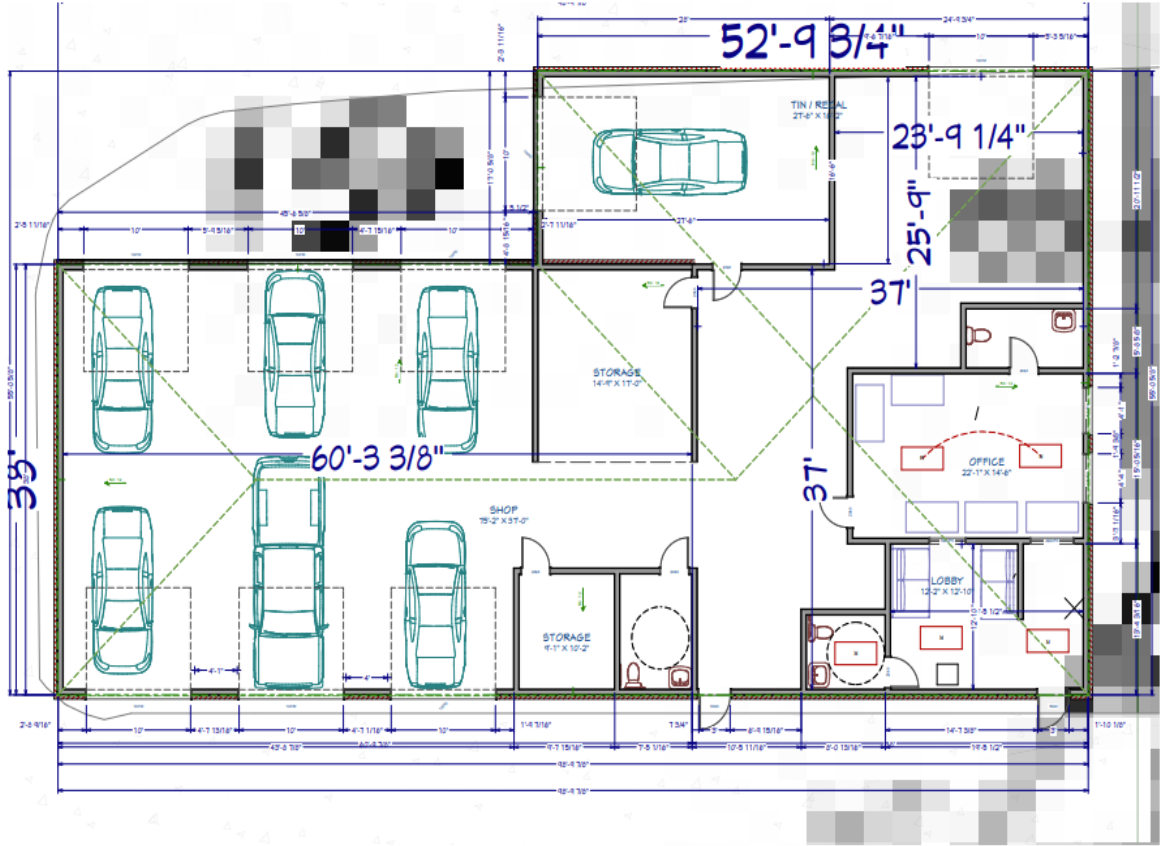
Right SIDE VIEW1



Camera 1

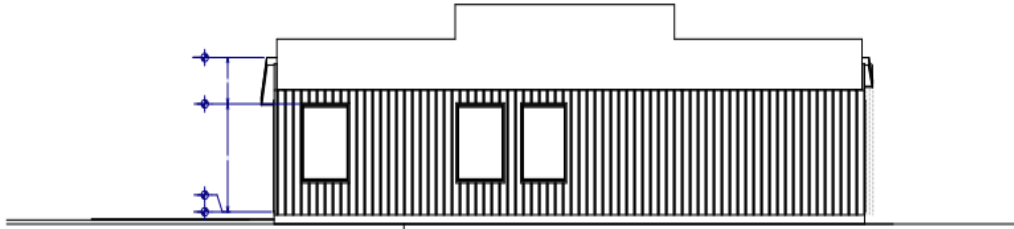
PREPARED BY: _____ CHECKED BY: _____ APPROVED BY: _____
DRAWING PROVIDED BY: _____
DATE: 5/20/2024
SCALE:
SHEET:

BUILDING FLOOR PLAN

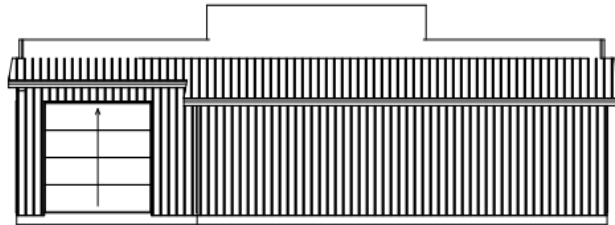


1st Floor

DATE:	5/20/2024
SCALE:	
SHEET:	



FRONT Elevation



Rear Elevation

DATE: 5/20/2024
SCALE:
SHEET:

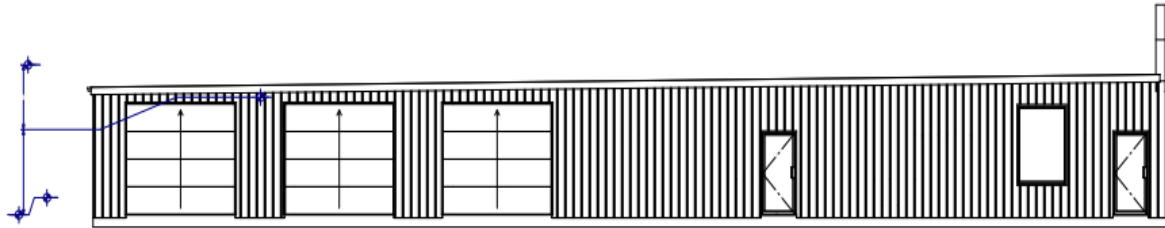
DRAWING PROVIDED BY:

DATE:

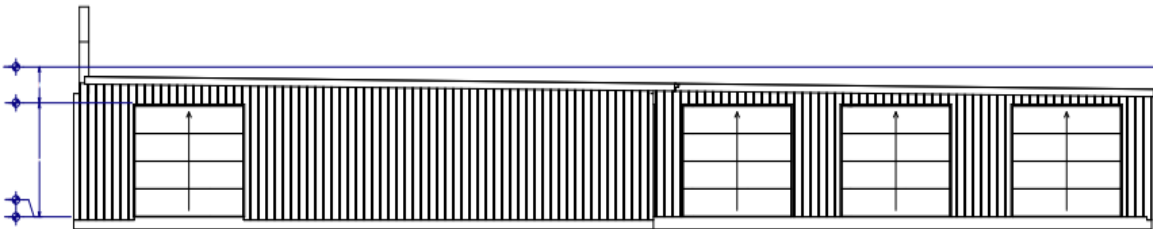
5/20/2024

SCALE:

SHEET:



Left Elevation



Detail 1


DRAWING PROVIDED BY:
DATE: 5/20/2024
SCALE:
SHEET:



City of Stonecrest 2038 Comprehensive Plan 5- Year Update



Caption: An example of Heavy Industrial activity located in Stonecrest, GA

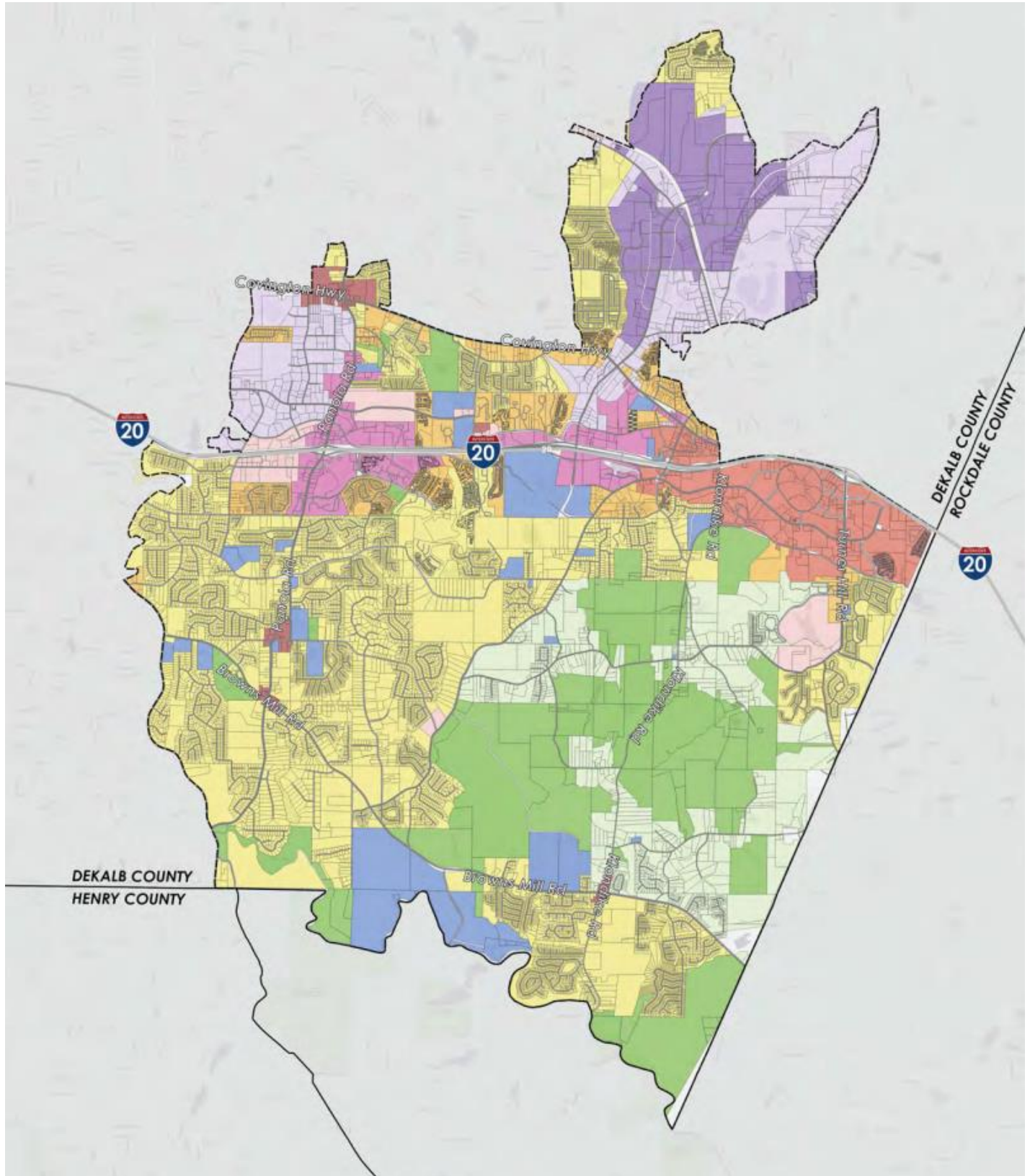
Heavy Industrial (M-HI): The intent of the Industrial Character Area is to identify areas that are appropriate for more intense land uses that are industrial-related. This designation consists of heavy and light industrial classifications. These uses shall be located to protect residential and commercial areas from potential disturbances generated by industrial land uses. This designation would consist of land used for warehousing, distribution, manufacturing, assembly, and processing. Where these types of uses generate odors, noise, vibration, air pollution, or other nuisances, the Heavy Industrial Land Use Designation would be appropriate.

Use Descriptions: Manufacturing; Warehouse Distribution; Wholesale/Trade; Automotive

Maximum Density, Units/Acre: n/a

Permitted Districts: OD, C2, M, M2

FUTURE LAND USE MAP





CITY OF STONECREST, GEORGIA

DEKALB COUNTY CONDITIONS SLUP #07-13560



GEORGIA STATE BOARD OF REGISTRATION OF USED MOTOR VEHICLE DEALERS
 & USED MOTOR VEHICLE PARTS DEALERS
 237 COLISEUM DRIVE
 MACON, GA 31217
 478.207.2440
 FAX 866.888.8026
 www.sos.ga.us/plb/usedcar

ZONING CERTIFICATION

THIS IS TO CERTIFY THAT

PULL A PART
 DEALERSHIP NAME

PULL A PART c/o GREG COHEN, SR VP of MARKETING AND NEW VENTURES
 OWNER(S)

6513 MARSHALL BLVD
 STREET ADDRESS

LITHONIA
 CITY

GA
 STATE

30058
 ZIP CODE

IS PROPERLY ZONED TO OPERATE THE PROPOSED USED MOTOR VEHICLE DEALER/BROKER
 ESTABLISHMENT IN THE COUNTY/CITY OF

DEKALB

AND THAT CURRENT ZONING

STANDARDS WILL ALLOW A PERMANENT SIGN ON THE PROPERTY THAT APPRISES CONSUMERS OF THE
 DEALERSHIP.

- Signs must comply with Ch. 21 of the County Code (the "Sign Ordinance")
- See attached conditions.

Melora Furman
 SIGNATURE OF ZONING COMMISSIONER

Melora Furman
 PRINT NAME OF ZONING COMMISSIONER

SWORN TO AND SUBSCRIBED BEFORE ME THIS

16th DAY OF December, 2013

[Signature]
 NOTARY PUBLIC

MY COMMISSION EXPIRES 4-4-17

NOTARY SEAL



DEKALB COUNTY

ITEM NO.

BOARD OF COMMISSIONERS

ZONING AGENDA / MINUTES

MEETING DATE: July 24, 2007

HEARING TYPE
PUBLIC HEARING

ACTION TYPE
ORDINANCE

SUBJECT: Special Land Use Permit – Pull-A-Part, LLC c/o The Battle Law Group

COMMISSION DISTRICTS: 5 & 7

DEPARTMENT: Planning

PUBLIC HEARING: YES NO

ATTACHMENT: YES No

INFORMATION CONTACT: Patrick Ejike/Kevin Hunter

PAGES: 22

PHONE NUMBER: (404) 371-2155

PURPOSE:
SLUP-07-13560

Application of Pull-A-Part, LLC c/o The Battle Law Group to request a special land use permit to allow for a used automobile parts/retailer. The property is located on the north side of Jabco Court, north of its intersection with Marbut Road. The property has 50 feet of frontage along Jabco Court, 60 feet along Marshall Boulevard and contains 33.58 acres.

Subject Property: 16-123-01-019

RECOMMENDATION(S):

PLANNING DEPARTMENT:

Approval w/conditions (Revised 7/13/07). Based on the submitted site plan and information, as well as field investigation of the project site, it appears that the proposed project meets all of the requirements of the Zoning Ordinance for approval of a Special Land Use Permit. Therefore, it is the recommendation of the Planning Department that the application be approved, subject to the following conditions:

1. The 200 foot Transitional Buffer shall be maintained in a natural state.
2. Approval shall be based on the submitted site plan dated April 6, 2007, entitled Preliminary Site Plan #2R, prepared by Planners and Engineers Collaborative, with the construction of an eight (8) foot high metal (painted sound) wall, subject to approval of the Planning and Development Department.
3. Noise levels shall be in strict compliance to the DeKalb County Code of Ordinance.

PLANNING COMMISSION:

Approval w/conditions.

COMMUNITY COUNCIL:

Approval.



FOR USE BY COMMISSION OFFICE/CLERK ONLY

ACTION: H21

MOTION was made by Commissioner May, seconded by Commissioner Stokes, and passed 5-0-0-2, to approve with conditions, the special land use permit of Pull-A-Part, LLC c/o The Battle Law Group. Commissioner Ellis was out of the room and not voting and Commissioner Boyer was absent and not voting.

ADOPTED: JUL 24 2007
(DATE)
Burrell Ellis
PRESIDING OFFICER
DEKALB COUNTY BOARD OF COMMISSIONERS

CERTIFIED: JUL 24 2007
(DATE)
M. Battle
CLERK,
DEKALB COUNTY BOARD OF COMMISSIONERS

FOR USE BY CHIEF EXECUTIVE OFFICER ONLY

APPROVED: AUG 06 2007
Vernon Jones
CHIEF EXECUTIVE OFFICER
DEKALB COUNTY

VETOED:
CHIEF EXECUTIVE OFFICER
DEKALB COUNTY

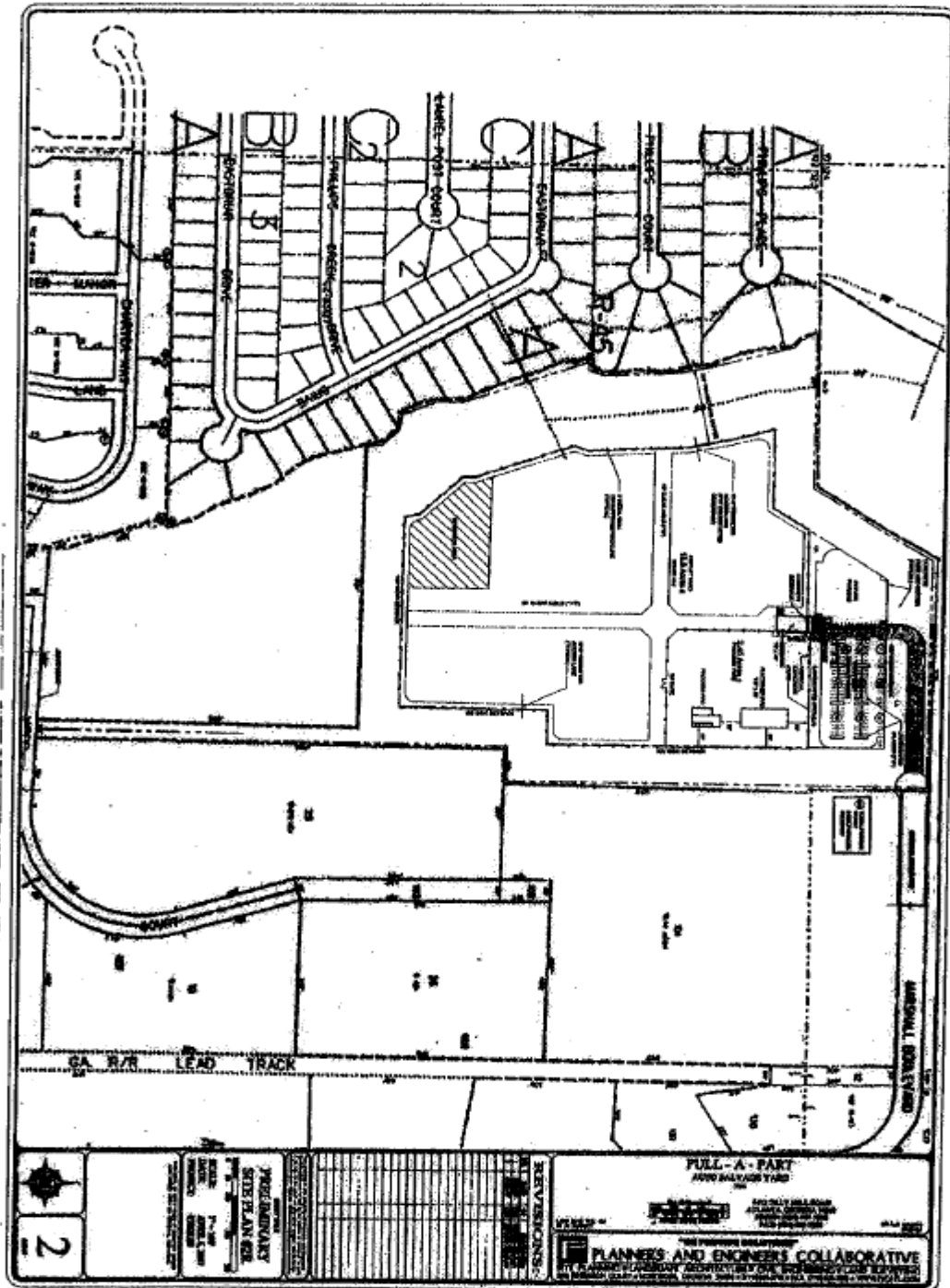
VETO STATEMENT ATTACHED:

MINUTES:

Michael Battle, 999 Peachtree Street, Atlanta, Ga. 30309, spoke in support of the application. Ms. Battle submitted a list of conditions for the record.

No one spoke in opposition of the application.

Table with 4 columns: FOR, AGAINST, ABSTAIN, ABSENT. Rows list Districts 1-7 and their respective commissioners (Elaine Boyer, Jeff Rader, Larry Johnson, Burrell Ellis, Lee May, Kathie Gannon, Connie Stokes). 'X' marks are present in the FOR and ABSENT columns for all listed commissioners.



FULL-A-PART
 ADD 84,000 SQ. FT.
 PLANNERS AND ENGINEERS COLLABORATIVE
 12000 WOODHURST DRIVE, SUITE 100, ATLANTA, GA 30349
 (404) 452-1200
 WWW.PECSOLUTIONS.COM

2

TMOD 24-001

City of Stonecrest Planning & Zoning Department
3120 Stonecrest Blvd.
Ste. 190
Stonecrest, GA 30038
www.stonecrestga.gov



TO: City of Stonecrest Planning Commission

FROM: City of Stonecrest Planning and Zoning Department

SUBJECT: TMOD-24-001 Truck Parking
Article 6 Parking Sec. 6.1.3 Parking Regulations, Off Street Parking Spaces.

ADDRESS: City-Wide

MEETING DATE: October 1, 2024

SUMMARY: The purpose of the text modification is to provide a clear definition of areas that shall permit commercial truck parking, tractor trailers and semi-trailers parking in the City.

STAFF RECOMMENDATION: APPROVAL



FACTS & ISSUES

- The current language does not address commercial truck parking, tractor trailer parking or semi-trailer parking city wide.
- The text modification will provide a clear understanding on truck parking in residential and commercial areas.
- Staff is proposing to amend Article 6 Parking; Sec 6.1.3 Parking Regulations; Off Street Parking Spaces.
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Attachment(s) Included:

- **Proposed *redlined* revisions to the Code of Ordinances Article 6 Parking; Sec 6.13. Off-Street Parking Spaces.**

TMOD-24-001

STONECREST CODE OF ORDINANCE UPDATE

ARTICLE 6. PARKING

TEXT AMENDMENT

TMOD 24-001

SEC. 6.1.3 PARKING REGULATIONS, OFF-STREET PARKING SPACES

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 fence or wall minimum of six feet in height.
 - 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 75 percent evergreens and at least two rows of plants.
 - 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.

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 every two years to ensure continued compliance with the above specifications. Additional maintenance such as grading, Graded Aggregate Base, or surface treatment may be required;
 - f. Parking areas on unpaved surfaces for transportation equipment and storage or maintenance (vehicle) storage with existing unpaved areas shall be considered a nonconforming use under section 8.1.5 exempt from the requirements of subsections B.10. and 11 of this section. if the underlying use of the parcel was issued a business license or Motor Carrier Number valid on December 31, 2017;
 - g. All other parcels with existing unpaved areas shall have two years to comply with these specifications with a one-time extension up to 12 months.

12. Commercial trucks, tractor trailers and semi-trailers: A commercial truck (including medium and heavy-duty trucks, semi-trucks, tractor trailer flatbed trucks, tow trucks, box trucks, and delivery trucks) and semitrailer are prohibited from parking in all residentially zoned properties. Commercial trucks, tractor trailers or semitrailers shall not be parked or stored in any O-I (Office Institutional), OD (Office Distribution), C-1 (Local Commercial), C-2 (General Commercial), MU-1 (Mixed Use Low Density), MU-2 (Mixed Use Low Density, MU-3 (Mixed Use Medium Density), MU-4 (Mixed Use High Density) and NS (Neighborhood Shopping) districts.

A. No Semi Truck allowed signs/ and/or Weight limit signs shall be posted on the designated streets that are not classified as truck routes. (See Table 6.1 a No Semi Truck/Weight limits signs examples.)

Table 6.1 a No Semi Truck/Weight limits signs.

The following are exceptions;

- a. The vehicle is engaged in loading or unloading activity where the driver is present and in charge thereof.
- b. The vehicle is owned or is being used by a business located on the property.
- c. A business on the property is conducting operations and the vehicle is being used in connection with such activity. Where a commercial vehicle is parked in an O-I, C-1, C-2, or MU district, it shall park only in areas designated and posted as loading zones and/or loading docks.
- d. Using loading zones and unloading docks by commercial vehicle operators for sleeping or parking overnight is strictly prohibited.
- e. If any vehicle found upon a parking lot, driveway or entrance drive, in violation of this Section regulating the parking and/or storage of commercial trailers, the owner or person in possession of any real property or the vehicle operator, or both may be punished as provided in this code section.

(Ord. of 8-2-2017, § 1(6.1.3); Ord. No. 2018-07-02, § 1(6.1.3), 7-16-2018)

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
<i>Residential</i>		
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	Three spaces per dwelling unit, plus one-quarter space per

	unit to accommodate guest parking.	dwelling unit to accommodate guest parking.
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.
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.
<i>Institutional</i>		
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.
Places of assembly with fixed seating, including places of worship, movie theaters, stadiums,	One space for each four seats in the largest assembly room.	One space for each two seats in the largest assembly room.

auditoriums, live performance theaters, conference centers and cultural facilities		
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.
<i>Recreational</i>		
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 a tent one space for each 300 square feet of area within the tent enclosure.	One space for each 200 square feet of land devoted to such use; or where such use is conducted 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.

<i>Commercial</i>		
Adult daycare center	Two spaces	Four spaces
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.
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	One space for each 500 square feet of floor area.	One space for each 200 square feet of floor area.

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Convenience Stores or Grocery Stores or other uses described more particularly herein		
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.
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.
<i>Industrial</i>		
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); Ord. No. 2022-05-01 , § 1(Exh. A), 5-23-2022; Ord. No. 2022-06-01 , § 2(Exh. A), 8-2-2022)

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

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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))

TMOD 24-002

City of Stonecrest Planning & Zoning Department
3120 Stonecrest Blvd.
Ste. 190
Stonecrest, GA 30038
www.stonecrestga.gov



TO: City of Stonecrest Planning Commission

FROM: City of Stonecrest Planning and Zoning Department

SUBJECT: TMOD-24-002 Hours of Operation Based on Uses
Chapter 4 Alcoholic Beverages/Chapter 16 Miscellaneous Provisions and Offenses

ADDRESS: City-Wide

MEETING DATE: October 1, 2024

Summary: The purpose of the text modification is to provide guidelines and requirements along with operating hours for businesses in the city based on the use and additional licensing requirements.

STAFF RECOMMENDATION: APPROVAL



FACTS & ISSUES

- The current language in the ordinance does differentiate regular hours of operation from a late-night establishment with additional licensing.
- The current language in the ordinance for hours of operation is located in numerous sections in the Ordinance.
- This text amendment will provide clear guidelines and instructions along with hours of operation in a modified section of the Ordinance.
- Staff is proposing to modify Chapter 4 Alcoholic Beverages/Chapter 16 Miscellaneous Provisions and Offenses.
- Staff f is proposing to modify Chapter 16 Article I In General Sec. 16-23 Reserved

Attachment(s) Included:

- **Proposed *redlined* revisions of Chapter 4 Alcoholic Beverages/Chapter 16 Miscellaneous Provisions and Offenses**
- **Proposed *redlined* revisions of Chapter 16 Article I In General Sec. 16-23 Reserved**

TMOD-24-002
STONECREST CODE OF ORDINANCE UPDATE

TEXT AMENDMENT

ARTICLE I. IN GENERAL

TMOD 24-002 HOURS OF OPERATION BASED ON USE

TMOD 24-003 ALCOHOL/ HOURS OF OPERATION BASED ON USE

Sec. 4.1.1. Purposes.

The purposes of this chapter shall include, but not be limited to, the following:

- (a) Compliance with and effectuation of state law;
- (b) Promotion and effectuation of the city's land use and zoning policies/plans;
- (c) Prevention of the unlawful sale and use of alcohol;
- (d) Protection of schools, homes, churches, parks and other entities; and
- (e) Protection of the public health, safety and welfare.

(Ord. No. 2017-06-05, § 4.1.1, 6-5-2017)

Sec. 4.1.2. Definitions.

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

Alcohol means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

Alcoholic beverage means and includes all alcohol, distilled spirits, beer, malt beverage, wine, or fortified wine.

Alcoholic beverage caterer means a person or entity possessing a valid off-premises alcoholic beverage catering license from the city or another local political subdivision.

Bar: an establishment intended for a casual environment offering lower-to-premium beverages, short-order meals, louder music, boisterous patrons and below characteristics or requirements. Operating hours 12pm-12am.

- Alcoholic Consumption on Premises license.
- Party-like environment.
- Karaoke
- Smoke & Vape Free Environment.
- Condensed table and clustered bar seating.
- No live entertainment.
- Patrons 21+ years of age.

Beer or malt beverage means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops or any other similar product, or any combination of such products in water, containing not more than six percent alcohol by volume, and including ale, porter, brown, stout, lager beer, small beer and strong beer. The term "beer" or "malt beverage" does not include sake, known as Japanese rice wine.

Bottle club means any restaurant, music hall, theater or other establishment providing food or entertainment in the normal course of business, and in which the owners or their agents knowingly allow patrons to bring in and consume the patrons' own alcoholic beverages.

Craft beer market means a retail package store for malt beverages to be consumed off-premises, where the primary means of delivery of the package is in growlers, as defined by this Code.

Day means a period from 12:00 midnight through 11:59 p.m.

Distilled spirits or spirituous liquor means any alcoholic beverage obtained by distillation or containing more than 21 percent alcohol by volume, including, but not limited to, all fortified wines.

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 beyond 12:30 a.m. Entertainment shall be incidental thereto. 2022-01-02

Employee means any person who regularly performs any service on the alcoholic beverage licensed premises on a full-time, part-time, or contract basis, regardless of whether the person is denominated an owner, partner, member, employee, independent contractor, lessee, or otherwise. The term "employee" does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

Family means and includes any person related to the person indicated within the first degree of consanguinity or affinity, as determined according to civil law.

Fixed salary means the amount of compensation paid any member, officer, agent or employee of a bona fide private club as may be fixed by its members at a prior annual meeting or by the city council out of the general revenue of the club and shall not include a commission on any profits from the sale of alcoholic beverages. For the purpose of this definition, tips or gratuities that are added to the bills under club regulation shall not be considered as profits from the sale of alcoholic beverages.

Full-service kitchen means a kitchen consisting of a commercial sink and refrigerator and either a commercial stove, grill or microwave oven approved by the City manager or his designee.

Licensee means the individual to whom a license is issued or, in the case of a partnership or corporation, all partners, officers and directors of the partnership or corporation.

Liter means metric measurement currently used by the United States.

Lounges/Clubs: an establishment intended for social engagement, networking, soft or live music, relaxed upscale atmosphere offering complimentary amenities such as premium snacks and exquisite short order dining, alcohol, Wi-Fi, or a business center for working professionals with other characteristics or requirements such as 20% of its sales from cigars. Operating hours 12pm-2am.

- Walk-in humidors and air purification systems for non-smoky experience.
- Upscale furniture, fixed bars, private rooms with ambience.
- Membership or open to the public.
- Alcohol, Hookah, Cigars, Pipes, Small Plate dining, Meeting Spaces & VIP Rooms
- Patrons 21+ year of age
- Dress Code

Manufacturer means any maker, producer or bottler of an alcoholic beverage. The term "manufacturer" also means:

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- (a) In the case of distilled spirits, any person engaged in distilling, rectifying, or blending any distilled spirits; provided, however, that a vintner that blends wine with distilled spirits to produce a fortified wine shall not be considered a manufacturer of distilled spirits.
 - (b) In the case of malt beverages, any brewer.
 - (c) In the case of wine, any vintner.

Package means a bottle, can, keg, barrel or other original consumer container.

Nightlife Establishments: Nightclubs or ~~Event Spaces~~ only operating beyond 12am and required to be closed by 2:00am and below characteristics or requirements. Operating hours 12 pm-2:00 am with an approved Special Land Use permit

- Collecting Entry Fees.
- Live Entertainment
- DJ's
- Artists
- Musicians
- Party Promotions
- Concerts
- Comedy Shows
- Party's
- Mobile and Fixed bars.
- Dance Floors, VIP Sections, Private Rooms
- Valet Parking.
- Patrons 21+ years of age.
- Onsite security.

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. 2022-01-02

Private club means any nonprofit association organized under the laws of this state that meets all of the following criteria:

- (a) Has been in existence at least one year prior to the filing of its application for a license to be issued pursuant to this chapter.
- (b) Has at least 75 regular dues-paying members.
- (c) Owns, hires or leases a building space within a building for the reasonable use of its members with all of the following:
 - (i) Full service kitchen and dining room space and equipment.
 - (ii) A sufficient number of employees for cooking, preparing and serving meals for its members and guests.
- (d) Has no member, officer, agent or employee directly or indirectly receiving, in the form of salary or other compensation, any profits from the sale of alcoholic beverages beyond a fixed salary.

~~*Restaurant means an eating and drinking establishment where food and drink are prepared, served and consumed primarily within the principal building. 2022-01-02*~~

Restaurant means any business whose primary function or operation is the preparation of food and/or drink for consumption on-premises, and whose gross profits are derived at 60 percent from the sale of food.

Restaurant (Class A): a counter based Dine-In or To-Go or drive-thru establishment where meals are prepared to be consumed in a dining area or via drive-thru with the below characteristics or requirements. Operating hours 6am-12am

- Fast-food, Café's, Coffee Shops, or buffet-style dining.
- Table and booth dining.
- Serves both breakfast and lunch.
- No alcoholic beverage served or license applicable.
- Valid business license.

Restaurant (Class B): establishments with full menus where patrons pay to sit and consume meals that are prepared, served, and consumed on the premises with the below characteristics or requirements. Operational hours 11:30 am-12:00am.

- Alcoholic beverage consumption on premises with valid alcohol license ONLY.
- Fixed bar and dining.
- Table and booth dining.
- Operational hours 11:30 pm-12:00 am.
- No smoking of any kind or type on premises.

Retailer, retail dealer, retail licensee or retail outlet means any person or other legal entity selling alcoholic beverages, either in unbroken packages or for consumption on the premises, retail only to consumers and not for resale.

Smoking Lounge means an establishment which sells tobacco and/or promotes the smoking of tobacco products or other 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. 2022-01-02

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. 2022-01-02

1. *The term special evens facility shall not include places of worship.*
2. *Small Special Event Facility shall mean assembly and entertainment uses with a seating or occupant capacity or 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.*

Wine means any alcoholic beverage containing not more than 21 percent alcohol by volume made from fruits, berries or grapes, either by natural fermentation or by natural fermentation with brandy added. "Wine," includes, but is not limited to, all sparkling wines, champagnes, combinations of such beverages, vermouths, special natural wines, rectified wines and like products. The term "wine" does not include cooking wine mixed with salt or other ingredients so as to render it unfit for human consumption as a beverage. A liquid shall first be deemed to be a wine at that point in the manufacturing process when it conforms to the definition of wine contained in this section.

(Ord. No. 2017-06-05, § 4.1.2, 6-5-2017)

ARTICLE II. LICENSING

Sec. 4.2.1. License required.

- (a) Except as specifically authorized in this chapter, no person, entity and/or business shall engage in the manufacture, sale or distribution of alcoholic beverages in the city without first having obtained a license as provided under this article.
- (b) The city license shall not be valid without current state licenses.
- (c) A retail establishment shall not have alcoholic beverages on the sales floor or in cooler unless the establishment has a current city alcoholic beverage license.

(Ord. No. 2017-06-05, § 4.2.1, 6-5-2017)

Sec. 4.2.2. Sale in incorporated area of city; scope of license.

- (a) Alcoholic beverages may be sold in the incorporated area of the city under a license granted by the city council upon the terms and conditions provided in this chapter.
- (b) The businesses of manufacturing, distributing, selling, handling and otherwise dealing in or processing alcoholic beverages are privileges and not rights pursuant to O.C.G.A. § 3-3-1, and such privileges shall not be exercised within the city limits without full compliance with all applicable licensing, regulatory, and revenue requirements of local, state and federal rules, regulations, and laws, including this chapter.
- (c) All licenses hereunder shall have printed on the front these words: "This license is a mere privilege subject to be revoked and annulled, and is subject to any future ordinances which may be enacted."

(Ord. No. 2017-06-05, § 4.2.2, 6-5-2017)

Sec. 4.2.3. Separate license for each location.

A separate application for an alcoholic beverage license must be made for each location and a separate license must be issued.

(Ord. No. 2017-06-05, § 4.2.3, 6-5-2017)

Sec. 4.2.4. Consumption sales only.

Persons holding a license to sell distilled spirits for consumption on the premises shall not be permitted to sell liquor by the package or bottle, except as provided in this article.

(Ord. No. 2017-06-05, § 4.2.4, 6-5-2017)

Sec. 4.2.5. Reserved.

Ord. No. 2022-01-02 , § 1(Exh. A), adopted January 10, 2022, repealed § 4.2.5, which pertained to temporary permits and derived from Ord. No. 2017-06-05, § 4.2.5, June 5, 2017.

Sec. 4.2.6. Off-premises alcoholic beverage catering license.

- (a) Any person or entity that possesses a valid license from the city to sell or otherwise dispense malt beverages or wine by the glass may apply for an off-premises alcoholic beverage catering license to sell or otherwise dispense malt beverages or wine by the glass at an authorized catering function, using the form prescribed by the City Manager or his designee.
- (b) Any person or entity that possesses a valid license from the city to sell or otherwise dispense malt beverages, wine, or distilled spirits by the glass may apply for an off-premises alcoholic beverage catering license to sell or otherwise dispense malt beverages, wine, or distilled spirits, using the form prescribed by the City Manager or his designee.
- (c) The annual licensing fee for an off-premises alcoholic beverage catering license shall be set by the city council, provided that the total of the licensing fee shall not exceed \$5,000.00 for any one licensed location.

(Ord. No. 2017-06-05, § 4.2.6, 6-5-2017)

Sec. 4.2.7. Off-premises alcoholic beverage catering event permit.

- (a) The City Manager or his designee shall be responsible for issuing off-premises alcohol catering event permits and shall develop rules and regulations governing all off-premises alcoholic beverage catering events.
- (b) Resident alcoholic beverage caterers. In order to sell or otherwise distribute distilled spirits, malt beverages, or wine at an authorized catering function within the corporate limits of the city, an alcoholic beverage caterer licensed by the city must apply for an event permit on the form prescribed by the City Manager or his designee. The application must include:
 - (i) The name of the caterer;
 - (ii) The date, address and time of the event; and
 - (iii) The licensed alcoholic beverage caterer's license number.
- (c) Nonresident alcoholic beverage caterers. In order to sell or otherwise distribute distilled spirits, malt beverages, or wine at an authorized catering function within the corporate limits of the city, an alcoholic beverage caterer licensed by another local political subdivision must apply for an event permit on the form prescribed by the City Manager or his designee. The application must include:
 - (i) The name of the caterer;
 - (ii) The date, address and time of the event;
 - (iii) The alcoholic beverage caterer's license from another jurisdiction; and
 - (iv) An event permit fee in the amount established by action of the city council.
- (d) An alcoholic beverage caterer must maintain the original event permit in the vehicle transporting the alcoholic beverages to the event at all times.
- (e) Excise taxes are imposed upon the sale of alcoholic beverages by an alcoholic beverage caterer licensed by the city as provided in article IV of this chapter.
- (f) Excise taxes are imposed upon the total of quantity of individual alcoholic beverage drinks brought into the corporate limits of the city by an alcoholic beverage caterer licensed by another local political subdivision in the amount provided in section 4.4.2 and shall be paid within 30 days of the conclusion of the event.

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- (g) Sunday sales. An alcoholic beverage caterer wishing to cater an event on Sunday must possess a valid Sunday sales license and comply with the requirements of state law with respect to the service of alcoholic beverages on Sunday.
 - (h) It is unlawful for a licensed alcoholic beverage caterer to employ any person under 21 years of age who, in the course of such employment, would dispense, serve, sell or handle alcoholic beverages.
 - (i) The alcohol beverage caterer shall comply with all the general ordinances and the licensing and regulations for a consumption-on-the-premises establishment during the permitted event, with the exception of the full-service kitchen requirement and the employee alcoholic beverage permit and non-alcoholic beverage permit requirement.

(Ord. No. 2017-06-05, § 4.2.7, 6-5-2017)

Sec. 4.2.8. Persons eligible for licensing.

- (a) No license for the sale of alcoholic beverages shall be granted to any person or entity, where the majority of stock or partnership interests are controlled by individuals who are not citizens of the United States or aliens lawfully admitted for permanent residence. If an entity is owned by other entities, then this requirement shall apply to the majority stockholders of the other entities to ensure that a license is not granted to an ineligible person or entity.
- (b) No license for the sale of alcoholic beverages shall be granted to any person that has not attained the age of 18 years.
- (c) No license for the sale of alcoholic beverages shall be granted to any person or entity for alcoholic beverage sales at a "sexually oriented business," as defined in section 4.5.5(b) and chapter 15, as adopted by the City of Stonecrest.
- (d) Licenses for corporations shall be issued in the name of the corporation and applied for by and in the name of the majority stockholder, officer and/or employee primarily responsible for the operation of the licensed premises. Licenses for partnerships shall be issued in the name of the partnership and shall be applied for by and in the name of the partner and/or employee primarily responsible for the operation of the licensed premises.
 - (i) Where the majority stockholder is not an individual, the license shall be issued to jointly to the corporation and local manager of the business.
 - (ii) In the case of a partnership, the license shall be issued to the partners with the highest ownership percentage. In the case of a sole proprietorship, the sole proprietor shall be the applicant and the licensee.
- (e) No license for the sale of alcoholic beverages shall be granted to any person who has been convicted under any federal, state or local law of any felony within the last ten years, has been on felony probation or parole within the last five years, or released from prison on felony charges within the last five years prior to filing an application. The term conviction includes any adjudication of guilt or a plea of guilty or nolo contendere. This subsection shall apply to any corporation or partnership where any stockholder with ownership of ten percent or more, all corporate officers, and all partners fails to meet these requirements.
- (f) No license for the sale of alcoholic beverages shall be granted to any person who has been convicted under any federal, state or local law of any misdemeanor involving moral turpitude within ten years prior to filing an application. The term "conviction" includes any adjudication of guilt or a plea of guilty or nolo contendere. The term "moral turpitude" shall include any violation that involves gambling, drugs, or a driving while intoxicated conviction in less than five years from a prior driving while intoxicated conviction, and sale of alcohol with the exception of any violations of section 4.5.7. This subsection shall apply to any corporation or

partnership where any stockholder with ownership of ten percent or more, all corporate officers, and all partners fails to meet these requirements.

- (g) It is unlawful for any city employee of a department regulating alcoholic beverages, or the employee's spouse or minor children, to have any whole, partial or beneficial interest in any license to sell alcoholic beverages in the city.
- (h) No license for the sale of alcoholic beverages shall be granted to any person who has had any license issued in any jurisdiction revoked within two years prior to the filing of the application.

(Ord. No. 2017-06-05, § 4.2.8, 6-5-2017)

Sec. 4.2.9. Application for alcoholic beverage license.

- (a) All persons or entities desiring to sell alcoholic beverages shall make application on the form prescribed by the City Manager or his designee.
- (b) The application shall include:
 - (i) The Applicant's full name, birth date, residential addresses for the past five years, name and location of their employers for the last five years, spouse's name, both the applicant and their spouse's criminal history showing all arrests, convictions, guilty pleas and dispositions for alleged violations of any local, state and/or federal law for the last five years prior to the application, and, where applicable, the name of the partnership or corporation for whom they are applying, and any trade business and/or organizational name under which the licensed premises may operate;
 - (ii) The proposed business to be carried on;
 - (iii) If a partnership, the names and addresses of the partners;
 - (iv) If a corporation, the names and addresses of the officers;
 - (v) The name and address of the agent for service of process;
 - (vi) The name and address of the manager;
 - (vii) The names and addresses of all stockholders holding ten or more percent or of any class of corporate stock, or any other entity having a financial interest in each entity which is to own or operate the establishment; and
 - (viii) If the manager changes, the applicant must furnish the City Manager or his designee with the name and address of the new manager and other information as is requested within ten days of such change.
- (c) All applications for a package liquor license, both original and renewals, must be accompanied by a full and complete statement relative to any and all interest in retail liquor stores. This shall include names and addresses of all persons possessing a legal ownership in the subject establishment, together with any interest that each person or that any family member of each person has in any other retail liquor store located in the city or any other place; the ownership of the land and building where such retail business is operated; the amount of rental paid for the land and building, the manner in which such rental is determined, and to whom and at what intervals the rental is paid; the names and addresses, by affidavit from the owner, lessor or sub lessor of the land and building, of all persons having any whole, partial, beneficial or other legal interest in and to the land and building on and in which the retail liquor store is located; and any other information called for by the City Manager or his designee to ensure compliance with the provisions of this division. Any change in relationship herein declared must be filed when made with the City Manager or his designee and failure to so file within a period of ten days after this change is made shall be grounds for the city to cancel the license.

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- (d) All applications shall be sworn to by the applicant before a notary public or other officer authorized to administer oaths.
 - (e) Upon receipt of the application, it shall be forwarded to the City Manager, or his designee, for a background investigation of the applicant, and all other persons identified in the application as required by subsection (b) of this section. The investigation may include a check of any criminal history anywhere in the United States, a check of any other jurisdiction identified by the applicant where he has previously held an alcohol license of any kind, and any other factor deemed relevant by the City Manager, or his designee. As a prerequisite to the issuance of any such initial permit or license, the applicant 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.
 - (f) In all instances in which an application is denied or dismissed with prejudice under the provisions of this section, the applicant may not reapply for a license for at least one year from the final date of such denial.
 - (g) An alcoholic beverage license shall be granted unless an applicant fails to meet the qualifications for an alcoholic beverage license under this chapter. The City Manager or his designee shall provide written notice to any applicant whose application is denied under the provisions of this chapter within 30 days of filing a properly completed application or within 15 days of obtaining the criminal background check or records identified in subsection (e) of this section, whichever is later. An application for an alcoholic beverage license is complete when it contains the information required by this chapter and is accompanied by the license fee in the amount established by action of the city council. Such written notification shall set forth in reasonable detail the reasons for such denial and shall advise the applicant of the right to appeal to the alcohol beverage review board under the provisions of this division within 15 days from date of notice. If a license is not issued or denied within the time frame specified herein, the license shall be automatically approved.

(Ord. No. 2017-06-05, § 4.2.9, 6-5-2017)

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. 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.

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- (d) An application for a permit shall include the applicant's legal name, all of the applicant's aliases and/or any other name by which the applicant has ever been known, mailing address, written proof of age (in the form of a driver's license, a picture identification document containing the applicant's date of birth issued by a governmental agency, or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency), and a list of all prior criminal convictions. The City Manager or his designee shall make a complete search relative to any police record of the applicant. As a prerequisite to the issuance of any such initial permit or license, the employee shall furnish a complete set of fingerprints to be forwarded to the Georgia Bureau of Investigation, which shall search the files of the Georgia Crime Information Center for any instance of criminal activity during the two years immediately preceding the date of the application. The Georgia Bureau of Investigation shall also submit the fingerprints to the Federal Bureau of Investigation under the rules established by the United States Department of Justice for processing and identification of records.
 - (e) Any permit for employment issued hereunder shall expire 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. No. 2017-06-05, § 4.2.10, 6-5-2017)

Sec. 4.2.11. Expiration; renewal.

- (a) All licenses granted under this article shall expire on December 31 of each year. A licensee who desires to renew the license shall file application, with the requisite fee heretofore provided, with the City Manager or his designee on the form provided for renewal of the license for the ensuing year. All applications for renewal will be reviewed by the City Manager or his designee. Licensees do not have a right to automatic renewal and must be in compliance with all rules and regulations for the granting of licenses. Applications for renewal must be filed before November 30 of each year; otherwise penalties and interest will be assessed. No renewal license shall be granted after December 31, but such application shall be treated as an initial application and the applicant shall be required to comply with all rules and regulations for the granting of licenses as if no previous license had been held.
- (b) All licenses granted under this division shall be for the full calendar year or for the number of months remaining in the calendar year. License fees shall be prorated based on the number of months remaining in the calendar year; partial months shall be counted as a full month. License fees are not refundable.
- (c) Any person renewing any license issued under this chapter who pays the required fee or any portion thereof after the date set by law for such payment shall pay, in addition to the annual fee, a late payment penalty in addition to an assessment of interest at the rate of ten percent of the amount annual fee for the failure to renew; and an additional penalty of 25 percent of the amount due shall be assessed for any fraud or intent to evade.
- (d) Failure to fully complete the renewal application, as required by the City Manager or his designee will delay the renewal. The failure to furnish complete information within 30 days after being requested shall result in automatic denial of the renewal.

(Ord. No. 2017-06-05, § 4.2.11, 6-5-2017)

Sec. 4.2.12. Transferability.

- (a) No license for the sale of alcoholic beverages shall be transferable, except as otherwise provided in this section.
- (b) In case of the death of the licensee, the establishment shall be allowed to continue to sell alcoholic beverages for a period of 30 days from the date of death, or until expiration of the license, or until approval of a new license, whichever occurs first; provided, however, that the City Manager or his designee must be notified of the licensee's death within ten days of the death or the license shall automatically terminate on the 11th day following the death of the licensee.
- (c) If a license is surrendered, or a licensee severs the association with the licensed establishment, the establishment may continue to sell alcoholic beverages for a period of 30 days from the date of surrender, or from the date determined to be the date of severance; provided, however, that the City Manager or his designee must be notified of the change within ten days of the severance or the license shall automatically terminate on the 11th day following the date of the severance. Upon issuance of a new license, the authorization to sell under the previous license shall be revoked by operation of law. No additional license fees shall be required during the period for which the original license was issued.
- (d) Nothing in this section shall prohibit one or more of the partners in the partnership holding a license to withdraw from the partnership in favor of one or more of the partners who were partners at the time of the issuance of the license. This section shall not prohibit transfer of stock between persons who held stock in the corporate owner at the time of issuance of the license; nor shall it prohibit transfers of stock which do not result in any person increasing stock holdings to a total of ten or more percent of any class of corporate stock, or any other entity having a financial interest in the entity.
- (e) Should a transfer of location be approved, with no change of ownership of the business, the license fee paid for the old location shall be applied to the new location.
- (f) Except as provided in this section, any change in the ownership of any entity owning a licensed establishment shall cancel and revoke any license issued under this division automatically, without the necessity of a hearing.

Violation of this section shall result in revocation of the license being used and a fine of \$1,000.00 each on the new ownership and the old ownership. No license will be issued to the old or the new owner in the city for one year from the date of the violation.

(Ord. No. 2017-06-05, § 4.2.12, 6-5-2017)

Sec. 4.2.13. Display.

The city alcoholic beverage license shall at all times be kept plainly exposed to view at the place of business of the licensee. The finance director or designee shall ensure that all licenses for on-premises consumption of alcoholic beverages show:

- (i) Any special land use permit conditions imposed by the city council for the establishment;
- (ii) The allowed hours of operation for the location; and
- (iii) Written notice to the licensee that the license with the hours of operation must be posted in a public and conspicuous place within the licensee's establishment.

(Ord. No. 2017-06-05, § 4.2.13, 6-5-2017)

Sec. 4.2.14. Suspension or revocation.

The City Manager or his designee is entitled, in its sole discretion, to either suspend or revoke any license upon a finding by the City Manager or his designee, of any violation by the licensee, of any other person required under this division to meet the qualifications required for the issuance of the license, or by any majority stockholder, general or managing partner, or employee, agent, or servant of the licensee or the business in which such license is utilized, of any of the following:

- (a) Any federal or state law, rule or regulation relative to the manufacture, sale, distribution or possession of alcoholic beverages;
- (b) Any provision, condition, requirement, or limitation contained in this division;
- (c) Any other ordinance of the city;
- (d) Any ordinance, rule, regulation or law of any governmental entity otherwise regulating the business in which such license is utilized;
- (e) Any criminal law which is classified as a felony;
- (f) Any criminal law involving moral turpitude;
- (g) Any documented negative impact to adjacent property owners for which the owner or tenant has failed to remedy through good faith efforts;
- (h) Failure to maintain parking lot of property in such a manner as to prevent littering, loitering, acts of disorderly conduct, excessive demand for public safety resources, and ongoing disturbance of adjacent property owners;
- (i) If the licensee furnishes fraudulent or untruthful information in the original, renewal or transfer application for a license or omits information required in the original, renewal or transfer application for a license;
- (j) Failure of the licensee or any other person required under this division to meet the qualifications required for the issuance of the license, to meet, as of the time of the notice of hearing relative thereto, the requirements established in this division for the initial issuance of such license;
- (k) Failure of the licensee or any employee or agent of the business in which the license is utilized to promptly report to the City Manager or his designee:
 - (i) Any violation of this division;
 - (ii) Any other violation of law;
 - (iii) Any other violation of any other city ordinance; or
 - (iv) Any breach of the peace, disturbance or altercation which occurs within or upon the premises of the business in which such license is utilized;
- (l) Repeated failure of the licensee or the employees, agent and servants of the business in which the license is utilized to promptly control and prevent within or upon the premises of such business any of the following activities or conduct:
 - (i) Fighting;
 - (ii) Disorderly conduct;
 - (iii) Utilization of controlled substances;
 - (iv) Gambling;

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- (v) Indecent conduct;
 - (vi) Excessive noise; or
 - (m) Failure of the licensee or any other person required under this division to meet the qualifications required for the issuance of the license to promptly pay and satisfy all taxes and other financial obligations due the city which are not the subject of appeal or litigation; or
 - (n) Failure to allow unrestricted access to the City Manager or his designee for inspections.

(Ord. No. 2017-06-05, § 4.2.14, 6-5-2017)

Sec. 4.2.15. Inspection of premises.

The community development department, and/or the City Manager or his designee may inspect establishments licensed under the alcoholic beverage ordinances of the city during the establishment's hours of operation. Such inspections shall be made for the purpose of verifying compliance with the requirements of this chapter and state law.

(Ord. No. 2017-06-05, § 4.2.15, 6-5-2017)

Sec. 4.2.16. Agent for service of process.

All establishments licensed under this chapter must have and continuously maintain in the county a registered agent upon whom any process, notice or demand required or permitted by law or under this chapter to be served upon the licensee or owner may be served. This person must be a resident of the county. The licensee shall file the name of such agent, along with the written consent of such agent, with the city in such form as the city prescribes.

(Ord. No. 2017-06-05, § 4.2.16, 6-5-2017)

Sec. 4.2.17. Collection of delinquent sums.

If any person fails to pay the sum due under this chapter, the City Manager or his designee shall issue an execution against the person so delinquent and such person's property for the amount of the delinquent fee or tax.

(Ord. No. 2017-06-05, § 4.2.17, 6-5-2017)

Sec. 4.2.18. Audits.

If the City Manager or his designee deems it necessary to conduct an audit of the records and books of a licensee under the provisions of this article, it shall so notify the licensee of the date, time and place of the audit.

(Ord. No. 2017-06-05, § 4.2.18, 6-5-2017)

ARTICLE III. ALCOHOL REVIEW BOARD

Sec. 4.3.1. Alcoholic review board establishment; composition.

- (a) There is hereby established an alcohol review board (sometimes referred to as the "ARB") which shall have the responsibility for alcoholic beverage appeals. The ARB shall consist of five alcohol review hearing officers selected from the available pool of individuals licensed to practice law in the State of Georgia who shall be appointed by the mayor and confirmed by the city council. Any member must comply with the requirements of section 2.14 of the Charter of the City of Stonecrest and shall serve a term of two years.
- (b) At the initial appointment of the ARB, to occur within 30 days of the passing, Mayor and Council shall direct three of the five members to serve a term of two years. The remaining members shall serve a term of one year.
- (c) Any member may be removed in accordance with section 2.14 of the Charter of the City of Stonecrest.

(Ord. No. 2017-06-05, § 4.3.1, 6-5-2017; Ord. No. 2017-11-04, § I, 11-20-2017)

Sec. 4.3.2. Alcoholic beverage appeals.

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

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

(Ord. No. 2017-06-05, § 4.3.2, 6-5-2017; Ord. No. 2017-11-04, § II, 11-20-2017)

Sec. 4.3.3. Hearings.

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

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- (e) The findings of the ARB shall be forwarded to the appellant and the City at the conclusion of the hearing.
 - (f) The findings of the ARB shall be final unless appealed within 30 days of the date of the findings by certiorari to the superior court of the county.

(Ord. No. 2017-06-05, § 4.3.3, 6-5-2017; Ord. No. 2017-11-04, § III, 11-20-2017)

Sec. 4.3.4. Service of notices.

For the purpose of this article, notice shall be deemed delivered when personally served or, when served by mail, within three days after the date of deposit in the United States mail.

(Ord. No. 2017-06-05, § 4.3.4, 6-5-2017)

ARTICLE IV. TAXATION OF RETAIL SALES

Sec. 4.4.1. Definitions.

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

Agent means that person designated by a licensee in the application for a permit to sell alcoholic beverages by the drink in the city.

Alcoholic beverage means any beverage containing alcohol obtained by distillation including rum, whiskey, gin and other spirituous liquors by whatever name called, but not including malt beverages, fermented wines or fortified wines.

Drink means any alcoholic beverage served for consumption on the premises which may or may not be diluted by any other liquid.

Licensee means any person who holds a license or permit from the city to sell alcoholic beverages by the drink.

Monthly period means the calendar month of the year.

Person means an individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, nonprofit corporation or cooperative nonprofit membership, estate, trust, business trust, receiver, trustee, syndicate or any other group or combination acting as a unit, the plural as well as the singular number, excepting the United States of America, the state and any political subdivision of either thereof upon which the city is without power to impose the tax herein provided.

Purchase price means the consideration received for the sale of alcoholic beverages by the drink valued in money, whether received in cash or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also the amount for which credit is allowed by the licensee to the purchaser, without any deduction therefrom whatsoever.

Purchaser means any person who orders and gives present or future consideration for any alcoholic beverage by the drink.

Tax means the tax imposed by this division.

(Ord. No. 2017-06-05, § 4.4.1, 6-5-2017)

Sec. 4.4.2. Imposed; rate.

There is imposed and levied upon every sale of an alcoholic beverage purchased by the drink in the city a tax as follows:

- (1) Distilled spirits purchased by the drink in the amount of three percent of the purchase price of such beverage.
- (2) Malt beverages sold in or from a barrel or bulk container are taxed at a rate of \$6.00 on each container sold not containing more than 15½ gallons and a proportionate tax at the same rate on all fractional parts of 15½ gallons.
- (3) Malt beverages sold in bottles, cans, or other containers, except barrel or bulk containers, are taxed at rate of five cents per 12 ounces and a proportionate tax at the same rate on all fractional parts of 12 ounces.

(Ord. No. 2017-06-05, § 4.4.2, 6-5-2017)

Sec. 4.4.3. Purchaser's receipt; credit or deferred payment.

Every licensee for the sale of alcoholic beverages by the drink operating a place of business in the city shall maintain detailed sales records indicating each transaction by beverage and food served, its price and total. Where the charges for food and drink are satisfied by credit or deferred payment, the payment of the tax to the licensee may be deferred in a like manner; however, the licensee shall be liable therefor at the time and to the extent that such credits are incurred.

(Ord. No. 2017-06-05, § 4.4.3, 6-5-2017)

Sec. 4.4.4. Liability for tax; authority to collect.

Every licensee or the licensee's agent shall collect the tax herein imposed from purchasers of alcoholic beverages by the drink sold within the licensee's licensed premises. Such licensee or agent shall furnish such information as may be requested by the City Manager or his designee to facilitate the collection of the tax.

(Ord. No. 2017-06-05, § 4.4.4, 6-5-2017)

Sec. 4.4.5. Determinations, returns and payments.

- (a) *Due date of taxes.* All taxes collected by any licensee or agent under this division shall be due and payable to the City Manager or his designee monthly on or before the twentieth day of every month next succeeding each respective monthly period.
- (b) *Return; limit of filing; persons required to file; execution.* On or before the twentieth day of the month following each monthly period, a return for the preceding monthly period shall be filed with the City Manager or his designee in such form as the City Manager or his designee may prescribe by every licensee or agent liable for the payment of tax.
- (c) *Contents of return.* All returns shall show the gross receipts from the sale of alcoholic beverages by the drink, amount of tax collected or authorized due for the related period, and such other information as may be required by the City Manager or his designee.
- (d) *Delivery of return and re-admittance.* The person required to file the return shall deliver the return, together with the remittance of the net amount of tax due to the City Manager or his designee.

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- (e) *Collection fee allowed operators.* Operators collecting the tax shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting and paying the amount due, if such amount is not delinquent at the time of payment. The rate of the deduction shall be the same rate authorized for deductions from state tax under O.C.G.A. § 48-8-1 et seq.

(Ord. No. 2017-06-05, § 4.4.5, 6-5-2017)

Sec. 4.4.6. Deficiency determinations.

- (a) *Computation of tax.* If the City Manager or his designee is not satisfied with the return or returns of the tax or the amount of the tax to be paid to the City Manager or his designee by any person, it may compute and determine the amount required to be paid upon the basis of any information within its possession or that may come into its possession. One or more than one deficiency determination may be made of the amount due for one or more than one monthly period.
- (b) *Interest on deficiency.* The amount of the determination, exclusive of penalties, shall bear interest at the rate specified by section 4.4.8. Interest shall be assessed for each month or fraction thereof from the close of the monthly period in which the amount or any portion thereof should have been returned until the date of payment.
- (c) *Offsetting of overpayments.* In making a determination, the City Manager or his designee may offset overpayments, for another period, against penalties, and against the interest on underpayments. The interest on overpayments shall be computed in the manner set forth in section 4.4.7(c).
- (d) *Penalty for negligence or disregard of rules and regulations.* If any part of the deficiency for which a deficiency determination has been made is due to negligence or disregard of rules and regulations, the penalty amount specified in section 4.4.8 shall be added to the amount of the deficiency.
- (e) *Penalty for fraud or intent to evade.* If any part of the deficiency for which a deficiency determination is made is due to fraud or an intent to evade any provision of this division or other authorized rules and regulations, a penalty of 25 percent of the deficiency shall be added thereto.
- (f) *Notice of determination.* The City Manager or his designee shall give to the licensee written notice of the determination. The notice may be served personally or by mail; if by mail, such service shall be pursuant to O.C.G.A. § 9-11-4 and shall be addressed to the licensee at the licensee's address as it appears in the records of the city. In case of service by mail of any notice required by this division, the service is complete at the time of deposit in the United States post office.
- (g) *Time within which notice of deficiency determination to be mailed.* Except in the case of fraud, intent to evade this division or authorized rules or regulations, or failure to make a return, every notice of a deficiency determination shall be mailed within three years after the twentieth day of every month following the monthly period for which the amount is proposed to be determined, or within three years after the return is filed, whichever period expires last.

(Ord. No. 2017-06-05, § 4.4.6, 6-5-2017)

Sec. 4.4.7. Determination if no return made.

- (a) *Estimate of gross receipts.* If any licensee fails to make a return, the City Manager or his designee shall make an estimate of the amount of the gross receipts of the licensee or, as the case may be, of the amount of the total sales in the city which are subject to the tax. The estimate shall be made for the period or periods in respect to which the licensee failed to make the return and shall be based upon any information which is in or may come into the possession of the City Manager or his designee. Upon the basis of this estimate, the

City Manager or his designee shall compute and determine the amount required to be paid the city, adding to the sum thus determined a penalty equal to ten percent thereof. One or more determinations may be made for one or for more than one period.

- (b) *Manner of computation; offsets; interest.* In making a determination, the City Manager or his designee may offset overpayments for a period or penalties against penalties and/or interest on underpayments. The interest on underpayments shall be computed in the manner set forth in subsection (c) of this section.
- (c) *Interest on amount found due.* The amount of the determination, exclusive of penalties, shall bear interest at the rate specified in section 4.4.8. Interest shall be assessed for each month, or fraction thereof from the close of the monthly period in which the amount or any portion thereof should have been returned until the date of payment.
- (d) *Penalty for fraud or intent to evade.* If the failure to file a return is due to fraud or an intent to evade this division or rules and regulations, penalties shall be assessed in accordance with section 4.4.8.
- (e) *Notice; manner of service.* Promptly after making a determination, the City Manager or his designee shall give to the person written notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

(Ord. No. 2017-06-05, § 4.4.7, 6-5-2017)

Sec. 4.4.8. Penalties and interest for failure to pay tax.

Any licensee who fails to pay the tax to the city, or fails to pay any amount of such tax required to be collected and paid to the city, within the time required, shall pay a penalty of ten percent of the tax, or amount of the tax, in addition to the tax or amount of the tax, plus interest on the unpaid tax or any portion thereof as set forth in section 4.4.7(c). An additional penalty of 25 percent of the amount due shall be assessed for any fraud or intent to evade.

(Ord. No. 2017-06-05, § 4.4.8, 6-5-2017)

Sec. 4.4.9. Collection of tax; security deposit; refunds.

- (a) The City Manager or his designee, whenever deemed necessary to ensure compliance with this article, may require any person subject hereto to deposit such security as the department may determine. The amount of the security shall be fixed by the department, shall be the greater of twice the person's estimated average liability for the period for which the return was filed, determined in such a manner as the department deems proper, or \$10,000.00. The amount of the security may be increased by the department subject to the limitations herein provided. The department may sell the security at public auction, with the approval of the city council, if it becomes necessary to do so in order to recover any tax or any amount required to be collected, interest or penalty due. Notice of the sale may be served upon the person who deposited the security personally or by mail; if by mail, service shall be made in the manner prescribed for service of a notice of a deficiency determination, and shall be addressed to the person at the person's address as it appears in the records of the department. Upon any sale, any surplus above the amounts due shall be returned to the person who deposited the security.
- (b) If any person is delinquent in the payment of the amount required to be paid, or if a determination has been made against the person which remains unpaid, the City Manager or his designee may, not later than three years after the payment became delinquent, give notice thereof by registered mail to all persons in the city having in their possession or under their control any credits or other personal property belonging to the delinquent, or owing any debts to the delinquent. After receiving the notice, the persons so notified shall neither transfer nor make any other disposition of the credits, other personal property or debts in their

possession or under their control at the time they receive the notice until the City Manager or his designee consents to a transfer or disposition or until 20 days elapse after the receipt of the notice. All persons so notified shall within five days after receipt of the notice advise the City Manager or his designee of all these credits, other personal property, or debts in their possession, under their control or owing by them.

- (c) At any time within three years after any tax or any amount of tax required to be collected becomes due and payable and at any time within three years after the delinquency of any tax or any amount of tax required to be collected, the City Manager or his designee may bring an action in the courts of this state, or any other state, or of the United States in the name of the city to collect the amount delinquent together with penalties and interest, court fees, filing fees, attorney's fees and other legal fees incident thereto.
- (d) If any operator liable for any amount under this division sells out the business or quits the business, the successors or assigns shall withhold sufficient of the purchase price to cover the tax liability until the former owner produces a receipt from the City Manager or his designee showing that same has been paid or a certificate stating that no amount is due.
- (e) If the purchaser of a business fails to withhold the purchase price as required, the purchaser becomes personally liable for the payment of the amount required to be withheld to the extent of the purchase price, valued in money. Within 30 days after receiving a written request from the purchaser for a certificate, the City Manager or his designee shall either issue the certificate or mail notice to the purchaser at the purchaser's address as it appears on the records of the City Manager or his designee of the amount that must be paid as a condition of issuing the certificate. The time within which the obligation of a successor may be enforced shall start to run at the time the operator sells out the business or at the time that the determination against the operator becomes final, whichever event occurs later.
- (f) Whenever the amount of any tax, penalty or interest has been paid more than once, or has been erroneously or illegally collected or received by the city under this division, it may be offset as provided in section 4.4.6(c), or it may be refunded, provided a verified claim in writing therefor, stating the specific ground upon which the claim is founded, is filed with the City Manager or his designee within three years from the date of payment. The claim may be audited and shall be made on forms provided by the City Manager or his designee. If the claim is approved by the City Manager or his designee and the city council, the excess amount collected or paid may be refunded or may be credited on any amounts then due and payable from the person from whom it was collected or by whom paid, and the balance may be refunded to this person, or such person's administrators or executors.

(Ord. No. 2017-06-05, § 4.4.9, 6-5-2017)

Sec. 4.4.10. Administration.

- (a) The City Manager or his designee shall administer and enforce the provisions of this article.
- (b) The City Manager or his designee may make and publish reasonable rules and regulations not inconsistent with this article or other laws of the city, county and the state, or the constitution of this state or the United States for the administration and enforcement of the provisions of this division and the collection of taxes hereunder.
- (c) Every licensee for the sale of alcoholic beverages by the drink in this city to a person shall keep such records, receipts, invoices and other pertinent papers in such form as the City Manager or his designee may require.
- (d) The City Manager or his designee may examine the books, papers, records, financial reports, equipment and other facilities of any licensee liable for the tax, in order to verify the accuracy of any return made, or if no return is made by the licensee, to ascertain and determine the amount required to be paid.

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- (e) In administration of the provisions of this division, the City Manager or his designee may require the filing of reports by any person or class of persons having possession or custody of information relating to sales of alcoholic beverages which are subject to the tax. The reports shall be filed with the City Manager or his designee when required by the department and shall set forth the price charged for each sale, the date of each sale and such other information as the department may require.
 - (f) The City Manager or his designee shall not make known in any manner the business affairs, operations or information obtained by an audit of books, papers, records, financial reports, equipment and other facilities of any licensee or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person not having such administrative duty under this division, except in the case of judicial proceedings or other proceedings necessary to collect the tax levied and assessed. Successors, receivers, trustees, executors, administrators, and assignees, if directly interested, may be given information as to the items included in the measure and amount of unpaid tax or amounts of tax required to be collected, interest and penalties.

(Ord. No. 2017-06-05, § 4.4.10, 6-5-2017)

Sec. 4.4.11. Revocation or suspension of license.

The failure to timely pay the tax imposed by this division for three consecutive months or four times in a 12-month period shall render the dealer or person liable therefor subject to suspension of the alcoholic beverage license for ten consecutive days beginning on a Friday. The failure to timely pay the tax imposed by this section six times within a 12-month period shall render the dealer or person liable therefor subject to revocation of the alcoholic beverage license.

(Ord. No. 2017-06-05, § 4.4.11, 6-5-2017)

ARTICLE V. OPERATIONAL RULES FOR RETAILERS

DIVISION 1. GENERALLY

Sec. 4.5.1. Posting of regulations.

- (a) All licensees under this article shall post in a prominent location on licensed premises, in a manner whereby it may be easily viewed by patrons, an approved sign setting forth or summarizing the laws of the city and the state in regard to the sale of alcoholic beverages to underage or intoxicated persons.
- (b) Each such sign shall be of a size and configuration approved by the City Manager or his designee, and shall include either the language of the applicable sections, or summaries approved by the City Manager or his designee.
- (c) The City Manager or his designee may design and have printed approved signs, which shall be made available to licensees at a price to be established by the City Manager or his designee.

(Ord. No. 2017-06-05, § 4.5.1, 6-5-2017)

Sec. 4.5.2. Location restrictions.

- (a) No person knowingly and intentionally may sell or offer to sell at retail, except as allowed under subsection (b) of this section:
 - (1) Any wine or malt beverages within 100 yards of any school, school grounds, educational facility, college campus.
 - (2) Any distilled spirits in or within 200 yards of any residence or church or within 200 yards of any school, school grounds, educational facility, college campus.
 - (3) Any distilled spirits, wine or malt beverages within 200 yards of an alcoholic treatment center owned and operated by this city, this state, or any county or municipal government therein.
- (b) No person knowingly and intentionally may sell or offer to sell for consumption on the premises, except as allowed under subsection (f) of this section:
 - (1) Any wine or malt beverages within 100 yards of any school, school grounds, educational facility or college campus;
 - (2) Any distilled spirits in or within 200 yards of any church or within 200 yards of any school building, school grounds, educational facility or college campus;
 - (3) Any distilled spirits, wine or malt beverages within 200 yards of an alcoholic treatment center owned and operated by this city, this state, or any county or municipal government therein.
- (c) The school building, school grounds, college campus, educational facility or educational building referred to in this section applies only to state, county, city, parochial school, daycare, kindergarten or buildings and to such buildings at such other schools in which are taught subjects commonly taught in the common schools and colleges of this state; provided this shall not apply to private universities and colleges.
- (d) For the purpose of this section, distance shall be measured by the most direct route of travel on the ground. Every license application shall include a scale drawing of the location of the proposed premises, showing the distance of the uses described in this section and a certificate of a registered land surveyor or professional engineer that the location complies with these distance requirements.
- (e) No license in effect as of April 30, 1998, shall be revoked before its date of expiration or renewal or transfer denied by reason of the method of measurement set out in this section, if the license was granted in reliance on another method of measurement. No application for a license shall be denied by reason of the method of measurement set out in this section if a prior license for the same location was in effect on April 30, 1998. No application for a license or renewal shall be denied by reason of the method of measurement set out in this section, if such application is pending on April 30, 1998.
- (f) Where an existing licensed location is interfered with by government action under the power of eminent domain, and not by a voluntary act of the licensee, the licensed use may relocate elsewhere on the property, and the new building site will be treated as an existing nonconforming use eligible for license renewal for the purposes of the distance requirements of this section.

(Ord. No. 2017-06-05, § 4.5.2, 6-5-2017)

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

- (a) No person shall be employed in or about the premises of any establishment licensed to sell alcoholic beverages at retail if the employment violates state law, nor shall any person under the age of 18 years sell, take orders for, or deliver alcoholic beverages.

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- (b) Nothing in subsection (a) of this section shall be construed to prohibit employees employed in supermarkets, convenience stores, or drug stores from selling or handling alcoholic beverages which are sold for consumption off the premises as provided in O.C.G.A. § 3-3-24.

(Ord. No. 2017-06-05, § 4.5.3, 6-5-2017; Ord. No. 2017-10-04, § 2(4.5.3), 10-16-2017)

Sec. 4.5.4. Advertising.

- (a) Each licensee for the retail sale of liquors hereunder, except consumption-on-the-premises establishments, shall have printed on a front window or entrance of the licensed premises the name of the licensed establishment together with the inscription "City of Stonecrest Retail License No. ____" in uniform letters not less than four nor more than eight inches in height.
- (b) Each retail licensee, except consumption-on-the-premises establishments, shall have conspicuously displayed within the interior of the licensed premises not less than four copies of a printed price list of the liquors offered for sale or the licensee may have the price placed on the bottles or on the front of the shelf where liquors are exhibited for sale.

(Ord. No. 2017-06-05, § 4.5.4, 6-5-2017)

Sec. 4.5.5. Prohibited types of entertainment, attire and conduct.

- (a) *Purpose.* It is the purpose of this section to regulate establishments licensed to sell, serve, or dispense alcoholic beverages 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 various forms of nudity and physical contact in such establishments between patrons and employees of the establishment. The provisions of this section have neither the purpose nor effect of imposing a restriction on the content or reasonable access to any communicative materials or performances, including sexually oriented materials or performances. Neither is it the purpose nor effect of this section to condone or legitimize the distribution or presentation of obscene material or conduct.
- (b) *Definitions.* The following words, terms, and phrases, when used in this section and section 4.2.8(c), shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

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: 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 the 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 "floor space" maintained for the display, sale, or rental of the items);

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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 "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 "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 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.

Characterized by means describing the essential character or quality of an item. As applied in this article, 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.

Feature means to give special prominence to.

Floor space, as referenced in 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.

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.

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.

Regularly means the consistent and repeated doing of an act on an ongoing basis.

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;

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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.

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.

Specified anatomical areas means and includes:

1. Less than completely and opaquely covered: 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.
- (c) *Findings and rationale.* Based on evidence of adverse secondary effects associated with certain conduct in alcoholic beverage establishments, which effects have been presented in hearings and in reports made available to the city council, and on findings, interpretations, and narrowing constructions incorporated in numerous cases, including, but not limited to, *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 AM*, 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 (1 Cir. 2002); *Boss Capital, Inc. v. City of Casselberry*, 187 F.3d 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), affd, 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 1, 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); Garnmoh 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 - 201112; 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 - 1995-98, 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:

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- (1) Nudity, partial nudity, conduct by bikini-clad persons, and/or sexual conduct coupled with alcohol in public places begets negative secondary effects, including sexual, lewd, lascivious, and salacious conduct among patrons and employees resulting in violation of laws and in dangers to the health, safety and welfare of the public;
 - (2) Physical contact between employees of alcoholic beverage establishments, including "bed" dances, "couch" dances, and "lap" dances as they are commonly called, are associated with and can lead to illicit sexual activities, including masturbation, lewdness, and prostitution, as well as other negative effects, including sexual assault;
 - (3) The city finds that the foregoing conduct, even when the employees are technically not nude or semi-nude, as defined in other portions of Stonecrest city regulations, is substantially similar to and presents similar concerns as conduct by nude and semi-nude performers in sexually oriented businesses;
 - (4) Each of the negative effects targeted by this section constitutes a harm which the city has a substantial government interest in preventing and/or abating. This substantial government interest in preventing such negative effects, which is the city's rationale for this section, exists independent of any comparative analysis between the regulated establishments and other, non-regulated establishments. The city finds that the cases and secondary effects documentation relied on in this section are reasonably believed to be relevant to the city's interest in preventing illicit sexual behavior.

The city adopts and incorporates herein its stated findings and legislative record related to adverse secondary effects, including the judicial opinions and reports related to such secondary effects.

- (d) *On-premises conduct.* No licensee, as defined in this chapter, shall knowingly violate the following regulations or knowingly or recklessly allow an employee or any other person to violate the following regulations:
 - (1) No person shall knowingly engage in masturbation, sexual intercourse, fellatio, cunnilingus, sodomy, bestiality, or flagellation on the licensed premises.
 - (2) No employee shall knowingly touch, engage in physical contact with, caress, or fondle the breast, buttocks, lap, pubic region, or genitals of a patron, whether directly or through clothing or other covering, on the licensed premises.
 - (3) No patron shall knowingly touch, engage in physical contact with, caress, or fondle the breast, buttocks, lap, pubic region, or genitals of an employee, whether directly or through clothing or other covering, on the licensed premises.
 - (4) No employee shall knowingly expose his genitals, pubic hair, buttocks, natal cleft, perineum, anus, vulva, or the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point (except that the exposure of the cleavage of the female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel is not prohibited) to a patron on the licensed premises. This subsection does not apply to conduct in theaters, concert halls, art centers, museums, or similar establishments that are primarily devoted to the arts or theatrical performances, when the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value. The exception in the previous sentence shall not be construed to apply to any sexually oriented business, as defined in this Code.

(Ord. No. 2017-06-05, § 4.5.5, 6-5-2017)

Sec. 4.5.6. Sales on days of national or state elections.

Licensees may open their establishments for the sale of alcoholic beverages on any election day, except within 250 yards of any polling place.

(Ord. No. 2017-06-05, § 4.5.6, 6-5-2017)

Sec. 4.5.7. Failure to require and properly check identification.

- (a) It is unlawful not to require and properly check identification to ensure an underage person is not sold, served or possesses alcoholic beverages while in a licensed establishment. In this section "identification" means any document issued by a governmental agency containing a description of the person, such person's photograph, and giving such person's date of birth and includes, without being limited to, a passport, military ID card, driver license or state department of public safety ID card.
- (b) Licensee must have written policies and procedures and train, instruct and supervise employees to ensure compliance with this section.
- (c) Except as otherwise authorized by law, and in accordance with state law:
 - (i) No person knowingly, directly or through another person, shall furnish, cause to be furnished, or permit any person in such person's employ to furnish any alcoholic beverage to any person under 21 years of age;
 - (ii) No person under 21 years of age shall purchase, attempt to purchase, or knowingly possess any alcoholic beverage;
 - (iii) No person under 21 years of age shall misrepresent such person's age in any manner whatever for the purpose of obtaining illegally any alcoholic beverage;
 - (iv) No person knowingly or intentionally shall act as an agent to purchase or acquire any alcoholic beverage for or on behalf of a person under 21 years of age; and
 - (v) No person under 21 years of age shall misrepresent his identity or use any false identification for the purpose of purchasing or obtaining any alcoholic beverage.
- (d) The prohibitions contained in subsections (c)(i), (ii), and (iv) of this section shall not apply with respect to the sale, purchase, or possession of alcoholic beverages for consumption:
 - (i) For medical purposes pursuant to a prescription of a physician duly authorized to practice medicine in this state; or
 - (ii) At a religious ceremony.
- (e) The prohibitions contained in subsections (c)(i), (ii), and (iv) of this section shall not apply when the person under the age of 21 is given the alcoholic beverage by his parent or guardian for consumption in the home and in the presence of the parent or guardian.
- (f) The prohibition contained in subsection (c)(i) of this section shall not apply with respect to sale of alcoholic beverages by a person when such person has been furnished with proper identification showing that the person to whom the alcoholic beverage is sold is 21 years of age or older. For the purposes of this subsection, the term "proper identification" means any document issued by a governmental agency containing a description of the person, such person's photograph, or both, and giving such person's date of birth and includes, without being limited to, a passport, military identification card, driver license, or an identification card authorized under O.C.G.A. §§ 40-5-100 through 40-5-104. "Proper identification" shall not include a birth certificate and shall not include any traffic citation and complaint form.
- (g) Nothing in this section shall be construed so as to conflict with O.C.G.A. § 3-3-23 or any other provision of state law. Any violations of this section shall be grounds for revocation of the license by the issuing body.

(Ord. No. 2017-06-05, § 4.5.7, 6-5-2017)

Sec. 4.5.8. Retailer to purchase from licensed wholesaler only.

No retailer shall purchase alcoholic beverages from any person other than a wholesaler licensed under this chapter. No wholesaler shall sell any alcoholic beverage to anyone other than a retailer licensed under this chapter.

(Ord. No. 2017-06-05, § 4.5.8, 6-5-2017)

Sec. 4.5.9. Happy hour promotions.

- (a) No licensee under this chapter or employee or agent of a licensee shall, in connection with the sale or other disposition of alcoholic beverages for consumption on the premises, engage in selling, offering to sell, or delivering to any person or persons any alcoholic beverage at a price less than one-half the price customarily charged for such alcoholic beverage, provided nothing contained herein shall be construed to prohibit reducing the price of a drink or drinks by up to one-half the price customarily charged.
- (b) In this section, the term "customarily charged" means the price regularly charged for such alcoholic beverage during the same calendar week.

(Ord. No. 2017-06-05, § 4.5.9, 6-5-2017)

Sec. 4.5.10. Locations where sales by the drink permitted; entrance to establishment.

No distilled spirits may be sold by the drink for consumption on the premises where sold except in eating establishments regularly serving prepared food, with a full-service kitchen prepared to serve food every hour they are open. When located in hotels, motels and high-rise office and apartment buildings, every entrance to the establishment shall be from a public lobby, hallway, mall or other publicly used interior portion of the primary use structure.

(Ord. No. 2017-06-05, § 4.5.10, 6-5-2017)

Sec. 4.5.11. Certain organizations exempt from food establishment requirements.

Veterans' organizations, fraternal organizations and other nonprofit organizations currently having tax-exempt status under either the United States Internal Revenue Code or O.C.G.A. § 48-71-1 et seq. shall not be required to operate a food establishment serving prepared food. However, any such organization selling or dispensing alcoholic beverages shall be subject to all ordinance regulations dealing with general licensing and consumption-on-the-premises establishments.

(Ord. No. 2017-06-05, § 4.5.11, 6-5-2017)

*DIVISION 2. ESTABLISHMENTS LICENSED FOR ON-PREMISES CONSUMPTION OF
DISTILLED SPIRITS*

~~**Sec. 4.5.12. Hours of sale and operation.**~~

- ~~(a) Distilled spirits shall be sold and delivered to the customer for consumption on the premises during the following hours:~~

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- ~~(i) Monday through Friday hours are from 9:00 a.m. until 3:55 a.m. of the following day.~~
- ~~(ii) Saturday hours are from 9:00 a.m. until 2:55 a.m. on Sunday.~~
- ~~(iii) Sunday hours are from 11:00 a.m. until 12:00 a.m. midnight on Monday as permitted by section 4.5.15.~~
- ~~(b) Sales and deliveries during all other hours are prohibited. All licensed establishments must close their premises to the public and clear their premises of patrons by 3:30 a.m. and shall not reopen their premises to the public until 9:00 a.m. or thereafter.~~

(Ord. No. 2017-06-05, § 4.5.12, 6-5-2017; Ord. No. 2018-08-02, § 5, 9-5-2018)

Sec. 4.5.13. Sales and deliveries during all other hours are prohibited.

There shall be no consumption on the premises after prohibited hours have been in effect for one-half hour. All licensed establishments must close their premises to the public and clear their premises of patrons within one hour after the time set by this chapter for discontinuance of the sale of alcoholic beverages on the premises and shall not reopen their premises to the public until 9:00 a.m. or thereafter.

(Ord. No. 2017-06-05, § 4.5.13, 6-5-2017)

Sec. 4.5.14. Employees.

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

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

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

(Ord. No. 2017-06-05, § 4.5.14, 6-5-2017; Ord. No. 2017-10-04, § 3(4.5.14), 10-16-2017)

Sec. 4.5.15. Sunday sales.

- (a) Licensed establishments deriving a minimum of 60 percent of their total annual gross food and beverage sales from the sale of prepared meals or food, or licensed establishments deriving at least 60 percent of their total annual income from the rental of rooms for overnight lodging, are authorized to apply for a Sunday sales permit to sell and serve alcoholic beverages, malt beverages and wine by the drink from 11:00 a.m. on Sunday until 12:00 a.m. midnight of the following Monday.
- (b) Applicants for a Sunday sales permit shall complete a form and affidavit furnished by the City Manager or his designee. The City Manager or his designee may, at any time, require that the licensee obtain an audit prepared by a certified public accountant, at the licensee's expense, to ensure compliance. If an audit reveals that incorrect, incomplete or misleading information was submitted on and/or with the Sunday sales form and/or affidavit, then, the permit shall be automatically revoked by the City Manager or his designee. No later than March 31 of the license year, licensee shall submit a report on monthly sales by category for the prior calendar year.
- (c) All annual permit renewals shall be filed with the City Manager or his designee not later than November 30 of the year preceding the license year for which the permit is to be issued. All renewals are subject to audit prior to being renewed to ensure compliance with this chapter.
- (d) Sunday sales permits may be granted for the full calendar year or for the number of months remaining in the calendar year. The permit fee shall be prorated based on the number of months remaining in the calendar year; partial months shall be counted as a full month. Fees are not refundable and permits shall not be transferable.
- (e) Establishments which qualify for a Sunday sales license are authorized to apply for a temporary Sunday sales permit if they desire to open for special events or holidays. The temporary permit shall be valid for one

calendar month and partial months shall be counted as a full month. Licensees must apply 30 days in advance of the issuance date.

(Ord. No. 2017-06-05, § 4.5.15, 6-5-2017; Ord. No. 2018-08-02 , § 5, 9-5-2018)

Sec. 4.5.16. Open area and patio sales.

No consumption and/or sale of distilled spirits shall be allowed in open areas and patios unless first permitted and approved by the City Manager or his designee. The department shall prepare such appropriate regulations as to ensure the safe and orderly operation of these establishments, including, but not limited to, regulations pertaining to maximum capacity, ingress and egress.

(Ord. No. 2017-06-05, § 4.5.16, 6-5-2017)

DIVISION 3. ESTABLISHMENTS LICENSED FOR ON-PREMISES CONSUMPTION OF BEER AND WINE

Sec. 4.5.17. Types of retail establishments.

- (a) No beer or wine shall be sold at retail except in establishments licensed to sell beer and/or wine in the original package, as applicable, which are located in zoning districts in which these establishments are permitted as a conforming use or when such establishment currently exists in the zoning district as a nonconforming use, as defined in chapter 27.
- (b) In cases where a hotel or motel is allowed to sell liquor by the package for the purposes of room service, beer and wine sales by the package shall also be permitted for the purposes of room service to guests of the hotel or motel.

(Ord. No. 2017-06-05, § 4.5.17, 6-5-2017)

Sec. 4.5.18. Hours of sale and operation.

Beer and/or wine shall be sold and delivered to the customer for consumption on the premises only during the following hours:

- (a) Monday through Friday hours are from 9:00 a.m. until 3:55 a.m. of the following day.
- (b) Saturday hours are from 9:00 a.m. until 2:55 a.m. on Sunday.
- (c) Sunday hours are from 11:00 a.m. on Sunday until 12:00 a.m. midnight on Monday as permitted by section 4.5.21.

Sales and deliveries during all other hours are prohibited. All licensed establishments must close their premises to the public and clear their premises of patrons by 3:30 a.m. and shall not reopen their premises to the public until 9:00 a.m. or thereafter.

(Ord. No. 2017-06-05, § 4.5.18, 6-5-2017; Ord. No. 2018-08-02 , § 6, 9-5-2018)

Sec. 4.5.19. Sales and deliveries during all other hours are prohibited.

There shall be no consumption on the premises after prohibited hours have been in effect for one-half hour. All licensed establishments must close their premises to the public and clear their premises of patrons within one hour after the time set by this chapter for discontinuance of the sale of alcoholic beverages on the premises and shall not reopen their premises to the public until 9:00 a.m. or thereafter.

(Ord. No. 2017-06-05, § 4.5.19, 6-5-2017)

Sec. 4.5.20. Employees.

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

- (1) An employee shall meet the same character requirements as set forth in the general ordinances for the licensee, except for the residency requirements.
- (2) No person shall be employed by an establishment holding a license hereunder until such person has been fingerprinted or cleared by the City Manager or his designee and a permit issued indicating that such person is eligible for this employment. The permit issued to a person under this section shall be either of the following:
 - a. Alcoholic beverage permit, which shall be issued only to a person who must be 18 years of age or older and who sells, serves or dispenses alcoholic beverages.
 - b. Nonalcoholic beverage permit, which shall be issued to a person whose employment, includes, but is not limited to, host, hostess, doorperson and bouncer. All employees holding nonalcoholic beverage permits shall be prohibited from selling, serving, or dispensing alcoholic beverages.
- (3) No permit shall be issued until such time as a signed application has been filed with the City Manager or his designee and a search of the criminal record of the applicant completed. The application shall include, but shall not be limited to, the name, date of birth and prior arrest record of the applicant, though the fact of an arrest record shall be used for investigative purposes only, and shall give rise to no presumption or inference of guilt. Due to the inclusion of arrest information, these applications shall be regarded as confidential and shall not be produced for public inspection without a court order.
- (4) The City Manager or his designee shall have a complete and exhaustive search made relative to any police record of the person fingerprinted or cleared. If there is no record of a violation of this division, the department shall issue a permit to the employee, stating that the person is eligible for employment. If it is found that the person fingerprinted or cleared is not eligible for employment, the department shall not issue a permit to the employee.
- (5) All permits issued through administrative error or through an error in completion of a background investigation may be terminated by the City Manager or his designee or the City Manager or his designee.
- (6) This section does not apply to employees whose duties are limited solely to those of a busperson, cook or dishwasher. This section does not apply to employees of theaters, as defined in article 9 of chapter 27 of the Code of the City of Stonecrest, whose duties are limited solely to those of concession sales, ticket sales, and ushers. All employees under this subsection shall be prohibited from selling, serving, or dispensing alcoholic beverages.
- (7) No licensee shall allow any employee required to hold a permit to work on the licensed premises unless the licensee has on file, on the premises, the current, valid permit of each such employee.

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- (8) If any permit holder leaves the employ of a licensed establishment, the licensee shall immediately surrender the permit to the City Manager or his designee.
 - (9) All permits issued hereunder remain the property of the city and shall be produced for inspection upon the demand of the City Manager or his designee.

(Ord. No. 2017-06-05, § 4.5.20, 6-5-2017; Ord. No. 2017-10-04, § 4(4.5.20), 10-16-2017)

Sec. 4.5.21. Sunday sales.

- (a) Licensed establishments deriving a minimum of 60 percent of their total annual gross food and beverage sales from prepared meals or food, or licensed establishments deriving at least 60 percent of their total annual gross income from the rental of rooms for overnight lodging, are authorized to apply for a Sunday sales permit to sell and serve alcoholic beverages by the drink from 11:00 a.m. on Sunday until 12:00 a.m. midnight of the following Monday.
- (b) Applicants for a Sunday sales permit shall complete a form and affidavit furnished by the City Manager or his designee. The City Manager or his designee may, at any time, require that the licensee obtain an audit prepared by a certified public accountant, at the licensee's expense, to ensure compliance. If an audit reveals that incorrect, incomplete or misleading information was submitted on and/or with the Sunday sales form and/or affidavit, then, the permit shall be automatically revoked by the City Manager or his designee. No later than March 31 of the license year, licensee shall submit a report on monthly sales by category for the prior calendar year.
- (c) All annual permit renewals shall be filed with the City Manager or his designee not later than November 30 of the year preceding the license year for which the permit is to be issued. All renewals are subject to audit prior to being renewed to ensure compliance with this chapter.
- (d) Sunday sales permits may be granted for the full calendar year or for the number of months remaining in the calendar year. The permit fee shall be prorated based on the number of months remaining in the calendar year; partial months shall be counted as a full month. Fees are not refundable and permits shall not be transferable.
- (e) Establishments which qualify for a Sunday sales license are authorized to apply for a temporary Sunday sales permit if they desire to open for special events or holidays. The temporary permit shall be valid for one calendar month and partial months shall be counted as a full month. Licensees must apply 30 days in advance of the issuance date.

(Ord. No. 2017-06-05, § 4.5.21, 6-5-2017; Ord. No. 2018-08-02 , § 6, 9-5-2018)

Sec. 4.5.22. Open area and patio sales.

No consumption and/or sale of beer and wine shall be allowed in open areas and patios unless first permitted and approved by the City Manager or his designee. The department shall prepare such appropriate regulations as to ensure the safe and orderly operation of these establishments, including, but not limited to, regulations pertaining to maximum capacity, ingress and egress.

(Ord. No. 2017-06-05, § 4.5.22, 6-5-2017)

DIVISION 4. PRIVATE CLUBS

Sec. 4.5.23. Generally.

Private clubs may sell and dispense alcoholic beverages upon compliance with all applicable ordinances and regulations of the city governing the sale of such beverages and upon payment of such license fees and taxes as may be required by the existing ordinances, rules and regulations of the city.

(Ord. No. 2017-06-05, § 4.5.23, 6-5-2017)

Sec. 4.5.24. Hours of sale and operation.

Alcoholic beverages shall be sold and delivered to patrons for consumption on the premises only during the following hours:

- (a) Monday through Friday hours are from 9:00 a.m. until 3:55 a.m. of the following day.
- (b) Saturday hours are from 9:00 a.m. until 2:55 a.m. on Sunday.
- (c) Sunday hours are from 11:00 a.m. on Sunday until 12:00 a.m. midnight on Monday as permitted by section 4.5.26.

Sales and deliveries during all other hours are prohibited. All licensed establishments must close their premises and clear their premises of patrons within one hour after the time set by this chapter for discontinuance of the sale of alcoholic beverages on the premises and shall not reopen their premises to the public until 9:00 a.m. or thereafter.

(Ord. No. 2017-06-05, § 4.5.24, 6-5-2017; Ord. No. 2018-08-02 , § 7, 9-5-2018)

Sec. 4.5.25. Employees.

The following provisions apply to all private clubs holding a license for consumption of alcoholic beverages on the premises:

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

the City Manager or his designee shall issue a permit to the employee, stating that the person is eligible for employment. If it is found that the person fingerprinted or cleared is not eligible for employment, the City Manager or his designee shall not issue a permit to the employee.

- (5) All permits issued through administrative error or through an error in completion of a background investigation can be terminated by the City Manager or his designee.
- (6) This section does not apply to employees whose duties are limited solely to those of a busperson, cook or dishwasher.
- (7) No licensee shall allow any employee required to hold a permit to work or train on the licensed premises unless the licensee has on file, on the premises, the current, valid permit of each such employee.
- (8) If any permit holder leaves the employ of a licensed establishment, the licensee shall immediately surrender the permit to the City Manager or his designee.
- (9) All permits issued hereunder remain the property of the city, and shall be produced for inspection upon the demand of the City Manager or his designee.

(Ord. No. 2017-06-05, § 4.5.25, 6-5-2017)

Sec. 4.5.26. Sunday sales.

- (a) Licensed establishments deriving a minimum of 60 percent of their total annual gross food and beverage sales from prepared meals or food, or licensed establishments deriving at least 60 percent of their total annual income from the rental of rooms for overnight lodging, are authorized to apply for a Sunday sales permit to sell and serve alcoholic beverages, malt beverages and wine by the drink from 11:00 a.m. on Sunday until 12:00 a.m. midnight of the following Monday. No later than March 31 of the license year, licensee shall submit a report on monthly sales by category for the prior calendar year.
- (b) Applicants for a Sunday sales permit shall complete a form and affidavit furnished by the City Manager or his designee. An audit may be required at any time to ensure compliance. If an audit reveals that incorrect, incomplete or misleading information was submitted on and/or with the Sunday sales form and/or affidavit, then, the permit shall be automatically revoked by the City Manager or his designee.
- (c) All annual permit renewals shall be filed with the City Manager or his designee not later than November 30 of the year preceding the license year for which the permit is to be issued. All renewals are subject to audit prior to being renewed to ensure compliance with this chapter.
- (d) Sunday sales permits may be granted for the full calendar year or for the number of months remaining in the calendar year. The permit fee shall be prorated based on the number of months remaining in the calendar year; partial months shall be counted as a full month. Fees are not refundable and permits shall not be transferable.
- (e) Establishments which qualify for a Sunday sales license are authorized to apply for a temporary Sunday sales permit if they desire to open for special events or holidays. The temporary permit shall be valid for one calendar month and partial months shall be counted as a full month. Licensees must apply 30 days in advance of the issuance date.

(Ord. No. 2017-06-05, § 4.5.26, 6-5-2017; Ord. No. 2018-08-02 , § 7, 9-5-2018)

Sec. 4.5.27. Open area and patio sales.

No consumption and/or sale of distilled spirits or beer or wine shall be allowed in open areas and patios of private clubs unless first permitted and approved by the City Manager or his designee. The department shall prepare such appropriate regulations as to ensure the safe and orderly operation of these establishments, including, but not limited to, regulations pertaining to maximum capacity, ingress and egress.

(Ord. No. 2017-06-05, § 4.5.27, 6-5-2017)

DIVISION 5. DISTILLED SPIRIT PACKAGE STORES

Sec. 4.5.28. Types of establishments where retail sale permitted.

- (a) No distilled spirits by the package shall be sold at retail except in the following:
- (1) Retail establishments devoted exclusively to the retail sale of alcoholic beverages by the package.
 - (2) Retail establishments in which space has been set aside devoted exclusively to the retail sales of distilled spirits by the package, with ingress and egress provided directly to and only to the exterior of the building in which the facility is located and not to any other enclosed part of the building in which the facility is located, except as provided in subsection (a)(3) of this section.
 - (3) In hotels, motels and high-rise office buildings where every public entrance to this use shall be from a lobby, hallway, or other interior portion of the primary use structure.
 - (4) In hotels and motels with a restaurant holding a consumption-on-the-premises license, as part of room service for guests of the hotel or motel.
- (b) Nothing in this section shall prohibit the retail sale within these establishments of liquid commodities and mixes normally used in the preparation and serving of distilled spirits.

(Ord. No. 2017-06-05, § 4.5.28, 6-5-2017)

Sec. 4.5.29. Coin-operated or amusement machines.

No retail dealer in liquors shall permit on the premises any slot machine of any kind or character or any coin-operated machine or any machine operated for amusement purposes. However, cigarette vending machines may be permitted.

(Ord. No. 2017-06-05, § 4.5.29, 6-5-2017)

Sec. 4.5.30. Hours of sale.

Retailers shall not engage in the sale of spirituous liquors except between the hours of 8:00 a.m. and 12:00 noon on Monday through Saturday. The hours within which this business may be carried on shall be determined by the standard time in force at the time of the sale thereof. Retailers shall not engage in the sale of spirituous liquors except between the hours of 12:30 p.m. and 11:00 p.m. on Sunday.

(Ord. No. 2017-06-05, § 4.5.30, 6-5-2017)

Sec. 4.5.31. Employees.

The following provisions apply to all establishments holding a license for package liquor:

- (1) An employee shall meet the same character requirements as set forth in the general ordinances for the licensee, except for the residency requirements.
- (2) No person shall be employed by an establishment holding a license hereunder until this person has been fingerprinted or cleared by the City Manager or his designee and has been issued a permit by the City Manager or his designee indicating that the person is eligible for employment. The permit issued to a person under this section shall be an alcoholic beverage permit, which shall be issued only to a person who must be 18 years of age or older and who sells alcoholic beverages.
- (3) No permit shall be issued until such time as a signed application has been filed with the City Manager or his designee and a search of the criminal record of the applicant completed. The application shall include, but shall not be limited to, the name, date of birth, and prior arrest record of the applicant, though the fact of an arrest record shall be used for investigative purposes only, and shall give rise to no presumption or inference of guilt. Due to the inclusion of arrest information, these applications shall be regarded as confidential and shall not be produced for public inspection without a court order.
- (4) The City Manager or his designee shall have a complete and exhaustive search made relative to any police record of the person fingerprinted or cleared. If there is no record of a violation of this division, the City Manager or his designee shall issue a permit to the employee, stating that the person is eligible for employment. If it is found that the person fingerprinted or cleared is not eligible for employment, the City Manager or his designee shall not issue a permit to the employee.
- (5) All permits issued through administrative error or through an error in completion of a background investigation can be terminated by the City Manager or his designee.
- (6) No licensee shall allow any employee required to hold a permit to work or train on the licensed premises unless the licensee has on file, on the premises, the current, valid permit of each such employee.
- (7) If any permit holder leaves the employ of a licensed establishment, the licensee shall immediately surrender the permit to the City Manager or his designee.
- (8) All permits issued hereunder remain the property of the city, and shall be produced for inspection upon the demand of the City Manager or his designee.

(Ord. No. 2017-06-05, § 4.5.31, 6-5-2017)

Sec. 4.5.32. Location of retail liquor package stores.

No new retail establishment selling distilled spirits by the package shall be located within 1,000 yards of an existing retail establishment selling distilled spirits by the package. This prohibition shall not apply to a hotel or a motel with a restaurant holding a consumption on the premises license which sells package liquor to its guests as part of room service.

(Ord. No. 2017-06-05, § 4.5.32, 6-5-2017)

DIVISION 6. BEER AND WINE PACKAGE STORES

Sec. 4.5.33. Types of retail establishments.

- (a) Except as provided in section 4.5.35, no beer and/or wine shall be sold at retail except in establishments maintaining 80 percent of the floor space and storage area in a manner which is devoted principally to the retail sale of other products and located in zoning districts in which these establishments are permitted as a conforming use or in districts where an existing establishment exists as a nonconforming use or in a facility duly licensed by the city to sell liquor by the package.
- (b) In cases where, under section 4.5.28(a)(4), a hotel or motel is allowed to sell liquor by the package for the purposes of room service, beer and wine sales by the package shall also be permitted for the purposes of room service to guests of the hotel or motel.

(Ord. No. 2017-06-05, § 4.5.33, 6-5-2017)

Sec. 4.5.34. Hours of sale; Sunday sales.

Retail package licensees shall not engage in the sale of beer and/or wine except between the hours of 8:00 a.m. and 12:00 midnight, Monday through Saturday. The hours within which business may be carried on shall be determined by the standard time in force at the time of the sale thereof. Retail package licensees shall not engage in the sale of beer and/or wine except between the hours of 12:30 p.m. and 11:00 p.m. on Sunday.

(Ord. No. 2017-06-05, § 4.5.34, 6-5-2017)

Sec. 4.5.35. Use of tags or labels to indicate prices.

Retailers shall indicate plainly, by tags or labels on the bottles or containers or on the shelf immediately below where the containers are placed, the prices of all beer and wine exposed or offered for sale.

(Ord. No. 2017-06-05, § 4.5.35, 6-5-2017)

Sec. 4.5.36. Ancillary wine tasting license.

- (a) The holder of a package wine license, with or without a package malt beverage license, but in no event with a package distilled spirits license, with licensed premises having a minimum of 200 square feet of floor space dedicated to the display of wine offered for sale, shall be eligible for an ancillary wine tasting license to provide samples of wine offered for sale to customers under the conditions set forth in this section.
- (b) Wine sampling shall be on limited occasions when a customer requests a sample of a wine offered for sale within the premises, or in conjunction with wine education classes and sampling designed to promote wine appreciation and education.
- (c) Wine tasting for customers shall only be conducted at a wine counter area constituting no more than ten percent of the entire floor area of the premises.
- (d) Wine sampling for customers shall be limited to no more than one time per day per customer for a period not to exceed two consecutive hours. Samples shall not exceed two ounces, and no customer shall consume more than eight ounces in any two-hour period.
- (e) Wine bottles shall be opened only by the licensee or an employee, and samples shall only be poured by the licensee and/or an employee.
- (f) No open containers of wine shall be removed from the licensed premises.

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- (g) Not more than three times per week for a period of not to exceed two consecutive hours, the holder of an ancillary wine tasting license may conduct educational classes and sampling for classes. All conditions of sampling set forth in this section shall apply to such classes, except for the limitation on floor areas where the classes can be conducted.
 - (h) Holders of an ancillary wine tasting permit shall not charge for samples or tastings, but may accept donations for a charitable organization of their choice.
 - (i) Wine sampling and tasting is only permitted within the enclosed portion of the premises.
 - (j) The annual fee for an ancillary wine tasting license shall be set and may be revised by resolution of the city council.

(Ord. No. 2017-06-05, § 4.5.36, 6-5-2017)

Sec. 4.5.37. Ancillary malt beverage tasting license.

- (a) The holder of a package malt beverage license, with or without a package wine license, but in no event with a package distilled spirits license, with licensed premises having a minimum of 400 square feet of floor space dedicated to the display of malt beverages offered for sale or which is authorized pursuant to section 4.5.39 to sell growlers, shall be eligible for an ancillary malt beverage tasting license to provide samples of malt beverages offered for sale to customers under the conditions set forth in this section.
- (b) Malt beverage sampling shall be on limited occasions when a customer request a sample of a malt beverage offered for sale within the premises, or in conjunction with malt beverage education classes and sampling designed to promote malt beverage appreciation and education.
- (c) Malt beverage tasting for customers shall only be conducted at a counter area constituting no more than ten percent of the entire floor area of the premises.
- (d) Malt beverage sampling for customers shall be limited to no more than one time per day per customer for a period not to exceed two consecutive hours. Samples shall not exceed two ounces, and no customer shall consume more than eight ounces in any two-hour period.
- (e) Only the licensee or an employee shall open and handle unpackaged malt beverages, and samples shall only be poured by the licensee and/or an employee.
- (f) No open containers shall be removed from the licensed premises.
- (g) Not more than three times per week for a period not to exceed two consecutive hours, the holder of an ancillary malt beverage tasting license may conduct educational classes and sampling for class participants. All conditions of sampling set forth in this section shall apply to such classes, except for the limitation on floor areas where the classes can be conducted.
- (h) Holders of an ancillary malt beverage tasting license shall not charge for samples or tastings, but may accept donations for a charitable organization of their choice.
- (i) Malt beverage sampling and tasting is only permitted within the designated interior portion of the premises.
- (j) The annual fee for an ancillary malt beverage tasting license shall be set, and may be revised, by resolution of the city council.

(Ord. No. 2017-06-05, § 4.5.37, 6-5-2017)

Sec. 4.5.38. Bed and breakfast license.

- (a) A bed and breakfast desiring to sell alcohol on premises shall first obtain a bed and breakfast alcohol license. Such license shall be limited to the sale of beer and wine.
- (b) A bed and breakfast licensed under this article shall:
 - (i) Comply with all local, state and federal licensing and operational requirements, and shall have all licenses and permits required of bed and breakfasts by the same;
 - (ii) Have a full-service kitchen at the licensed location approved by local health and fire departments;
 - (iii) Restrict its sell of alcohol to overnight customers staying on the premises and its customers who are served food that is to be consumed on the premises while dining or attending a culinary class. More than one bottle of wine shall not be sold to any customer in a three-day period. A bed and breakfast shall not allow customers to take alcoholic beverages in any form away from the licensed premises, except that overnight customers may be permitted to remove one unsealed bottle of wine per patron for consumption off premises at the end of their overnight stay;
 - (iv) Submit reports to the City Manager or his designee as required under this chapter.

(Ord. No. 2017-06-05, § 4.5.38, 6-5-2017)

Sec. 4.5.39. On-premises consumption unlawful; growlers.

- (a) It shall be unlawful for any person to consume any alcoholic beverages on premises licensed for the sale of alcoholic beverages by the package. It shall be unlawful for any retail package licensee to open or break the package of any alcoholic beverages for a purchaser or to permit the consumption of alcoholic beverages on the licensed premises. This section shall not apply with respect to:
 - (1) Tastings provided pursuant to an ancillary wine tasting license;
 - (2) Tastings provided pursuant to an ancillary malt beverage tasting license; or
 - (3) Sales pursuant to a license for consumption on the premises.
- (b) Notwithstanding the foregoing prohibition, package malt beverage licensees, who are not also licensed to sell distilled spirits by the package, may fill growlers with draft beer at the licensee's licensed location from kegs lawfully procured by the licensee, subject to the following requirements:
 - (i) The filled growler must be securely sealed, on premises, with a tamper proof plastic cap;
 - (ii) Either at least 90 percent of the licensee's total gross sales are from the packaged sale of malt beverages and/or wine or the licensee's premises have a minimum of 400 square feet of floor space dedicated to the display of malt beverages offered for sale; and
 - (iii) The licensee complies with all state, federal and local packaging and labeling laws regarding alcoholic beverages.

Each filled growler must be removed from the premises in its securely sealed condition. Except as provided in subsection (a) of this section, consumption on the premises shall be prohibited.

(Ord. No. 2017-06-05, § 4.5.39, 6-5-2017)

Sec. 4.5.40. Craft beer market.

- (a) No person shall be permitted to own or operate a craft beer market without obtaining from the finance director as provided in this chapter for both a retail package sales of malt beverages license and an ancillary tasting license.
- (b) Notwithstanding any other provision of this chapter or the Code of Ordinances for the city generally, a craft beer market shall be authorized to sell samples of draft beer and pints to patrons over the age of 21 years. Samples shall not exceed four ounces in volume, pints shall not exceed 16 ounces, and beers having an alcohol content in excess of six percent alcohol by volume shall not exceed ten ounces. One individual shall not be offered more than a total of 32 ounces within a 24-hour period.
- (c) A craft beer market or growler shop may, but is not required, to serve food, so long as the establishment complies with all other provisions of the city Code and such food service is properly permitted by the city.
- (d) A craft beer market or growler shop that offers for sale samples or pints shall be exempt from the definitions of restaurants and late night establishments in chapter 27.
- (e) Employees of a craft beer market that offers for sale samples or pints, as defined in this section, shall obtain and the licensee shall maintain on premises an employee license as required in section 4.5.20.

(Ord. No. 2017-06-05, § 4.5.40, 6-5-2017)

ARTICLE VI. WHOLESALERS

Sec. 4.6.1. Generally.

- (a) Any person desiring to sell, at wholesale, any alcoholic beverage in the city shall make application to the City Manager or his designee and obtain a license to do so, which application shall be in writing on the prescribed forms, and pay a fee in the amount established by action of the city council, a copy of which is on file in the office of the clerk of the city.
- (b) No person who has any direct financial interest in a license for the retail sale of distilled spirits shall be allowed to have any interest or ownership in any wholesale distilled spirit license.
- (c) No retailer shall purchase any alcoholic beverage from any person other than a wholesaler licensed under this article. No wholesaler shall sell any distilled spirits to any person other than a retailer licensed under this chapter.
- (d) No alcoholic beverage shall be delivered to any retail sales outlet in the city except by a duly licensed wholesaler. The name of the wholesale distributor shall be clearly marked on the delivery vehicle.

(Ord. No. 2017-06-05, § 4.6.1, 6-5-2017)

Sec. 4.6.2. Excise tax imposed; bond required.

- (a) There is imposed an excise tax upon all alcoholic beverages purchased in the city by persons holding a retail package license and/or a consumption-on-the-premises license at a rate established by action of the city council, a copy of which is on file in the office of the clerk of the city.
- (b) The excise tax shall be collected by all wholesale dealers selling alcoholic beverages to persons holding retail licenses and shall be paid by the wholesale dealers to the City Manager or his designee by the tenth of each month, based upon the units of alcohol sold during the previous month. The wholesale dealer shall keep true

and correct records of all sales and shipments. The monthly remittance shall be accompanied by a sworn statement showing, but not limited to, the type and volume sold to each retail licensee on a form or in a format as approved by the City Manager or his designee.

- (c) Each wholesale dealer, prior to commencement of business operation in the city, shall post a performance bond with the City Manager or his designee equal to 1½ times the estimated highest monthly payment made in a calendar year of the excise tax based on sales collected by the wholesale dealer from the retailers to secure the payments for the tax imposed herein. These bonds shall be secured by cash which shall bear no interest, or a surety bond executed by a surety company licensed to do business in this state and approved by the City Manager or his designee.
- (d) A wholesaler may be excused from posting the performance bond after demonstrating full and satisfactory compliance with the provisions required hereunder for a period of 12 months subsequent to the commencement of business operations within the city. Continued exemption from the requirement of posting the performance bond shall be conditioned upon continued compliance with the terms of this article and the payment of all sums as required by the provisions of this section.
- (e) Any person who fails to pay any tax to the city or any amount of tax required to be collected and paid to the city under this article within the time required shall pay a late payment penalty, in addition to the tax or amount of tax, plus interest on the unpaid tax or any portion thereof as specified by section 4.4.8.

(Ord. No. 2017-06-05, § 4.6.2, 6-5-2017)

Sec. 4.6.3. Audit.

The city shall have the right to audit each wholesale dealer licensed to do business in the city.

(Ord. No. 2017-06-05, § 4.6.3, 6-5-2017)

Sec. 4.6.4. Hours of sale.

Wholesalers shall not engage in the sale of alcoholic beverages except between 6:00 a.m. and 11:00 p.m., Monday through Saturday.

(Ord. No. 2017-06-05, § 4.6.4, 6-5-2017)

ARTICLE VII. CONSUMPTION OF ALCOHOL NOT PURCHASED ON THE PREMISES

Sec. 4.7.1. Brown bagging prohibited.

Except as provided in section 4.7.2, no owner, operator, or agent of any restaurant, music hall, theatre, or any other business licensee of the city shall knowingly allow patrons to bring in and consume any alcoholic beverage that is not purchased on the premises pursuant to a license under this chapter.

(Ord. No. 2017-06-05, § 4.7.1, 6-5-2017)

Sec. 4.7.2. Corkage.

- (a) At the sole discretion of the licensee, establishments having both a full service kitchen and a license for on-premises consumption of alcoholic beverages may allow patrons to carry or otherwise take wine onto the premises for consumption during the service of meals only subject to the following:

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- (1) Only one bottle per patron of legal drinking age at a table or booth shall be allowed;
 - (2) Before opening, the wine must be sealed in the original seal;
 - (3) The bottle must be commercially manufactured;
 - (4) The bottle may not exceed 1,000 mL in volume;
 - (5) The bottle must be given to the licensee or its designee either before or as the patron is seated; and
 - (6) A partially consumed bottle of wine may be returned to the patron after the licensee or its designee re-corks the bottle in a manner to make the cork flush with the top of the bottle. The licensee shall place the re-corked bottle in a bag or other container that is secured in such a manner that is visibly apparent if the container has been subsequently opened or tampered with
- (b) A licensee who allows patrons to carry or otherwise take wine onto the premises for consumption in accordance with subsection (a) of this section may charge a fee to patrons for this service, at the licensee's discretion.

(Ord. No. 2017-06-05, § 4.7.2, 6-5-2017)

ARTICLE VIII. TRANSITION PERIOD

Sec. 4.8.1. Existing license.

Any legal, validly issued existing license or permit issued by DeKalb County within the incorporated boundaries of the City of Stonecrest shall be valid within the City of Stonecrest for the calendar year of 2017. Any such licensee or permit holder shall be required to comply with the requirements of this chapter, including article IV and article V. At the expiration of 2017, any such licensee or permit holder shall be required to comply with section 4.2.9 and section 4.2.10, or any other section regarding the application of an initial permit, as if no previous license or permit had been held.

Nothing in this subsection should be construed as creating a right, vested or otherwise, to the license or permit originally issued by DeKalb County, or the renewal or issuance of said permit or license for any subsequent years by the City of Stonecrest.

(Ord. No. 2017-06-05, § 4.8.1, 6-5-2017)

Sec. 4.8.2. Transition departments.

During the period of transition and startup of the City of Stonecrest, and until the City notifies DeKalb County of its intention to take over alcohol permitting, any duties required by this chapter shall be fulfilled by DeKalb County or any other designee of the City Manager.

(Ord. No. 2017-06-05, § 4.8.2, 6-5-2017)

Chapter 15 LICENSES, PERMITS AND MISCELLANEOUS BUSINESS REGULATIONS

ARTICLE I. IN GENERAL

Sec. 15.1.1. Security information—Required.

All persons subject to the provisions of this chapter shall furnish to the City Manager or his designee, on a form supplied by the City Manager or his designee, any and all information necessary to indicate the security measures located at such person's business, trade or profession and the persons to be notified in the event of an emergency of the business, trade or profession.

(Ord. No. 2017-08-05, § 1(15.1.1), 8-7-2017)

Sec. 15.1.2. Security information—Furnished with license application.

All persons applying for a new or renewal license under the provisions of this chapter shall be required, at the time of application, to furnish the information required in section 15.1.1, and to keep the information current.

(Ord. No. 2017-08-05, § 1(15.1.2), 8-7-2017)

Sec. 15.1.3. Emergency decal.

All persons subject to the provisions of this chapter shall be furnished by the City Manager or his designee with an emergency decal containing thereon a coded number; it shall be the responsibility of the owner, operator or manager of the business to affix the decal to the main entrance of the business. The decal shall be placed at approximate eye level on the main entrance, and if the decal cannot be placed on the main entrance, it shall be placed on the most conspicuous location as close as possible to the main entrance to the business.

(Ord. No. 2017-08-05, § 1(15.1.3), 8-7-2017)

Sec. 15.1.4. Carnivals, sideshows, etc.; permit required prior to issuance of license.

No license shall be granted for the operation of a carnival, sideshow or similar exhibition on a vacant lot or in any open place where performances of any kind are given or where machinery of any kind or devices of any kind are operated for amusement unless a permit is obtained. Applications for this permit, accompanied by a fee in the amount established by action of the City Council, a copy of which is on file in the office of their clerk, shall be filed with the City Manager or his designee. The application shall contain such information as the City Manager or his designee requires.

(Ord. No. 2017-08-05, § 1(15.1.4), 8-7-2017)

Sec. 15.1.5. Table of classification of occupations.

Classification of Occupations

Business Description	NAICS	2017 Class
Accommodation, Food Services, and Drinking Places	72	5
Administrative and Support and Waste Management and Remediation Services	56	3
Agriculture, Forestry, Hunting and Fishing	11	4

Arts, Entertainment and Recreation	71	2
Construction	23	1
Educational Services	61	4
Finance and Insurance	52	6
Health Care and Social Assistance	62	4
Information	51	5
Management of Companies (Holding Companies)	55	6
Manufacturing	31—33	5
Mining	21	2
Scientific, and Technical Services	54	3
Real Estate and Rental and Leasing	53	6
Transportation and Warehousing	48, 49	2
Utilities	22	1
Wholesale and Retail Trade	42, 44, 45	1
Other Services	81	3

(Ord. No. 2017-08-07, § 1, 7-7-2017)

Secs. 15.1.6—15.1.25. Reserved.

ARTICLE II. BUSINESS OCCUPATION TAXES

Sec. 15.2.1. Payment of occupational tax.

- (a) Each person engaged in a business, trade, profession or occupation whether with a location within the city, or in the case of an out-of-state business with no location in Georgia exerting substantial efforts within the city pursuant to O.C.G.A. § 48-13-7 shall pay an occupational tax for said business, trade, profession or occupation.
- (b) Occupation taxes shall be based upon gross receipts in combination with profitability ratio and number of employees. The profitability ratio for the type of business will be determined from nationwide averages derived from statistics, classifications or other information published by the United States Office of Management and Budget, the United States Internal Revenue Service or successor agencies of the United States.
- (c) A schedule of specific business occupation taxes, as adopted from time to time by the City Council is on file in the office of the clerk of, and shall be levied and collected in the amount and manner specified by this article.

(Ord. No. 2017-08-05, § 1(15.2.1), 8-7-2017)

Sec. 15.2.2. Definitions of terms used in this article.

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:

Administrative fee means a component of the occupational tax which approximates the cost of handling and processing the occupational tax.

Applicant or holder means the applicant for, or holder of, a business occupation tax certificate, and shall include the business and any legally or organizationally related entity to which the occupational tax certificate applies.

Business means any person, sole proprietor, partnership, corporation, trade, profession, occupation or other entity and the efforts or activities associated thereby for the purposes of raising revenue or producing income.

Director means the director of finance or his designee.

Dominant line means the type of business within a multiple-line business from which the greatest amount of income is derived.

Employee means an individual whose work is performed under the direction and supervision of the employer and whose employer withholds FICA, federal income tax, or state income tax from such individual's compensation or whose employer issues to such individual for the purposes of documenting compensation a form I.R.S. W-2 but not a form I.R.S. 1099.

Gross receipts.

- (1) The term "gross receipts" means total revenue of the business or practitioner for the period, including without being limited to the following:
 - a. Total income without deduction for the cost of goods sold or expenses incurred;
 - b. Gain from trading in stocks, bonds, capital assets, or instruments of indebtedness;
 - c. Proceeds from commissions on the sale of property, goods, or services;
 - d. Proceeds from fees charged for services rendered;
 - e. Proceeds from rent, interest, royalty, or dividend income; and
 - f. From all other income whatsoever arising from or growing out of the conduct of the business, trade, profession or occupation without any deduction whatsoever.
- (2) The term "gross receipts" shall not include the following:
 - a. Sales, use, or excise taxes;
 - b. Sales returns, allowances, and discounts;
 - c. Interorganizational sales or transfers between or among the units of a parent-subsidary controlled group of corporations, as defined by 26 USC 1563(a)(1), between or among the units of a brother-sister controlled group of corporations, as defined by 26 USC 1563(a)(2), or between or among wholly-owned partnerships or other wholly-owned entities;
 - d. Payments made to a subcontractor or independent agent;
 - e. Governmental and foundation grants, charitable contributions or the interest income derived from such funds, received by a nonprofit organization which employs salaried practitioners otherwise covered by this article, if such funds constitute 80 percent or more of the organization's receipts; and

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- f. Proceeds from sales to customers outside the geographical boundaries of the state.

License means a permit or certificate issued by the city that allows an entity to operate lawfully in the city. A license does not create any rights to operate in violation of any provision of this Code and it may be denied, suspended or revoked by the city at any time pursuant to the procedures set forth herein. The term "license" applies to any license issued pursuant to this chapter.

Location or office shall include any structure or any vehicle of a business or practitioner of a profession or occupation which has a location or office where a business, profession, or occupation is conducted, but shall not include a temporary or construction work site which serves a single customer or project or delivery vehicles of a business or practitioner of a profession or occupation which has a location or office.

Occupation tax means a tax levied on persons, partnerships, corporations or other entities for engaging in an occupation, trade, profession or business for revenue raising or income producing purposes.

Person, wherever used in this article, shall be held to include sole proprietors, corporations, partnerships, nonprofit or any other form of business organization.

Practitioner of profession or occupation means one who by state law requires state licensure regulating such profession or occupation. The term "practitioner of profession or occupation" shall not include a practitioner who is an employee of a business if the business pays an occupation tax.

Regulatory fees means payments, whether designated as license fees, permit fees or by another name, which are required as an exercise of police power and as a part of or as an aid to regulation of an occupation, profession or business. Regulatory fees shall not include an administrative fee. Regulatory fees do not include development impact fees, as defined by O.C.G.A. § 36-71-2, or other costs or conditions of zoning or land development.

(Ord. No. 2017-08-05, § 1(15.2.2), 8-7-2017)

Sec. 15.2.3. Registration of name of business; payment of taxes required.

- (a) No person shall be engaged in, pursue or carry on any business within the city, in any manner without having registered the name of the business with the City Manager or his designee and either paid the taxes as provided by this article or produced evidence of occupational tax payment to another jurisdiction in this state or proof of payment of a local business occupation tax in another state which purports to tax the business' or practitioner's sales or services in this state. The city shall not require an occupation tax on those receipts that were taxed by occupation tax in other states.
- (b) At the time of business registration, such person shall also identify to the City Manager or his designee the line or lines of business that the business conducts. Classification of businesses for occupation tax purposes shall be based on the dominant line of business conducted.
- (c) Each separate business trade name shall be subject to the provisions of this article and shall fully comply with all city Code requirements before engaging in, pursuing or carrying on any business within the city.
- (d) Failure or refusal to provide information requested by the city for the purpose of classification, assessment or levying of occupation taxes, regulatory fees or administrative costs or regarding the site of a location or office and taxes or fees paid to other local governments shall be punished as a misdemeanor and shall be subject to the provisions of this Code.

(Ord. No. 2017-08-05, § 1(15.2.3), 8-7-2017)

Sec. 15.2.4. Estimation of gross receipts; filing of returns.

- (a) All occupation taxes levied by this article are levied on the amount of business transacted during the current calendar year and the number of employees to be employed in the business conducted. However, for convenience of both the city and the taxpayer those businesses subject to the occupational tax shall, on or before February 1, file with the City Manager or his designee a return showing all gross receipts of that business during the preceding calendar year ending on December 31. This return showing preceding calendar year gross receipts shall be used as an estimate of gross receipts for making payments on the occupation tax for the current calendar year. The number of employees reported for the current year's business operations may be based upon the number of employees employed in the business conducted during the previous year. Applicants or owners engaged in the business shall be reported as employees of the business. Should a business not continue or terminate during the year, such business shall notify the City Manager or his designee's business occupation tax section and file a final return reporting the actual number of employees and those gross receipts not previously reported.
- (b) Where a business subject to the occupation tax for the calendar year has been conducted for only a part of the preceding year, the amount of gross receipts for such part shall be set forth in said return. Said return shall also show a figure putting the receipts for such part of a year on an annual basis with the part-year receipts bearing the same ratio to the whole-year gross receipts as the part year bears to the whole year. Said figure shall be used as the estimate of the gross receipts of the business for the current calendar year in establishing the business tax liability.
- (c) If a business is to begin on or after January 1 of the occupation tax year, the tax on such business shall be due and payable on the date of the commencement of the business and shall be based upon estimated gross receipts of the business from the date of commencement until the end of the calendar year. The business shall also file the required registration form and shall pay the administrative fee required by this article. Notwithstanding the foregoing, if a lawyer begins business after January 1 of the occupation tax year, the tax and administrative fee on such business shall be due and payable on December 31 of the year in which the business begins. Any lawyer failing to pay the occupation tax and administrative fee within 120 days after December 31 shall be considered delinquent and shall be subject to and shall pay a ten percent penalty of the amount of tax or fee due and interest of 1½ (1.5) percent per month. Such penalty shall be assessed in full on May 1 of the year following the tax year in addition to interest on delinquent occupational taxes and administrative fees. In addition, a list of all delinquent lawyers may be sent to the State Bar of Georgia. Certain general penalties applicable to most businesses for continuing violations of this Code shall not apply to violations of this chapter by lawyers. Specifically, failing to comply with the article will not result in the city closing the business or penalizing the continued practice of law by fining, imprisoning or criminalizing noncompliance.
- (d) The city shall not require the payment of more than one occupational tax for each location that a business or practitioner shall have nor shall the city require a business to pay an occupational tax for more than 100 percent of the business' gross receipts.
- (e) Real estate brokers shall pay an occupational tax for each principal office and each separate branch office located in the city based upon gross receipts derived from transactions with respect to property located within the city. Payment of the occupation tax shall permit the broker, the broker's affiliated associates and salespersons to engage in all of the brokerage activities described in O.C.G.A. § 43-40-1 without further licensing or taxing other than the state licenses issued pursuant state law.
- (f) For out of state businesses with no location in the state, occupation taxes include the gross receipts of business, as defined in section 15.2.8.
- (g) For the purposes of this section, prima facie evidence of gross receipts generated during any period shall be a copy of the business' federal income tax return or an affidavit of the business' accounting firm.

(Ord. No. 2017-08-05, § 1(15.2.4), 8-7-2017)

Sec. 15.2.5. Administrative and regulatory fees.

- (a) A non-prorated, nonrefundable administrative fee set by the city council shall be required on all business occupation tax accounts for the initial start-up, renewal or reopening of those accounts.
- (b) A regulatory fee will be imposed on those applicable businesses listed under O.C.G.A. § 48-13-9(b) that the city deems necessary to regulate.

(Ord. No. 2017-08-05, § 1(15.2.5), 8-7-2017)

Sec. 15.2.6. Separate registration for separate locations or separate tradenames.

Where a person conducts business at more than one fixed location or has multiple business tradenames, each location or place and each tradename shall be considered to be separate for the purpose of the occupation tax and the gross receipts of each will be returned on a form furnished by the City Manager or his designee in accordance with the provisions of this article.

(Ord. No. 2017-08-05, § 1(15.2.6), 8-7-2017)

Sec. 15.2.7. Renewal returns and applications; due date; penalty for late payment.

- (a) On or before February 1 of each subsequent year businesses liable for occupation taxes levied under this article for the year shall file with the City Manager or his designee's business occupation tax section, on a form furnished by the City Manager or his designee, a signed return setting forth the actual amount of the gross receipts of such business during the preceding calendar year ending December 31.
- (b) Occupational taxes on businesses continuing from the preceding year shall be due and payable on January 1 of each subsequent year. Occupational taxes due from businesses continuing operation in the current year from the preceding year shall be considered delinquent if not paid by April 15 of each year. Any business failing to pay the occupational taxes and administrative fees within 120 days after January 1 shall be subject to and shall pay a ten percent penalty of the amount of tax or fee due and interest of 1½ (1.5) percent per month. Such penalty shall be assessed in full on May 1 of the tax year in addition to interest on delinquent occupation taxes, regulatory fees and administrative fees.
- (c) If any person or business whose duty it is to obtain a registration in the city begins to transact or offers to transact any kind of business after said registration or occupation tax becomes delinquent, such offender shall be assessed interest according to the rate as provided by state law and penalties under the city Code.
- (d) On any new business begun in the city and not subject to payment of occupational taxes to the city, failure to register the name of the business and the line or lines of business that the business conducts will be subject to the possible penalties or other violations of this Code. Registration under this section is required for ensuring that business conducted complies with city codes or ordinances governing health, safety, and other purposes.
- (e) Notwithstanding the foregoing, occupation taxes and administrative fees for lawyers shall be due and payable on December 31 of the year in which the tax is incurred. Any lawyer failing to pay the occupation tax and administrative fees within 120 days after December 31 shall be considered delinquent and shall be subject to and shall pay a ten percent penalty of the amount of tax or fee due and interest of 1½ (1.5) percent per month. Such penalty shall be assessed in full on May 1 of the year following the tax year in addition to interest on delinquent occupational taxes and administrative fees. In addition, a list of all

delinquent lawyers may be sent to the Georgia Bar. Certain general penalties applicable to most businesses for continuing violations of this Code shall not apply to violations of this chapter by lawyers. Specifically, failing to comply with the article will not result in the city closing the business or penalizing the continued practice of law by fining, imprisoning or criminalizing noncompliance.

- (f) In addition to the remedies set forth in this section, the City Manager or his designee may issue an execution for failure to pay taxes against the person so delinquent and against such person's property for the amount of the occupational tax required to be paid for the purpose of carrying on any of the businesses enumerated in this article.

(Ord. No. 2017-08-05, § 1(15.2.7), 8-7-2017)

Sec. 15.2.8. Paying occupation tax of business with no location in Georgia.

Registration and the assessment of an occupation tax is hereby imposed on those businesses and practitioners of professions and occupations with no location or office in the state if the business' largest dollar volume of business in Georgia is in the city, and the business or practitioner:

- (a) Has one or more employees or agents who exert substantial efforts within the jurisdiction of the city, for the purpose of soliciting business or serving customers or clients; or
- (b) Owns personal or real property which generates income and which is located within the city.

(Ord. No. 2017-08-05, § 1(15.2.8), 8-7-2017)

Sec. 15.2.9. Professionals classified in O.C.G.A. § 48-13. 9(c), paragraphs 1 through 18.

Practitioners of professions as described in O.C.G.A. § 48-13-9(c)(1) through (18) shall elect as their entire occupation tax one of the following:

- (1) The occupation tax based-on number of employees and gross receipts combined with profitability ratios as set forth in this article;
- (2) An established fee described in O.C.G.A. § 48-13-10(g)(2). Such fee is per practitioner who is licensed by the state to provide the service, such tax to be paid at the practitioner's office or location. Practitioners paying according to this section shall pay the fee per practitioner and shall not be required to provide information relating to gross receipts or number of employees of the business or practitioner; or
- (3) Any practitioner whose office is maintained by and who is employed in practice exclusively by instrumentalities of the United States, the state, a municipality or county of the state, shall not be required to register or pay an occupation tax for that practice.

(Ord. No. 2017-08-05, § 1(15.2.9), 8-7-2017)

Sec. 15.2.10. Purpose and scope of tax.

The occupation tax levied herein is for revenue purposes only and is not for regulatory purposes, nor is the payment of the tax made a condition precedent to the practice of any profession, trade or calling.

(Ord. No. 2017-08-05, § 1(15.2.10), 8-7-2017)

Sec. 15.2.11. Evidence of state registration required if applicable; city and state registration to be displayed.

- (a) Each person who is licensed by the Secretary of State pursuant to Title 43 of the Official Code of Georgia Annotated shall provide evidence of proper and current state licensure before the city registration may be issued.
- (b) Each person who is licensed by the state shall post the state license next to the city registration in a conspicuous place in the licensee's place of business and shall keep both the state license and the city registration there at all times while valid.
- (c) Any transient or nonresident person doing business within the city shall carry their occupational tax receipt either upon such person or in any vehicle or other conveyance which is used in such business, and such person shall exhibit it to any authorized enforcement officer of the city when so requested.

(Ord. No. 2017-08-05, § 1(15.2.11), 8-7-2017)

Sec. 15.2.12. Change of location.

Any person moving from one location to another shall notify the City Manager or his designee of this move and the new address in writing on a form provided by the City Manager or his designee prior to the day of the moving. A new receipt for the occupational tax will be issued for the new location if the new location conforms to the zoning regulations of the city.

(Ord. No. 2017-08-05, § 1(15.2.12), 8-7-2017)

Sec. 15.2.13. Transferability.

Occupational receipts shall not be transferable and a transfer of ownership shall be considered in the same light as the termination of the business and the establishment of a new business. Filing a new registration application and payment of applicable fees and taxes shall be required of the new owner of the business.

(Ord. No. 2017-08-05, § 1(15.2.13), 8-7-2017)

Sec. 15.2.14. Evidence of qualification required if applicable.

Any business required to obtain health permits, bonds, certificates of qualification, certificates of competency or any other regulatory matter shall first, before the issuance of city registration, show evidence of such qualification.

(Ord. No. 2017-08-05, § 1(15.2.14), 8-7-2017)

Sec. 15.2.15. Inspections of books and records; audits; confidential information.

- (a) The City Manager or his designee shall have the right to inspect the books or records of any business for which returns have been made and upon demand of the City Manager or his designee such books or records shall be submitted for inspection by a representative or agent of the city within 30 days. Independent auditors or bookkeepers employed by the city shall be classified as agents for the purposes of this article. Failure of submission of such books and records within 30 days shall be grounds for revocation of the occupation tax registration currently existing in the city. If it is determined that a deficiency exists as a result

of under reporting, additional payment of occupation taxes required to be paid under this article shall be assessed the interest of 1½ (1.5) percent per month. Notwithstanding the foregoing, no attorney shall be required to disclose any information that would violate the attorney/client privilege.

- (b) Information provided by a business or practitioner of an occupation or profession for the purpose of determining the amount of occupation tax for the business or practitioner is confidential and exempt from disclosure under O.C.G.A. § 50-18-70 through 50-18-77.
- (c) Information provided to the city by a business or practitioner of an occupation or profession for the purpose of determining the amount of occupation tax for the business or practitioner may be disclosed to the governing authority of another local government for occupation tax purposes or pursuant to court order or for the purpose of collection of occupation tax or prosecution for failure or refusal to pay occupation tax.
- (d) Nothing herein shall be construed to prohibit the publication by the city of statistics, so classified as to prevent the identification of particular reports or returns and items thereof.

(Ord. No. 2017-08-05, § 1(15.2.15), 8-7-2017)

Sec. 15.2.16. Business classifications for determining tax levy.

- (a) For the purpose of this article, every person engaged in business requiring the payment of occupational taxes is classified in accordance to the major line of business, as defined in the North American Industry Classification System (NAICS), Office of Management and Budget; and profitability classes are assigned in accordance with Statistics of Income, Business Income Tax Returns, United States Treasury Department, Internal Revenue Service. The City Manager or his designee shall review assignment of businesses to profitability classes on an annual basis and shall administratively reassign businesses as necessary to the then most accurate profitability class.
- (b) Classifications by business profitability have been established by the City Council and are incorporated herein by reference and adopted for use in the application of this article. All separate businesses engaged in more than one business activity shall be classified on the basis of their dominant business activity at each location where business is done; except, that a person whose dominant business activity is legally exempt, as defined by this article, shall be classified according to such person's principal subsidiary business, if any, which is subject to the levy and assessment of occupation taxes.
- (c) The occupation tax shall be determined by applying the business' gross receipts and number of employees to the business' profitability classification and rates established for each business type.
- (d) A copy of business classifications shall be maintained in the office of the city clerk and shall be available for inspection by all interested persons.

(Ord. No. 2017-08-05, § 1(15.2.16), 8-7-2017)

Sec. 15.2.17. Casual and isolated transactions.

Nothing in this article shall be interpreted to require any person who may engage in casual or isolated activity and commercial transactions, where they involve personal assets and are not the principal occupation of the individual, to pay occupational tax therefor. Street vendor, transient vendor or flea market vendor activities shall not be considered to be casual and isolated business transactions and shall be required to comply with the provisions of this article.

(Ord. No. 2017-08-05, § 1(15.2.17), 8-7-2017)

Sec. 15.2.18. Exemption for disabled veterans, disabled indigent persons, certain organizations.

- (a) Persons who qualify for a state veteran's or disabled indigent person's license shall be eligible for exemption from the city occupational tax fee. Any such person claiming an exemption shall secure evidence of qualification for the exemption from the proper authority and present it to the City Manager or his designee.
- (b) Organizations which are exempt from federal income taxation under section 501(c)(3) or section 501(c)(4) of the United States Internal Revenue Code shall be eligible for exemption from the city occupational tax. Any such organization claiming an exemption shall provide to the City Manager or his designee a federal tax exemption letter showing the code section under which an exemption is claimed. However, with respect to any activity for which an organization otherwise entitled to an exemption under this section shall be liable for federal income tax on unrelated business income or shall be deemed to be a feeder organization under the United States Internal Revenue Code, the exemption from payment of occupational taxes shall not be available.
- (c) Notwithstanding the exemption from payment of city occupation taxes, an exempt person or business shall comply with the same laws and regulations as are required of other registered businesses.

(Ord. No. 2017-08-05, § 1(15.2.18), 8-7-2017)

Sec. 15.2.19. Exclusions from article; special classifications.

- (a) Wholesale dealers in liquor, wine, beer, and malt beverages are not required to pay the business occupation taxes provided for in this article.
- (b) Registration and occupational tax payment is required from any satellite subscription television system. The term "satellite subscription television system" means services provided to subscribers for sale where the provider of the services utilizes a master antenna type system or earth dish system designed to receive and distribute satellite television signals; particularly, a system to provide service to one or more multiple unit dwellings under common ownership wherein any wiring necessary to operate the system does not cross adjacent non-owned property lines and does not cross city right-of-way in the city. The provisions of this subsection shall not apply to any person that is subject to the city's franchise fee for the holders of a cable or video service provider state franchise.
- (c) Registration and occupational tax payment is required from any broadcast subscription television system. The term "broadcast subscription television system" means services provided to subscribers for sale where the provider of the services transmits premium programming from one or multiple sources by transmitting or retransmitting programs to the public.
- (d) Any vendor or exhibitor who is a member of a group or collection of vendors or exhibitors that has come together at one location for the purpose of selling arts, crafts, antiques, or other goods for a period not to exceed ten consecutive days may be registered individually, or the group or collection may be registered as a special event. Any applicant for a special event shall be considered as the promoter of the special event and shall be responsible for registration of the special event and paying the occupational taxes. Any special event group or collection of vendors or exhibitors shall comply with the same laws and regulations as required of other registered businesses, where applicable.
- (e) As part of the city's economic development incentives and only to the extent as described in O.C.G.A. § 48-13-10, the City Council may by ordinance or resolution provide for an exemption or reduction in occupation tax or a credit against occupation tax owed to one or more types of businesses or practitioners of occupations or professions as part of a plan for economic development or attracting, encouraging, or

maintaining selected types of businesses or practitioners of selected occupations or professions. Such exemptions or reductions in occupation tax shall not be arbitrary or capricious. Exemptions under this subsection shall not exceed ten percent of the business' total annual gross receipts.

(Ord. No. 2017-08-05, § 1(15.2.19), 8-7-2017)

Sec. 15.2.20. Denial, revocation or suspension of business occupation tax certificate.

- (a) *Grounds for denial, revocation, or suspension of business occupation tax certificate.* A business occupation tax certificate issued pursuant to any provision of this article shall be denied, revoked or suspended and considered void, upon one or more of the following grounds:
- (1) The original application or renewal thereof contains false or misleading information, or the applicant omitted material facts in the application;
 - (2) The premises covered by the certificate are found to be in violation of any codes or ordinances of the city;
 - (3) The applicant for, or holder of, the certificate is engaged in the business or occupation under a false or assumed name, or is impersonating another practitioner of a like or different name;
 - (4) The applicant for, or holder of, the certificate is engaging in false, misleading, or deceptive advertising or practices;
 - (5) The holder of the certificate is operating under a business or trade name not listed on the current application on file with the city;
 - (6) The holder of the certificate fails to maintain the initial requirements for obtaining the certificate;
 - (7) The applicant for, or holder of, a certificate is classified as, or becomes classified as, a habitual violator under O.C.G.A. § 40-5-1 et seq., or is found to be operating the business under the influence of alcohol or of illegal drugs or substances;
 - (8) The applicant for, or holder of, the certificate has been convicted of or has pled guilty or nolo contendere to any sexual offense, the offense of false swearing, the offense of operating an adult entertainment establishment in violation of the distance requirements of O.C.G.A. § 36-60-1 et seq., or to any offense involving illegal sale of narcotics or possession or receipt of stolen property, for a period of five years prior to the filing of the application. If after having been granted a certificate, the applicant is convicted, pleads guilty or enters a plea of nolo contendere to any of the above offenses, said certificate shall be subject to suspension and/or revocation;
 - (9) The applicant for, or holder of, the certificate fails to pay occupation taxes and administrative fees when due;
 - (10) The establishment has been declared a public or private nuisance or has created a threat or nuisance to public health, safety or welfare; or
 - (11) Any other violation of this article.
- (b) *False or misleading information.* No business occupation tax certificate shall be issued or renewed pursuant to any provisions of this article to any applicant, business or legally or organizationally related entity if within the 12 months immediately preceding the filing of any application under this article the same applicant, business or legally or organizationally related entity has been denied a certificate or had a certificate revoked for any location based in whole or in part upon having furnished false or misleading information in any application or having omitted material facts in any application.

(c) *Notice of denial, revocation or suspension of certificate.* Upon denial of an application seeking issuance or renewal of a business occupation tax certificate, or revocation or suspension of a business occupation tax certificate, written notification shall be provided of such decision to the applicant or holder of the certificate within five calendar days. The written notification shall state the grounds for the denial, revocation or suspension, and shall be served via hand delivery to the applicant or holder at the business location and sending a copy of such notice via registered mail, return receipt requested, to the address listed by the applicant or holder on the application for a certificate.

(Ord. No. 2017-08-05, § 1(15.2.20), 8-7-2017)

Sec. 15.2.21. Grievances regarding occupation tax assessment or classification.

For grievances regarding the occupation tax assessed or the major line of business classification, the aggrieved person or entity shall first submit in writing a complaint to the city which shall set forth in reasonable detail the matters complained of. The complaint may take letter form, and it shall be the duty of the city to review the complaint and issue a written reply to the taxpayer within 30 calendar days from the date the complaint is received. The written reply shall state in reasonable detail the basis for the decision regarding the initial assessment and classification. Should the aggrieved person or entity desire to seek review of such a decision, or if the city fails to issue a written opinion to the taxpayer within the 30 calendar day-time period, the taxpayer shall be entitled to appeal to the certificate review hearing officer pursuant to the procedure set forth in article XVI of this chapter.

(Ord. No. 2017-08-05, § 1(15.2.21), 8-7-2017)

Sec. 15.2.22. Promulgation of rules, regulations.

The City Manager or his designee shall have the power and authority to make and publish reasonable rules and regulations not inconsistent with this article or other laws of the city and the state, or the constitution of this state or the constitution of the United States, for the administration and enforcement of the provisions of this article and the collection of the occupational tax.

(Ord. No. 2017-08-05, § 1(15.2.22), 8-7-2017)

Sec. 15.2.23. Requirement for public hearings.

The city shall conduct at least one public hearing before adopting any ordinance or resolution regarding the occupation tax, and in any year when revenue from occupational taxes is greater than revenue from occupational taxes for the preceding year in order to determine how to use the additional revenue.

(Ord. No. 2017-08-05, § 1(15.2.23), 8-7-2017)

Secs. 15.2.24—15.2.50. Reserved.

ARTICLE III. ASTROLOGERS (RESERVED)

(Ord. No. 2017-08-05, § 2, 8-7-2017)

ARTICLE IV. GOING-OUT-OF-BUSINESS SALES

DIVISION 1. GENERALLY

Sec. 15.4.1. Definitions.

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

Fire and other altered goods sale means a sale held out in such a manner as to reasonably cause the public to believe that the sale will offer goods damaged or altered by fire, smoke, water or other means.

Going-out-of-business sale means a sale held out in such a manner as to reasonably cause the public to believe that upon the disposal of the stock or goods on hand the business will cease and be discontinued, including, but not limited to, the following sales: Adjuster's; adjustment; alteration; assignee's bankrupt; benefit of administrator's; benefit of creditor's; benefit of trustee's; building coming down; closing; creditor's committee; creditor's end; executor's; final days; forced out; forced out of business; insolvent's last days; lease expires; liquidation; loss of lease; mortgage sale; receiver's; trustee's; and quitting business.

Goods means any goods, wares, merchandise or other property capable of being the object of a sale regulated under this article.

Removal of business sale means a sale held out in such a manner as to reasonably cause the public to believe that the person conducting the sale will cease and discontinue business at the place of sale upon disposal of the stock of goods on hand and will then move to and resume business at a new location or will then continue business from another existing location.

(Ord. No. 2017-08-05, § 3(15.4.1), 8-7-2017)

Sec. 15.4.2. Persons exempt from article.

The provisions of this article do not apply to or affect the following persons:

- (1) Persons acting pursuant to an order or process of a court of competent jurisdiction.
- (2) Persons acting in accordance with their powers and duties as public officials.
- (3) Duly licensed auctioneers, selling at auction.
- (4) Any publisher or newspaper, magazine or other publication that publishes in good faith any advertisement, without knowledge of its false, deceptive or misleading character or without knowledge that there has not been compliance with the provisions of this article.

(Ord. No. 2017-08-05, § 3(15.4.2), 8-7-2017)

Sec. 15.4.3. Duties of licensee.

A licensee under this article shall:

- (1) *Adhere to inventory.* Make no additions during the period of the licensed sale to the stock of goods set forth in the inventory attached to the application for license.

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- (2) *Advertise properly.* Refrain from employing any untrue, deceptive or misleading advertising.
 - (3) *Adhere to advertising.* Conduct the licensed sale in strict conformity with any advertising or holding out incident thereto.
 - (4) *Keep duplicate inventory.* Keep available at the place of sale a duplicate copy of the inventory submitted with the application, and present this duplicate to inspecting officials upon request.
 - (5) *Segregate noninventoried goods.* Keep any other goods separate and apart from the goods listed in the filed inventory as being objects of sale, and make this distinction clear to the public by placing tags on all inventoried goods in and about the place of sale apprising the public of the status of all these goods.

(Ord. No. 2017-08-05, § 3(15.4.3), 8-7-2017)

Sec. 15.4.4. Interval between sales.

Any person who has held a sale as regulated under this article at the location stated in the application within one year last past from the date of the application shall not be granted a license.

(Ord. No. 2017-08-05, § 3(15.4.4), 8-7-2017)

Sec. 15.4.5. Location of sale restricted.

Where a person applying for a license required by the provisions of this article operates more than one place of business, the license issued shall apply only to the one store or branch specified in the application. No other store or branch shall advertise or represent that it is cooperating with this sale or in any way participating in the licensed sale, nor shall the store or branch conducting the licensed sale advertise or represent that any other store or branch is cooperating with it or participating in any way in the licensed sale.

(Ord. No. 2017-08-05, § 3(15.4.5), 8-7-2017)

Sec. 15.4.6. Bankrupt or fire sales.

- (a) *Sale of unaffected or undamaged goods.* It is unlawful for any person conducting any sale, whether by auction or otherwise, of any goods, wares or merchandise which are or have been or which are claimed to be or claimed to have been in or damaged by a fire, or which are or have been or which are claimed to be or claimed to have been sold or purchased on account of any fire, or which are or have been or are claimed to be or claimed to have been the property of any bankrupt or person who has failed in business or has made a general assignment, or which are being sold or offered for sale in any other way than through the usual channels of trade, to sell or offer for sale therein any goods, wares or merchandise not so circumstanced or affected or damaged.
- (b) *Adding to goods.* It is unlawful for any person to add to, or to permit to be added to, or to bring into or permit to be brought into any store, warehouse or other building in the city, any goods for the purpose of adding to these goods, wares or merchandise so circumstanced or affected and on hand in this store, warehouse or other building for the purpose of being sold at this sale.

(Ord. No. 2017-08-05, § 3(15.4.6), 8-7-2017)

Sec. 15.4.7. Advertising restrictions.

- (a) It is unlawful for any person to advertise, in any newspaper, handbill, sign, poster or any other such printed media, or by radio or television broadcast to residents of the city, that the person is conducting a closing-out, going-out-of-business, fire or bankrupt sale or similar sale, as defined in this article, as a means of attracting the general public to the person's place of business when such person does not actually intend to close out or go out of business or has not purchased the license required by this article.
- (b) It is unlawful for any person to advertise by sign, poster, handbill, newspaper or any other such printed or written media any closing-out, going-out-of-business, fire or bankrupt sale or similar sale, as defined in this article, unless all the written or printed matter in this advertisement shall be of the same size and type, including the notice that sales, excise and other taxes are either included or excluded from the advertised price and also whether the advertised price includes an article of the type being advertised to be traded in on the advertised article.

(Ord. No. 2017-08-05, § 3(15.4.7), 8-7-2017)

Secs. 15.4.8—15.4.20. Reserved.*DIVISION 2. LICENSE***Sec. 15.4.21. Required.**

A license issued by the City Manager or his designee shall be obtained by any person before selling or offering to sell any goods at a sale to be advertised or held out by any means to be any of the following kinds:

- (a) Going-out-of-business sale.
- (b) Removal of business sale.
- (c) Fire and other altered stock sale.

(Ord. No. 2017-08-05, § 3(15.4.21), 8-7-2017)

Sec. 15.4.22. Application.

A person desiring to conduct a sale for which a license is required by this division shall make a written application to the City Manager or his designee setting forth the following information:

- (a) The true name and address of the owner of the goods to be the object of the sale.
- (b) The true name and address of the person from whom the applicant purchased the goods to be sold and the price therefor, and if not purchased, the manner of this acquisition.
- (c) A description of the place where the sale is to be held.
- (d) The nature of the occupancy, whether by lease or sublease and the effective date of the termination of such occupancy.
- (e) The dates of the period of time in which the sale is to be conducted.
- (f) A full and complete statement of the facts in regard to the sale, including the reason for the urgent and expeditious disposal of goods thereby and the manner in which it will be conducted.

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- (g) The means to be employed in advertising the sale together with the proposed content of any advertisement.
 - (h) A complete and detailed inventory of the goods to be sold at this sale as disclosed by the applicant's records. This inventory shall be attached to and become part of the required application.

(Ord. No. 2017-08-05, § 3(15.4.22), 8-7-2017)

Sec. 15.4.23. Established business required; exception.

- (a) Any person who has not been the owner of a business advertised or described in the application for a license under this division for a period of at least 12 months prior to the date of the proposed sale shall not be granted a license under this division.
- (b) Upon the death of a person doing business in the city, such person's heirs, devisees or legatees or the representative of such person's estate shall have the right to apply at any time for a license under this division.

(Ord. No. 2017-08-05, § 3(15.4.23), 8-7-2017)

Sec. 15.4.24. Inventory restrictions.

- (a) All goods included in the inventory of an applicant for a license under this division shall have been purchased by the applicant for resale on bona fide orders without cancellation privileges and shall not comprise goods purchased on consignment.
- (b) The inventory shall not include goods ordered in contemplation of conducting a sale regulated under this division. Any unusual purchase or additions to the stock of goods of the business affected within 30 days before the filing of an application under this division shall be deemed to be of this character.

(Ord. No. 2017-08-05, § 3(15.4.24), 8-7-2017)

Sec. 15.4.25. Conditions of issuance.

A license shall be issued under this division on the following terms:

- (a) *Licensing period.* The license shall authorize the sale described in the application for a period of not more than 30 consecutive days, Sundays and legal holidays excluded, following the issuance thereof.
- (b) *Renewal procedure.* The City Manager or his designee shall renew a license for one period of time only, this period to be in addition to the 30 days permitted in the original license and not to exceed 30 consecutive days, Sundays and holidays excluded, when it finds that all of the following exists:
 - (1) Facts justifying the license renewal.
 - (2) The licensee has filed an application for renewal.
 - (3) The licensee has submitted with the application for renewal a revised inventory showing the items listed on the original inventory remaining unsold and not listing any goods not included in the original application and inventory. For the purpose of this subsection, any application for a license under the provisions of this division covering any goods previously inventoried as required hereunder shall be deemed to be an application for renewal, whether presented by the original applicant, or by any other person.

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- (c) *Nature of sale.* The license shall authorize only the type of sale described in the application at the location named therein.
 - (d) *Salable goods.* The license shall authorize only the sale of goods described in the inventory attached to the application.
 - (e) *Surrender of general licenses.* Upon being issued a license hereunder for a going-out-of-business sale, the licensee shall surrender to the City Manager or his designee all other business licenses the licensee may hold at the time applicable to the location and goods covered by the application for a license under this division.
 - (f) *Non-transferability.* Any license provided for shall not be assigned or transferable.

(Ord. No. 2017-08-05, § 3(15.4.25), 8-7-2017)

Sec. 15.4.26. Fees.

- (a) Any applicant for a license under this division shall submit to the City Manager or his designee with the application the required license fee.
- (b) Any applicant for a renewal license under this article shall submit to the City Manager or his designee with the renewal application the required renewal license fee.
- (c) The license fee shall be in the amount established by action of the City Council, a copy of which is on file in the office of the clerk.

(Ord. No. 2017-08-05, § 3(15.4.26), 8-7-2017)

Secs. 15.4.27—15.4.50. Reserved.

ARTICLE V. PAWNSHOPS

Sec. 15.5.1. Definitions.

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

Employee means any person working for an owner or pawnbroker, or any owner or pawnbroker who, in the performance of duties or the management of the business affairs of a pawnshop, comes into substantial contact with members of the public, or is employed on a part-time or full-time basis, either with or without remuneration, by a pawnshop.

Pawn or pledge means a bailment of personal property as security for any debt or engagement, redeemable upon certain terms and with the implied power of sale on default.

Pawnbroker means any person, whether an owner or not, who works in a pawnshop on a regular basis and in a managerial capacity whereby the person has charge of the business or operations of the pawnshop. The term "pawnbroker" includes any person whose business or occupation it is to take or receive, by way of pledge, pawn or exchange, any goods, wares or merchandise or any kind of personal property whatever, as security for the repayment of money lent thereon.

Pawnshop means any business wherein a substantial part thereof is to take or receive, by way of pledge, pawn or exchange, any goods, wares, merchandise or any kind of personal property as security for the repayment of money lent thereon.

(Ord. No. 2017-08-05, § 3(15.5.1), 8-7-2017)

Sec. 15.5.2. Penalties; suspension or revocation of license.

Any person who violates any provision of this article shall, upon conviction, be punished as provided by this Code. Further, any person failing to comply with any provision of this article, or such other laws, ordinances and regulations as may be passed by the City Council for the conduct of the business of a pawnbroker, shall have the license to conduct this business revoked. This revocation shall result from conviction in any court for a violation of any provision of this article or any other ordinance or regulation covering the conduct of the business for which a permit and license have been issued.

(Ord. No. 2017-08-05, § 3(15.5.2), 8-7-2017)

Sec. 15.5.3. Responsibility for enforcement.

The City Manager or his designee shall have the responsibility for the enforcement of this article.

(Ord. No. 2017-08-05, § 3(15.5.3), 8-7-2017)

Sec. 15.5.4. Annual permit.

- (a) All persons, before beginning the business of operating a pawnshop or becoming an employee of a pawnshop or similar place where money is advanced on goods or other effects or merchandise of any kind is taken in pawn, shall first file an application with the City Manager or his designee and obtain an annual permit to conduct or be employed in the business. No permit shall be issued until a fee in the amount established by action of the City Council, a copy of which is on file in the office of the clerk, is paid to the City Manager or his designee.
- (b) The requirements of this section are in addition to the requirements of article II of this chapter.
- (c) The application for the permit required shall state the street and number at which it is proposed to operate the business. The application shall contain the full name, address, phone number, date of birth and Social Security number of all persons, including pawnbrokers, owning any interest in the proposed business, plus any additional information, including fingerprints, deemed necessary by the City Manager.
- (d) No business license shall be issued to a person until the permit required by this section has been granted by the City Manager or his designee.

(Ord. No. 2017-08-05, § 3(15.5.4), 8-7-2017)

Sec. 15.5.5. Employees.

No person shall be employed by a pawnshop in any capacity until such person has been fingerprinted by the City Manager or his designee and has been issued an annual permit authorizing such person to be employed by a pawnshop. It shall be the duty of the pawnbroker to ensure that there is compliance with the provisions of this section.

(Ord. No. 2017-08-05, § 3(15.5.5), 8-7-2017)

Sec. 15.5.6. Character of persons connected with business.

No owner, stockholder, employee, pawnbroker or any other person connected with the business for which a license or permit is sought shall have been convicted of a crime involving moral turpitude or shall have been convicted of any crime involving theft or a crime against property.

(Ord. No. 2017-08-05, § 3(15.5.6), 8-7-2017)

Sec. 15.5.7. Records.

All pawnbrokers shall keep books wherein shall be entered an accurate description of all property at the time of each loan, purchase, or sale. This description shall include, to the extent possible:

- (a) The date of the transaction;
- (b) The name of the person conducting the transaction;
- (c) The name, age, and address of the customer; a description of the general appearance of the customer; and the distinctive number from the customer's driver license or other similar identification card;
- (d) An identification and description of the pledged or purchased goods, including, if reasonably available, the serial, model, or other number, and all identifying marks inscribed thereon;
- (e) The number of the receipt or pawn ticket;
- (f) The price paid or the amount loaned;
- (g) If payment is made by check, the number of the check issued for the purchase price or loan;
- (h) The maturity date of the transaction; and
- (i) The signature of the customer.

These entries shall be made as soon after the transaction as is possible, in no event more than one hour thereafter. The pawnbroker shall photograph the person pawning the merchandise along with a pawnbroker's ticket showing a transaction number. The pawnbroker shall obtain the right index fingerprint, provided it has not been amputated; if so, the next adjoining finger shall be acceptable.

(Ord. No. 2017-08-05, § 3(15.5.7), 8-7-2017)

Sec. 15.5.8. Daily reports; fingerprinting, photographing of persons pawning articles.

- (a) Every pawnbroker shall make a daily report in writing to the City Manager or his designee in such form as may be prescribed by the City Manager or his designee of all property pledged, traded or bought by such pawnbroker during the 24 hours ending at 9:00 p.m. on the date of the report. These reports shall be typewritten. In addition to any other information required by the City Manager or his designee, the reports shall show:
 - (1) The name and address of the pawnbroker.
 - (2) The time of transaction.
 - (3) The serial numbers of pawn tickets.
 - (4) The amount paid or advanced.

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- (5) A full description of articles, including kind, style, material, color, design; kind and number of stones in jewelry and all identifying names, marks and numbers.
 - (6) A description of the person selling or pawning, including name, address, race, weight and height.
 - (b) Insufficient reports shall be rejected, and any pawnbroker making them shall be deemed guilty of an offense.
 - (c) In addition to the other records and information, each pawnbroker shall obtain from each person pawning any articles with such pawnbroker the fingerprint of the right-hand index finger, unless this finger is missing, in which event the print of the next finger in existence on the right hand of the person pawning the articles shall be obtained with a notation as to the exact finger printed. All prints shall be made on forms approved by the City Manager or his designee and the pawnbroker shall obtain all other information called for on the form approved. Fingerprints and the information as required in this section shall be obtained from all persons each time these persons pawn any article with a pawnbroker, regardless of whether the person may have previously pawned an article with the pawnbroker and been fingerprinted.
 - (d) In addition to other records and information, each pawnbroker shall photograph each customer with the photograph showing the pawnbroker's ticket and transaction number. This photograph shall be reduced to a negative form and maintained by the pawnbroker as a permanent record.

(Ord. No. 2017-08-05, § 3(15.5.8), 8-7-2017)

~~Sec. 15.5.9. Hours of operation.~~

~~Pawnbrokers may not keep open their places of business except between 7:00 a.m. and 9:00 p.m., Monday through Saturday.~~

(Ord. No. 2017-08-05, § 3(15.5.9), 8-7-2017)

Sec. 15.5.10. Waiting period prior to disposal of articles.

Any pawnbroker or person operating under a pawnbroker's license who takes goods on pawn or buys goods, taking full title thereto, the term "goods" being used in the broadest sense and including all kinds of personal property, shall hold these goods so taken in pawn or purchase for at least 30 days before disposing of them by sale, transfer, shipment or otherwise.

(Ord. No. 2017-08-05, § 3(15.5.10), 8-7-2017)

Sec. 15.5.11. Dealing with minors.

It is unlawful for any pawnbroker, the pawnbroker's agents or employees to receive goods in pawn from minors.

(Ord. No. 2017-08-05, § 3(15.5.11), 8-7-2017)

Secs. 15.5.12—15.5.50. Reserved.

ARTICLE VI. PRECIOUS METAL DEALERS

DIVISION 1. GENERALLY

Sec. 15.6.1. Definitions.

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

Dealer means any person engaged in the business of purchasing precious metals or gems or goods made from precious metals or gems from persons or sources other than manufacturers or manufacturers' representatives or other dealers in precious metals or gems or a person engaged in any other business if, in conjunction with such business, precious metals or gems or goods made from precious metals or gems are purchased from persons or sources other than manufacturers or manufacturers' representatives or other dealers in precious metals or gems when the purchase is for resale in its original form or is changed by remounting, melting, reforming, remolding or recasting, or for resale as scrap or in bulk.

Employee means any person working for a dealer, whether or not the person is in the direct employment of the dealer, who, in the performance of duties or the management of the business affairs of the dealer, handles precious metals or gems, or who prepares any reports or records which are required by this article. The term "employee" does not include any employee of any bank, armored car company, private security company, or other business entity which is acting in the sole capacity of bailee-for-hire in relationship to the dealer.

Gem means any precious or semiprecious stone which is cut and polished.

Precious metal means gold, silver, platinum or any alloy containing gold, silver or platinum.

Purchase means buy, barter, trade, accept as collateral for a loan, or receive for the purpose of melting down, crushing or otherwise altering the appearance of the item.

(Ord. No. 2017-08-05, § 3(15.6.1), 8-7-2017)

Sec. 15.6.2. Purpose; applicability of state law.

The purpose of this article is to regulate and establish qualifications for dealers of precious metals, gems and goods made from precious metals and gems, who engage in business in the city. It is a further purpose of this article to enhance and supplement state law. Any permit fee required by the terms of this article shall be collected in addition to any license or registration fee as may be imposed on dealers by any state law.

(Ord. No. 2017-08-05, § 3(15.6.2), 8-7-2017)

Sec. 15.6.3. Exemptions.

- (a) The provisions of this article shall not apply to dealers exclusively engaged in the sale or exchange of numismatic coins or to transactions exclusively involving numismatic coins or other coinage.
- (b) The provisions of this article shall not apply to pawnshops, pawnbrokers, or employees of pawnbrokers who maintain permanent places of business within the city and are in compliance with article V of this chapter.

(Ord. No. 2017-08-05, § 3(15.6.3), 8-7-2017)

Sec. 15.6.4. Violations.

- (a) It is unlawful for any dealer or employee to violate any of the provisions of this article, whether or not such dealer or employee is the holder of a current, valid permit issued according to the terms of this article. It shall be a violation of this article for any person to:

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- (1) Make any false statement in an application for any permit provided for in this article.
 - (2) Make any false entry in any record or form required by the terms of this article.
 - (3) Violate any criminal law of this state while acting in the course of business as a dealer or employee of a dealer.
- (b) Willful violation of any of the provisions of this article shall be grounds for revocation of the dealer's business license.
- (Ord. No. 2017-08-05, § 3(15.6.4), 8-7-2017)

Sec. 15.6.5. Responsibility for enforcement.

The code enforcement department of the city shall have the responsibility for the enforcement of this article.

(Ord. No. 2017-08-05, § 3(15.6.5), 8-7-2017)

Sec. 15.6.6. Records of transactions.

- (a) Every dealer shall maintain a book in permanent form in which shall be entered at the time of each purchase of precious metals or gems or goods made from precious metals or gems, the following:
- (1) The date and time of the purchase transaction.
 - (2) The name of the person making the purchase from the seller.
 - (3) The name, age and address of the seller of the items purchased and the distinctive number from each seller's driver license or other similar identification card containing a photo of the seller.
 - (4) A clear and accurate identification and description of the purchased goods, including the serial model or other number, and all identifying marks ascribed thereon.
 - (5) The price paid for the goods purchased.
 - (6) The number of the check issued for the purchase price if payment is made by check.
 - (7) The signature of the seller.
- (b) The permanent record book required in this section shall be in legible English. Entries shall appear in chronological order, and shall be numbered in sequence. No blank lines may be left between entries. No obliterations, alterations or erasures may be made. Corrections shall be made by drawing a line of ink through the entry without destroying its legibility. The book shall be maintained for each purchase of precious metals or gems or goods made from precious metals or gems for at least two years. The book shall be open to the inspection of any duly authorized law enforcement officer during the ordinary hours of business or any reasonable time. The book shall be kept at the business premises during ordinary hours of business.
- (c) Dealers exclusively engaged in buying or exchanging for merchandise scrap dental gold and silver from licensed dentists by registered or certified mail may record the post office record of the mail parcel in lieu of the seller's age, driver license number and signature as required in this section.
- (Ord. No. 2017-08-05, § 3(15.6.6), 8-7-2017)

Sec. 15.6.7. Daily reports.

- (a) Every dealer shall record, on cards or forms furnished or approved by the police department the details of each purchase of precious metals or gems or goods made from precious metals or gems. These records shall be entered in legible English at the time of each purchase of such items, and each card or form shall bear the number of the corresponding entry made in the book required by section 15.6.6 of this article. Each record shall include such information as may be reasonably required by the police department and shall include, as a minimum, the following:
 - (1) An accurate description of all articles received in the transaction with the particular seller. This description shall include to the extent possible the maker of each article, any identifying mark, number or initials, any pattern or shape, and a statement of the kind of materials of which it is composed.
 - (2) The date and time of the transaction.
 - (3) The name and address of the dealer.
 - (4) The name of the person making the purchase.
 - (5) The full name, date of birth and address, race and gender of the seller, as well as a general description of the seller.
 - (6) The number of the seller's valid state driver license or state-issued I.D. card, or other similar identification which bears a photograph of the seller.
 - (7) Signature of seller.
 - (8) Such other information as may be required by any state law regulating dealers of precious metals and gems.
- (b) Each card or form required by this section shall be delivered or mailed to the police department within 24 hours after the date on which the transaction occurred, and shall be handled in the following manner:
 - (1) All such forms or cards shall be maintained in a locked container under the direct supervision of the police department and shall be available for inspection only for law enforcement purposes.
 - (2) The police department may allow any person to inspect the records for the purpose of locating stolen property, providing such person demonstrates theft of precious metals or gems by presenting an incident report or other similar document.

(Ord. No. 2017-08-05, § 3(15.6.7), 8-7-2017)

Sec. 15.6.8. Photographs of articles and sellers; photocopies of documents.

- (a) Every dealer shall take a well-focused, properly exposed color photograph of all precious metals, gems or goods made from precious metals or gems, which are purchased by the dealer. In the case of flatware, a photograph may be made of a representative place setting.
- (b) In addition to photographing the items purchased, the dealer shall take a well-focused, properly exposed color photograph of the seller, and shall attach the photograph to the corresponding form or card required by section 15.6.7. In addition to the required photographs, the dealer shall attach to the form or card a photocopy of any bill of sale, receipt or other document tending to show the seller's ownership of the items purchased by the dealer, if any such documents exist, and a photocopy of the seller's driver license or other identification authorized by this article.

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- (c) All photographs required in this section shall be made with a self-developing camera and film system, or such other system as may be authorized in writing by the police department.

(Ord. No. 2017-08-05, § 3(15.6.8), 8-7-2017)

~~**Sec. 15.6.9. Hours of operation.**~~

~~Dealers may not keep open their places of business except between 7:00 a.m. and 9:00 p.m.~~

~~(Ord. No. 2017-08-05, § 3(15.6.9), 8-7-2017)~~

Sec. 15.6.10. Waiting period prior to disposing of articles.

Any dealer who in the course of business acquires precious metals or gems or goods made from precious metals or gems shall hold these items for at least seven calendar days before disposing of them by sale, transfer, shipment, grinding, melting, crushing or otherwise altering the appearance of the items. This section does not prevent any dealer from storing such items off the business premises, or from placing such items in the hands of any bank or security company for safekeeping, provided that no such item shall be removed from the city during the above-described holding period.

(Ord. No. 2017-08-05, § 3(15.6.10), 8-7-2017)

Sec. 15.6.11. Inspection of items held by dealer.

All items held by any dealer in accordance with the terms of section 15.6.10 shall be produced for inspection upon the demand of any authorized law enforcement officer or, if the items are stored off the premises, within one business day thereof, during normal business hours. If the provisions of this section are in conflict with the provisions of section 15.6.10, the provisions of this section shall control.

(Ord. No. 2017-08-05, § 3(15.6.11), 8-7-2017)

Secs. 15.6.12—15.6.25. Reserved.

DIVISION 2. PERMIT

Sec. 15.6.26. Required; prerequisite to issuance of business license.

- (a) No business license shall be issued to conduct the business of purchasing precious metals or gems until the annual permit required by this section has been issued by the police department.
- (b) No dealer shall engage in the business of purchasing precious metals or gems without having first obtained an annual permit issued by the police department and no dealer shall allow an employee to be involved in any way in the purchase of precious metals or gems until that employee has first obtained an annual employee permit from police department and no person shall work as an employee of a dealer until such person has first obtained an annual employee permit. No annual employee permit shall be issued unless the dealer with whom employment is authorized is a holder of a current dealer's permit.

(Ord. No. 2017-08-05, § 3(15.6.26), 8-7-2017)

Sec. 15.6.27. Application.

- (a) The application for the annual dealer's permit required by this division shall include such fingerprints, photographs and information as may be reasonably required by the police department, but shall in any case include the following:
 - (1) The name, age and business address of the person applying for the permit.
 - (2) The telephone number of the applicant.
 - (3) The name, age and business address of all other persons having an ownership interest or actually employed in the business other than publicly held corporations.
 - (4) The address of the premises upon which the business is conducted and the zoning and planning classification of the premises.
 - (5) The applicant shall be required to notify the police department within seven calendar days of any change of address of the applicant or business or any change of ownership in the business.
- (b) The applicant shall attach to this application a completed and signed employee or owner application as described in section 15.6.29 for each person named in the dealer's application. Each such application shall be signed by the owner, managing partner, corporate president or chief executive officer of the business, and there shall be a description of the capacity in which the signator is acting.

(Ord. No. 2017-08-05, § 3(15.6.27), 8-7-2017)

Sec. 15.6.28. Denial.

No permit required by the provisions of this division shall be issued under any of the following circumstances:

- (1) The applicant has no permanent place of business other than a van, mobile home, trailer or similar nonpermanent structure.
- (2) No owner, corporate officer, majority stockholder, partner or managing director of the business entity applying for the license has been a legal resident of the state for a minimum of 90 days preceding the date of application.
- (3) Any person required to be listed in the application for a dealer's permit has been convicted of or has entered a plea of guilty to a misdemeanor involving moral turpitude or any felony under the laws of this state or of the jurisdiction in which the verdict or plea was entered. This section does not apply to any person who has been convicted of or has entered a plea of guilty to a misdemeanor involving moral turpitude or any felony after ten years have expired from the date of the plea, conviction or completion of sentence, whichever is later.
- (4) The person is not eligible to register as a dealer in precious metals or gems by the terms of any law of this state requiring such registration.

(Ord. No. 2017-08-05, § 3(15.6.28), 8-7-2017)

Sec. 15.6.29. Employee or owner application.

- (a) Persons required to obtain an employee permit by this division shall complete an employee or owner application which shall state relevant information, including, but not limited to, the following:

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- (1) Name.
 - (2) Date of birth.
 - (3) Driver license, state identification card or Social Security number.
 - (4) Race.
 - (5) Sex.
 - (6) Residential address and telephone number.
 - (7) Last previous residential address.
 - (8) Height and weight.
 - (9) Hair and eye color.
 - (10) Name, address and telephone number of the dealer.
 - (11) Either a statement that the applicant has never been convicted of, plead guilty to or been sentenced to probation for any offense other than a minor traffic violation, or a list of all such pleas, convictions and sentences of probation.
- (b) The application form shall also provide a place for the applicant's signature. Persons required to be listed in a dealer's application shall also complete an employee or owner application.

(Ord. No. 2017-08-05, § 3(15.6.29), 8-7-2017)

Sec. 15.6.30. Fingerprints.

All persons required to complete an employee or owner application shall also submit to fingerprinting by the agency or individual designated by the police department.

(Ord. No. 2017-08-05, § 3(15.6.30), 8-7-2017)

Sec. 15.6.31. Issuance; fee.

- (a) The police department shall provide the permit application forms required by this division, and shall review each completed application prior to issuing any permit. No employee or dealer permit shall be issued if it appears that the applicant or any person required to complete an employee or owner form has been convicted of, or has entered a plea of guilty to a misdemeanor involving moral turpitude, or any felony.
- (b) After ascertaining that all requisite forms have been completed, all fingerprint cards have been submitted, that no applicant or listed person is disqualified by virtue of a prior criminal record, and that all other requirements of this article have been complied with, the police department shall approve the application, subject to payment of an annual permit fee in the amount established by action of the City Council, a copy of which is on file in the office of the clerk of the city.

(Ord. No. 2017-08-05, § 3(15.6.31), 8-7-2017)

Sec. 15.6.32. Expiration and renewal.

Each permit required by this division shall indicate thereon an expiration date which is at least one year from the date of issue and must be posted in a conspicuous place on the premises. Any permit holder may reapply for a permit at any time following the 60th day preceding the date of expiration. It shall be unlawful for any dealer to

apply for a renewal unless all of the dealer's employees are holders of current, valid employee permits. No permits shall be renewed unless the dealer is the holder of a current, valid business license.

(Ord. No. 2017-08-05, § 3(15.6.32), 8-7-2017)

Sec. 15.6.33. Revocation and surrender of permits.

- (a) Any dealer or employee permit issued in accordance with provisions of this division shall be revoked by operation-of-law upon the occurrence of any of the following:
 - (1) The conviction of the dealer or employee for violating any state law or city ordinance pertaining to making false statements for the purpose of obtaining registration or authorization to become a dealer or employee of a dealer.
 - (2) The conviction of the dealer or employee for violation of a provision of this article after the dealer or employee has been previously convicted of a violation of this article within the preceding three years.
- (b) Upon revocation, the permit holder shall surrender the permit to the police department within one business day of the conviction resulting in revocation, and failure to do so shall constitute a separate violation for each day the permit is withheld.

(Ord. No. 2017-08-05, § 3(15.6.33), 8-7-2017)

Sec. 15.6.34. Appeals.

In any case in which it appears to the police department that an applicant is not entitled to the issuance of a dealer or employee permit under the provisions of this article, the police department shall so notify the applicant in writing by mailing the notice to the last address furnished to the City Manager or his designee by the applicant. If the police department refuses to issue a permit, or if a permit is surrendered pursuant to the provisions of this article, the applicant or permit holder shall be entitled to appeal to the certificate review hearing officer pursuant to the procedure set forth in article XVI of this chapter.

(Ord. No. 2017-08-05, § 3(15.6.34), 8-7-2017)

Secs. 15.6.35—15.6.50. Reserved.

DIVISION 3. TEMPORARY POWERS

Sec. 15.6.51. Powers vested in city manager.

- (a) Until such time as a police department is created in the City of Stonecrest the City Manager or his designee shall have the duty to administer, enforce, and register precious metal dealers under the provisions of this article.
- (b) This section shall be repealed upon the creation of the Stonecrest Police Department.

(Ord. No. 2017-08-05, § 3(15.6.51), 8-7-2017)

ARTICLE VII. PEDDLERS, DOOR-TO-DOOR SALES AND SIMILAR OCCUPATIONS

Sec. 15.7.1. Definition.

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:

Canvassing and/or soliciting means and includes any one or more of the following activities:

- (a) Seeking to obtain orders for the purchase of goods, wares, merchandise, foodstuffs, services of any kind, character or description whatever, for any kind of consideration whatever;
- (b) Seeking to obtain prospective customers for application or purchase of insurance of any type, kind or publication;
- (c) Seeking to obtain donations or charitable contributions; or
- (d) Seeking to obtain subscriptions to books, magazines, periodicals, newspapers and every other type or kind of publication.

Residence means and includes every separate living unit occupied for residential purposes by one or more persons, contained within any type of building or structure.

(Ord. No. 2018-06-01, § 1(15.7.1), 6-18-2018)

Sec. 15.7.2. Permit required.

It shall be unlawful for any person to engage in business as a canvasser or solicitor, calling on the residences within the incorporated areas of the city for the purpose of soliciting orders, sales, subscriptions, or business of any kind, without first registering with the City Manager or his designee and paying the appropriate regulatory fee.

(Ord. No. 2018-06-01, § 1(15.7.2), 6-18-2018)

Sec. 15.7.3. Application.

- (a) Each registrant shall furnish, on a form developed by the City Manager or his designee, at least his name and permanent address, his signature, the name and address of his employer, the nature of products sold or displayed, and the proposed method of operation within the city. Each registrant shall be fingerprinted and photographed by the City Manager or his designee.

- (b) The questionnaire form shall also bear the following statement:

"Georgia Code section 16-10-71 provides that a person who makes a lawful oath or affirmation or who executes a document knowing that it purports to be an acknowledgment of a lawful oath or affirmation commits the offense of false swearing when, in any matter or thing other than a judicial proceeding, he knowingly and willfully makes a false statement."

(Ord. No. 2018-06-01, § 1(15.7.3), 6-18-2018)

Sec. 15.7.4. Regulatory fee.

The City Manager or his designee shall collect a fee of \$100.00 for each registration. Upon approval, a registration card will be issued showing the name of the firm or corporation and the name of the representative. Such registration shall be valid for 90 days from the date of issuance. The registration may be renewed during the same calendar year for an additional 90-day period without another investigation or additional fees.

(Ord. No. 2018-06-01, § 1(15.7.4), 6-18-2018)

Sec. 15.7.5. Identity cards.

Each registrant shall be issued an identity card bearing his name and photograph, the company name, and the expiration date of the registration. Each solicitor must carry such identity card at all times while soliciting or canvassing within the city and shall display such card to each customer and upon appearance at each residence and/or business establishment canvassed or solicited.

(Ord. No. 2018-06-01, § 1(15.7.5), 6-18-2018)

~~Sec. 15.7.6. Hours of operation.~~

~~(a) Soliciting or canvassing on the public streets, areas, or parks of the city shall be conducted only between the hours of 9:00 a.m. and 7:00 p.m.~~

~~(b) Soliciting or canvassing or calling from house to house within the incorporated areas of the city shall be conducted only between the hours of 9:00 a.m. and 6:00 p.m.~~

(Ord. No. 2018-06-01, § 1(15.7.6), 6-18-2018)

Sec. 15.7.7. Restriction on number of persons soliciting.

The number of solicitors or canvassers in the city for any single firm, corporation, or organization shall not exceed five in number at any one time.

(Ord. No. 2018-06-01, § 1(15.7.7), 6-18-2018)

Sec. 15.7.8. Identification to prospective customers.

Prior to any solicitation of funds within the city, each canvasser or solicitor shall identify the organization which he represents. Additionally, each canvasser or solicitor must inform each person solicited of any minimum payment, deposit, or donation required for the acceptance of any merchandise, wares, goods, or any similar items provided by each canvasser or solicitor prior to such acceptance by each person solicited.

(Ord. No. 2018-06-01, § 1(15.7.8), 6-18-2018)

Sec. 15.7.9. Fraud, etc.

It shall be unlawful for a canvasser or solicitor to perform any of the following acts:

- (a) Falsely represent, either directly or by implication, that funds being solicited are on behalf of any person other than the person registered with the City Manager or his designee;
- (b) Without the express prior permission of an occupant or property owner, to solicit at any residence, apartment complex, or shopping center, other than areas open to public parking, where a sign has been posted prohibiting such solicitation;
- (c) To remain on private premises after being asked to leave the premises or to continue solicitation after being refused upon the public streets, areas, or parks; such action shall constitute harassment; or

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- (d) To solicit or canvass on any private premises upon which is displayed a sign, plaque or other posting declaring "No Soliciting" or other similar prohibition.

(Ord. No. 2018-06-01, § 1(15.7.9), 6-18-2018)

Sec. 15.7.10. Exceptions.

- (a) Any person desiring to solicit or canvass upon the public streets, areas, or parks, or call from house to house within the incorporated areas of the city for the purpose of raising funds or seeking donations for any religious, charitable, or eleemosynary organization shall register with and obtain a license from the city.
- (b) Such person on a form developed by the City Manager or his designee, at least:
 - (1) Applicant's name and permanent address;
 - (2) Name, address, and telephone number of the firm, corporation, or organization represented;
 - (3) Names and addresses of all persons canvassing or soliciting within the city;
 - (4) The nature of any merchandise or goods to be sold or offered for sale in conjunction with such solicitation; and
 - (5) Proof of tax-exempt status shall be required when registering with City Manager or his designee.
 - i. The City Manager or his designee shall collect a fee of \$1.00 from each organization to cover costs of processing the license.
 - ii. Each organization shall be issued an identity card bearing the name of each individual who shall engage in solicitation or canvassing on behalf of the organization, the organization's name, and the expiration date of the license. Each applicant does not have to be fingerprinted or photographed.
 - iii. The license shall be valid for 90 days from the date of issuance.

(Ord. No. 2018-06-01, § 1(15.7.10), 6-18-2018)

Sec. 15.7.11. License revocation.

Any license issued under this article may be suspended and/or revoked by the City Manager or his designee due to any violation of any ordinance or resolution of the city, county, or of any state or federal law, or whenever the license holder shall cease to possess the qualifications and character required in this article for the original application.

(Ord. No. 2018-06-01, § 1(15.7.11), 6-18-2018)

Sec. 15.7.12. Activity not regulated hereby.

This section is not intended to, nor shall it operate to, regulate door-to-door visitation for the following purposes: political canvassing or religious canvassing, provided that such canvassing does not include the soliciting of orders, sales, subscriptions or business of any kind.

(Ord. No. 2018-06-01, § 1(15.7.12), 6-18-2018)

Sec. 15.7.13. Penalty.

- (a) Any person violating any of the provisions of this article shall, upon conviction or entering a plea of guilty or nolo contendere in the Stonecrest Municipal Court, shall be punished pursuant to chapter 16 of this Code.
- (b) Continued violation of the provisions of this article may be enjoined by instituting appropriate proceedings for injunction in a court of competent jurisdiction of this state. Such actions may be maintained notwithstanding that other adequate remedies at law may exist. Remedies contained in this article are meant to be cumulative in nature.

(Ord. No. 2018-06-01, § 1(15.7.13), 6-18-2018)

ARTICLE VIII. MASSAGE THERAPY LICENSING

Sec. 15.8.1. Definitions.

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

Director means the director of finance or his designee.

Massage or *massages* or *massage therapy* means the manipulation and/or treatment of soft tissues of the body, including, but not limited to, the use of effleurage, petrissage, pressure, friction, tapotement, kneading, vibration, range of motion stretches, and any other soft tissue manipulation whether manual or by use of massage apparatus, and may include the use of oils, lotions, creams, salt glows, hydrotherapy, heliotherapy, hot packs, and cold packs. The term "massage" or "massage therapy" shall not include diagnosis, the prescribing of drugs or medicines, spinal or other joint manipulations, or any service or procedure for which a license to practice chiropractic, physical therapy, podiatry, or medicine is required by the state.

Massage apparatus means any manual, mechanical, hydraulic, hydrokinetic, electric, or electronic device or instrument or any device or instrument operated by manual, mechanical, hydraulic, hydrokinetic or electric power, which is utilized by a massage therapist for the purpose of administering a massage.

Massage establishment means any business established for profit which employs or contracts with one or more massage therapists, or 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. The term "massage establishment" shall not include hospitals or other professional health care establishments separately licensed as such by the state.

Massage therapist means any person whom for good or valuable consideration administers a massage.

(Ord. No. 2017-08-05, § 5(15.8.1), 8-7-2017)

Sec. 15.8.2. Licenses required.

- (a) *Massage therapist license.* It shall be unlawful for any natural person to administer massages without having obtained a license in accordance with the requirements of this article.
- (b) *Massage establishment license.* It shall be unlawful for any person, natural or corporate, to operate a massage establishment without having obtained a license therefor; or for any person, natural or corporate, to allow a massage therapist to administer massages without having obtained a license in accordance with the requirements of this article.

(Ord. No. 2017-08-05, § 5(15.8.2), 8-7-2017)

Sec. 15.8.3. Scope of regulations.

- (a) All licenses issued under this article shall constitute a mere privilege to conduct the business so authorized during the term of the license or permit only and subject to all terms and conditions imposed by the city and state law.
- (b) Nothing in this article shall be construed to regulate, prevent, or restrict in any manner:
 - (i) Any physician, chiropractor, physical therapist, or similar professional licensed and regulated by or through the state while engaged in the practice of said profession;
 - (ii) Any hospital or other professional health care establishment separately licensed as such by the state; or
 - (iii) Any other individual or entity expressly exempted from local legislation by the laws of the state.
- (c) Except as specified in subsection (b) of this section, the requirements of this article shall be in addition to all other licensing, taxing, and regulatory provisions of local, state or federal law, and shall not authorize violations of said other applicable laws.

(Ord. No. 2017-08-05, § 5(15.8.3), 8-7-2017)

Sec. 15.8.4. Application process.

- (a) *Application Requirements.* Any person desiring to obtain a massage establishment license or massage therapist license shall make application to the City Manager or his designee. All applications shall be sworn to by the applicant as true, correct and complete before a notary public or other officer authorized to administer oaths. All applications shall be in writing and shall set forth the following information:
 - (1) The full legal name of the applicant, including all aliases, nicknames, pseudonyms or trade names currently or heretofore used by the applicant;
 - (2) The current and all previous business and residence addresses of the applicant within the three years immediately preceding the date of application;
 - (3) Sworn affidavits of at least three bona fide residents of the city that the applicant is personally known to them and they believe the person to be of good moral character;
 - (4) Written proof that the applicant is over the age of 18 years;
 - (5) The applicant's height, weight and color of eyes and hair;
 - (6) Two current photographs of the applicant at least two inches by two inches in size;
 - (7) The business, occupation or employment of the applicant for three years immediately preceding the date of application;
 - (8) Any massage or similar business license history of the applicant, including whether such person, in any previous operation in any jurisdiction, has had such a license revoked or suspended, the reason therefor, and any business activity or occupation subsequent to the action of suspension or revocation;
 - (9) All convictions, pleas of guilty, or pleas of nolo contendere for violations of any law and the grounds therefor;

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- (10) The applicant shall be fingerprinted by the City Manager or his designee and such fingerprint card and record shall be attached as an exhibit to the application. Payment of all fees charged by the City Manager or his designee in connection with this requirement shall be the responsibility of the applicant;
 - (11) Applicants for a massage therapist license shall provide a certificate dated within 30 days of application from a physician licensed in the state, certifying that the applicant is in sound mental and physical health, and free of all contagious or communicable diseases;
 - (12) Applicants for a massage therapist license must furnish a certified copy of a diploma or certificate of graduation (demonstrating compliance with section 15.8.5(a)(2)), along with a certified statement from the National Certification Board of Therapeutic Massage and Body Work evidencing passage by the applicant thereof of the exam for massage therapists administered by said Board. Applicants for a massage establishment license must furnish an affidavit demonstrating compliance with section 15.8.5(b)(2) and 15.8.5(b)(3);
 - (13) If the applicant is a corporation or partnership, such corporation or partnership shall submit the foregoing information and exhibits with regard to each employee, independent contractor agent and partner, general or limited, associated with the operation of the licensed establishment;
 - (14) If the applicant is a corporation, such corporation shall, in addition to the foregoing information, submit a complete list of the stockholders of said corporation, including names, current addresses and current occupations, and provide the name and address for its registered agent in the county;
 - (15) If the applicant is an individual, the applicant must reside in the state and must submit written, reliable proof thereof. Additionally, if the applicant does not reside in the county, the applicant must provide the name and address for an agent who resides in the county authorized to receive legal process and notices under this article on behalf of the applicant.
- (b) *Fees.* All license applications shall be accompanied by a fee as elsewhere established by the City Council to defray the costs associated with issuance of said licenses. All fees associated with the background check required by subsection (a)(10) of this section shall be the responsibility of the applicant and shall be in addition to the application fee.

(Ord. No. 2017-08-05, § 5(15.8.4), 8-7-2017)

Sec. 15.8.5. Minimum standards.

- (a) *Massage therapist.* No applicant shall be issued a license as a massage therapist unless both of the following standards are first met:
- (1) The applicant must be of good moral character. No applicant shall be found to have met this requirement if said applicant has been convicted, pled guilty, or entered a plea of nolo contendere to any felony, or to any misdemeanor involving moral turpitude, within a period of five years prior to the filing of the application; and
 - (2) The applicant must be the holder of a diploma or certificate earned by the applicant from a state certified school, representative of the fact that the applicant attended a course of massage therapy education and study of not less than 500 classroom hours consisting of a curriculum of anatomy and physiology, basic massage theory, technique and clinical practice, approach to massage, allied modalities and disease awareness, and other such subjects and have passed the National Certification Board of Therapeutic Massage and Body Work exam for massage therapists.
- (b) *Massage establishment.* No applicant shall be issued a license for a massage establishment unless all of the following standards are first met:

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- (1) The applicant, including the partner applying on behalf of a partnership and an agent applying on behalf of a corporation, must be of good moral character. No applicant shall be found to have met this requirement if said applicant has been convicted, pled guilty, or entered a plea of nolo contendere to any felony, or to any misdemeanor involving moral turpitude, within a period of four years prior to the filing of the application;
 - (2) A corporate applicant must be chartered under the laws of Georgia or authorized by the Secretary of State to do business in the state. The applicant shall be the owner or legal agent of the establishment. The corporate applicant must identify an agent for service of process in the county;
 - (3) The owner/applicant, or corporate agent must be a resident of the state;
 - (4) A readable sign shall be posted at the main entrance identifying the establishment as a massage establishment, provided also that all such signs shall comply with the sign requirements of the Code of Ordinances;
 - (5) Minimum lighting shall be provided in accordance with the Uniform Building Code, and, additionally, at least one artificial light of not less than 40 watts shall be provided in each enclosed room or booth;
 - (6) Ordinary beds or mattresses shall not be permitted in any licensed massage establishment;
 - (7) Minimum ventilation shall be provided in accordance with the Standard Mechanical Code and the Georgia Energy Code; and
 - (8) The establishment, prior to the issuance of any license hereunder, must be in compliance with all applicable building and life safety codes, and the building to be occupied must have a valid, current certificate of occupancy.

(Ord. No. 2017-08-05, § 5(15.8.5), 8-7-2017)

Sec. 15.8.6. Issuance of license.

- (a) *Review of applications.* If a license application is submitted in proper form, including all information and exhibits required herein and accompanied by the correct fees, the application shall be accepted and a review of the application and an inspection and investigation shall be conducted by the director. The director shall transmit a copy of the completed application to the City Manager or his designee. Upon the payment by the applicant of the required fees, the City Manager, or its designee, shall cause to be conducted a background investigation of the police record of the applicant, and shall transmit a summary of the investigation results to the director.
- (b) *Action on applications.* Upon receipt of this background investigation, and completion of review of the application in accordance with the terms of this article, the director shall act on the application. The director shall deny any application that:
 - (1) Fails to meet each of the application requirements specified herein;
 - (2) Fails to meet each of the minimum standards specified in section 15.8.5; or
 - (3) Contains false information in the application or attached documents.

Otherwise, the director shall approve the application and the license shall be issued upon the payment of any applicable city business or occupation tax. All licenses issued pursuant to this article shall be valid for a period of one year. If an application for a license is denied under this article, the applicant shall not be authorized to reapply for said denied license for a period of one year from the date of denial.

- (c) *Appeals of denials of applications.* In the event the director denies a license or apprentice permit application, such denial shall be in written form, addressed to the applicant at the application address, and shall state the

grounds upon which the denial is based. Within 15 days of the date of issuance of such notice, the applicant shall be entitled to appeal to the certificate review hearing officer pursuant to the procedure set forth in article XVI of this chapter.

(Ord. No. 2017-08-05, § 5(15.8.6), 8-7-2017)

Sec. 15.8.7. Transfers and sales prohibited.

All licenses issued pursuant to this article are nontransferable.

(Ord. No. 2017-08-05, § 5(15.8.7), 8-7-2017)

Sec. 15.8.8. Change of location.

A change of location of massage establishment premises may be approved by the City Manager or his designee provided all general ordinances are complied with and a change of location fee as elsewhere established by the City Council is first paid.

(Ord. No. 2017-08-05, § 5(15.8.8), 8-7-2017)

Sec. 15.8.9. Renewals.

All valid licenses may be renewed for additional one-year periods, provided a renewal application meeting all of the requirements for an initial license application is submitted prior to expiration of the existing license and approved by the director according to the same standards for initial licenses. The fee for the annual renewal shall be as elsewhere established by the City Council.

(Ord. No. 2017-08-05, § 5(15.8.9), 8-7-2017)

Sec. 15.8.10. Further requirements.

The following additional requirements shall apply to all license holders and establishments:

- (a) All massage therapists and all other persons on the premises, with the exception of the customers, shall be completely clothed at all times when administering a massage. For the purposes of this provision, "completely clothed" shall mean having on the upper portion of the body appropriate undergarments and either blouse or shirt which shall cover all the upper body save the arms and neck and shall mean having on the lower body appropriate undergarments plus either pants or skirt, and said pants or skirt must cover from the waist down to a point at least two inches above the knee. All clothes worn in compliance with this subsection shall be entirely non-transparent.
- (b) Massage of the human genitals or anus within massage establishments is expressly prohibited.
- (c) The storing, serving, sale or consumption of alcoholic beverages within massage establishments is expressly prohibited.
- (d) Every person to whom a license shall have been granted shall display said license in a conspicuous place on the premises that is clearly visible to the visiting public.
- (e) The City Manager or his designee, shall have the right to inspect any licensed massage premises and its records at any time, with or without notice, during business hours to ensure compliance with this article.

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- (f) It shall be unlawful for any person under the age of 18 years to patronize any massage establishment unless at the time of such patronage such person carries with him a written order directing the treatment to be given by a regularly licensed physician, or unless such person provides a written consent to massage therapy treatment signed by the underage patron's parent or guardian. It shall be the duty of the operator of such massage establishment to determine the age of each person patronizing such massage establishment and a violation of this section shall be grounds for revocation of the license of such massage establishment and/or massage therapist administering massage to an underage patron.
 - (g) It shall be the duty of all persons holding a license for a massage establishment under this article to file with the City Manager or his designee the names of all employees and independent contractors other than those holding massage therapist licenses, their home addresses, home telephone numbers and places of employment. Changes in the list of said employees and independent contractors with the names of new employees and independent contractors must be filed with said city department within ten days from the date of any such change.
 - (h) It shall be the duty of any person granted a license under this article to maintain correct and accurate records of the names and addresses of the persons receiving treatment at such establishment; and the name of the person at the establishment administering the treatment. The records shall be subject to inspection at any time by the city through the City Manager or his designee.
 - (i) It shall be the duty of the licensee establishment to actively supervise and monitor the conduct of any and all employees, independent contractors, customers and all other persons on the premises in order to ensure compliance with the provisions of this chapter.

(Ord. No. 2017-08-05, § 5(15.8.10), 8-7-2017)

Sec. 15.8.11. Revocation of license.

- (a) No license issued hereunder shall be revoked except for due cause as herein defined without the opportunity for a hearing as hereinafter set forth before the certificate review hearing officer. Notice of such hearing shall be given in writing and served at least ten days prior to the date of the hearing thereon. In the event the license holder cannot be found, and the service of notice cannot be otherwise made in the manner herein provided, a copy of such notice shall be mailed registered postage fully prepaid, addressed to the license holder or the registered agent thereof at his, her, or its place of business or residence at least ten days prior to the date of such hearing. The notice shall state the grounds for revocation of such license and shall designate the time and place where such hearing will be held.
- (b) Due cause for revocation of such license shall be as provided in section 15.8.12 of this article.
- (c) In all hearings pursuant to this section, the following procedures shall prevail, and the proceeding shall be as informal as compatible with justice:
 - (1) The charges and specifications against the licensee shall be read along with any response filed by the licensee.
 - (2) The certificate review hearing officer shall hear the evidence upon the charges and specifications as filed against the licensee and shall not consider any additional evidence beyond the scope of the charges, and may exclude evidence which is purely cumulative.
 - (3) The order of proof shall be as follows: The city representative shall present his evidence in support of the charges; the licensee shall then present his evidence. Evidence of each party may be supported by submission of pertinent documents. Each party shall be allowed to present pertinent rebuttal evidence.

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- (4) The licensee and city may be represented by counsel, and may present, examine and cross-examine witnesses. Additionally, the certificate review hearing officer may interrogate all parties and witnesses to obtain necessary information. Following the presentation of evidence, the hearing officer may have a reasonable time within which to issue its decision.
 - (5) The findings of the certificate review hearing officer will be final unless within 30 days of the date of the decision, the applicant files a petition for writ of certiorari to the superior court of the county.

(Ord. No. 2017-08-05, § 5(15.8.11), 8-7-2017)

Sec. 15.8.12. Grounds for revocation.

- (a) The license of a massage therapist may be revoked upon one or more of the following grounds:
 - (1) Failure of the holder to maintain initial requirements for obtaining the license;
 - (2) The holder is guilty of fraud in the practice of massage, or fraud or deceit in his being licensed in the practice of massage;
 - (3) The holder is engaged in the practice of massage under a false or assumed name, or is impersonating another therapist of a like or different name;
 - (4) The holder is addicted to the habitual use of intoxicating liquors, narcotics or stimulants to such an extent as to incapacitate such person to the extent that he is unable to perform his professional duties;
 - (5) The holder is guilty of fraudulent, false, misleading or deceptive advertising or practices any other licensed profession without legal authority therefor;
 - (6) The holder has violated any of the provisions of this chapter;
 - (7) The holder has violated any laws relating to sodomy, aggravated sodomy, solicitation of sodomy, public indecency, prostitution, pimping, pandering, pandering by compulsion, masturbation for hire, distribution of obscene materials, distribution of material depicting nudity, or sexual conduct, as defined under Georgia law; or has been convicted, pled guilty, or entered a plea of nolo contendere to any felony, or to any misdemeanor involving moral turpitude;
 - (8) The original application, or renewal thereof, contains materially false information; or the applicant has deliberately sought to falsify information contained therein; or
 - (9) There has been the occurrence of a fact which would have barred the issuance of the original license.
- (b) The license of a massage establishment may be revoked upon one or more of the following grounds:
 - (1) Failure of the holder to maintain initial requirements for obtaining the license;
 - (2) The holder allows or permits any person who is not a licensed massage therapist to administer a massage in said establishment;
 - (3) The premises in which the massage establishment is located are in violation of any federal, state, city, or county laws designated for the health, protection and safety of the occupants or general public;
 - (4) The premises are in violation of the city's building or life safety codes;
 - (5) The original application or renewal thereof, contains materially false information; or the applicant has deliberately sought to falsify information contained therein;
 - (6) The holder of the license, including any person with an ownership interest in the license, has been convicted, pled guilty, or entered a plea of nolo contendere to any felony, or to any misdemeanor involving moral turpitude, or has violated any laws relating to sodomy, aggravated sodomy, solicitation

of sodomy, public indecency, prostitution, pimping, pandering, pandering by compulsion, masturbation for hire, distribution of obscene materials, distribution of material depicting nudity, or sexual conduct, as defined under state law;

- (7) Any of the license holder's employees, independent contractors or agents has been convicted, pled guilty, or entered a plea of nolo contendere to any felony, or to any misdemeanor involving moral turpitude, or has violated any laws relating to sodomy, aggravated sodomy, solicitation of sodomy, public indecency, prostitution, pimping, pandering, pandering by compulsion, masturbation for hire, distribution of obscene materials, distribution of material depicting nudity, or sexual conduct, as defined under state law, in connection with the operation of the massage establishment or on or about the premises of the massage establishment;
 - (8) Failure of the holder to actively supervise and monitor the conduct of the employees, independent contractors, agents, customers, or others on the premises in order to protect the health, safety and welfare of the general public and the customers; or
 - (9) The holder, his employees, agents, or independent contractors associated with the establishment have allowed to occur or have engaged in a violation of any part of this chapter.
- (c) Any massage therapist or massage establishment who has his or its license or permit revoked shall be disqualified from reapplying for such a license or permit for a period of 12 months immediately following the date of revocation.

(Ord. No. 2017-08-05, § 5(15.8.12), 8-7-2017)

Sec. 15.8.13. Violations; penalties.

- (a) Any person, firm, corporation or other entity violating the provisions of this article shall be punishable by a fine not to exceed \$1,000.00 per violation or by imprisonment for a period not to exceed 60 days, or by both such fine and imprisonment. Violation of this article shall also be grounds for immediate suspension or revocation of the license issued hereunder.
- (b) The violation of the provisions of this article may be abated as a nuisance.
- (c) The violation of all provisions of this article by any person may be enjoined by instituting appropriate proceedings for injunction in any court of competent jurisdiction. Such actions may be maintained notwithstanding that other adequate remedies at law exist. Such actions may be instituted in the name of the City Council.

(Ord. No. 2017-08-05, § 5(15.8.12), 8-7-2017)

Sec. 15.8.14. Unlawful operation declared nuisance.

- (a) Any massage establishment operated, conducted or maintained contrary to the provisions of this article shall be and the same is declared to be unlawful and a public nuisance. The city may, in addition, or in lieu of all other remedies, commence an action or actions, proceeding or proceedings for abatement, removal or enjoinder thereof, in the manner provided by law.
- (b) No massage establishment shall operate at any location nor on any premises which does not comply with all zoning, building, and fire safety codes, and other ordinances and laws of the city and the state.

(Ord. No. 2017-08-05, § 5(15.8.13), 8-7-2017)

ARTICLE IX. ESCORT OR DATING SERVICES

Sec. 15.9.1. License.

- (a) Any person desiring to engage in the business of providing or arranging dates, escorts or partners for persons shall, before engaging in such business, file an application for a business license on a form supplied by the City Manager or his designee and shall comply with all the provisions of this article.
- (b) The applicant for a dating or escort service license must be an owner, partner or majority stockholder.
- (c) Each applicant shall submit the following information, as a minimum:
 - (1) Trade name and business address.
 - (2) Applicant's name and residence address.
 - (3) Names and residence addresses of all interested persons, to include owners, partners, stockholders, officers and directors.
 - (4) Manager's name and residence address.
 - (5) Employees' names and residence addresses.

(Ord. No. 2017-08-05, § 5(15.9.1), 8-7-2017)

Sec. 15.9.2. Qualifications of license applicant, others connected with business.

No applicant, owner, partner, stockholder, officer, director or any other interested person connected with the business for which a license is applied under this article shall have been convicted of a crime involving moral turpitude, lottery or illegal sale or possession of narcotics within the preceding ten-year period; any subsequent convictions of the nature described in this section automatically acts to void any such license and permits held.

(Ord. No. 2017-08-05, § 5(15.9.2), 8-7-2017)

Sec. 15.9.3. Permit required.

All applicants for an escort or dating service business license, along with their employees, must also file for a permit with the City Manager or his designee accompanied by a permit fee in the amount established by action of the City Council, a copy of which is on file in the office of the city clerk and providing the information in section 15.9.1 as well as any additional information and fingerprinting as deemed necessary by the City Manager or his designee for the purposes of conducting a background investigation of the applicant.

(Ord. No. 2017-08-05, § 5(15.9.3), 8-7-2017)

Sec. 15.9.4. Employees.

No person under 18 years of age shall be employed by an escort or dating service in any capacity and not before such person has been fingerprinted by the City Manager or his designee. When determined that the employee applicant has not been convicted of a crime involving moral turpitude for the preceding three-year period, an annual personal identification card authorizing such person to be employed by the escort or dating service will be issued. It shall be the responsibility of the business license applicant to ensure that the provisions of this section are complied with and that no employee possesses an expired identification card or permit while in the business' employ.

(Ord. No. 2017-08-05, § 5(15.9.4), 8-7-2017)

Secs. 15.9.5—15.9.25. Reserved.

ARTICLE X. POOLROOMS

DIVISION 1. GENERALLY

Sec. 15.10.1. Definitions.

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

Pool or billiards includes any game played on a table surrounded by an elastic ledge of cushions with balls which are impelled by a cue.

Poolroom means any public place where a person is permitted to play the game of pool or billiards.

(Ord. No. 2017-08-05, § 5(15.10.1), 8-7-2017)

Sec. 15.10.2. Applicability.

O.C.G.A. § 43-8-1 et seq. does not apply within the city. The provisions of this article govern the operation of poolrooms within the city.

(Ord. No. 2017-08-05, § 5(15.10.2), 8-7-2017)

Sec. 15.10.3. Inspection of licensed establishments.

The City Manager or his designee may inspect establishments licensed under this article during the hours in which the premises are open for business. Such inspection shall be made for the purpose of verifying compliance with the requirements of this article.

(Ord. No. 2017-08-05, § 5(15.10.3), 8-7-2017)

Sec. 15.10.4. Gambling.

No gambling or other games of chance shall be permitted in a poolroom.

(Ord. No. 2017-08-05, § 5(15.10.4), 8-7-2017)

Sec. 15.10.5. Manager.

All poolrooms which have three or more pool tables shall have a manager, or designated employee, on-duty during operating hours, whose responsibility is the operation of the pool tables.

(Ord. No. 2017-08-05, § 5(15.10.5), 8-7-2017)

Secs. 15.10.6—15.10.20. Reserved.

DIVISION 2. LICENSE

Sec. 15.10.21. Required.

No person shall operate a poolroom without a business license issued by the City Manager or his designee.
(Ord. No. 2017-08-05, § 5(15.10.21), 8-7-2017)

Sec. 15.10.22. Application.

- (a) All persons desiring to operate a poolroom shall make application for a business license on a form prescribed by the City Manager or his designee.
- (b) The application shall include, but shall not be limited to, the following:
 - (1) The name and address of the owner-applicant.
 - (2) The address of the licensed establishment.
 - (3) The number of pool tables to be operated at the licensed establishment.
 - (4) If the owner-applicant is a partnership, the names and residence addresses of the partners.
 - (5) If the owner-applicant is a corporation, the names of the officers.
 - (6) The name and address of the agent for service of process.
 - (7) The name of the manager.
 - (8) The name of all shareholders holding more than ten percent of any class of corporate stock, or other entity having a financial interest in each entity which is to own or operate the licensed establishment.

If the manager changes, the owner-applicant must furnish the City Manager or his designee with the name and address of the new manager and other information as requested within ten days of such change.

- (c) All applicants shall furnish data, information and records as required by the City Manager or his designee to ensure compliance with the provisions of this article. Failure to furnish data shall automatically serve to dismiss the application with prejudice.
- (d) All applications shall be sworn to by the applicant before a notary public or other officer authorized to administer oaths.
- (e) In all instances in which an application is denied under the provisions of this division, the applicant may not reapply for a license for at least one year from the final date of denial.

(Ord. No. 2017-08-05, § 5(15.10.22), 8-7-2017)

Sec. 15.10.23. Persons eligible.

- (a) No poolroom license shall be granted to any illegal alien.

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- (b) Where the owner-applicant is a partnership or corporation, the provisions of this section shall apply to all its partners, officers, managers and majority stockholders. In the case of a corporation, the license shall be issued jointly to the corporation and to the majority stockholder, if an individual. Where the majority stockholder is not an individual, the license shall be issued jointly to the corporation and its agent registered under the provisions of this section. In the case of a partnership, the license will be issued to one of the partners.
 - (c) No license shall be granted to any person who has been convicted under any federal, state or local law of any misdemeanor involving moral turpitude within ten years prior to the filing of the application for such license.
 - (d) No license shall be granted to any person convicted under any federal, state or local law of any felony within ten years prior to the filing of the application for such license.
 - (e) No license shall be granted to any person who has had any license issued under the police powers of the city or DeKalb County previously revoked or rejected within two years prior to the filing of the application. The City Manager or his designee may decline to issue a license when any person having an interest in the operation of such place of business or control over such place of business does not meet the same character requirements as set forth for the licensee.
 - (f) All licensed establishments must have and continuously maintain in the county a registered agent upon whom any process, notice or demand required or permitted by law or under this article to be served upon the licensee or owner may be served. The licensee shall file the name of such agent, along with the written consent of such agent with the City Manager or his designee in such form as is prescribed.

(Ord. No. 2017-08-05, § 5(15.10.23), 8-7-2017)

Sec. 15.10.24. Expiration; renewal; transfer.

- (a) All licenses granted under this division shall expire on December 31 of each year.
- (b) Licensees who desire to renew their licenses shall file application with all applicable fees with the City Manager or his designee on the form provided for renewal of the license for the following year. Applications for renewal must be filed before November 30 of each year or the applicant shall pay a late payment penalty in addition to an assessment of interest as specified by chapter 2 of this Code. No renewal licenses shall be granted after January 1, but such application shall be treated as an initial application and the applicant shall be required to comply with all requirements for the granting of licenses as if no previous license had been held.
- (c) All licenses granted hereunder shall be for the full calendar year. License fees shall not be prorated and are nonrefundable.
- (d) No license shall be transferred without prior approval of the City Manager or his designee.

(Ord. No. 2017-08-05, § 5(15.10.24), 8-7-2017)

Sec. 15.10.25. Fee.

No poolroom license shall be issued until a fee in the amount established by action of the City Council, a copy of which is on file in the office of the clerk, is paid to the city.

(Ord. No. 2017-08-05, § 5(15.10.25), 8-7-2017)

Sec. 15.10.26. Issuance.

Before a poolroom license is granted, the applicant therefor shall comply with all rules and regulations adopted by the City Council regulating the operation of poolrooms.

(Ord. No. 2017-08-05, § 5(15.10.26), 8-7-2017)

Sec. 15.10.27. Suspension or revocation.

A poolroom license may be suspended or revoked by the City Manager or his designee for failure of a licensee to comply with the provisions of this article or where the licensee furnishes fraudulent or false information in the license application.

(Ord. No. 2017-08-05, § 5(15.10.27), 8-7-2017)

Sec. 15.10.28. Appeals.

- (a) No poolroom license shall be denied, suspended or revoked without the opportunity for a hearing.
- (b) The City Manager or his designee shall provide written notice to the owner-applicant and licensee of the order to deny, suspend or revoke the license. Such written notification shall set forth in reasonable detail the reasons for such action and shall notify the owner-applicant and licensee of the right to appeal under the provisions of this chapter. Any owner-applicant or licensee who is aggrieved or adversely affected by a final action of the city may have a review thereof in accordance with the appeals procedures specified in article XVI of this chapter.

(Ord. No. 2017-08-05, § 5(15.10.28), 8-7-2017)

Secs. 15.10.29—15.10.50. Reserved.

ARTICLE XI. VEHICLES FOR HIRE

Sec. 15-11-1. Definitions.

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

Open stand means locations on the streets of the city that may be used by any taxicab on a nonexclusive, first-come-first-served basis, and not by private vehicles or other public conveyances.

Taxicab means a motor vehicle used to transport passengers for a fee or fare and which is fitted with a taximeter or other device that is used to compute such fee or fare. Taxicabs shall not include limousine carriers or ride share drivers, as defined in O.C.G.A. § 40-1-90(1) and (3).

Taxicab company means an entity or person operating a taxicab or providing taxi services, as defined in O.C.G.A. § 40-1-90(5).

Taximeter means an instrument or device attached to a motor vehicle and designed to measure the distance traveled by such vehicle, or an instrument or device attached to a motor vehicle and designed to compute and indicate the fare or fee to be charged to the passenger.

(Ord. No. 2018-06-01, § 1(15.11.00), 6-18-2018)

Sec. 15-11-2. Doing business defined.

Any taxicab company operating a taxicab within the incorporated boundaries of the city or with an established business relationship with independent contractors operating a taxicab shall be deemed doing business in the city under this article if such person is picking up passengers in the city and accepting or soliciting any consideration, charge or fee which is determined by agreement, by mileage, by the length of time the vehicle is used or by contract for the use of any motor vehicle or other vehicle designed or used for the purpose of transporting passengers.

(Ord. No. 2018-06-01, § 1(15.11.00), 6-18-2018)

Sec. 15-11.3. Cruising and use of vehicle stands.

Cruising is defined as moving about the streets of the city for the purpose of picking up and transporting passengers who have not previously requested such service by telephone or by personal command. Taxicab companies shall ensure that their drivers use open stands on a nonexclusive, first-come-first-served basis.

(Ord. No. 2018-06-01, § 1(15.11.00), 6-18-2018)

Sec. 15-11-4. Call jumping.

Taxicab companies under this article shall not participate in nor allow their drivers to practice call jumping or the act of intercepting a passenger who has requested service from another company.

(Ord. No. 2018-06-01, § 1(15.11.00), 6-18-2018)

Sec. 15-11-5. Schedule of fares.

- (a) All taxicab companies doing business in the incorporated boundaries of the city shall charge a schedule of fares as provided in the city fee schedule.
- (b) All taxicab companies permitted under this article shall have the right to charge a charge as provided in the city fee schedule if the meter is not utilized.
- (c) Taximeters shall be calibrated by the permitted taxicab company to calculate the fares in accordance with the schedule set forth in this section. The taxi shall have, installed, lead and wire seals to the taximeter once it is calibrated so that no adjustments, alterations or replacements may be made to the taximeter that affects in any way its accuracy or indications.

(Ord. No. 2018-06-01, § 1(15.11.00), 6-18-2018)

Sec. 15-11-6. Temporary fuel surcharge.

- (a) The City Manager or his designee shall assess fuel prices in the city every three months, the first assessment to occur immediately after approval of the ordinance from which this article is derived and again thereafter on November 1, February 1, May 1, and August 1 of each calendar year and repeating every November 1, February 1, May 1, August 1 and/or an assessment may be needed based on a sudden increase in gasoline prices between those dates.

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- (b) At the time of the assessment, if the City manager or his designee finds that the price of fuel in the city exceeds by 20 percent the average price of fuel in the Atlanta metropolitan area in the preceding year, as published by the American Automobile Association, the City manager or designee shall be authorized to institute temporary fuel surcharges as set forth in this article.
 - (c) Within ten days of the assessment of fuel prices, if the price exceeds the standards of subsection (b) of this section, the City Manager or his designee shall notify all taxicab companies, taxicab drivers, taxicab trade associations, and all other affected persons or entities operating in the taxicab industry within the city of temporary fuel surcharges that may be imposed on customers.
 - (d) If the City Manager or designee authorizes the assessment of temporary fuel surcharges, all taxicab companies and drivers shall charge, in addition to the schedule of fares set forth in section 15-11-5, a fuel surcharge as provided in the city fee schedule.
 - (e) No other temporary fuel charges may be assessed against customers and the temporary fuel surcharges applied only remains in effect until the time of the next periodic fuel price assessment by the police chief or designee.
 - (f) All taxicab drivers must and shall conspicuously display a printed passenger notice on the taxicab dashboard describing the temporary fuel surcharge.
 - (g) The printed notice shall advise passengers that a temporary fuel surcharge will be added to the metered fare or to the flat rate fare due to increases in gasoline prices in the city and shall advise passengers of the amount of the fee as described in subsection (d) of this section.

(Ord. No. 2018-06-01, § 1(15.11.00), 6-18-2018)

ARTICLE XII. SEXUALLY ORIENTED BUSINESSES

Sec. 15.12.1. Findings; public purpose.

- (a) *Purpose.* It is the purpose of this article 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 article 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 article 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 article to condone or legitimize the distribution of obscene material.
- (b) *Findings and rationale.* Based on evidence of adverse secondary effects associated with certain conduct in alcoholic beverage establishments, which effects have been presented in hearings and in reports made available to the City Council, and on findings, interpretations, and narrowing constructions incorporated in numerous cases, including, but not limited to, *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 AM*, 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 F.3d 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 Faloan 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 - 2011-12; 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 - 1995-98, 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) 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 article, 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 article are reasonably believed to be relevant to the secondary effects.
- (c) *Adoption of findings of 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.

(Ord. No. 2017-08-05, § 7(15.12.1), 8-7-2017)

Sec. 15.12.2. Definitions.

For the purposes of this article, 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:

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: 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;

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- (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 "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 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 term "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 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.

Characterized by means describing the essential character or quality of an item. As applied in this article, 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.

Employ, employee, and employment describe and pertain to any person who performs any service on the premises of a sexually oriented business, on a full-time, part-time, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, lessee, or otherwise. The term "employee" does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

Establish or establishment means and includes any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business;
- (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or
- (3) The addition of any sexually oriented business to any other existing sexually oriented business.

Feature means to give special prominence to.

Floor space means the floor area inside an establishment that is visible or accessible to patrons for any reason, excluding restrooms.

Hearing officer means an attorney, not an employee of the city, who is licensed to practice law in the state, and retained to serve as an independent tribunal to conduct hearings under this article.

Influential interest means any of the following:

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- (1) The actual power to operate the sexually oriented business or control the operation, management or policies of the sexually oriented business or legal entity which operates the sexually oriented business;
 - (2) Ownership of a financial interest of 30 percent or more of a business or of any class of voting securities of a business; or
 - (3) Holding an office (e.g., president, vice-president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the sexually oriented business.

Licensee means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In the case of an employee, the term "licensee" means the person in whose name the sexually oriented business employee license has been issued.

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.

Operator means any person on the premises of a sexually oriented business who manages, supervises, or controls the business or a portion thereof. A person may be found to be an operator regardless of whether such person is an owner, part owner, or licensee of the business.

Person means an individual, proprietorship, partnership, corporation, association, or other legal entity.

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.

Regularly means the consistent and repeated doing of an act on an ongoing basis.

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.

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, or any establishment that does not regularly advertise itself or hold itself out, in any medium, as an establishment that caters to adult sexual interests.

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 Code.

Specified anatomical areas means and includes:

- (1) Less than completely and opaquely covered: 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.

Specified criminal activity means any of the following specified crimes for which less than five years has elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:

- (1) Rape, child molestation, sexual assault, sexual battery, aggravated sexual assault, aggravated sexual battery, or public indecency;
- (2) Prostitution, keeping a place of prostitution, pimping, or pandering;
- (3) Obscenity, disseminating or displaying matter harmful to a minor, or use of child in sexual performance;
- (4) Any offense related to any sexually-oriented business, including controlled substance offenses, tax violations, racketeering, crimes involving sex, crimes involving prostitution, or crimes involving obscenity;
- (5) Any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; or
- (6) Any offense in another jurisdiction that, had the predicate acts been committed in the state, would have constituted any of the foregoing offenses.

Specified sexual activity means any of the following:

- (1) Intercourse, oral copulation, masturbation or sodomy; or
- (2) Excretory functions as a part of or in connection with any of the activities described in subsection (1) of this definition.

Transfer of ownership or control of a sexually oriented business means any of the following:

- (1) The sale, lease, or sublease of the business;
- (2) The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or
- (3) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

Viewing room means the room, booth, or area where a patron of a sexually oriented business would ordinarily be positioned while watching a film, videocassette, digital video disc, or other video reproduction.

(Ord. No. 2017-08-05, § 7(15.12.2), 8-7-2017)

Sec. 15.12.3. License required.

- (a) *Business license.* It is unlawful for any person to operate a sexually oriented business in the city without a valid sexually oriented business license.
- (b) *Employee license.* It is unlawful for any person to be an employee of a sexually oriented business in the city without a valid sexually oriented business employee license, except that a person who is a licensee under a valid sexually oriented business license shall not be required to also obtain a sexually oriented business employee license.
- (c) *Application.* An applicant for a sexually oriented business license or a sexually oriented business employee license shall file in person at the office of the City Manager or his designee a completed application made on a form provided by the City Manager or his designee. A sexually oriented business may designate an individual with an influential interest in the business to file its application for a sexually oriented business license in person on behalf of the business. The application shall be signed as required by subsection (d) of this section and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in this subsection, accompanied by the appropriate licensing fee:
 - (1) The applicant's full legal name and any other names used by the applicant in the preceding five years.
 - (2) Current business address or another mailing address for the applicant.
 - (3) 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.
 - (4) If the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number of the sexually oriented business.
 - (5) If the application is for a sexually oriented business license, the name and business address of the statutory agent or other agent authorized to receive service of process.
 - (6) A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity, as defined in this article, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.
 - (7) A statement of whether any sexually oriented business in which an applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):
 - a. Been declared by a court of law to be a nuisance; or
 - b. Been subject to a court order of closure.
 - (8) An application for a sexually oriented business license shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor area occupied by the business and a statement of floor area visible or accessible to patrons for any reason, excluding restrooms. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. Applicants who

are required to comply with the stage, booth, and/or room configuration requirements of this article shall submit a diagram indicating that the setup and configuration of the premises meets the requirements of the applicable regulations. The City Manager may waive the requirements of this subsection for a renewal application if the applicant adopts a legal description and a sketch or diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

The information provided pursuant to this subsection (c) of this section shall be supplemented in writing by certified mail, return receipt requested, to the City Manager or his designee within ten working days of a change of circumstances which would render the information originally submitted false or incomplete.

- (d) *Signature.* A person who seeks a sexually oriented business employee license under this section shall sign the application for a license. If a person who seeks a sexually oriented business license under this section is an individual, he shall sign the application for a license as applicant. If a person who seeks a sexually oriented business license is other than an individual, each person with an influential interest in the sexually oriented business or in a legal entity that controls the sexually oriented business shall sign the application for a license as applicant. Each applicant must be qualified under this article and each applicant shall be considered a licensee if a license is granted.
- (e) *Confidentiality.* The information provided by an applicant in connection with an application for a license under this article shall be maintained by the office of the City Manager or his designee on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by governing law or court order. Any information protected by the right to privacy as recognized by state or federal law shall be redacted prior to such disclosure.

(Ord. No. 2017-08-05, § 7(15.12.3), 8-7-2017)

Sec. 15.12.4. Issuance of license.

- (a) *Business license.* Upon the filing of a completed application for a sexually oriented business license, the City Manager or his designee shall immediately issue a temporary license to the applicant if the completed application is from a preexisting sexually oriented business that is lawfully operating in the city and the completed application, on its face, indicates that the applicant is entitled to an annual sexually oriented business license. The temporary license shall expire upon the final decision of the city to deny or grant an annual license. Within 30 days of the filing of a completed sexually oriented business license application, the City Manager or his designee shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The City Manager or his designee shall issue a license unless:
 - (1) An applicant is less than 18 years of age.
 - (2) An applicant has failed to provide information required by this article for issuance of a license or has falsely answered a question or request for information on the application form.
 - (3) The license application fee required by this article has not been paid.
 - (4) The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this article.
 - (5) The sexually oriented business, as defined herein, is not in compliance with the locational requirements of any other part of this Code. However, this ground for denial of a license to operate a sexually oriented business shall not prevent issuance or renewal of a license for a sexually oriented business that was in a location where a sexually oriented business was allowed under law prior to the effective date of the ordinance from which this article is derived, provided that the sexually oriented business has not been discontinued for a continuous period of six months; has not been enlarged;

expanded, moved, or otherwise altered in any manner that increases the degree of nonconformity; and has not had its structure destroyed to an extent exceeding 60 percent of the structure's fair market value at the time of destruction.

- (6) Any sexually oriented business in which an applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):
 - a. Been declared by a court of law to be a nuisance; or
 - b. Been subject to an order of closure.
- (7) An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this article.

(b) *Employee license.* The City Manager or his designee shall issue a license unless:

- (1) The applicant is less than 18 years of age.
- (2) The applicant has failed to provide information as required by this article for issuance of a license or has falsely answered a question or request for information on the application form.
- (3) The license application fee required by this article has not been paid.
- (4) Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):
 - a. Been declared by a court of law to be a nuisance; or
 - b. Been subject to an order of closure.
- (5) The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this article.

(c) *License information.* The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensees, the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time that the business is occupied by patrons or is open to the public. A sexually oriented business employee shall keep the employee's license on his person or on the premises where the licensee is then working or performing.

(d) *Location requirements.* A license granted under this section does not excuse compliance with, or authorize the violation of, any location or zoning requirements for sexually oriented businesses in effect in the city.

(Ord. No. 2017-08-05, § 7(15.12.4), 8-7-2017)

Sec. 15.12.5. Fees.

The fees charged for the initial license and annual renewal licenses for sexually oriented business and sexually oriented business employee licenses shall be as established by the council, or its designee, in the city's fee schedule.

(Ord. No. 2017-08-05, § 7(15.12.5), 8-7-2017)

Sec. 15.12.6. Inspection.

Sexually oriented businesses and sexually oriented business employees shall permit the City Manager and his agents to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this article, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed by the city to authorize reasonable inspections of the licensed premises pursuant to this article, but not to authorize a harassing or excessive pattern of inspections.

(Ord. No. 2017-08-05, § 7(15.12.6), 8-7-2017)

Sec. 15.12.7. Expiration and renewal of license.

- (a) Each license shall remain valid for a period of one calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in this article.
- (b) Application for renewal of an annual license should be made at least 90 days before the expiration date of the current annual license, and when made less than 90 days before the expiration date, the expiration of the current license will not be affected.

(Ord. No. 2017-08-05, § 7(15.12.7), 8-7-2017)

Sec. 15.12.8. Suspension.

- (a) The City Manager shall issue a written notice of intent to suspend a sexually oriented business license for a period not to exceed 30 days if the sexually oriented business licensee has knowingly or recklessly violated this article or has knowingly or recklessly allowed an employee or any other person to violate this article.
- (b) The City Manager shall issue a written notice of intent to suspend a sexually oriented business employee license for a period not to exceed 30 days if the employee licensee has knowingly or recklessly violated this article.

(Ord. No. 2017-08-05, § 7(15.12.8), 8-7-2017)

Sec. 15.12.9. Revocation.

- (a) The City Manager shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if the licensee knowingly or recklessly violates this article or has knowingly or recklessly allowed an employee or any other person to violate this article and a suspension of the licensee's license has become effective within the previous 12-month period.
- (b) The City Manager shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if:
 - (1) The licensee has knowingly given false information in the application for the sexually oriented business license or the sexually oriented business employee license;
 - (2) The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises of the sexually oriented business;
 - (3) The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises of the sexually oriented business;

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- (4) The licensee knowingly or recklessly-operated the sexually oriented business during a period of time when the license was finally suspended or revoked;
 - (5) The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity or specified criminal activity to occur in or on the premises of the sexually oriented business;
 - (6) The licensee has knowingly or recklessly allowed a person under the age of 21 years to consume alcohol on the premises of the sexually oriented business; or
 - (7) The licensee has knowingly or recklessly allowed a person under the age of 18 years to appear in a semi-nude condition or in a state of nudity on the premises of the sexually oriented business.
- (c) The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.
 - (d) When, after the notice and hearing procedure described in this article, the city revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for one year from the date revocation becomes effective.

(Ord. No. 2017-08-05, § 7(15.12.9), 8-7-2017)

Sec. 15.12.10. Hearing; license denial, suspension, revocation; appeal.

- (a) Notice of intent; response.
 - (1) When the City Manager or his designee issues a written notice of intent to deny, suspend, or revoke a license, the City Manager or his designee shall immediately send such notice, which shall include the specific grounds under this article for such action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the City Manager or his designee for the respondent. The notice shall also set forth the following: The respondent shall have ten days after the delivery of the written notice to submit, at the office of the City Manager or his designee, a written request for a hearing. If the respondent does not request a hearing within the ten days, the City Manager's or designee's written notice shall become a final denial, suspension, or revocation, as the case may be, on the 30th day after it is issued, and shall be subject to the provisions of subsection (b) of this section.
 - (2) If the respondent does make a written request for a hearing within the ten days, then the City Manager or his designee shall, within ten days after the submission of the request, send a notice to the respondent indicating the date, time, and place of the hearing. The hearing shall be conducted not less than ten days nor more than 20 days after the date that the hearing notice is issued. The city shall provide for the hearing to be transcribed.
 - (3) At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his behalf, and cross examine any of the City Manager's or designee's witnesses. The city shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The hearing officer shall issue a final written decision, including specific reasons for the decision pursuant to this article, to the respondent within five days after the hearing.
 - (4) If the decision is to deny, suspend, or revoke the license, the decision shall advise the respondent of the right to appeal such decision to the superior court of the county, and the decision shall not become

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effective until the 30th day after it is rendered. If the hearing officer's decision finds that no grounds exist for denial, suspension, or revocation of the license, the hearing officer shall, contemporaneously with the issuance of the decision, order the City Manager or his designee to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the City Manager or his designee shall contemporaneously therewith issue the license to the applicant.

- (b) If any court action challenging a licensing decision is initiated, the city shall prepare and transmit to the court a transcript of the hearing within 30 days after receiving written notice of the filing of the court action. The city shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any sexually oriented business that is lawfully operating as a sexually oriented business, or any sexually oriented business employee that is lawfully employed as a sexually oriented business employee, on the date on which the completed business or employee application, as applicable, is filed with the City Manager: Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the city's enforcement of any denial, suspension, or revocation of a temporary license or annual license, the City Manager shall immediately issue the respondent a provisional license. The provisional license shall allow the respondent to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the city's enforcement.

(Ord. No. 2017-08-05, § 7(15.12.10), 8-7-2017)

Sec. 15.12.11. Transfer of license.

A licensee shall not transfer his license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application.

(Ord. No. 2017-08-05, § 7(15.12.11), 8-7-2017)

~~Sec. 15.12.12. Hours of operation.~~

~~No sexually oriented business shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day after July 1, 2017.~~

(Ord. No. 2017-08-05, § 7(15.12.12), 8-7-2017)

Sec. 15.12.13. Regulations pertaining to exhibition of sexually explicit films on premises.

- (a) A person who operates or causes to be operated a sexually oriented business which exhibits in a booth or viewing room on the premises, through any mechanical or electronic image-producing device, a film, videocassette, digital video disc, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.
- (1) Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all operator's stations, booths or viewing rooms, overhead lighting fixtures, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain equipment for displaying films, videocassettes, digital video discs, or other video reproductions. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or

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- architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The City Manager may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
- (2) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.
 - (3) The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five footcandles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described in this subsection is maintained at all times that the premises is occupied by patrons or open for business.
 - (4) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no specified sexual activity occurs in or on the licensed premises.
 - (5) It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:
 - a. That the occupancy of viewing rooms less than 150 square feet is limited to one person.
 - b. That specified sexual activity on the premises is prohibited.
 - c. That the making of openings between viewing rooms is prohibited.
 - d. That violators will be required to leave the premises.
 - e. That violations of these regulations are unlawful.
 - (6) It shall be the duty of the operator to enforce the regulations articulated in subsections (a)(5)(a) through (e) of this section.
 - (7) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed 32 square feet of floor area. If the premises has two or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose, excluding restrooms, from at least one of the operator's stations. The view required in this subsection must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this subsection remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.
 - (8) It shall be the duty of the operator to ensure that no porous materials are used for any wall, floor, or seat in any booth or viewing room.
- (b) It is unlawful for a person having a duty under subsections (a)(1) through (8) of this section to knowingly or recklessly fail to fulfill that duty.
 - (c) No patron shall knowingly or recklessly enter or remain in a viewing room less than 150 square feet in area that is occupied by any other patron.

(d) No patron shall knowingly or recklessly be or remain within one foot of any other patron while in a viewing room that is 150 square feet or larger in area.

(e) No person shall knowingly or recklessly make any hole or opening between viewing rooms.

(Ord. No. 2017-08-05, § 7(15.12.13), 8-7-2017)

Sec. 15.12.14. Loitering, exterior lighting and monitoring, and interior lighting requirements.

(a) It shall be the duty of the operator of a sexually oriented business to ensure that at least two conspicuous signs stating that no loitering is permitted on the premises are posted on the premises; designate one or more employees to monitor the activities of persons on the premises by visually inspecting the premises at least once every 90 minutes or inspecting the premises by use of video cameras and monitors; and provide lighting to the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. Said lighting shall be of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than one (1.0) footcandle as measured at the floor level. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.

(b) It shall be the duty of the operator of a sexually oriented business to ensure that the interior premises shall be equipped with overhead lighting of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than five (5.0) footcandles as measured at the floor level and the illumination must be maintained at all times that any customer is present in or on the premises.

(c) No sexually oriented business shall erect a fence, wall, or similar barrier that prevents any portion of the parking lots for the establishment from being visible from a public right-of-way.

(d) It is unlawful for a person having a duty under this section to knowingly or recklessly fail to fulfill that duty.

(Ord. No. 2017-08-05, § 7(15.12.14), 8-7-2017)

Sec. 15.12.15. Penalties and enforcement.

(a) A person who violates any of the provisions of this article shall be guilty of a violation and, upon conviction, shall be punishable by fines not to exceed \$1,000.00 per violation, or by imprisonment for a period not to exceed six months, or by both such fine and imprisonment. Each day a violation is committed, or permitted to continue, shall constitute a separate offense and shall be fined as such.

(b) Any premises, building, dwelling, or other structure in which a sexually oriented business is repeatedly-operated or maintained in violation of this article shall constitute a nuisance and shall be subject to civil abatement proceedings in a court of competent jurisdiction.

(c) The city's legal counsel is authorized to institute civil proceedings necessary for the enforcement of this article to enjoin, prosecute, restrain, or correct violations hereof. Such proceedings shall be brought in the name of the city; provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this article, or any of the laws in force in the city or to exempt anyone violating this Code or any part of the laws from any penalty which may be incurred.

(Ord. No. 2017-08-05, § 7(15.12.15), 8-7-2017)

Sec. 15.12.16. Applicability of article to existing businesses.

- (a) *Licensing Requirements.* All preexisting sexually oriented businesses lawfully operating in the City in compliance with all state and local laws prior to the effective date of the ordinance from which this article is derived, and all sexually oriented business employees working in the City prior to the effective date of the ordinance from which this article is derived, are hereby granted a De Facto Temporary License to continue operation or employment for a period of 120 days following the effective date of the ordinance from which this article is derived. By the end of said 120 days, all sexually oriented businesses and sexually oriented business employees must apply for a license under this article.
- (b) *Interior Configuration Requirements.* Any preexisting sexually oriented business that is required to, but does not, have interior configurations or stages that meet at least the minimum requirements of section 15.12.13 and subsection 15.12.17(b) shall have 120 days from the effective date of the ordinance from which this article is derived to conform its premises to said requirements. During said 120 days, any employee who appears within view of any patron in a semi-nude condition shall nevertheless remain, while semi-nude, at least six feet from all patrons.

(Ord. No. 2017-08-05, § 7(15.12.16), 8-7-2017)

Sec. 15.12.17. Prohibited conduct.

- (a) No patron, employee, or any other person shall knowingly or intentionally, in a sexually oriented business, appear in a state of nudity or engage in a specified sexual activity.
- (b) No person shall knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six feet from all patrons and on a stage at least 18 inches from the floor in a room of at least 600 square feet.
- (c) No employee who appears semi-nude in a sexually oriented business shall knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business. No customer shall knowingly or intentionally touch such an employee or the clothing of such an employee on the premises of a sexually oriented business.
- (d) No person shall possess, use, or consume alcoholic beverages on the premises of a sexually oriented business after July 1, 2017.
- (e) No person shall knowingly or recklessly allow a person under the age of 18 years to be or remain on the premises of a sexually oriented business.
- (f) No operator of a sexually oriented business shall knowingly or recklessly allow a room in the sexually oriented business to be simultaneously occupied by any patron and any employee who is semi-nude or who appears semi-nude on the premises of the sexually oriented business, unless an operator of the sexually oriented business is present in the same room.
- (g) No operator or licensee of a sexually oriented business shall violate the regulations in this section or knowingly or recklessly allow an employee or any other person to violate the regulations in this section.
- (h) A sign in a form to be prescribed by the City Manager, and summarizing the provisions of subsections (a) through (e) of this section, shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry. No person shall cover, obstruct, or obscure the sign.

(Ord. No. 2017-08-05, § 7(15.12.17), 8-7-2017)

Sec. 15.12.18. Scierter required to prove violation or business licensee liability.

This article does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a reckless mental state is necessary to establish a violation of a provision of this article. Notwithstanding anything to the contrary, for the purposes of this article, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the sexually oriented business licensee for the purposes of finding a violation of this article, or for the purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

(Ord. No. 2017-08-05, § 7(15.12.18), 8-7-2017)

Sec. 15.12.19. Spacing requirements.

- (a) It is 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.
- (b) It is 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. No. 2017-08-05, § 7(15.12.19), 8-7-2017)

ARTICLE XIII. MULTIFAMILY RENTAL DWELLINGS

Sec. 15-13-1. Definitions.

For the purpose of this article, certain terms and words are defined. Where words have not been defined, but are defined in chapter 1, those words shall have the meaning defined therein. The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them as directed below, except where the context clearly indicates a different meaning:

Certified building inspector means a person who has been authorized to perform inspections pursuant to the process established by this article, provided that such person maintains the qualifications for certification as established by this article.

Compliance certificate means a certificate, in a form authorized by the City Manager or his designee, executed by a certified building inspector showing compliance with those minimum requirements described in the inspection report attached thereto.

Inspection report means the report attached to the code compliance certificate describing minimum requirements for inspection of each unit.

Lease means any written or oral agreement that sets forth any and all conditions concerning the use and occupancy of multifamily rental dwellings or multifamily rental units.

Multifamily rental dwelling means any dwelling unit designed for and containing more than one lodging or dwelling unit, as defined in chapter 27, article 9, of the City of Stonecrest Code of Ordinances, that is leased to a residential tenant or tenants for use as a home, residence, or sleeping unit. The term "multifamily rental dwelling," includes, but is not limited to, multifamily dwelling units, multifamily apartments, duplexes, triplexes, boardinghouses, rooming houses, group homes, and flats.

Multifamily rental unit means any one area, room, structure, flat, apartment, or facility of a multifamily rental dwelling that is leased or available for lease to an occupant.

Occupant means any person who is a tenant, lessee, or a person residing within a multifamily rental dwelling or multifamily rental unit.

Owner means any person, agent, firm, or corporation having a legal or equitable interest in the premises.

Premises means any lot or parcel of real property on which exists one or more multifamily rental dwellings or multifamily rental units.

(Ord. No. 2018-06-01, § 3(15.13.1), 6-18-2018)

Sec. 15-13-2. Certification process, requirements, forms and appeals.

- (a) *Process.* The City Manager or his designee shall create the process for certifying building inspectors, shall establish the requirements and application for becoming a certified building inspector, and shall administer the process. A nonrefundable administrative fee set by the city council shall be required to be submitted with all applications to be a certified building inspector. Persons who have successfully completed the certification process issued by the City Manager or his designee shall be designated as certified building inspectors authorized to perform the inspections required by this article.
- (b) *Compliance certificates and inspection reports.* The City Manager or his designee is authorized to create the forms for compliance certificates and inspection reports. At a minimum, inspection reports submitted to the city must contain the certified building inspector's signature and date of certification. A certified building inspector shall personally perform the inspections required by this article. The certified building inspector signing the inspection report and performing the inspection shall not be an employee of, otherwise related to, or affiliated in any way with any owner or occupant of the multifamily rental dwelling or multifamily rental dwelling unit being inspected. Failure to have a certified building inspector personally perform an inspection shall nullify any such compliance certificate.
- (c) *Certified building inspectors.*
 - (1) *Minimum requirements.* At a minimum, a certified building inspector shall be a licensed architect or engineer or shall hold one of the following certifications from the International Code Council: property maintenance and housing inspector, housing rehabilitation inspector, building inspector, building plan examiner or commercial combination inspector.
 - (2) *Denial of certification.* Upon receipt of a complete application to be a certified building inspector, the City Manager or his designee shall have 45 days to grant or deny the application. If denied, the City Manager or his designee shall notify the applicant in writing of the reasons for the denial at the address set forth on the application.
 - (3) *Revocation of certification.* Upon a certified building inspector's conviction of a violation of section 15-13-4(c) of this article, or if a certified building inspector no longer meets the minimum requirements set forth in this article, the City Manager or his designee shall revoke the authority of that individual to act as a certified building inspector. The City Manager or his designee shall notify the individual in writing of the reasons for the revocation at the address set forth on the application to be a certified building inspector.

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- (4) *Appeals.* Any applicant or certified building inspector believes the provisions of this article have been applied in error may file an appeal therefrom in accordance with article XVI of this chapter.

(Ord. No. 2018-06-01, § 3(15.13.2), 6-18-2018)

Sec. 15-13-3. Inspection, certificate and fee required.

Commencing on January 1, 2019, it shall be unlawful for any owner or agent of an owner to engage in the leasing of a multifamily rental unit without first possessing a compliance certificate.

- (a) *Compliance certificate.* A compliance certificate shall contain the certification of a certified building inspector that all multifamily rental dwellings and/or multifamily rental units subject to this article have been inspected within the 12-month period immediately preceding the date of certification and are in compliance with applicable provisions of the Code and the requirements set forth in the code compliance certificate and inspection report.
- (1) Commencing on January 1, 2019, all owners of multifamily rental dwellings and/or multifamily rental units within the incorporated parts of the city that receive income from four or more such units and meet the requirements of O.C.G.A. § 48-13-5 for having a location or office within the incorporated parts of the city shall file, simultaneously with their business occupation tax return, code compliance certificates covering 100 percent of the owner's multifamily rental units located within the incorporated parts of the city.
- (2) After submission of the initial code compliance certificates, owners shall submit code compliance certificates annually with their business occupational tax return. Each subsequent code compliance certificate shall show an internal and external inspection of at least 20 percent of the units on a premises and all units on the premises shall be inspected, at a minimum, every five years. All units inspected shall be listed individually on the code compliance certificate submitted by the certified building inspector.
- (b) *Fee.* A nonrefundable administrative fee set by the city council shall be required to be submitted with all code compliance certificates.
- (c) *Inspections and repairs.* Upon initial inspection of multifamily rental dwellings and multifamily rental units subject to this article, should a certified building inspector determine that further work is necessary to comply with the minimum standards set forth in the Code, an acceptable plan shall be submitted to the building official, outlining the time and scope of work necessary to bring the units into compliance. If the plan is accepted by the building official as reasonable and justified, an extension of the time for compliance with this article may be granted for up to six months so that necessary repairs may be completed. No extension shall be granted if life or safety issues are involved, and none of the units where life or safety issues are involved shall be leased until brought into compliance with the minimum standards set forth in the Code. For years subsequent to the initial year, the six month extension for repairs is not available.
- (d) *Written record of inspection.* Each owner and certified building inspector shall for a period of five years from the date of inspection keep a written record of inspection for each multifamily rental dwelling and/or multifamily rental unit, including the date of the inspection, items inspected, and all violations, if any, observed. These records shall be presented to the building official within ten business days after a request is made in writing to the owner or inspector. Failure to provide these records shall nullify the compliance certificate for such dwellings or units.
- (e) *Exemptions.* Provided all other required permits, certificates and/or permissions are obtained from the city, this section shall not apply to multifamily rental dwellings or multifamily rental units for a period of five years following issuance of a certificate of occupancy for such dwelling or unit.

(Ord. No. 2018-06-01, § 3(15.13.3), 6-18-2018)

Sec. 15-13-4. Violations.

- (a) No business occupation tax certificate shall be issued to any owner until the owner provides the city with a code compliance certificate in the form and manner required by this article.
- (b) Any person who does anything prohibited or fails to do anything required by this article, shall upon conviction, be punished as provided by this Code.
- (c) An owner who knowingly furnishes or participates in furnishing a code compliance certificate to the city falsely certifying that all multifamily rental dwellings or multifamily rental units inspected are in compliance with the requirements set forth in the code compliance certificate shall be guilty of a violation of this article for each multifamily rental dwelling or multifamily rental unit for which the certification is shown to be false.
- (d) A certified building inspector who knowingly furnishes or participates in furnishing an inspection report containing false information that a multifamily rental dwelling or multifamily rental unit meets the minimum housing standards of the city as shown by the inspection report shall be guilty of a violation of this article.

(Ord. No. 2018-06-01, § 3(15.13.4), 6-18-2018)

Secs. 15-13-5—15-13.51. Reserved.

ARTICLE XIV. FILM PRODUCTION

Sec. 15.14.1. Definitions.

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

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

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

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

Department means the Department of Economic Development.

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

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

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

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

Filming means creating motion picture images on public property or private property, including the on-site/on-location pre-production activities associated therewith, where the final product is intended to be commercially released and/or commercially distributed. Filming does not include activities performed as part of:

- 1) Documenting current affairs; or
- 2) Producing newscasts.

In addition, filming does not include location scouting.

Impact with regards to public property, means (1) Use of intellectual property belonging to the city; (2) Closure of a city or state street, lane and/or sidewalk; (3) Use of pyrotechnics or other explosives; (4) Smoke effects, water effects or flame effects; (5) Display of real or artificial fire arms, grenades or other weapons that would cause the public to fear violence; (6) Vehicle chases and/or vehicle crashes; (7) Use of large or any other equipment that has a reasonable likelihood of causing damage to public property; (8) Use of wild animals controlled under federal or state law or county and/or municipal ordinances; (9) Use of city or state streets and/or lanes for the parking of trailers or vehicles associated with the filming activity that are likely to restrict the flow of traffic; (10) If another permit and/or license or any type of inspection is required by the ordinances of the city for the filming activity; (11) A gathering that lasts for more than one hour, has more than 75 attendees; or (12) any combination of the above.

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

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

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

Private property means real property owned or leased by an individual or non-governmental entity, including, for example, residential homes and commercial developments.

(Ord. No. 2017-10-03, § 1(15.14.1), 10-16-2017; Ord. No. 2023-01-02, § 1(Exh. A), 1-23-2023)

Sec. 15.14.2. Purpose and intent.

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

(Ord. No. 2017-10-03, § 1(15.14.2), 10-16-2017)

Sec. 15.14.3. Department of economic development as resource and liaison.

The Department of Economic Development will serve as a resource for Stonecrest's residents and businesses, providing information upon request about current or scheduled filming, helping to resolve problems that arise from entertainment industry work, and acting as a liaison between residents, businesses and the

entertainment industry to address inconvenience experienced generally and with regard to a specific project. The Department of Economic Development will also serve as an ambassador to the entertainment industry, providing information, answering questions, helping to resolve challenges and facilitating the industry's work in the city. The Department of Economic Development will implement other mechanisms that enhance the experience of all people performing and effected by entertainment industry work, which may include an informational webpage and on-line permitting. While permits are required for entertainment industry work that occurs on public and private property, the Department of Economic Development will be a resource and liaison for all entertainment industry work, including work that occurs on private property.

(Ord. No. 2017-10-03, § 1(15.14.3), 10-16-2017; Ord. No. 2023-01-02 , § 1(Exh. A), 1-23-2023)

Sec. 15.14.4. Permits for filming.

- (1) Any producer that wishes to perform filming must first obtain a filming permit. No person shall use any public property or facility, or private property, facility or residence where such use will have an Impact on public property for the purpose of filming without first applying for and obtaining a permit pursuant to this Article.
- (2) Filming permits shall be issued by the Department of Economic Development. Permits shall be issued to the producer.
- (3) A permit will specify the filming that may occur at a particular location at a particular time. The permit will authorize elements to be performed as part of the filming, provided that the elements have been approved by the Department of Economic Development. After receiving a permit, a producer may request modifications to the permit as described in subsection 15.14.8(1) below.
- (4) Where the filming application includes a request to close a city street, lane and/or sidewalk during the transition period for the City of Stonecrest, the request will be processed by DeKalb County in accordance with DeKalb County's ordinances, guidelines, and regulations.
- (5) A producer that receives a permit is responsible for knowing and complying with all other laws, including other ordinances and regulations, that establish prerequisites, authorizations and other required permissions applicable to the filming.
- (6) Where permitted filming includes signs or other displays of speech which would require a permit under chapter 21 or otherwise be prohibited under the Code, the signs and/or displays must be removed upon the expiration of the permit.
- (7) Notwithstanding any other part of this Code, any producer that performs filming without receiving a permit, violates the material terms of a permit, or is otherwise in violation of this entertainment filming ordinance, shall be subject to the provisions of section 1-11 of the Code.
- (8) While it is the intent of the city to honor each permit, the issuance of such permit shall not grant the producer a constitutionally protected property interest.

(Ord. No. 2017-10-03, § 1(15.14.4), 10-16-2017; Ord. No. 2023-01-02 , § 1(Exh. A), 1-23-2023)

Sec. 15.14.5. Exemption from filming permit requirement; first amendment activity.

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

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- (1) Filming associated with any permitted or unpermitted rally, protest or demonstration, except when the same is staged for the sole purpose of being included in the filming's final product.
 - (2) Filming associated with an outdoor event that is authorized by a city-issued permit, except when the same is staged for the sole purpose of being included in the filming's final product.
 - (3) The provisions of this article shall not apply to film activities for the purpose of News Media.
 - (4) The recording of visual images (motion or still photography) solely for private use and not for commercial use associated with personal/family video.
 - (5) Film activities (motion or still photography) conducted at or within a properly-licensed studio.
 - (6) The owner of any small business, as defined by the size standards of the Small Business Administration (SBA), may film a commercial for said business at their properly licensed business location without a permit, so long as the filming takes place wholly inside the private premises of the business location or immediately outside the premises so long as the filming does not substantially interfere with any vehicular or pedestrian traffic on the public right-of-way.

(Ord. No. 2017-10-03, § 1(15.14.5), 10-16-2017; Ord. No. 2023-01-02 , § 1(Exh. A), 1-23-2023)

Sec. 15.14.6. Filming elements.

- (1) An applicant shall indicate on the application each of the elements listed below that will be included in the filming.
- (2) The final decision of whether to allow the element shall be made by the Department of Economic Development, and communicated to the applicant by the Department of Economic Development. Prior to denying permission to perform an element, representatives of the Department of Economic Development shall consult with the producer in an attempt to find alternative ways to accommodate the producer's filming needs.
- (3) Where the element requires approval from an additional governmental jurisdiction, the producer must obtain that approval as well.
- (4) The elements are as follows:
 - (a) Night-time filming with the use of outdoor lighting where a residence exists within 150 feet from the location of an outdoor light;
 - (b) Filming in buildings that are owned by the city and not leased to a third-party, or in buildings of which the city is a lessee;
 - (c) Use of intellectual property belonging to the city;
 - (d) Closure of a street, lane and/or sidewalk;
 - (e) Use of pyrotechnics or other explosives;
 - (f) Smoke effects, water effects, or flame effects;
 - (g) Display of real or artificial fire arms, grenades, or other weapons that would cause the public to fear violence;
 - (h) Vehicle chases and/or vehicle crashes:
 - (i) Dangerous stunts that have a reasonable likelihood of causing substantial personal injury;
 - (j) Use of large or any other equipment that has a reasonable likelihood of causing damage to public property;

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- (k) Filming in a city park; and
 - (l) Use of wild animals controlled under federal, state, county, or city law and/or ordinances.

(Ord. No. 2017-10-03, § 1(15.14.6), 10-16-2017; Ord. No. 2023-01-02 , § 1(Exh. A), 1-23-2023)

Sec. 15.14.7. Processing of permit applications.

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

- (1) The application shall include, but not be limited to, the following:
 - a. The filming project name;
 - b. The name and contact information of the applicant, including postal address, email address, and telephone number;
 - c. A valid photo identification of the applicant;
 - d. The name and contact information of the producer (if the applicant is not the producer);
 - e. The dates, times and locations of the filming for which a permit is being requested, and a general description of the filming activity that will occur at each location;
 - f. A description of any elements that may be performed during the filming, including the dates, times and locations of each;
 - g. A description of any aspects of the filming, other than the elements, that may require city services;
 - h. A description of any assistance the producer may need from the city and/or concerns that the producer wants the city to be aware of; and
 - i. Where the producer is a student, an official letter or document from his school confirming that he is currently enrolled there. In addition, the student must appear in person and present his current student identification card and a valid driver license. Where the student does not have a driver license, he may present a different form of identification that includes his photo.
- (2) When more than one application is received for filming at substantially the same place and time, and the director reasonably determines that the filmings cannot logistically and/or safely occur together, the earlier or earliest of the applications that is received by the Department of Economic Development in a substantially completed form, which includes submission of the requisite application fee, shall be given priority as to the time and place requested. The Department of Economic Development shall make reasonable efforts to consult with the other applicants in an attempt to find alternative times and/or locations that are acceptable.
- (3) Film permit applications must be submitted to the Department of Economic Development at least three days prior to the proposed effective date of the permit to avoid rush permit fees as outlined in section 15.4.11.
- (4) The Department of Economic Development shall compile and maintain rules and guidelines for filming, including the elements that are part of the filming, and shall apply those rules and guidelines equally regardless of the subject matter of the filming and/or the content of the speech therein.

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- (5) In the event that permission to perform an element is denied pursuant to subsection 15.14.6(2) above, the Department of Economic Development will process the remainder of the permit and grant all other aspects of the filming for which the requirements have been met.
 - (6) The Department of Economic Development may deny an application only if the director reasonably determines that one or more of the below-listed conditions exists. Prior to denial, the Department of Economic Development shall make reasonable efforts to consult with the producer in an attempt to resolve issues of concern and/or find alternative ways to accommodate the producer's filming needs, as described in subsections (7) through (10) of this section.
 - a. The filming poses an unreasonable risk of personal injury or property damage to people or property not associated with the filming;
 - b. The filming poses an unreasonable risk of damage to public property that could not be quickly and/or fully remediated;
 - c. The date and time requested for a particular filming location conflicts with previously-issued permits or permissions for filming, outdoor events, or other activities;
 - d. Use of the filming location, or use of the location during the date or time requested, would unreasonably interfere with the operation of city functions;
 - e. Use of the filming location or the proposed activity at the location would violate a law, ordinance, statute or regulation, regardless of whether the illegal activity is part of the message or content of the filming. A permit shall not be denied based upon simulation of an illegal activity where the actual illegal activity is not being performed;
 - f. The producer owes an outstanding debt to the city;
 - g. The producer previously caused significant damage to public property and, at the time of submitting the application under consideration, failed to adequately repair the damage or pay in full the city's invoice for damage repair and restoration services;
 - h. The producer previously violated this entertainment filming ordinance on two or more occasions, including without limitation by violating a material condition and/or restriction of a permit;
 - i. On two or more occasions, the producer's entertainment industry work in the city violated a city ordinance or other applicable law; and
 - j. The applicant made a material misrepresentation or gave incorrect material information on the application.
 - (7) Prior to denying an application, if the Department of Economic Development determines that the requested filming includes one or more of the conditions described in subsection (6)a., b., c., or d. of this section, the Department of Economic Development shall employ reasonable efforts to identify alternative filming locations, times and/or dates that eliminate the unacceptable conditions and that are mutually acceptable to the producer and the city. The producer shall modify the application to incorporate any agreed-upon alternatives.
 - (8) Prior to denying an application, if the Department of Economic Development determines that the requested filming or related activity creates a violation as described in subsection (6)c. of this section, the Department of Economic Development shall allow the producer to revise the application so that the filming activities comply with applicable law.
 - (9) Prior to denying an application pursuant to subsection (6)f. or g. of this section, the Department of Economic Development shall notify the producer of the potential denial and allow her/him to remedy the conditions described in those subsections. The Department of Economic Development shall process the application after such repair, restoration or payment is complete, and may require the producer to

obtain a refundable sanitation bond for the filming permit in an amount equivalent to the cost of the repair, restoration or debt.

- (10) Prior to denying an application pursuant to subsection (6)h., i. or j. of this section, the Department of Economic Development shall provide the applicant an opportunity to present documents or other evidence that refutes the director's finding of previous permit violations, of previous violations of the law, or of misrepresentation or misinformation on the application, as applicable.
- (11) Where the director has complied with subsections (7), (8), (9) and/or (10) of this section and reasonably determines that one or more of the conditions set forth in subsection (6) of this section continues to exist and that the application should therefore be denied, the director shall issue a written communication to the applicant that includes a detailed explanation for the denial. Nothing in this subsection shall preclude the director from also notifying the applicant orally.
- (12) If the director denies an application, the applicant shall have the right to appeal the decision to the city manager or his designee, provided that a written request for such appeal is made to the city manager within three business days after the applicant's receipt of the director's determination. The person considering the appeal must be impartial, and must have had no involvement in the director's decision. The appeal shall be heard or considered within three business days after the city receives the applicant's request, and shall be decided de novo. The person considering the appeal shall evaluate the application and the director's decision in accordance with the criteria of this article XIV.
- (13) The person considering the appeal may issue his decision verbally, and shall issue a written decision within three business days of receiving written evidence from the applicant and/or meeting with the applicant, whichever is later. The written decision shall be the final decision of the city regarding the application. The applicant or producer may appeal the decision by writ of certiorari to the Superior Court of DeKalb County pursuant to the procedures set forth by Georgia law.
- (14) In no event shall the director's or any city employee's evaluation of whether to grant or deny the application, including any of the elements, include consideration of:
 - a) The race, color, creed, religion, gender, age, disability, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, political affiliation or associational relationships of the applicant, producer or any person associated with the filming; or
 - b) The message or content of the filming.

(Ord. No. 2017-10-03, § 1(15.14.7), 10-16-2017; Ord. No. 2023-01-02 , § 1(Exh. A), 1-23-2023)

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

- (1) After receiving a permit, the producer may request a material modification of the permit at any time by submitting to the Department of Economic Development a change request and change fee as set forth in section 15.14.11. The Department of Economic Development's ability to process the change request shall be determined pursuant to the provisions established for processing applications, as set forth in subsections 15.14.7(2) and (3) above. The director's decision of whether to grant or deny the modification request shall be determined as set forth in subsections 15.14.7(4) through (14). Submission of a change request will not impact the validity of the permit already issued, except upon written request of the producer.
- (2) Where a producer has obtained a permit and abides by the material requirements thereof, the permit shall prevent the city's stoppage of activities that are authorized by the permit, except as otherwise set forth in subsection (3) of this section or as a result of applicable law.

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

(Ord. No. 2017-10-03, § 1(15.14.8), 10-16-2017)

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

- (1) A producer or producer's designee must have the permit on-site at the time and location of the filming, and must also have on-site any other permits required for that location by the department or any other governmental agency.
- (2) A producer must confine filming to the locations, times, guidelines and conditions specified in the permit and must abide by all other material terms of the permit.
- (3) Permits are not transferable.
- (4) A producer must clean and repair the filming location, and restore it to the condition it was in immediately prior to the filming, unless otherwise agreed upon in writing by the director and the producer. The department will inspect the filming location after the filming is completed to ascertain whether this requirement has been met. Where a producer fails to fulfill this requirement, the director will bill the

producer for the cleaning, repair and/or restoration costs borne by the city, and the producer must pay the invoice in full within 30 days of receipt.

- (5) Permits shall require the producer to notify the department within three hours or sooner of learning of any emergency event regarding or arising from the filming that involves the media, the police or fire departments or emergency medical services.
- (6) A producer is responsible for:
 - (a) Knowing and complying with all city ordinances and other laws applicable to the filming and to the other activities arising from the producer's permit; and
 - (b) Requiring and using commercially reasonable efforts to enforce the requirement that any person working for or at the direction of the producer (including without limitation contractors) complies with all city ordinances and other laws applicable to the filming and to the other activities arising from the permit.
- (7) The requirements of subsection (6) of this section shall include without limitation that the producer is responsible for obtaining any and all permissions, licenses or other required authorizations for use of intellectual property, including intellectual property which is on public property but is not owned by the city.
- (8) Permits shall prohibit a producer from acting as a representative or agent of the city, and from indicating city endorsement of the filming, except as otherwise agreed to in writing by the director. This provision shall not prohibit the producer's use of the city logo in the filming credits.
- (9) The director shall require that notification be given to residents and businesses within a three-block radius of a location for which a filming permit has been issued. The director may provide the notification, may require the producer to provide the notification, or may utilize a different mechanism for providing notification. The notification must state that a filming permit has been issued, and must include the dates, times, locations and activities that are authorized by the permit. Additionally, the director shall require that notification be given to the councilmember representing the district in which the filming will occur. The director shall determine the most effective means and timing of notification based upon factors such as the type of impact that the filming will have on the neighborhood, the time between receipt of the application and commencement of the filming, the producer's budget and previous communications from a neighborhood regarding notification preferences.

(Ord. No. 2017-10-03, § 1(15.14.9), 10-16-2017)

Sec. 15.14.10. Other permit requirements.

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

- (1) The producer signs an indemnification provision on the permit whereby the producer agrees to indemnify the city and its officials and employees from all claims, losses and expenses, including attorneys' fees and costs, that may arise from the permit and any of the activities performed pursuant to the permit by, on behalf of, or at the direction of the producer;
- (2) The producer signs a provision agreeing to comply with all applicable environmental laws, including an agreement not to allow legally-prohibited contaminants from entering the sewage and stormwater drainage systems serving the area where the filming will occur. The producer must sign a separate indemnification clause, such as the one described in subsection (1) of this section, that pertains specifically to environmental breaches and includes without limitation the fines and clean-up costs associated therewith;

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- (3) The producer obtains insurance coverage in an amount determined by the director, covers the city as an additional insured on the policy, and provides proof of the coverage.
 - (4) The producer pays the permit fee and any other applicable fees set forth in section 15.14.11 below.

(Ord. No. 2017-10-03, § 1(15.14.10), 10-16-2017)

Sec. 15.14.11. Fee schedule.

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

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

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

(Ord. No. 2017-10-03, § 1(15.14.11), 10-16-2017)

Secs. 15.14.12—15.14.100. Reserved.

ARTICLE XV. NONCONSENSUAL TOWING

Sec. 15.15.1. Definitions.

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

Nonconsensual towing means towing without the prior consent or authorization of the owner or operator of the motor vehicle being towed.

Wrecker means an automotive vehicle with hoisting apparatus and equipment for towing or hauling wrecked or disabled automobiles or other vehicles. The term "wrecker" includes any vehicle otherwise equipped and used for the purpose of towing or hauling wrecked or disabled automobiles or vehicles.

(Ord. No. 2017-08-05, § 8(15.15.1), 8-7-2017)

Sec. 15.15.2. License required; nontransferable.

It is unlawful for any person to operate or cause to be operated, any wrecker or tow truck engaging in nonconsensual towing within the boundaries of the city without first having obtained a nonconsensual towing license from the city. The nonconsensual towing license shall not be transferable.

(Ord. No. 2017-08-05, § 8(15.15.2), 8-7-2017)

Sec. 15.15.3. Revocation of license.

- (a) The City Manager or his designee shall revoke the nonconsensual towing license of any wrecker owner or operator when such person has been found in violation of any of the terms of this article or upon any of the following grounds:
 - (1) If the registration was procured by fraudulent conduct or false statement of a material fact as to ownership, use, possession or operation.
 - (2) If the owner or licensee is found at the scene of an accident in violation of this Code.
 - (3) If the licensee impounds any vehicle, without the consent of its owner, to any impound lot located more than five miles outside of the limits of the city.
- (b) This revocation shall terminate all authority and permission granted by the registration to the wrecker owner. Any person whose registration has been revoked shall not be eligible to again apply for a license for a period of one year from the date of the issuance of the original license.
- (c) Any person whose license has been revoked may file an appeal therefrom in accordance with article XVI of this chapter.

(Ord. No. 2017-08-05, § 8(15.15.3), 8-7-2017)

Sec. 15.15.4. Fees charged for nonconsensual towing.

Any wrecker service engaged in the business of providing nonconsensual towing service shall not charge the owner or operator of any towed motor vehicle more than the maximum rates published in the Nonconsensual Towing Maximum Rate Tariff prescribed by the state department of public safety. No storage fees shall be charged for the first 24-hour period from the time the motor vehicle is removed from the property. The fees stated in the maximum rate tariff shall be all inclusive; no additional fees may be charged for the use of dollies, trailers, lifts, slimjims or any other equipment or service. Only charges or rates for storage and removal that are approved by the state department of public safety and contained in the state department of public safety's maximum rate tariff for nonconsensual towing shall be billed or collected by the wrecker service for towing or storage services; and it is a violation of this rule for any wrecker service to bill or collect fees or charges which are not expressly permitted by such maximum rate tariff.

(Ord. No. 2017-08-05, § 8(15.15.4), 8-7-2017)

ARTICLE XVI. APPEALS

Sec. 15.16.1. Administration; procedure for grievances and appeals.

The City Manager or his designee shall administer and enforce the provisions of this article. Should an aggrieved person or entity desire to appeal a decision under this chapter, the following procedure shall apply:

- (a) A notice of appeal must be filed within 15 calendar days after receipt of the decision complained of. The notice of appeal shall be in the form of a letter, and shall clearly identify all objections or exceptions taken to the decision city manager or his designee. The notice of appeal shall also contain an address for receipt of future notices and decisions of the certificate hearing officer. Should the aggrieved person or entity fail to file a notice of appeal within the time allowed, the right to appeal is lost.

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- (b) Upon receipt of a timely and proper notice of appeal, appellant shall be notified, in writing, of the date, time and place where a hearing will be held. The hearing shall be held before the certificate hearing officer within 45 calendar days of the date the notice of appeal is filed, but not sooner than ten calendar days after the appellant receives notice of the hearing. City Manager or his designee shall transmit to the hearing officer all documents or materials constituting the record of the action or proceedings below.
 - (c) If the City Manager or his designee deems it necessary that an audit of the financial books/records of appellant be conducted, the city shall notify appellant in writing of a reasonable date, time and place for the audit, which shall be conducted prior to the date of a hearing on the matter. City Manager or his designee may hire outside auditors for this purpose. The expense of hiring outside auditors shall be borne by the city if the position of the appellant is sustained by the audit. If not, the expense of the outside auditors shall be due and payable from appellant as part of the costs of appeal.

(Ord. No. 2017-08-05, § 8(15.16.1), 8-7-2017)

Sec. 15.16.2. Stay of proceedings while under appeal.

An appeal under this article shall stay all legal proceedings with regard to collection of the occupation tax from an appellant; however, such appeal shall not preclude the city from pursuing legal proceedings to enjoin any violation of this article or of any other article of this Code.

(Ord. No. 2017-08-05, § 8(15.16.2), 8-7-2017)

Sec. 15.16.3. Certificate review hearing officer.

A certificate review hearing officer shall be appointed by the mayor and approved by the City Council. The certificate review hearing officer shall have the following duties:

- (a) To hear appeals from decisions of the City Manager or his designee denying the issuance or renewal of any license pertaining to this chapter, except those licenses issued pursuant to article XII of this chapter;
- (b) To hear appeals from the decisions of the City Manager or his designee revoking or suspending any license pertaining to this chapter, except those licenses issued pursuant to article XII of this chapter;
- (c) To hear appeals from the decisions of the City Manager or his designee denying the issuance of permits pertaining to this chapter, except those permits issued pursuant to article XII of this chapter;
- (d) To hear appeals from the decisions of the City Manager or his designee revoking or suspending an employee permit to this chapter, except those permits issued pursuant to article XII of this chapter.

(Ord. No. 2017-08-05, § 8(15.16.3), 8-7-2017)

Sec. 15.16.4. Hearings.

In all hearings pursuant to this chapter, the following procedures shall prevail, and the proceeding shall be as informal as compatible with justice:

- (a) A certificate review hearing officer shall convene the hearing.
- (b) The proceeding before the certificate hearing officer shall be recorded, and all documents and other materials considered by the certificate hearing officer shall be preserved as the record of the

proceedings. The record of the proceedings shall be preserved for not less than 150 calendar days after the hearing.

- (c) Any alleged violations or misconduct levied against the appellant and scheduled for a hearing before the certificate hearing officer shall be read completely to appellant at the commencement of the hearing, unless waived by appellant.
- (d) The certificate hearing officer may receive evidence in support of the alleged violations or misconduct as filed against appellant. Decisions of the certificate review hearing officer are to be supported by the evidence accepted and admitted during the hearing.
- (e) The city shall bear the burden of proof. The standard of proof shall be by a preponderance of the evidence.
- (f) The order of proof shall be as follows: The city representative shall present the case-in-chief in support of the alleged violations or misconduct; the appellant may present a case-in-chief, if desired. Each party may be allowed to present one case-in-rebuttal.
- (g) The appellant and city may be represented by counsel, may present evidence, and may examine and cross-examine witnesses. Additionally, the certificate review hearing officer is permitted to question witnesses. A party is permitted no more than 15 minutes to present that party's case-in-chief; a case-in-rebuttal is permitted no more than ten minutes of presentation. Presentation of arguments and evidence may be in oral or written form, except that affidavits of individuals who are unavailable for cross-examination shall not be accepted, admitted, or considered by the certificate review hearing officer.
- (h) Following the presentation of evidence, the hearing officer shall issue a written decision within 30 calendar days of the date of the hearing. A copy of the decision shall be mailed, via registered or certified mail, to the parties or the parties' representatives. For the appellant, the decision shall be mailed to the address provided on the notice of appeal. Should the certificate hearing officer fail to issue a timely decision, on the 31st day after the date of the hearing appellant may seek review as if a decision adverse to appellant had been rendered.
- (i) The findings of the certificate hearing officer shall be final unless a party files a petition for writ of certiorari to the superior court of the county within 30 calendar days of the decision of the certificate hearing officer.

(Ord. No. 2017-08-05, § 8(15.16.4), 8-7-2017)

Sec. 15.16.5. Service of notices.

For the purpose of this article, notice shall be deemed delivered when personally served or, when served by mail, within three days after the date of deposit in the United States mail.

(Ord. No. 2017-08-05, § 8(15.16.5), 8-7-2017)

ARTICLE XVII. TRANSITION PERIOD

Sec. 15.17.1. Existing license.

Any legal, validly issued existing license or permit issued by DeKalb County within the incorporated boundaries of the City of Stonecrest shall be valid within the City of Stonecrest for the calendar year of 2017. Any such licensee or permit holder shall be required to comply with the requirements of this chapter. At the expiration

of 2017, any such licensee or permit holder shall be required to comply with this chapter regarding the application of an initial permit, as if no previous license or permit had been held.

Nothing in this section should be construed as creating a right, vested or otherwise, to the license or permit originally issued by DeKalb County, or the renewal or issuance of said permit or license for any subsequent years by the City of Stonecrest.

(Ord. No. 2017-08-05, § 8(15.17.1), 8-7-2017)

ARTICLE XVIII. SHORT TERM VACATION RENTALS

Sec. 15.18.1. Purpose; intent.

The purpose of this article is to protect the public health, safety and general welfare of individuals and the community at-large through the establishment of reasonable regulations for the use of residential dwelling units as short-term vacation rentals

(Ord. No. 2018-06-01, § 4(15.18.1), 6-18-2018)

Sec. 15.18.2. Definitions.

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

Code compliance verification form means a document executed by a short-term vacation owner certifying that the short-term vacation unit complies with applicable zoning, building, health and life safety code provisions. No person shall allow occupancy or possession of any short-term vacation rental unit if the premises is in violation of any applicable zoning, building, health or life safety code provisions.

Short-term vacation rental occupants means guests, tourists, lessees, vacationers or any other person who, in exchange for compensation, occupy a dwelling unit for lodging for a period of time not to exceed 30 consecutive days.

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."

Short-term vacation rental agent means a natural person designated by the owner of a short-term vacation rental on the short-term vacation rental certificate application. Such person shall be available for and responsive to contact at all times and someone who is customarily present at a location within the city for the purposes of transacting business.

(Ord. No. 2018-06-01, § 4(15.18.2), 6-18-2018)

Sec. 15.18.3. Application.

- (a) No person shall rent, lease, or otherwise exchange for compensation all or any portion of a single-family dwelling as short-term vacation rental, as defined in section 15.18.2, without first obtaining a business tax certificate from the City Manager or his designee and complying with the regulations contained in this

section. No certificate issued under this chapter may be transferred or assigned or used by any person other than the one to whom it is issued, or at any location other than the one for which it is issued.

- (b) Applicants for a business tax certificate shall submit, on an annual basis, a registration for a short-term vacation rental to the City. The application shall be furnished on a form specified by the City Manager, accompanied by a non-refundable application fee as established in 15.18.4. Such application should include:
- (1) The complete street address of the STVR;
 - (2) Ownership, including the name, address, e-mail and telephone number of each person or entity with an ownership interest in the property;
 - (3) The number of bedrooms, the maximum occupancy and the number and location of off-street parking spaces on the premises and any off-premises parking applicable;
 - (4) The name, address and telephone number of a short-term vacation rental agent or local emergency contact if applicable;
 - (5) Any other information that this chapter requires the owner to provide to the city as part of the registration for a short-term vacation rental. The city manager or his designee shall have the authority to obtain additional information from the applicant as necessary to achieve the objectives of this chapter;
 - (6) The emergency contact number required by section 15.18.5;
 - (7) Any other information that this chapter requires the owner to provide to the city as part of an application for a short-term vacation rental certificate. The city manager or his designee shall have the authority to obtain additional information from the applicant as necessary to achieve the objectives of this chapter.
- (c) The application form pursuant to this section shall be processed and added to a database to be kept by the City Manager or his designee listing STVR unit information and any citations that occur. The city shall notify the owner and agent of any instances that result in a citation for a code violation or other legal infraction.
- (d) The owner or agent shall not be relieved of any personal responsibility or personal liability for noncompliance with any applicable law, rule or regulation pertaining to the use and occupancy of the single-family dwellings as a short-term vacation rental unit.

(Ord. No. 2018-06-01, § 4(15.18.3), 6-18-2018)

Sec. 15.18.4. Application fee/renewal.

- (a) The short-term vacation rental application shall be accompanied by an initial application fee and be subject to an annual application fee every January 1 thereafter, as established by the mayor and city council.
- (1) The 2018 rental application fee shall be \$100.00 per rental unit.
 - (2) The annual application fee thereafter shall be \$100.00 per rental unit. The annual application fee shall be due January 1 of each year and if not paid within 90 days thereof shall be subject to delinquency and penalties provisions of chapter 15, article II of the Code of Ordinances for Stonecrest, Georgia, as applicable to occupation tax/business license provisions. Every person holding a license as specified herein shall secure that license within 90 days after January 1 of each year, and pay for same as herein provided.
- (b) Each property shall be issued a business tax certificate.
- (c) Failure to apply for a business tax certificate as prescribed by this law will result in a fine of \$100.00 for each month that the unit continues to operate a valid business tax certificate.

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- (d) The annual application fee is not transferrable and should ownership of a unit change, the new owner must reapply and remit the application fee.
 - (e) In the event a management company changes, a new application will be required with a fee of \$25.00 to cover administrative costs.
 - (f) The business tax certificate number shall be included in any advertisement of the STVR.

(Ord. No. 2018-06-01, § 4(15.18.4), 6-18-2018)

Sec. 15.18.5. Emergency contact.

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. STVR applicants and agents are to work with city staff as to the implementation of such emergency contact facilities or equipment and, until the appropriate connection for emergency contact is established, occupancy of the STVR location without the connection is prohibited.

(Ord. No. 2018-06-01, § 4(15.18.5), 6-18-2018)

Sec. 15.18.6. Compliance.

All STVRs are responsible for complying with and remitting the City of Stonecrest's hotel and motel tax ordinance.

(Ord. No. 2018-06-01, § 4(15.18.6), 6-18-2018)

ARTICLE XIX. MOBILE FOOD VENDORS

DIVISION 1. GENERALLY

Sec. 15.19.1. Definitions.

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

Blind person means a person whose vision, with correcting glasses, is so defective as to prevent the performance of activities for which eyesight is essential. See O.C.G.A. § 49-4-51(b).

Disabled veteran means a resident of the state who may be either a war veteran or veteran of peace-time service as set forth below and such person must obtain a certificate of exemption issued by the state commissioner of veterans' service.

- (1) A war veteran must furnish satisfactory proof that he has a physical disability which is disabling to the extent of ten percent or more; that his service in the armed forces of the United States was terminated under conditions other than dishonorable; and that his service or some part thereof was rendered during a war period, as defined by an act of the Congress of the United States, approved March 20, 1933, entitled "An Act to Maintain the Credit of the United States," and commonly known as Public Law No. 2, 73rd Congress; or that some part of his service was rendered on or after December 7, 1941, and before December 31, 1946; or that some part of his service was rendered on or after June 27, 1950, and before January 31, 1955; or that some part of his service was rendered on or after August 5,

1964, and before May 8, 1975. Proof of such ten percent disability shall be established upon the written certificate of two physicians as to such disability, or by a letter or other written evidence from the United States Department of Veterans Affairs or the Department of Veterans Service stating the degree of disability, or by written evidence from the branch of the armed forces of the United States in which such veteran served.

- (2) A veteran of peace-time service in the United States armed forces must furnish proof that he has a physical disability to the extent of 25 percent or more incurred in the line of duty during the period of such service by a letter or other evidence from the United States Department of Veterans Affairs or the Department of Veterans Service stating the degree of disability or by written evidence from the branch of the armed forces of the United States in which such veteran served and that his service in the armed forces of the United States was terminated under conditions other than dishonorable.
- (3) That disabled veterans and blind persons shall only have to show proof of their disability upon their initial application, as opposed to annually. If the current language of O.C.G.A. § 43-12-2 is amended, then this definition of disabled veteran shall be controlled by O.C.G.A. § 43-12-2, as amended.

Food truck means any motor vehicle used for vending of prepared food items to the public from designated food truck areas.

Items permissible for sale means items which may be offered for sale by and are limited to non-alcoholic pre-packaged beverages; pre-packaged food; prepared food; and prepared non-alcoholic beverages. Items permissible for sale shall not include any tobacco products.

Moral turpitude means the act or behavior of baseness, vileness or the depravity in private and social duties which people owe to their fellow people, or to society in general, contrary to accepted and customary rule of right and duty between person and person; act or behavior that gravely violates moral sentiment or accepted moral standards of community and is a morally suitable quality held to be present in some criminal offenses as distinguished from others.

Non-alcoholic pre-packaged beverages means beverages sealed in plastic or aluminum single serving containers excluding all beverages in glass containers, and excluding all alcoholic, including, but not limited to, malt beverages, wine and distilled spirits.

Operating area means:

- (1) The area in which a vendor may operate from a vending cart and which may not exceed 28 square feet of sidewalk including the area of the vending cart, and, when externally located, the operator and trash receptacle; or
- (2) The parameters of the food truck.

Pre-packaged food means single serving sealed packaged foods, including, but not limited to, candy, popsicles, chips/bagged snacks which do not require any heating or powered refrigeration, and the service of which does not require authorization by the DeKalb County Board of Health.

Prepared non-alcoholic beverages means beverages prepared on-site and which are not served in glass containers, and excluding all alcoholic beverages, including, but not limited to, malt beverages, wine and distilled spirits.

Prepared food means food prepared on-site, the sale of which requires authorization by the DeKalb County Board of Health.

Public property and public space both mean, for the purpose of this article, any property owned by the City of Stonecrest within street rights-of-way, including any roadways and sidewalks, but excluding city-owned parks.

Vending means vending activity as permitted on privately-owned commercial or industrial property under the jurisdiction of the City of Stonecrest and in specifically designated city-owned parks or property. Vending shall

only be permitted in city-owned parks or property where such activity is associated with a special event and/or subject to regulation under a more specific permit.

Valid vendor permit means a permit issued by the City of Stonecrest for a vendor of a vending cart or food truck. Such permit shall consist of a photo identification card which contains the vendor's name, photograph, vending type and classification, authorized valid vendor locations and time period for which such permit is valid.

Vending cart means a vending cart at which prepared food, prepared non-alcoholic beverages, pre-packaged food and non-alcoholic pre-packaged beverages may be offered for sale.

Vendor means any person who has been issued a valid vendor permit.

(Ord. No. 2018-10-01, § 1(15.19.1), 10-3-2018)

Sec. 15-19-2. Purpose, intent and applicability.

- (a) Vending on public property in the incorporated boundaries of the city, as defined in this article, shall be prohibited. Vending on privately-owned commercial or industrial property without a permit issued pursuant to this article shall be unlawful and a person violating this article shall, upon conviction, be punished as provided by this Code.
- (b) It is the intent of council in enacting this article to:
 - (1) Serve and protect the health, safety and welfare of the general public.
 - (2) Establish a uniform set of rules and regulations which are fair and equitable.
 - (3) Provide economic development opportunities for small entrepreneurs in the city.
 - (4) Provide a variety of goods and services for sale.
 - (5) Promote stable vendors who will enrich the city's ambiance and be assets to public security.

(Ord. No. 2018-10-01, § 1(15-19-2), 10-3-2018)

Sec. 15-19-3. Vending business required to remit sales taxes and keep records.

- (a) Every vendor shall file with Georgia Department of Revenue (GDOR) the appropriate forms and remit monthly sale tax revenues to GDOR. Nothing in this section shall prohibit the revocation of any permit in accordance with the provisions of division 2 of this article.
- (b) Prospective vendors, by filing a business license application, agree to produce documents and records which may be considered pertinent to the ascertainment of facts relative to the issuance and maintenance of the permit, including, but not limited to, the following:

Records of sales and receipts for purchases and expenses from any business in which a vendor has any interest.

(Ord. No. 2018-10-01, § 1(15-19-3), 10-3-2018)

Sec. 15-19-4. Vending operational rules.

- (a) Hours of operation shall be between 7:00 a.m. and 6:00 p.m., or as previously approved by the City Manager or his designee in connection with a special event permit.
- (b) Any and all signage must comply with the City of Stonecrest Code of Ordinances, chapter 21.

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- (c) Vendors may offer items permissible for sale only.
 - (d) All vendors shall display their valid vending permits, photo identification card, and any required copies of licensing agreements at the valid vendor location.
 - (e) All vendors must maintain an auditable point-of-sale system to track and report on sales revenue and appropriate taxation in accordance with the requirements of section 15-19-3.
 - (f) Vending operations may not obstruct vehicular traffic flow except for up to 15 minutes to load and unload vending carts and merchandise.
 - (g) Vending operations, including, but not limited to, the display of merchandise and may not exceed the approved operating area.
 - (h) Vending carts and/or food trucks shall not be left unattended or stored at any time in the operating area when vending is not taking place or during restricted hours of operation.
 - (i) Vending carts and/or food trucks should not occupy more than one standard parking space.
 - (j) Vending carts and/or food trucks shall not operate on vacant or undeveloped lots.
 - (k) Vending carts and/or food trucks shall be located within 100 yards of the principal structure of the lot upon which it intends to vend.
 - (l) Vending carts and/or food trucks are allowed to stay at any one place of operation for a maximum of four hours.
 - (m) Vendors offering prepared food shall obtain the proper authorization and permits from the DeKalb County Board of Health or the comparable department of another municipality.
 - (n) Vendors offering pre-packed food and prepackaged beverages shall obtain the proper authorization from the Georgia Department of Agriculture.
- (Ord. No. 2018-10-01, § 1(15-19-4), 10-3-2018)

Sec. 15-19-5. Aesthetic standards.

Vending carts must comply with the following aesthetic standards:

- (a) Length of the cart may not exceed seven feet and width may not exceed four feet in height, excluding canopies, umbrellas, or transparent enclosures; may not exceed five feet;
- (b) Canopies shall have a minimum clearance of seven feet and a maximum height of nine feet, six inches above the sidewalk;
- (c) Canopies may not exceed 48 square feet (eight feet by six feet);
- (d) All carts must be mobile, and able to roll on wheels;
- (e) The design, materials, and colors are to be of natural wood or metal products and considerate of the immediate surroundings of the proposed location;
- (f) Materials must be in working order, and may not include peeling paint, visible defects or areas requiring maintenance;
- (g) The wheels located under the cart are preferred; however projecting wheels must have fenders;
- (h) Hitches attached to the cart must be removable and detached when in operation; and
- (i) If used, propane tanks must be enclosed.

(Ord. No. 2018-10-01, § 1(15-19-4), 10-3-2018)

Secs. 15-19-6—15-19-20. Reserved.

DIVISION 2. PERMITS AND LICENSES

Sec. 15-19-21. Vendor permit and business license required.

- (a) No vending shall occur without a permit issued pursuant to this article.
- (b) No person shall engage in the business or trade of vending without first obtaining a business license. Disabled veterans and blind persons, as defined by O.C.G.A. § 43-12-1 and section 15.19.1 of this Code, are exempt from payment of business license fees, but must obtain such licenses.
- (c) All valid vendor permits are nontransferable, and must be displayed in clear view, together with the vending permit photo identification card, at the permitted location or designated food truck area at all times when the vendor or assistant vendor is present.

(Ord. No. 2018-10-01, § 1(15-19-21), 10-3-2018)

Sec. 15-19-22. Application.

- (a) An application shall be required by all persons seeking issuance of a valid vendor permit. Each applicant must apply in person and complete an application form. Application forms may be obtained from and filed with the office of revenue.
- (b) Permit fees and applicable maintenance fees are due and payable in the manner required by the City Manager or his designee if and when the application is approved by the City.
- (c) An application for permit, including the proposed vending areas, must be submitted the City Manager of his designee for approval at least 30 calendar days prior to the proposed vending start date. The City Manager or his designee shall approve, deny, or request addition information from the applicant within 14 business days.
- (d) The application shall, at a minimum, consist of the following data:
 - (1) Applicant's name and current address.
 - (2) Applicant's previous addresses within the last five years.
 - (3) Social Security number.
 - (4) Proposed vending locations.
 - (5) Certification of approval of vending location from the private property owner.
 - (6) A dimensional site plan drawing for each vending location within the city which clearly shows the footprint and placement of the cart and the operating area.
 - (7) The times and days/dates during which the vendor estimates they will vend on the proposed property.
 - (8) GDOR retail identification tax number.
 - (9) State issued picture identification.
 - (10) City business license.

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(11) A general description of the items permissible for sale to be sold or offered for sale.

- (e) All applicants shall furnish all data, information and records requested of them by the City Manager or his designee within ten days from the date of request. Failure to furnish such information within ten days shall automatically dismiss, with prejudice, the application.

(Ord. No. 2018-10-01, § 1(15-19-22), 10-3-2018)

Sec. 15-19-23. Term and renewal of permits.

- (a) A valid vendor permit will be issued for a one-year period. When the one-year permit expires, a vendor may apply for a renewal permit which allows the vendor to vend for another one-year period. All valid vendor permits are required to be renewed annually on or before March 1. All annual permit fees and applicable annual maintenance fees are due and payable at the time of renewal.
- (b) Vendors may present to the City Manager or his designee an application for a renewal permit. Upon a review and approval of the renewal application, satisfaction of all other license and permit requirements, and upon payment of the appropriate fees as indicated in section 15-19-24, the vendor shall be furnished with a renewal permit.
- (c) Each applicant for a renewal application shall submit an application which shall at a minimum consist of the data required for the issuance of an initial permit as set forth in section 15-19-22.

(Ord. No. 2018-10-01, § 1(15-19-23), 10-3-2018)

Sec. 15-19-24. Annual fees.

- (a) Annual permit fees and applicable annual maintenance fees are due and payable upon approval of the application.
- (b) The annual permit fee for all valid vendor permits shall be \$75.00.

(Ord. No. 2018-10-01, § 1(15-19-24), 10-3-2018)

Sec. 15-19-25. Location.

- (a) Valid vendor locations shall:
- (1) Not be within 15 feet of street intersections or pedestrian crosswalks or 15 feet of building entrances/exits or within 50 feet of hotels/motels;
 - (2) Not be within 15 feet of a driveway, bus stop, crosswalk, or intersection;
 - (3) Provide a minimum of five feet of unobstructed pedestrian space;
 - (4) Not be within 15 feet of a fire hydrant driveway; and
 - (5) Not be within 600 feet of the closet property line of any public or private elementary, middle or high school.

(Ord. No. 2018-10-01, § 1(15-19-25), 10-3-2018)

Sec. 15-19-26. Notification of name change or change of address.

Whenever either the name or address provided by the vendor on the application for a valid vendor permit changes, the vendor shall notify the City Manager or his designee in writing within ten days of such change and provide same with the name change or address change. Vendors shall ensure that a current and correct name, residence address and mailing address are on file with the City Manager or his designee at all times.

(Ord. No. 2018-10-01, § 1(15-19-26), 10-3-2018)

Sec. 15-19-27. Denials, fines, suspensions and revocations.

- (a) No valid vendor permit shall be issued to any person who has been convicted within five years immediately prior to the filing of the application for any felony or misdemeanor relating to drug possession and related matter; crimes of moral turpitude; larceny, fraudulent conveyance, perjury and/or false swearing, or subrogation. Any conviction for dealing and/or trafficking in illegal drugs will automatically disqualify an applicant.
- (b) Failure to maintain initial qualifications shall be grounds for revocation or denial of a renewal permit.
- (c) A denial, fine, suspension, revocation of any permit issued pursuant to this article may be imposed for any of the following causes:
 - (1) Fraud, misrepresentation or false statements contained in the application.
 - (2) Failure on the part of a vendor to maintain initial eligibility qualifications.
 - (3) Failure to furnish any and all documentation requested by either the police department, the office of revenue or the license review board for the purposes of the investigation of any application or for the inspection of records pursuant to this division within 30 days of such request.
 - (4) Any failure to comply with any requirement set forth in this article or this Code.
- (d) Any person whose permit is revoked may not reapply until one year following the effective date of the revocation.
- (e) In addition to carrying out all other investigations as may be permitted under this article, the license and permits unit shall investigate any alleged violation of this article upon receipt of a written, sworn complaint by any person who witnesses or becomes aware of a potential violation. Such complaint shall be signed under penalty of perjury, and shall be accompanied by any supporting evidence.

(Ord. No. 2018-10-01, § 1(15-19-27), 10-3-2018)

Sec. 15-19-28. Appeal on suspension, fine, revocation or denial.

A person to whom the city refuses to issue a vendor's permit or whose vendor's permit is suspended or revoked may file an appeal therefrom in accordance with article XVI of this chapter.

(Ord. No. 2018-10-01, § 1(15-19-27), 10-3-2018)

Sec. 15-19-29. Vendors selling ice cream or other pre-packaged food and/or non-alcoholic pre-packaged beverages out of motor vehicles.

- (a) Vendors selling ice cream or other pre-packaged food and/or non-alcoholic pre-packaged beverages out of motor vehicles shall be subject to this section. Vendors permitted in accordance with this section shall not be permitted to sell prepared food or prepared non-alcoholic beverages.
- (b) Every vendor selling ice cream or other pre-packaged food and/or non-alcoholic pre-packaged beverages out of motor vehicles pursuant to this section shall, before making any sale, park the vehicle at the right curb and at least eight feet from any other vehicle that may be parked on the street and not less than 100 feet from any intersecting street. When the vending vehicle stops, all sound equipment or other devices used to notify customers of the presence of the vendor shall be stopped and shall not be resumed until the vehicle is again put in motion.
- (c) No vehicle using sound equipment or other method of attracting customers shall operate such equipment between the hours of 9:00 p.m. and 9:00 a.m. daily. On days in which schools are actually in session, no motor vehicle shall be operated within 600 feet of any public school in the city one hour before or one hour after published school hours.
- (d) Vendors selling ice cream or other pre-packaged food and/or non-alcoholic pre-packaged beverages out of motor vehicles pursuant to this section, shall not stop or stand and do business for more than 30 minutes.
- (e) Vendors selling ice cream or other pre-packaged food and/or non-alcoholic pre-packaged beverages out of motor vehicles pursuant to this section shall not be restricted to an operational area or location specifically described in section 15-19-25.

(Ord. No. 2018-10-01, § 1(15-19-29), 10-3-2018)

Chapter 16 MISCELLANEOUS PROVISIONS AND OFFENSES

TEXT AMENDMENT

ARTICLE I. IN GENERAL

TMOD 24-002 HOURS OF OPERATION BASED ON USE

TMOD 24-003 ALCOHOL/ HOURS OF OPERATION BASED ON USE

Sec. 16-1. Fines and punishment.

Unless otherwise specified, any person found guilty of violating any provision of this chapter shall be punished in a manner consistent with this Code and Georgia law.

(Ord. No. 2018-10-03, § 16-1, 10-15-2018)

Sec. 16-2. Criminal impersonation.

- (a) As used in this section, the term "intent to defraud" means the use of deception with the intention to injure another's interest which has economic or monetary value.

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- (b) A person commits the offense of criminal impersonation if the individual:
- (1) Assumes a false identity and commits any act in their assumed character with the intent to defraud another; or
 - (2) Pretends to be a representative of some person or organization and commits any act in their pretended capacity with the intent to defraud another.

(Ord. No. 2018-10-03, § 16-2, 10-15-2018)

Sec. 16-3. False representation of age.

It shall be unlawful for any person to misrepresent his age in any manner whatever for the purpose of gaining entrance to events or establishments that require a minimum age, including, but not limited to, bars, nightclubs, movies, video stores, bookstores or bingo parlors.

(Ord. No. 2018-10-03, § 16-3, 10-15-2018)

Sec. 16-4. Aiding, encouraging minor to commit unlawful act.

No person shall aid, abet or encourage a minor to do any act which constitutes a violation of any State law or this Code.

(Ord. No. 2018-10-03, § 16-4, 10-15-2018)

Secs. 16-5—16-19. Reserved.

ARTICLE III. OFFENSES AGAINST PUBLIC PEACE, ORDER AND SAFETY

DIVISION 1. GENERALLY

Sec. 16-20. Disorderly conduct.

- (a) It shall be unlawful for any person to disturb or endanger the public peace or decency by any disorderly conduct.
- (b) The following acts, among others, are declared to be disorderly conduct:
- (1) Act in a violent or tumultuous manner toward another whereby any person is placed in fear of the safety of such person's life limb or health;
 - (2) Act in a violent or tumultuous manner toward another whereby the property of any person is placed in danger of being damaged or destroyed;
 - (3) Cause, provoke or engage in any fight, brawl or riotous conduct so as to endanger the life, limb, health or property of another;
 - (4) Assemble or congregate with another or others for the purpose of gaming;
 - (5) Be in or about any place, alone or with others, with the purpose of or intent to engage in any fraudulent scheme, trick or device to obtain any money or valuable thing or to aid or abet any person doing so;

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- (6) Be in or about any place where gaming or illegal sale or possession of alcoholic beverages or narcotics or dangerous drugs are practiced, allowed or tolerated, for the purpose of or intent to engage in gaming or the purchase, use, possession or consumption of such illegal drugs, narcotics or alcohol;
 - (7) Direct fighting words toward another, that is, words which by their very nature tend to incite an immediate breach of the peace;
 - (8) Interfere, by acts of physical obstruction, with another's pursuit of a lawful occupation;
 - (9) Congregate with another or others in or on any public way so as to halt the flow of vehicular or pedestrian traffic, and to fail to clear that public way after being ordered to do so by a City official, police officer or other lawful authority;
 - (10) Stand or remain in or about any street, sidewalk, overpass, or public way so as to impede the flow of vehicular or pedestrian traffic, and to fail to clear such street, sidewalk, overpass or public way after being ordered to do so by a City Official, police officer or other lawful authority;
 - (11) Disrupt by actions which tend to cause an immediate breach of the peace the undisturbed activities of any house of worship, hospital, or home for the elderly; or
 - (12) Throw bottles, paper, cans, glass sticks, stones, missiles, or any other debris on public property.
 - (13) Hosting a "party house," as defined in the zoning ordinance, in violation of any provisions related to same in the zoning code or any other applicable ordinance of the city.
 - (14) Attending a "party house," as defined in the zoning ordinance, and causing any disturbance in violation of the city's noise ordinance or being visibly drink in the front yard of the "party house" or public street.

(Ord. No. 2018-10-03, § 16-20, 10-15-2018; Ord. No. 2019-11-04 , § III, 11-25-2019)

Sec. 16-21. Obstruction and interference.

- (a) It shall be unlawful for any person to intentionally interfere or hinder a city official, employee, or agent when such official, employee or agent either has properly identified himself or is otherwise identifiable as such and is engaged in the lawful performance of his official duties.
- (b) It shall be unlawful for any person to give a false name, address or date of birth, or any other false information, to any city official, employee, or agent in the lawful discharge of his official duties with the intent to mislead such official, employee or agent in any way.
- (c) It shall be unlawful for any person to refuse to provide identification, address or date of birth to a code enforcement officer, police officer or fire marshal while said officer is conducting an investigation and the officer has reasonable belief that said individual committed a crime, is committing a crime or is about to commit a crime. However, said person shall not be compelled to answer any other inquiry.

(Ord. No. 2018-10-03, § 16-21, 10-15-2018)

Sec. 16-22. Begging, panhandling or soliciting on public property, sidewalks and streets; certain designated places prohibited.

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

Aggressively beg, panhandle or solicit means any request made in person for a donation of money or some other article of value from another person by an unwanted touching, detaining, impeding or intimidation.

Aggressive begging, panhandling or soliciting usually includes approaching or following pedestrians; repetitive begging, panhandling or soliciting despite refusals; the use of abusive or profane language; unwanted physical contact; or the intentional blocking of pedestrian and vehicular traffic. Also, any person who intentionally blocks the passage of another person or a vehicle, which requires another person to take evasive action to avoid physical contact, is an aggressive panhandler.

Beg, panhandle or solicit means any request made in person for a donation of money or some other article of value, either by words, bodily gestures, signs or other means, from another person.

Beg, panhandle, or solicit from any operator or occupant of a vehicle that is in traffic on a public street means any request made in person for a donation of money or some other article of value, either by words, bodily gestures, signs or other means, from any operator or occupant of a vehicle, coupled with an actual exchange of money or some other article of value between the person begging, panhandling or soliciting and any operator or occupant of a vehicle while that vehicle is on the portion of a public street currently in use by vehicular traffic.

Beggar, panhandler or solicitor means any person traveling either by foot, vehicle or other conveyance, from place to place, requesting in person a donation of money or some other article of value, either by words, bodily gestures, signs or any other means, from another person.

Obstruct pedestrian or vehicular traffic means to walk, stand, sit, lie or place an object in such a manner as to intentionally block passage of another person or a vehicle, or to require another person or driver of a vehicle to take evasive action to avoid physical contact. Acts authorized as an exercise of one's constitutional right to picket or to legally protest, and acts authorized by permit are not included within the definition of this term.

Public place means an area generally visible to public view and, includes, but is not limited to, alleys, bridges, buildings, driveways, parking lots, parks, plazas, sidewalks and streets open to the general public, including those areas that serve food or drink or provide entertainment or other services, outdoor cafes, public restrooms, and the doorways and entrances to buildings or dwellings and the grounds enclosing them.

(b) *Restrictions and requirements.*

- (1) Beggars, panhandlers or solicitors are prohibited from intentionally obstructing pedestrian or vehicular traffic.
- (2) Beggars, panhandlers or solicitors are prohibited from aggressively begging, panhandling or soliciting.
- (3) Beggars, panhandlers or solicitors are prohibited from begging, panhandling or soliciting from any operator or occupant of a vehicle that is in traffic on a public street, as those terms are defined in this article.
- (4) Any operator or occupant of a vehicle that is in traffic on a public street is prohibited from offering money or some other article of value to a beggar, panhandler or solicitor resulting in the actual exchange of money or some other article of value between the person begging, panhandling or soliciting and the operator or occupant of a vehicle while that vehicle is on the portion of a public street currently in use by vehicular traffic.
- (5) No person shall stand on a traffic median, bicycle path or public street to beg, panhandle or solicit when to do so would obstruct vehicular traffic.
- (6) Begging, panhandling, soliciting or aggressive begging, panhandling or soliciting are prohibited at the following places:
 - a. At an outdoor cafe;
 - b. Within 12 feet of an outdoor cafe;
 - c. In a public restroom;
 - d. From any person standing in line to enter a building or event;

- e. Within 12 feet of a line to enter a building or event;
- f. Within 12 feet of the entrance or exit of a building;
- g. From any person using an automated teller machine, or any electronic information processing device which accepts or dispenses cash in connection with a credit, deposit or convenience account (ATM);
- h. Within 12 feet of an ATM;
- i. From any person using a pay phone;
- j. Within 12 feet of a pay phone.

(Ord. No. 2018-10-03, § 16-22, 10-15-2018)

Sec. 16-23. Reserved.

A.

B.

C. Hours of Operation Based on Uses

- a. Pawnbrokers may not keep open their places of business except between 7 a.m. and 9:00 p.m. Monday through Saturday (Section 15.5.9)
- b. Precious Metal Dealers may not keep open their places of business except between 7:00 a.m. and 9:00 p.m. (Section 15.6.9)
- c. Peddlers, Door to Door Sales and Similar Occupations
- d. Soliciting or canvassing on the public streets, areas, or parks of the city shall be conducted only between the hours of 9:00 a.m. and 7:00 p.m.
- e. Soliciting or canvassing or calling from house to house within the incorporated areas of the city shall be conducted only between the hours of 9:00 a.m. and 6:00 p.m. (Section 15.7.6)"
- f. Massage therapists shall conduct business only between the hours of 7:00 a.m. and 9:00 p.m.
- g. No sexually oriented business shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day after July 1, 2017. (Section 15.12.12)
- h. Distilled Spirits
 - a) Distilled spirits shall be sold and delivered to the customer for consumption on the premises during the following hours:
 - (i) ~~Monday through Friday hours are from 9:00 a.m. until 1:55 a.m. of the following day. 12am~~
 - (ii) ~~Saturday hours are from 9:00 a.m. until 12:55-00a.m. on Sunday.—~~
 - (iii) ~~Sunday hours are from 11:00 a.m. until 12:00 a.m. midnight on Monday.—~~
 - (b) Sales and deliveries during all other hours are prohibited. All licensed establishments must close their premises to the public and clear their premises of patrons by ~~3:30 a.m. 12am~~ and shall not reopen their premises to the public until 9:00 a.m. or thereafter. (Section 4.5.12)"
- i. Sunday Sales: Licensed establishments deriving a minimum of 60 percent of their total annual gross food and beverage sales from the sale of prepared meals or food, or licensed establishments deriving at

least 60 percent of their total annual income from the rental of rooms for overnight lodging, are authorized to apply for a Sunday sales permit to sell and serve alcoholic beverages, malt beverages and wine by the drink from 11:00 a.m. on Sunday until 12:00 a.m. ~~midnight of the following Monday.~~ (Section 4.5.15)

- j. **Restaurants.** All restaurants or drive-ins within the limits of the city are required to close the same before 12:00 midnight and same is not to be reopened until 6:00 a.m. the following day. An exception to this requirement is those restaurant businesses when applying for a business licenses specify the exception. ~~who have received a~~ However, public service facilities may remain open up to twenty-four (24) hours a day with a prior permit of the mayor and council. Service facilities include but are not limited to government buildings and/or hospitals as interpreted by the Planning and Zoning Director or his/her designee.
- k. **Outdoor amusement and recreation parks and facilities.** All outdoor amusement and recreation parks and facilities are required to cease all operations by 11:00 p.m. Monday through Sunday, and such parks and facilities shall not open before 12:00 noon on Sundays. If go-cart activities are permitted by the city at any such parks or facilities, such activities shall cease by 9:00 p.m. Monday through Saturday and shall only be allowed from 12:00 noon until 6:00 p.m. on Sundays.
- l. **Convenience Store.** All convenience stores within the city limits are required to close the same before 12:00 midnight and same is not to be reopened until 6:00 a.m. the following day.
- m. **Quarry work shall not begin before 7:00 a.m. and shall end on or before 5:30 p.m. No work shall be permitted on Sundays. Blasting and the explosion of dynamite and explosives shall be limited between the hours of 11:00 a.m. and 1:00 p.m. *September 12, 2024***
September 12, 2024-CPIM suggested amendment
~~Quarry work shall not begin before 7:00 a.m. and shall end on or before 5:30 p.m. No work shall be permitted on Sundays.~~ Blasting and the explosion of dynamite and explosives shall be limited between the hours of 11:00 a.m. and 1:00 p.m.
- n. **Billiard and Pool Halls; Bowling Alleys.** No person operating a bowling alley or pool, or billiard hall covered by the provisions of this article shall permit any table to be played upon after 12:00 midnight Sunday night and 2:00 a.m. Monday through Saturday. Such playing shall be prohibited until 6:00 a.m. each day. If operated in conjunction with any other business, the proprietor/operator shall keep dark and not allow public access to that part of the business in which the pool or billiard tables are located after such closing hours.

(Ord. No. 2018-10-03, § 16-23, 10-15-2018)

Sec. 16-24. Reserved.

(Ord. No. 2018-10-03, § 16-24, 10-15-2018)

Sec. 16-25. Shoplifting.

- (a) *Unlawful act.* It shall be unlawful for any person to commit the offense of theft by shoplifting within the corporate limits of the city when the property which is the subject of the theft is \$500.00 or less in value.
- (b) *Defined.* A person commits the offense of theft by shoplifting when alone or in concert with another person, with the intent of appropriating merchandise to such person's own use without paying for the same or to deprive the owner of possession thereof or of the value thereof, in whole or in part, does any of the following:

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- (1) Conceals or takes possession of the goods or merchandise of any store or retail establishment;
 - (2) Alters the price tag or other price marking on goods or merchandise of any store or retail establishment;
 - (3) Transfers the goods or merchandise of any store or retail establishment from one container to another;
 - (4) Interchanges the label or price tag from one item of merchandise with a label or price tag for another item of merchandise; or
 - (5) Wrongfully causes the amount paid to be less than the merchant's stated price for the merchandise.

(Ord. No. 2018-10-03, § 16-25, 10-15-2018)

Sec. 16-26. Public defecation or urination.

It shall be unlawful for any person to defecate or urinate on or adjacent to any street or sidewalk, or in the halls, elevators, stairways, or any other area designated for public passage within any public or commercial buildings, or on any property open to public view.

(Ord. No. 2018-10-03, § 16-26, 10-15-2018)

Sec. 16-27. Urban camping prohibited.

- (a) *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:

Camp means residing in or using a public street, sidewalk, or park for private living accommodations, such as erecting tents or other temporary structures or objects providing shelter; sleeping in a single place for any substantial prolonged period of time; regularly cooking or preparing meals; or other similar activities.

Public park means all municipal parks, public playgrounds, public plazas, attractions, and monuments.

Public street means all public streets and highways, public sidewalks, public benches, public parking lots, and medians.

Storing personal property means leaving one's personal effects, such as, but not limited to, clothing, bedrolls, cookware, sleeping bags, luggage, knapsacks, or backpacks, unattended for any substantial prolonged length of time. The term "storing personal property" shall not include parking a bicycle or other mode of transportation.

- (b) *Public parks.* It shall be unlawful to camp or to store personal property in any park owned by the city.
- (c) *Public streets.* It shall be unlawful to camp, to sleep, to store personal property, to sit or to lie down on any public street.
- (d) *Other public property; blocking ingress and egress.* It shall be unlawful to camp, to sleep, to store personal property, to sit or to lie down on any public property so as to interfere with ingress or egress from buildings.
- (e) *Warning.* No person may be arrested for violating this section until he has received an oral or written warning to cease the unlawful conduct. If the violator fails to comply with the warning issued, he is subject to arrest for urban camping.
- (f) *Exceptions.* This section shall not be construed to prohibit the following behavior:
 - (1) Persons sitting or lying down as a result of a medical emergency;
 - (2) Persons in wheelchairs sitting on sidewalks;

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- (3) Persons sitting down while attending parades;
 - (4) Persons sitting down while patronizing sidewalk cafes;
 - (05) Persons lying down or napping while attending performances, festivals, concerts, fireworks, or other special events;
 - (6) Persons sitting on chairs or benches supplied by a public agency or abutting private property owner;
 - (7) Persons sitting on seats in bus zones occupied by people waiting for the bus;
 - (8) Persons sitting or lying down while waiting in an orderly line outside a box office to purchase tickets to any sporting event, concert, performance, or other special event;
 - (9) Persons sitting or lying down while waiting in an orderly line awaiting entry to any building, including shelters, or awaiting social services, such as provision of meals; or
 - (10) Children sleeping while being carried by an accompanying person or while sitting or lying in a stroller or baby carriage.

(Ord. No. 2018-10-03, § 16-27, 10-15-2018)

Sec. 16-28. Residential picketing prohibited.

- (a) It shall be unlawful for any person to engage in picketing upon, before, or about the private residence or home of any individual.
- (b) Picketing shall include, but not be limited to, the following types of activity:
 - (1) Staging a public or private protest of any kind.
 - (2) Obstructing passage to or from a residence.
 - (3) Promoting a strike or a boycott at a residence.
 - (4) To intimidate or otherwise harass the resident.
- (c) It is the purpose of this section to protect and preserve the home, inasmuch as the public health and welfare and the good order of the city require that citizens of the city enjoy a feeling of peace, well-being, and privacy in their homes at all times.

(Ord. No. 2018-10-03, § 16-28, 10-15-2018)

Sec. 16-29. Loitering and prowling.

- (a) It shall be unlawful for a person to be in a place at a time or in a manner not usual for law-abiding individuals under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether alarm is warranted is the fact that the person takes flight upon the appearance of a law enforcement officer, refuses to identify himself, or manifestly endeavors to conceal himself or any object. Unless flight by the person or other circumstances make it impracticable, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to dispel any alarm or immediate concern which would otherwise be warranted by requesting the person to identify himself and explain his presence and conduct. No person shall be convicted of an offense under this section if the law enforcement officer failed to comply with the foregoing procedure or if it appears at trial that the explanation given by the person was true and would have dispelled the alarm or immediate concern.

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- (b) It shall be unlawful for a person aged 17 years or younger to be in a place at a time or in a manner not usual for law-abiding individuals under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether alarm is warranted is the fact that the person takes flight upon the appearance of a law enforcement officer, refuses to identify himself, is present at such a place during school hours, or manifestly endeavors to conceal himself or any object. Unless flight by the person or other circumstances make it impracticable, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to dispel any alarm or immediate concern which would otherwise be warranted by requesting the person to identify himself and explain his presence and conduct. No person shall be convicted of an offense under this section if the law enforcement officer failed to comply with the foregoing procedure or if it appears at trial that the explanation given by the person was true and would have dispelled the alarm or immediate concern.
 - (c) It shall be unlawful for any parent guardian or other persona having the custody or control of any minor to permit, allow or encourage such minor to violate subsection (a) of this section.
 - (d) It shall be unlawful for the proprietor, manager or other person having charge or control of any public or other place to permit, allow or encourage any minor to violate subsection (a) of this section in such place.
- (Ord. No. 2018-10-03, § 16-29, 10-15-2018)

Sec. 16-29.1. Loitering for the purpose of procuring others to engage in sexual acts for hire.

It shall be unlawful for any person to loiter in public for the purpose of soliciting or procuring others to engage in any sexual acts for hire.

(Ord. No. 2018-10-03, § 16-29.1, 10-15-2018)

Sec. 16-29.2. Loitering for the purposes of engaging in drug-related activity.

(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.

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- (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 a controlled substance into the human body;
 2. To enhance the effect of 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 a controlled substance for introduction into the human body;
 5. To conceal any quantity of a controlled substance; or
 6. To contain or hold 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;

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- 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 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, subject to any requirements of state law.

(Ord. No. 2018-10-03, § 16-29.2, 10-15-2018; Ord. No. 2022-07-01 , § 1, 8-22-2022)

Sec. 16-30. Preventing or disrupting lawful meetings, gatherings or processions.

It shall be unlawful for a person to knowingly prevent or disrupt a lawful meeting or gathering of the city council or any board, committee or instrumentality thereof or of the state to substantially obstruct or interfere with the meeting or gathering by physical action or verbal utterance. The term "lawful meeting or gathering" shall mean any such time and place where a quorum is present.

(Ord. No. 2018-10-03, § 16-30, 10-15-2018)

Sec. 16-31. Unauthorized persons entering vacant buildings.

It shall be unlawful for any person to enter or to remain in a vacant or unoccupied building or on any portion of vacant land upon which such vacant building is located unless with permission of an authorized agent of said property, provided such building or vacant property is prominently marked by a posted notice which is easily seen from a distance of at least 50 feet that informs the public such property is vacant or unoccupied and unauthorized persons are prohibited from entering.

(Ord. No. 2018-10-03, § 16-31, 10-15-2018)

Sec. 16-32. Discharge of weapons.

It shall be unlawful for any person to fire a gun, rifle, pistol, revolver, cannon, air rifle, firearm of any type or shoot a slingshot, crossbow or bow within the city, except in defense of a person or property. This section shall not apply to:

- (a) Any law enforcement officer while in the discharge of official duties; and
- (b) Any bow or crossbow hunter that holds a valid hunting permit issued by and who complies with the regulations of the Georgia Department of Natural Resources with respect to deer hunting within DeKalb County.

(Ord. No. 2018-10-03, § 16-32, 10-15-2018)

Sec. 16-33. Reckless operation of motor vehicle upon parking facility or walkway.

No person shall operate a motor vehicle upon any parking facility, public or private, vehicle-access or pedestrian walkway of any parking facility by sudden starting, stopping or turning so as to endanger the person or property of another.

(Ord. No. 2018-10-03, § 16-33, 10-15-2018)

Sec. 16-34. Creating hazardous or offensive condition.

No person shall create a hazardous or physically offensive condition by an act which serves no legitimate purpose.

(Ord. No. 2018-10-03, § 16-34, 10-15-2018)

Sec. 16-35. Halting or impeding flow of traffic.

No person shall congregate with another or others in or on any public right-of-way or place so as to halt or impede the flow of vehicle or pedestrian traffic after having been directed to clear such public right-of-way or place by a police officer or any other authorized law enforcement officer.

(Ord. No. 2018-10-03, § 16-35, 10-15-2018)

Sec. 16-36. Civil trespass.

No person shall knowingly and without authority enter upon the land or premises of another person after receiving, prior to such entry, notice from the owner, rightful occupant, or authorized representative of the owner or rightful occupant that such entry is forbidden. Posted "no solicitation" signs shall be deemed adequate notice.

(Ord. No. 2018-10-03, § 16-36, 10-15-2018)

Secs. 16-37—16-50. Reserved.

DIVISION 2. DRUG AND ALCOHOL-RELATED OFFENSES

Sec. 16-51. Public possession or consumption.

- (a) Alcohol consumption near package stores. It shall be unlawful for any person to open or to consume all or any part of any type of alcoholic beverage within 100 feet of any retail store where alcoholic beverages are sold in package form or within the boundary lines of the property on which such retail store is located, whichever constitutes the greater distance, unless otherwise permitted by chapter 4.
- (b) Drinking in public.
 - (1) It shall be unlawful for any person to drink any vinous, malt or other alcoholic beverage while on any streets, sidewalks, alleyways, parking areas or other open areas operated and controlled by the city. This subsection (b) does not apply to parks.
 - (2) Subsection (b)(1) of this section shall not apply to gatherings or activities for which a temporary liquor license has been issued by the city, subject to any conditions attached to the issuance of the permit.

(Ord. No. 2018-10-03, § 16-51, 10-15-2018)

Sec. 16-52. Public intoxication.

It shall be unlawful for any person to be disorderly while under the influence of illicit drugs, alcohol, concentrated vapors, or inhalants on the streets, sidewalks or other public places within the corporate limits of the city. Any person who acts in a reckless manner so as to create an unreasonable risk to himself, to others or to property in the vicinity while under the influence of alcohol or drugs is in violation of this section. The condition of intoxication or incapacitation must be outwardly manifested by boisterousness, public indecency, as defined by this chapter, indecent acts, vulgar, profane, or loud and unbecoming language, unconsciousness, disorientation or the inability to care for his own needs or recognize obvious dangers.

(Ord. No. 2018-10-03, § 16-52, 10-15-2018)

Sec. 16-53. Furnishing, purchasing, or possession of alcoholic beverages by person less than 21 years of age.

- (a) Except as otherwise authorized by law:
 - (1) No person directly or through another person shall furnish, cause to be furnished, or permit any person in such person's employ to furnish any alcoholic beverage to any person less than 21 years of age;
 - (2) No person less than 21 years of age shall purchase, drink or knowingly possess any alcoholic beverages;
 - (3) No person less than 21 years of age shall misrepresent such person's age in any manner whatever for the purpose of obtaining illegally any alcoholic beverage;
 - (4) No person shall knowingly or intentionally act as an agent to purchase or acquire any alcoholic beverage for or on behalf of a person less than 21 years of age;
 - (5) No person less than 21 years of age shall misrepresent such person's identity or use any false identification for the purpose of purchasing or obtaining any alcoholic beverages; or
 - (6) No person shall keep or maintain a place where persons less than 21 years of age are allowed and permitted to come and purchase, drink or possess any alcoholic beverage.
- (b) The prohibitions contained in subsections (a)(1), (2) and (4) of this section shall not apply with respect to:

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- (1) The sale, purchase or possession of alcohol beverages for consumption for medical purposes pursuant to a prescription of a physician duly authorized to practice medicine in this state;
 - (2) The sale, purchase or possession of alcohol beverages for consumption at a religious ceremony;
 - (3) The possession of alcoholic beverages for consumption by a person under 21 years of age when the parent or guardian of the person less than 21 years of age gives the alcoholic beverage to the person and when possession is in the home of the parent or guardian and such parent or guardian is present;
 - (4) The sale of alcoholic beverages by a person when such person has been furnished with proper identification showing that the person to whom the alcoholic beverage is sold is 21 years of age or older. For the purposes of this subsection, the term "proper identification" means any document issued by a governmental agency containing a description of the person, such person's photograph, or both, and giving such person's date of birth and includes, without being limited to, a passport, military identification card, driver license, or an identification card authorized under O.C.G.A. § § 40-5-100 through 40-5-104. The term "proper identification" shall not include a birth certificate.
- (c) If such conduct is not otherwise prohibited pursuant to O.C.G.A. § 3-3-24, nothing contained in this section shall be construed to prohibit any person less than 21 years of age from:
- (1) Dispensing, serving, selling or handling alcoholic beverages as a part of employment in any licensed establishments;
 - (2) Being employed in any establishment in which alcoholic beverages are distilled or manufactured; or
 - (3) Taking orders for and having possession of alcoholic beverages as a part of employment in a licensed establishment.
- (d) Testimony by any person under 21 years of age, when given in an administrative or judicial proceeding against another person for violation of any provision of this section, shall not be used as an admission in any administrative or judicial proceedings brought against such testifying person less than 21 years of age.
- (e) Any person convicted of violating any prohibition contained in subsection (a) of this section shall be punished by a fine not to exceed \$1,000.00 or imprisonment for not more than 180 days, or both; except that any person convicted of violating subsection (a)(2) of this section shall be punished by not more than 30 days imprisonment or a fine of not more than \$300.00 or both. Any defendant charged under this section shall be entitled upon request to have the case against such defendant transferred to the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred. Any person charged with a second or subsequent offense under this section shall be punished as for a misdemeanor of a high and aggravated nature in the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred.
- (f) Whenever any person who has not been previously convicted of any offense under this section or under any other law of the United States or any other state relating to alcoholic beverages pleads guilty to or is found guilty of a violation of subsection (a)(2) or (3) of this section, the court, without entering a judgment of guilt and with the consent of such person, may defer further proceedings and place such person on probation upon such reasonable terms and conditions as the court may require.
- (1) The terms of probation shall preferably be such as to require the person to undergo a comprehensive rehabilitation program, including, if necessary, medical treatment, not to exceed three years, designed to acquaint such person with the ill effects of alcohol abuse and to provide such person with knowledge of the gains and benefits which can be achieved by being a good member of society.
 - (2) Upon violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed accordingly.

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- (3) Upon fulfillment of the terms and conditions of probation, the court shall discharge such person and dismiss the proceedings against such person. Discharge and dismissal under this subsection shall be without court adjudication of guilt and shall not be deemed a conviction for the purposes of this subsection or for the purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Discharge and dismissal under this subsection may occur only once with respect to any person.
- (g) Unless the officer has reasonable cause to believe such person is intoxicated, an officer may arrest, by issuance of a citation, a person accused of violating only subsection (a)(2) of this section. The citation shall enumerate the specific charges against the person and either the date upon which the person is to appear and answer the charges or a notation that the person will be later notified of the date upon which the person is to appear and answer the charges. If the person charged shall fail to appear as required, the judge, having jurisdiction of the offense may issue a warrant or other order directing the apprehension of such person and commanding that such person be brought before the court to answer the charges contained within the citation and the charge of such person's failure to appear as required. Nothing in this subsection shall be construed to invalidate an otherwise valid arrest by citation of a person who is intoxicated.

(Ord. No. 2018-10-03, § 16-53, 10-15-2018)

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 found guilty of violating this section shall be punished by a fine.
- (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.

(Ord. No. 2018-10-03, § 16-54, 10-15-2018; Ord. No. 2022-07-01, § 2, 8-22-2022)

Secs. 16-55—16-70. Reserved.

DIVISION 3. OFFENSES INVOLVING SCHOOLS

Sec. 16-71. Unauthorized persons entering school buildings.

No person shall enter or remain in any public, private or parochial school building between the hours of 7:30 a.m. and 6:00 p.m. on days that school is in session (or until 10:00 p.m. at those schools which have extended

sessions), who is not a regularly enrolled student, teacher or employee at that school, unless the person shall have first and immediately proceeded to the administrative offices and identified themselves to the principal or the principal's agent and receives permission to remain on the premises.

(Ord. No. 2018-10-03, § 16-71, 10-15-2018)

Sec. 16-72. Unauthorized persons not to remain in school buildings or on school grounds after being requested to leave.

It shall be unlawful for any person to enter and remain in any public, private, or parochial school or on the surrounding school grounds after being directed to leave by the principal of the school or by someone with lawful authority.

(Ord. No. 2018-10-03, § 16-72, 10-15-2018)

Sec. 16-73. Creating a disturbance.

- (a) It shall be unlawful for any person to create a disturbance in any public, private or parochial school or on the surrounding school grounds lawfully used for school activities while such recreational areas are in use or other activities are in progress thereon.
- (b) A disturbance, for the purposes of this section, shall be defined as any act which may be reasonably expected to interfere with the activities within the school or school activities on the school grounds or fields while such activities are in progress thereon.

(Ord. No. 2018-10-03, § 16-73, 10-15-2018)

Sec. 16-74. Operation of motorized vehicles on school property.

The operation of motorized vehicles of any nature in or on any yard, campus, playing field or open area of any public school, college or institution in the city, except on those areas designated by school authorities for use of motorized vehicles, is prohibited.

(Ord. No. 2018-10-03, § 16-74, 10-15-2018)

TMOD 24-003

City of Stonecrest Planning & Zoning Department
3120 Stonecrest Blvd.
Ste. 190
Stonecrest, GA 30038
www.stonecrestga.gov



TO: City of Stonecrest Planning Commission

FROM: City of Stonecrest Planning and Zoning Department

SUBJECT: TMOD-24-003 Alcoholic Beverages
Chapter 16 Article I In General Sec 16-23 Reserved

ADDRESS: City-Wide

MEETING DATE: October 1, 2024

Summary: The purpose of the text modification is to provide an updated version of definitions, uses and the hours of operation for bars, lounges, clubs, restaurants (A) restaurants (B) and other uses in the city.

STAFF RECOMMENDATION: APPROVAL



FACTS & ISSUES

- The current language in the ordinance does not separate the hours of operation for uses that sell and consume alcohol on premises.
- General hours of operation for a business are in conflict with the hours of operation for businesses that sell and consume alcohol on premises..
- This text amendment will provide clear (amended) definitions of a bar, lounges, clubs, restaurants (A), and restaurants (B) along with the hours of operation and the requirements for businesses that sell and consume alcohol on premises..
- Staff is proposing to modify Chapter 4 Alcoholic Beverages/Chapter 16 Miscellaneous Provisions and Offenses.
- Staff is proposing to modify Chapter 16 Article I In General Sec. 16-23 Reserved

Attachment(s) Included:

- **Proposed *redlined* revisions to Chapter 4 Alcoholic Beverages/Chapter 16 Miscellaneous Provisions and Offenses.**
- **Proposed *redlined* revisions Chapter 16 Article I In General Sec. 16-23 Reserved**

TMOD-24-003
STONECREST CODE OF ORDINANCE UPDATE

TEXT AMENDMENT

ARTICLE I. IN GENERAL

TMOD 24-002 HOURS OF OPERATION BASED ON USE

TMOD 24-003 ALCOHOL/ HOURS OF OPERATION BASED ON USE

Sec. 4.1.1. Purposes.

The purposes of this chapter shall include, but not be limited to, the following:

- (a) Compliance with and effectuation of state law;
- (b) Promotion and effectuation of the city's land use and zoning policies/plans;
- (c) Prevention of the unlawful sale and use of alcohol;
- (d) Protection of schools, homes, churches, parks and other entities; and
- (e) Protection of the public health, safety and welfare.

(Ord. No. 2017-06-05, § 4.1.1, 6-5-2017)

Sec. 4.1.2. Definitions.

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

Alcohol means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

Alcoholic beverage means and includes all alcohol, distilled spirits, beer, malt beverage, wine, or fortified wine.

Alcoholic beverage caterer means a person or entity possessing a valid off-premises alcoholic beverage catering license from the city or another local political subdivision.

Bar: an establishment intended for a casual environment offering lower-to-premium beverages, short-order meals, louder music, boisterous patrons and below characteristics or requirements. Operating hours 12pm-12am.

- Alcoholic Consumption on Premises license.
- Party-like environment.
- Karaoke
- Smoke & Vape Free Environment.
- Condensed table and clustered bar seating.
- No live entertainment.
- Patrons 21+ years of age.

Beer or malt beverage means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops or any other similar product, or any combination of such products in water, containing not more than six percent alcohol by volume, and including ale, porter, brown, stout, lager beer, small beer and strong beer. The term "beer" or "malt beverage" does not include sake, known as Japanese rice wine.

Bottle club means any restaurant, music hall, theater or other establishment providing food or entertainment in the normal course of business, and in which the owners or their agents knowingly allow patrons to bring in and consume the patrons' own alcoholic beverages.

Craft beer market means a retail package store for malt beverages to be consumed off-premises, where the primary means of delivery of the package is in growlers, as defined by this Code.

Day means a period from 12:00 midnight through 11:59 p.m.

Distilled spirits or spirituous liquor means any alcoholic beverage obtained by distillation or containing more than 21 percent alcohol by volume, including, but not limited to, all fortified wines.

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 beyond 12:30 a.m. Entertainment shall be incidental thereto. 2022-01-02

Employee means any person who regularly performs any service on the alcoholic beverage licensed premises on a full-time, part-time, or contract basis, regardless of whether the person is denominated an owner, partner, member, employee, independent contractor, lessee, or otherwise. The term "employee" does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

Family means and includes any person related to the person indicated within the first degree of consanguinity or affinity, as determined according to civil law.

Fixed salary means the amount of compensation paid any member, officer, agent or employee of a bona fide private club as may be fixed by its members at a prior annual meeting or by the city council out of the general revenue of the club and shall not include a commission on any profits from the sale of alcoholic beverages. For the purpose of this definition, tips or gratuities that are added to the bills under club regulation shall not be considered as profits from the sale of alcoholic beverages.

Full-service kitchen means a kitchen consisting of a commercial sink and refrigerator and either a commercial stove, grill or microwave oven approved by the City manager or his designee.

Licensee means the individual to whom a license is issued or, in the case of a partnership or corporation, all partners, officers and directors of the partnership or corporation.

Liter means metric measurement currently used by the United States.

Lounges/Clubs: an establishment intended for social engagement, networking, soft or live music, relaxed upscale atmosphere offering complimentary amenities such as premium snacks and exquisite short order dining, alcohol, Wi-Fi, or a business center for working professionals with other characteristics or requirements such as 20% of its sales from cigars. Operating hours 12pm-2am.

- Walk-in humidors and air purification systems for non-smoky experience.
- Upscale furniture, fixed bars, private rooms with ambience.
- Membership or open to the public.
- Alcohol, Hookah, Cigars, Pipes, Small Plate dining, Meeting Spaces & VIP Rooms
- Patrons 21+ year of age
- Dress Code

Manufacturer means any maker, producer or bottler of an alcoholic beverage. The term "manufacturer" also means:

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- (a) In the case of distilled spirits, any person engaged in distilling, rectifying, or blending any distilled spirits; provided, however, that a vintner that blends wine with distilled spirits to produce a fortified wine shall not be considered a manufacturer of distilled spirits.
 - (b) In the case of malt beverages, any brewer.
 - (c) In the case of wine, any vintner.

Package means a bottle, can, keg, barrel or other original consumer container.

Nightlife Establishments: Nightclubs or ~~Event Spaces~~ only operating beyond 12am and required to be closed by 2:00am and below characteristics or requirements. Operating hours 12 pm-2:00 am with an approved Special Land Use permit

- Collecting Entry Fees.
- Live Entertainment
- DJ's
- Artists
- Musicians
- Party Promotions
- Concerts
- Comedy Shows
- Party's
- Mobile and Fixed bars.
- Dance Floors, VIP Sections, Private Rooms
- Valet Parking.
- Patrons 21+ years of age.
- Onsite security.

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. 2022-01-02

Private club means any nonprofit association organized under the laws of this state that meets all of the following criteria:

- (a) Has been in existence at least one year prior to the filing of its application for a license to be issued pursuant to this chapter.
- (b) Has at least 75 regular dues-paying members.
- (c) Owns, hires or leases a building space within a building for the reasonable use of its members with all of the following:
 - (i) Full service kitchen and dining room space and equipment.
 - (ii) A sufficient number of employees for cooking, preparing and serving meals for its members and guests.
- (d) Has no member, officer, agent or employee directly or indirectly receiving, in the form of salary or other compensation, any profits from the sale of alcoholic beverages beyond a fixed salary.

~~*Restaurant means an eating and drinking establishment where food and drink are prepared, served and consumed primarily within the principal building. 2022-01-02*~~

Restaurant means any business whose primary function or operation is the preparation of food and/or drink for consumption on-premises, and whose gross profits are derived at 60 percent from the sale of food.

Restaurant (Class A): a counter based Dine-In or To-Go or drive-thru establishment where meals are prepared to be consumed in a dining area or via drive-thru with the below characteristics or requirements. Operating hours 6am-12am

- Fast-food, Café's, Coffee Shops, or buffet-style dining.
- Table and booth dining.
- Serves both breakfast and lunch.
- No alcoholic beverage served or license applicable.
- Valid business license.

Restaurant (Class B): establishments with full menus where patrons pay to sit and consume meals that are prepared, served, and consumed on the premises with the below characteristics or requirements. Operational hours 11:30 am-12:00am.

- Alcoholic beverage consumption on premises with valid alcohol license ONLY.
- Fixed bar and dining.
- Table and booth dining.
- Operational hours 11:30 pm-12:00 am.
- No smoking of any kind or type on premises.

Retailer, retail dealer, retail licensee or retail outlet means any person or other legal entity selling alcoholic beverages, either in unbroken packages or for consumption on the premises, retail only to consumers and not for resale.

Smoking Lounge means an establishment which sells tobacco and/or promotes the smoking of tobacco products or other 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. 2022-01-02

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. 2022-01-02

1. *The term special evens facility shall not include places of worship.*
2. *Small Special Event Facility shall mean assembly and entertainment uses with a seating or occupant capacity or 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.*

Wine means any alcoholic beverage containing not more than 21 percent alcohol by volume made from fruits, berries or grapes, either by natural fermentation or by natural fermentation with brandy added. "Wine," includes, but is not limited to, all sparkling wines, champagnes, combinations of such beverages, vermouths, special natural wines, rectified wines and like products. The term "wine" does not include cooking wine mixed with salt or other ingredients so as to render it unfit for human consumption as a beverage. A liquid shall first be deemed to be a wine at that point in the manufacturing process when it conforms to the definition of wine contained in this section.

(Ord. No. 2017-06-05, § 4.1.2, 6-5-2017)

ARTICLE II. LICENSING

Sec. 4.2.1. License required.

- (a) Except as specifically authorized in this chapter, no person, entity and/or business shall engage in the manufacture, sale or distribution of alcoholic beverages in the city without first having obtained a license as provided under this article.
- (b) The city license shall not be valid without current state licenses.
- (c) A retail establishment shall not have alcoholic beverages on the sales floor or in cooler unless the establishment has a current city alcoholic beverage license.

(Ord. No. 2017-06-05, § 4.2.1, 6-5-2017)

Sec. 4.2.2. Sale in incorporated area of city; scope of license.

- (a) Alcoholic beverages may be sold in the incorporated area of the city under a license granted by the city council upon the terms and conditions provided in this chapter.
- (b) The businesses of manufacturing, distributing, selling, handling and otherwise dealing in or processing alcoholic beverages are privileges and not rights pursuant to O.C.G.A. § 3-3-1, and such privileges shall not be exercised within the city limits without full compliance with all applicable licensing, regulatory, and revenue requirements of local, state and federal rules, regulations, and laws, including this chapter.
- (c) All licenses hereunder shall have printed on the front these words: "This license is a mere privilege subject to be revoked and annulled, and is subject to any future ordinances which may be enacted."

(Ord. No. 2017-06-05, § 4.2.2, 6-5-2017)

Sec. 4.2.3. Separate license for each location.

A separate application for an alcoholic beverage license must be made for each location and a separate license must be issued.

(Ord. No. 2017-06-05, § 4.2.3, 6-5-2017)

Sec. 4.2.4. Consumption sales only.

Persons holding a license to sell distilled spirits for consumption on the premises shall not be permitted to sell liquor by the package or bottle, except as provided in this article.

(Ord. No. 2017-06-05, § 4.2.4, 6-5-2017)

Sec. 4.2.5. Reserved.

Ord. No. 2022-01-02 , § 1(Exh. A), adopted January 10, 2022, repealed § 4.2.5, which pertained to temporary permits and derived from Ord. No. 2017-06-05, § 4.2.5, June 5, 2017.

Sec. 4.2.6. Off-premises alcoholic beverage catering license.

- (a) Any person or entity that possesses a valid license from the city to sell or otherwise dispense malt beverages or wine by the glass may apply for an off-premises alcoholic beverage catering license to sell or otherwise dispense malt beverages or wine by the glass at an authorized catering function, using the form prescribed by the City Manager or his designee.
- (b) Any person or entity that possesses a valid license from the city to sell or otherwise dispense malt beverages, wine, or distilled spirits by the glass may apply for an off-premises alcoholic beverage catering license to sell or otherwise dispense malt beverages, wine, or distilled spirits, using the form prescribed by the City Manager or his designee.
- (c) The annual licensing fee for an off-premises alcoholic beverage catering license shall be set by the city council, provided that the total of the licensing fee shall not exceed \$5,000.00 for any one licensed location.

(Ord. No. 2017-06-05, § 4.2.6, 6-5-2017)

Sec. 4.2.7. Off-premises alcoholic beverage catering event permit.

- (a) The City Manager or his designee shall be responsible for issuing off-premises alcohol catering event permits and shall develop rules and regulations governing all off-premises alcoholic beverage catering events.
- (b) Resident alcoholic beverage caterers. In order to sell or otherwise distribute distilled spirits, malt beverages, or wine at an authorized catering function within the corporate limits of the city, an alcoholic beverage caterer licensed by the city must apply for an event permit on the form prescribed by the City Manager or his designee. The application must include:
 - (i) The name of the caterer;
 - (ii) The date, address and time of the event; and
 - (iii) The licensed alcoholic beverage caterer's license number.
- (c) Nonresident alcoholic beverage caterers. In order to sell or otherwise distribute distilled spirits, malt beverages, or wine at an authorized catering function within the corporate limits of the city, an alcoholic beverage caterer licensed by another local political subdivision must apply for an event permit on the form prescribed by the City Manager or his designee. The application must include:
 - (i) The name of the caterer;
 - (ii) The date, address and time of the event;
 - (iii) The alcoholic beverage caterer's license from another jurisdiction; and
 - (iv) An event permit fee in the amount established by action of the city council.
- (d) An alcoholic beverage caterer must maintain the original event permit in the vehicle transporting the alcoholic beverages to the event at all times.
- (e) Excise taxes are imposed upon the sale of alcoholic beverages by an alcoholic beverage caterer licensed by the city as provided in article IV of this chapter.
- (f) Excise taxes are imposed upon the total of quantity of individual alcoholic beverage drinks brought into the corporate limits of the city by an alcoholic beverage caterer licensed by another local political subdivision in the amount provided in section 4.4.2 and shall be paid within 30 days of the conclusion of the event.

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- (g) Sunday sales. An alcoholic beverage caterer wishing to cater an event on Sunday must possess a valid Sunday sales license and comply with the requirements of state law with respect to the service of alcoholic beverages on Sunday.
 - (h) It is unlawful for a licensed alcoholic beverage caterer to employ any person under 21 years of age who, in the course of such employment, would dispense, serve, sell or handle alcoholic beverages.
 - (i) The alcohol beverage caterer shall comply with all the general ordinances and the licensing and regulations for a consumption-on-the-premises establishment during the permitted event, with the exception of the full-service kitchen requirement and the employee alcoholic beverage permit and non-alcoholic beverage permit requirement.

(Ord. No. 2017-06-05, § 4.2.7, 6-5-2017)

Sec. 4.2.8. Persons eligible for licensing.

- (a) No license for the sale of alcoholic beverages shall be granted to any person or entity, where the majority of stock or partnership interests are controlled by individuals who are not citizens of the United States or aliens lawfully admitted for permanent residence. If an entity is owned by other entities, then this requirement shall apply to the majority stockholders of the other entities to ensure that a license is not granted to an ineligible person or entity.
- (b) No license for the sale of alcoholic beverages shall be granted to any person that has not attained the age of 18 years.
- (c) No license for the sale of alcoholic beverages shall be granted to any person or entity for alcoholic beverage sales at a "sexually oriented business," as defined in section 4.5.5(b) and chapter 15, as adopted by the City of Stonecrest.
- (d) Licenses for corporations shall be issued in the name of the corporation and applied for by and in the name of the majority stockholder, officer and/or employee primarily responsible for the operation of the licensed premises. Licenses for partnerships shall be issued in the name of the partnership and shall be applied for by and in the name of the partner and/or employee primarily responsible for the operation of the licensed premises.
 - (i) Where the majority stockholder is not an individual, the license shall be issued to jointly to the corporation and local manager of the business.
 - (ii) In the case of a partnership, the license shall be issued to the partners with the highest ownership percentage. In the case of a sole proprietorship, the sole proprietor shall be the applicant and the licensee.
- (e) No license for the sale of alcoholic beverages shall be granted to any person who has been convicted under any federal, state or local law of any felony within the last ten years, has been on felony probation or parole within the last five years, or released from prison on felony charges within the last five years prior to filing an application. The term conviction includes any adjudication of guilt or a plea of guilty or nolo contendere. This subsection shall apply to any corporation or partnership where any stockholder with ownership of ten percent or more, all corporate officers, and all partners fails to meet these requirements.
- (f) No license for the sale of alcoholic beverages shall be granted to any person who has been convicted under any federal, state or local law of any misdemeanor involving moral turpitude within ten years prior to filing an application. The term "conviction" includes any adjudication of guilt or a plea of guilty or nolo contendere. The term "moral turpitude" shall include any violation that involves gambling, drugs, or a driving while intoxicated conviction in less than five years from a prior driving while intoxicated conviction, and sale of alcohol with the exception of any violations of section 4.5.7. This subsection shall apply to any corporation or

partnership where any stockholder with ownership of ten percent or more, all corporate officers, and all partners fails to meet these requirements.

- (g) It is unlawful for any city employee of a department regulating alcoholic beverages, or the employee's spouse or minor children, to have any whole, partial or beneficial interest in any license to sell alcoholic beverages in the city.
- (h) No license for the sale of alcoholic beverages shall be granted to any person who has had any license issued in any jurisdiction revoked within two years prior to the filing of the application.

(Ord. No. 2017-06-05, § 4.2.8, 6-5-2017)

Sec. 4.2.9. Application for alcoholic beverage license.

- (a) All persons or entities desiring to sell alcoholic beverages shall make application on the form prescribed by the City Manager or his designee.
- (b) The application shall include:
 - (i) The Applicant's full name, birth date, residential addresses for the past five years, name and location of their employers for the last five years, spouse's name, both the applicant and their spouse's criminal history showing all arrests, convictions, guilty pleas and dispositions for alleged violations of any local, state and/or federal law for the last five years prior to the application, and, where applicable, the name of the partnership or corporation for whom they are applying, and any trade business and/or organizational name under which the licensed premises may operate;
 - (ii) The proposed business to be carried on;
 - (iii) If a partnership, the names and addresses of the partners;
 - (iv) If a corporation, the names and addresses of the officers;
 - (v) The name and address of the agent for service of process;
 - (vi) The name and address of the manager;
 - (vii) The names and addresses of all stockholders holding ten or more percent or of any class of corporate stock, or any other entity having a financial interest in each entity which is to own or operate the establishment; and
 - (viii) If the manager changes, the applicant must furnish the City Manager or his designee with the name and address of the new manager and other information as is requested within ten days of such change.
- (c) All applications for a package liquor license, both original and renewals, must be accompanied by a full and complete statement relative to any and all interest in retail liquor stores. This shall include names and addresses of all persons possessing a legal ownership in the subject establishment, together with any interest that each person or that any family member of each person has in any other retail liquor store located in the city or any other place; the ownership of the land and building where such retail business is operated; the amount of rental paid for the land and building, the manner in which such rental is determined, and to whom and at what intervals the rental is paid; the names and addresses, by affidavit from the owner, lessor or sub lessor of the land and building, of all persons having any whole, partial, beneficial or other legal interest in and to the land and building on and in which the retail liquor store is located; and any other information called for by the City Manager or his designee to ensure compliance with the provisions of this division. Any change in relationship herein declared must be filed when made with the City Manager or his designee and failure to so file within a period of ten days after this change is made shall be grounds for the city to cancel the license.

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- (d) All applications shall be sworn to by the applicant before a notary public or other officer authorized to administer oaths.
 - (e) Upon receipt of the application, it shall be forwarded to the City Manager, or his designee, for a background investigation of the applicant, and all other persons identified in the application as required by subsection (b) of this section. The investigation may include a check of any criminal history anywhere in the United States, a check of any other jurisdiction identified by the applicant where he has previously held an alcohol license of any kind, and any other factor deemed relevant by the City Manager, or his designee. As a prerequisite to the issuance of any such initial permit or license, the applicant 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.
 - (f) In all instances in which an application is denied or dismissed with prejudice under the provisions of this section, the applicant may not reapply for a license for at least one year from the final date of such denial.
 - (g) An alcoholic beverage license shall be granted unless an applicant fails to meet the qualifications for an alcoholic beverage license under this chapter. The City Manager or his designee shall provide written notice to any applicant whose application is denied under the provisions of this chapter within 30 days of filing a properly completed application or within 15 days of obtaining the criminal background check or records identified in subsection (e) of this section, whichever is later. An application for an alcoholic beverage license is complete when it contains the information required by this chapter and is accompanied by the license fee in the amount established by action of the city council. Such written notification shall set forth in reasonable detail the reasons for such denial and shall advise the applicant of the right to appeal to the alcohol beverage review board under the provisions of this division within 15 days from date of notice. If a license is not issued or denied within the time frame specified herein, the license shall be automatically approved.

(Ord. No. 2017-06-05, § 4.2.9, 6-5-2017)

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. 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.

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- (d) An application for a permit shall include the applicant's legal name, all of the applicant's aliases and/or any other name by which the applicant has ever been known, mailing address, written proof of age (in the form of a driver's license, a picture identification document containing the applicant's date of birth issued by a governmental agency, or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency), and a list of all prior criminal convictions. The City Manager or his designee shall make a complete search relative to any police record of the applicant. As a prerequisite to the issuance of any such initial permit or license, the employee shall furnish a complete set of fingerprints to be forwarded to the Georgia Bureau of Investigation, which shall search the files of the Georgia Crime Information Center for any instance of criminal activity during the two years immediately preceding the date of the application. The Georgia Bureau of Investigation shall also submit the fingerprints to the Federal Bureau of Investigation under the rules established by the United States Department of Justice for processing and identification of records.
 - (e) Any permit for employment issued hereunder shall expire 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. No. 2017-06-05, § 4.2.10, 6-5-2017)

Sec. 4.2.11. Expiration; renewal.

- (a) All licenses granted under this article shall expire on December 31 of each year. A licensee who desires to renew the license shall file application, with the requisite fee heretofore provided, with the City Manager or his designee on the form provided for renewal of the license for the ensuing year. All applications for renewal will be reviewed by the City Manager or his designee. Licensees do not have a right to automatic renewal and must be in compliance with all rules and regulations for the granting of licenses. Applications for renewal must be filed before November 30 of each year; otherwise penalties and interest will be assessed. No renewal license shall be granted after December 31, but such application shall be treated as an initial application and the applicant shall be required to comply with all rules and regulations for the granting of licenses as if no previous license had been held.
- (b) All licenses granted under this division shall be for the full calendar year or for the number of months remaining in the calendar year. License fees shall be prorated based on the number of months remaining in the calendar year; partial months shall be counted as a full month. License fees are not refundable.
- (c) Any person renewing any license issued under this chapter who pays the required fee or any portion thereof after the date set by law for such payment shall pay, in addition to the annual fee, a late payment penalty in addition to an assessment of interest at the rate of ten percent of the amount annual fee for the failure to renew; and an additional penalty of 25 percent of the amount due shall be assessed for any fraud or intent to evade.
- (d) Failure to fully complete the renewal application, as required by the City Manager or his designee will delay the renewal. The failure to furnish complete information within 30 days after being requested shall result in automatic denial of the renewal.

(Ord. No. 2017-06-05, § 4.2.11, 6-5-2017)

Sec. 4.2.12. Transferability.

- (a) No license for the sale of alcoholic beverages shall be transferable, except as otherwise provided in this section.
- (b) In case of the death of the licensee, the establishment shall be allowed to continue to sell alcoholic beverages for a period of 30 days from the date of death, or until expiration of the license, or until approval of a new license, whichever occurs first; provided, however, that the City Manager or his designee must be notified of the licensee's death within ten days of the death or the license shall automatically terminate on the 11th day following the death of the licensee.
- (c) If a license is surrendered, or a licensee severs the association with the licensed establishment, the establishment may continue to sell alcoholic beverages for a period of 30 days from the date of surrender, or from the date determined to be the date of severance; provided, however, that the City Manager or his designee must be notified of the change within ten days of the severance or the license shall automatically terminate on the 11th day following the date of the severance. Upon issuance of a new license, the authorization to sell under the previous license shall be revoked by operation of law. No additional license fees shall be required during the period for which the original license was issued.
- (d) Nothing in this section shall prohibit one or more of the partners in the partnership holding a license to withdraw from the partnership in favor of one or more of the partners who were partners at the time of the issuance of the license. This section shall not prohibit transfer of stock between persons who held stock in the corporate owner at the time of issuance of the license; nor shall it prohibit transfers of stock which do not result in any person increasing stock holdings to a total of ten or more percent of any class of corporate stock, or any other entity having a financial interest in the entity.
- (e) Should a transfer of location be approved, with no change of ownership of the business, the license fee paid for the old location shall be applied to the new location.
- (f) Except as provided in this section, any change in the ownership of any entity owning a licensed establishment shall cancel and revoke any license issued under this division automatically, without the necessity of a hearing.

Violation of this section shall result in revocation of the license being used and a fine of \$1,000.00 each on the new ownership and the old ownership. No license will be issued to the old or the new owner in the city for one year from the date of the violation.

(Ord. No. 2017-06-05, § 4.2.12, 6-5-2017)

Sec. 4.2.13. Display.

The city alcoholic beverage license shall at all times be kept plainly exposed to view at the place of business of the licensee. The finance director or designee shall ensure that all licenses for on-premises consumption of alcoholic beverages show:

- (i) Any special land use permit conditions imposed by the city council for the establishment;
- (ii) The allowed hours of operation for the location; and
- (iii) Written notice to the licensee that the license with the hours of operation must be posted in a public and conspicuous place within the licensee's establishment.

(Ord. No. 2017-06-05, § 4.2.13, 6-5-2017)

Sec. 4.2.14. Suspension or revocation.

The City Manager or his designee is entitled, in its sole discretion, to either suspend or revoke any license upon a finding by the City Manager or his designee, of any violation by the licensee, of any other person required under this division to meet the qualifications required for the issuance of the license, or by any majority stockholder, general or managing partner, or employee, agent, or servant of the licensee or the business in which such license is utilized, of any of the following:

- (a) Any federal or state law, rule or regulation relative to the manufacture, sale, distribution or possession of alcoholic beverages;
- (b) Any provision, condition, requirement, or limitation contained in this division;
- (c) Any other ordinance of the city;
- (d) Any ordinance, rule, regulation or law of any governmental entity otherwise regulating the business in which such license is utilized;
- (e) Any criminal law which is classified as a felony;
- (f) Any criminal law involving moral turpitude;
- (g) Any documented negative impact to adjacent property owners for which the owner or tenant has failed to remedy through good faith efforts;
- (h) Failure to maintain parking lot of property in such a manner as to prevent littering, loitering, acts of disorderly conduct, excessive demand for public safety resources, and ongoing disturbance of adjacent property owners;
- (i) If the licensee furnishes fraudulent or untruthful information in the original, renewal or transfer application for a license or omits information required in the original, renewal or transfer application for a license;
- (j) Failure of the licensee or any other person required under this division to meet the qualifications required for the issuance of the license, to meet, as of the time of the notice of hearing relative thereto, the requirements established in this division for the initial issuance of such license;
- (k) Failure of the licensee or any employee or agent of the business in which the license is utilized to promptly report to the City Manager or his designee:
 - (i) Any violation of this division;
 - (ii) Any other violation of law;
 - (iii) Any other violation of any other city ordinance; or
 - (iv) Any breach of the peace, disturbance or altercation which occurs within or upon the premises of the business in which such license is utilized;
- (l) Repeated failure of the licensee or the employees, agent and servants of the business in which the license is utilized to promptly control and prevent within or upon the premises of such business any of the following activities or conduct:
 - (i) Fighting;
 - (ii) Disorderly conduct;
 - (iii) Utilization of controlled substances;
 - (iv) Gambling;

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- (v) Indecent conduct;
 - (vi) Excessive noise; or
 - (m) Failure of the licensee or any other person required under this division to meet the qualifications required for the issuance of the license to promptly pay and satisfy all taxes and other financial obligations due the city which are not the subject of appeal or litigation; or
 - (n) Failure to allow unrestricted access to the City Manager or his designee for inspections.

(Ord. No. 2017-06-05, § 4.2.14, 6-5-2017)

Sec. 4.2.15. Inspection of premises.

The community development department, and/or the City Manager or his designee may inspect establishments licensed under the alcoholic beverage ordinances of the city during the establishment's hours of operation. Such inspections shall be made for the purpose of verifying compliance with the requirements of this chapter and state law.

(Ord. No. 2017-06-05, § 4.2.15, 6-5-2017)

Sec. 4.2.16. Agent for service of process.

All establishments licensed under this chapter must have and continuously maintain in the county a registered agent upon whom any process, notice or demand required or permitted by law or under this chapter to be served upon the licensee or owner may be served. This person must be a resident of the county. The licensee shall file the name of such agent, along with the written consent of such agent, with the city in such form as the city prescribes.

(Ord. No. 2017-06-05, § 4.2.16, 6-5-2017)

Sec. 4.2.17. Collection of delinquent sums.

If any person fails to pay the sum due under this chapter, the City Manager or his designee shall issue an execution against the person so delinquent and such person's property for the amount of the delinquent fee or tax.

(Ord. No. 2017-06-05, § 4.2.17, 6-5-2017)

Sec. 4.2.18. Audits.

If the City Manager or his designee deems it necessary to conduct an audit of the records and books of a licensee under the provisions of this article, it shall so notify the licensee of the date, time and place of the audit.

(Ord. No. 2017-06-05, § 4.2.18, 6-5-2017)

ARTICLE III. ALCOHOL REVIEW BOARD

Sec. 4.3.1. Alcoholic review board establishment; composition.

- (a) There is hereby established an alcohol review board (sometimes referred to as the "ARB") which shall have the responsibility for alcoholic beverage appeals. The ARB shall consist of five alcohol review hearing officers selected from the available pool of individuals licensed to practice law in the State of Georgia who shall be appointed by the mayor and confirmed by the city council. Any member must comply with the requirements of section 2.14 of the Charter of the City of Stonecrest and shall serve a term of two years.
- (b) At the initial appointment of the ARB, to occur within 30 days of the passing, Mayor and Council shall direct three of the five members to serve a term of two years. The remaining members shall serve a term of one year.
- (c) Any member may be removed in accordance with section 2.14 of the Charter of the City of Stonecrest.

(Ord. No. 2017-06-05, § 4.3.1, 6-5-2017; Ord. No. 2017-11-04, § I, 11-20-2017)

Sec. 4.3.2. Alcoholic beverage appeals.

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

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

(Ord. No. 2017-06-05, § 4.3.2, 6-5-2017; Ord. No. 2017-11-04, § II, 11-20-2017)

Sec. 4.3.3. Hearings.

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

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- (e) The findings of the ARB shall be forwarded to the appellant and the City at the conclusion of the hearing.
 - (f) The findings of the ARB shall be final unless appealed within 30 days of the date of the findings by certiorari to the superior court of the county.

(Ord. No. 2017-06-05, § 4.3.3, 6-5-2017; Ord. No. 2017-11-04, § III, 11-20-2017)

Sec. 4.3.4. Service of notices.

For the purpose of this article, notice shall be deemed delivered when personally served or, when served by mail, within three days after the date of deposit in the United States mail.

(Ord. No. 2017-06-05, § 4.3.4, 6-5-2017)

ARTICLE IV. TAXATION OF RETAIL SALES

Sec. 4.4.1. Definitions.

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

Agent means that person designated by a licensee in the application for a permit to sell alcoholic beverages by the drink in the city.

Alcoholic beverage means any beverage containing alcohol obtained by distillation including rum, whiskey, gin and other spirituous liquors by whatever name called, but not including malt beverages, fermented wines or fortified wines.

Drink means any alcoholic beverage served for consumption on the premises which may or may not be diluted by any other liquid.

Licensee means any person who holds a license or permit from the city to sell alcoholic beverages by the drink.

Monthly period means the calendar month of the year.

Person means an individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, nonprofit corporation or cooperative nonprofit membership, estate, trust, business trust, receiver, trustee, syndicate or any other group or combination acting as a unit, the plural as well as the singular number, excepting the United States of America, the state and any political subdivision of either thereof upon which the city is without power to impose the tax herein provided.

Purchase price means the consideration received for the sale of alcoholic beverages by the drink valued in money, whether received in cash or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also the amount for which credit is allowed by the licensee to the purchaser, without any deduction therefrom whatsoever.

Purchaser means any person who orders and gives present or future consideration for any alcoholic beverage by the drink.

Tax means the tax imposed by this division.

(Ord. No. 2017-06-05, § 4.4.1, 6-5-2017)

Sec. 4.4.2. Imposed; rate.

There is imposed and levied upon every sale of an alcoholic beverage purchased by the drink in the city a tax as follows:

- (1) Distilled spirits purchased by the drink in the amount of three percent of the purchase price of such beverage.
- (2) Malt beverages sold in or from a barrel or bulk container are taxed at a rate of \$6.00 on each container sold not containing more than 15½ gallons and a proportionate tax at the same rate on all fractional parts of 15½ gallons.
- (3) Malt beverages sold in bottles, cans, or other containers, except barrel or bulk containers, are taxed at rate of five cents per 12 ounces and a proportionate tax at the same rate on all fractional parts of 12 ounces.

(Ord. No. 2017-06-05, § 4.4.2, 6-5-2017)

Sec. 4.4.3. Purchaser's receipt; credit or deferred payment.

Every licensee for the sale of alcoholic beverages by the drink operating a place of business in the city shall maintain detailed sales records indicating each transaction by beverage and food served, its price and total. Where the charges for food and drink are satisfied by credit or deferred payment, the payment of the tax to the licensee may be deferred in a like manner; however, the licensee shall be liable therefor at the time and to the extent that such credits are incurred.

(Ord. No. 2017-06-05, § 4.4.3, 6-5-2017)

Sec. 4.4.4. Liability for tax; authority to collect.

Every licensee or the licensee's agent shall collect the tax herein imposed from purchasers of alcoholic beverages by the drink sold within the licensee's licensed premises. Such licensee or agent shall furnish such information as may be requested by the City Manager or his designee to facilitate the collection of the tax.

(Ord. No. 2017-06-05, § 4.4.4, 6-5-2017)

Sec. 4.4.5. Determinations, returns and payments.

- (a) *Due date of taxes.* All taxes collected by any licensee or agent under this division shall be due and payable to the City Manager or his designee monthly on or before the twentieth day of every month next succeeding each respective monthly period.
- (b) *Return; limit of filing; persons required to file; execution.* On or before the twentieth day of the month following each monthly period, a return for the preceding monthly period shall be filed with the City Manager or his designee in such form as the City Manager or his designee may prescribe by every licensee or agent liable for the payment of tax.
- (c) *Contents of return.* All returns shall show the gross receipts from the sale of alcoholic beverages by the drink, amount of tax collected or authorized due for the related period, and such other information as may be required by the City Manager or his designee.
- (d) *Delivery of return and re-admittance.* The person required to file the return shall deliver the return, together with the remittance of the net amount of tax due to the City Manager or his designee.

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- (e) *Collection fee allowed operators.* Operators collecting the tax shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting and paying the amount due, if such amount is not delinquent at the time of payment. The rate of the deduction shall be the same rate authorized for deductions from state tax under O.C.G.A. § 48-8-1 et seq.

(Ord. No. 2017-06-05, § 4.4.5, 6-5-2017)

Sec. 4.4.6. Deficiency determinations.

- (a) *Computation of tax.* If the City Manager or his designee is not satisfied with the return or returns of the tax or the amount of the tax to be paid to the City Manager or his designee by any person, it may compute and determine the amount required to be paid upon the basis of any information within its possession or that may come into its possession. One or more than one deficiency determination may be made of the amount due for one or more than one monthly period.
- (b) *Interest on deficiency.* The amount of the determination, exclusive of penalties, shall bear interest at the rate specified by section 4.4.8. Interest shall be assessed for each month or fraction thereof from the close of the monthly period in which the amount or any portion thereof should have been returned until the date of payment.
- (c) *Offsetting of overpayments.* In making a determination, the City Manager or his designee may offset overpayments, for another period, against penalties, and against the interest on underpayments. The interest on overpayments shall be computed in the manner set forth in section 4.4.7(c).
- (d) *Penalty for negligence or disregard of rules and regulations.* If any part of the deficiency for which a deficiency determination has been made is due to negligence or disregard of rules and regulations, the penalty amount specified in section 4.4.8 shall be added to the amount of the deficiency.
- (e) *Penalty for fraud or intent to evade.* If any part of the deficiency for which a deficiency determination is made is due to fraud or an intent to evade any provision of this division or other authorized rules and regulations, a penalty of 25 percent of the deficiency shall be added thereto.
- (f) *Notice of determination.* The City Manager or his designee shall give to the licensee written notice of the determination. The notice may be served personally or by mail; if by mail, such service shall be pursuant to O.C.G.A. § 9-11-4 and shall be addressed to the licensee at the licensee's address as it appears in the records of the city. In case of service by mail of any notice required by this division, the service is complete at the time of deposit in the United States post office.
- (g) *Time within which notice of deficiency determination to be mailed.* Except in the case of fraud, intent to evade this division or authorized rules or regulations, or failure to make a return, every notice of a deficiency determination shall be mailed within three years after the twentieth day of every month following the monthly period for which the amount is proposed to be determined, or within three years after the return is filed, whichever period expires last.

(Ord. No. 2017-06-05, § 4.4.6, 6-5-2017)

Sec. 4.4.7. Determination if no return made.

- (a) *Estimate of gross receipts.* If any licensee fails to make a return, the City Manager or his designee shall make an estimate of the amount of the gross receipts of the licensee or, as the case may be, of the amount of the total sales in the city which are subject to the tax. The estimate shall be made for the period or periods in respect to which the licensee failed to make the return and shall be based upon any information which is in or may come into the possession of the City Manager or his designee. Upon the basis of this estimate, the

City Manager or his designee shall compute and determine the amount required to be paid the city, adding to the sum thus determined a penalty equal to ten percent thereof. One or more determinations may be made for one or for more than one period.

- (b) *Manner of computation; offsets; interest.* In making a determination, the City Manager or his designee may offset overpayments for a period or penalties against penalties and/or interest on underpayments. The interest on underpayments shall be computed in the manner set forth in subsection (c) of this section.
- (c) *Interest on amount found due.* The amount of the determination, exclusive of penalties, shall bear interest at the rate specified in section 4.4.8. Interest shall be assessed for each month, or fraction thereof from the close of the monthly period in which the amount or any portion thereof should have been returned until the date of payment.
- (d) *Penalty for fraud or intent to evade.* If the failure to file a return is due to fraud or an intent to evade this division or rules and regulations, penalties shall be assessed in accordance with section 4.4.8.
- (e) *Notice; manner of service.* Promptly after making a determination, the City Manager or his designee shall give to the person written notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

(Ord. No. 2017-06-05, § 4.4.7, 6-5-2017)

Sec. 4.4.8. Penalties and interest for failure to pay tax.

Any licensee who fails to pay the tax to the city, or fails to pay any amount of such tax required to be collected and paid to the city, within the time required, shall pay a penalty of ten percent of the tax, or amount of the tax, in addition to the tax or amount of the tax, plus interest on the unpaid tax or any portion thereof as set forth in section 4.4.7(c). An additional penalty of 25 percent of the amount due shall be assessed for any fraud or intent to evade.

(Ord. No. 2017-06-05, § 4.4.8, 6-5-2017)

Sec. 4.4.9. Collection of tax; security deposit; refunds.

- (a) The City Manager or his designee, whenever deemed necessary to ensure compliance with this article, may require any person subject hereto to deposit such security as the department may determine. The amount of the security shall be fixed by the department, shall be the greater of twice the person's estimated average liability for the period for which the return was filed, determined in such a manner as the department deems proper, or \$10,000.00. The amount of the security may be increased by the department subject to the limitations herein provided. The department may sell the security at public auction, with the approval of the city council, if it becomes necessary to do so in order to recover any tax or any amount required to be collected, interest or penalty due. Notice of the sale may be served upon the person who deposited the security personally or by mail; if by mail, service shall be made in the manner prescribed for service of a notice of a deficiency determination, and shall be addressed to the person at the person's address as it appears in the records of the department. Upon any sale, any surplus above the amounts due shall be returned to the person who deposited the security.
- (b) If any person is delinquent in the payment of the amount required to be paid, or if a determination has been made against the person which remains unpaid, the City Manager or his designee may, not later than three years after the payment became delinquent, give notice thereof by registered mail to all persons in the city having in their possession or under their control any credits or other personal property belonging to the delinquent, or owing any debts to the delinquent. After receiving the notice, the persons so notified shall neither transfer nor make any other disposition of the credits, other personal property or debts in their

possession or under their control at the time they receive the notice until the City Manager or his designee consents to a transfer or disposition or until 20 days elapse after the receipt of the notice. All persons so notified shall within five days after receipt of the notice advise the City Manager or his designee of all these credits, other personal property, or debts in their possession, under their control or owing by them.

- (c) At any time within three years after any tax or any amount of tax required to be collected becomes due and payable and at any time within three years after the delinquency of any tax or any amount of tax required to be collected, the City Manager or his designee may bring an action in the courts of this state, or any other state, or of the United States in the name of the city to collect the amount delinquent together with penalties and interest, court fees, filing fees, attorney's fees and other legal fees incident thereto.
- (d) If any operator liable for any amount under this division sells out the business or quits the business, the successors or assigns shall withhold sufficient of the purchase price to cover the tax liability until the former owner produces a receipt from the City Manager or his designee showing that same has been paid or a certificate stating that no amount is due.
- (e) If the purchaser of a business fails to withhold the purchase price as required, the purchaser becomes personally liable for the payment of the amount required to be withheld to the extent of the purchase price, valued in money. Within 30 days after receiving a written request from the purchaser for a certificate, the City Manager or his designee shall either issue the certificate or mail notice to the purchaser at the purchaser's address as it appears on the records of the City Manager or his designee of the amount that must be paid as a condition of issuing the certificate. The time within which the obligation of a successor may be enforced shall start to run at the time the operator sells out the business or at the time that the determination against the operator becomes final, whichever event occurs later.
- (f) Whenever the amount of any tax, penalty or interest has been paid more than once, or has been erroneously or illegally collected or received by the city under this division, it may be offset as provided in section 4.4.6(c), or it may be refunded, provided a verified claim in writing therefor, stating the specific ground upon which the claim is founded, is filed with the City Manager or his designee within three years from the date of payment. The claim may be audited and shall be made on forms provided by the City Manager or his designee. If the claim is approved by the City Manager or his designee and the city council, the excess amount collected or paid may be refunded or may be credited on any amounts then due and payable from the person from whom it was collected or by whom paid, and the balance may be refunded to this person, or such person's administrators or executors.

(Ord. No. 2017-06-05, § 4.4.9, 6-5-2017)

Sec. 4.4.10. Administration.

- (a) The City Manager or his designee shall administer and enforce the provisions of this article.
- (b) The City Manager or his designee may make and publish reasonable rules and regulations not inconsistent with this article or other laws of the city, county and the state, or the constitution of this state or the United States for the administration and enforcement of the provisions of this division and the collection of taxes hereunder.
- (c) Every licensee for the sale of alcoholic beverages by the drink in this city to a person shall keep such records, receipts, invoices and other pertinent papers in such form as the City Manager or his designee may require.
- (d) The City Manager or his designee may examine the books, papers, records, financial reports, equipment and other facilities of any licensee liable for the tax, in order to verify the accuracy of any return made, or if no return is made by the licensee, to ascertain and determine the amount required to be paid.

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- (e) In administration of the provisions of this division, the City Manager or his designee may require the filing of reports by any person or class of persons having possession or custody of information relating to sales of alcoholic beverages which are subject to the tax. The reports shall be filed with the City Manager or his designee when required by the department and shall set forth the price charged for each sale, the date of each sale and such other information as the department may require.
 - (f) The City Manager or his designee shall not make known in any manner the business affairs, operations or information obtained by an audit of books, papers, records, financial reports, equipment and other facilities of any licensee or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person not having such administrative duty under this division, except in the case of judicial proceedings or other proceedings necessary to collect the tax levied and assessed. Successors, receivers, trustees, executors, administrators, and assignees, if directly interested, may be given information as to the items included in the measure and amount of unpaid tax or amounts of tax required to be collected, interest and penalties.

(Ord. No. 2017-06-05, § 4.4.10, 6-5-2017)

Sec. 4.4.11. Revocation or suspension of license.

The failure to timely pay the tax imposed by this division for three consecutive months or four times in a 12-month period shall render the dealer or person liable therefor subject to suspension of the alcoholic beverage license for ten consecutive days beginning on a Friday. The failure to timely pay the tax imposed by this section six times within a 12-month period shall render the dealer or person liable therefor subject to revocation of the alcoholic beverage license.

(Ord. No. 2017-06-05, § 4.4.11, 6-5-2017)

ARTICLE V. OPERATIONAL RULES FOR RETAILERS

DIVISION 1. GENERALLY

Sec. 4.5.1. Posting of regulations.

- (a) All licensees under this article shall post in a prominent location on licensed premises, in a manner whereby it may be easily viewed by patrons, an approved sign setting forth or summarizing the laws of the city and the state in regard to the sale of alcoholic beverages to underage or intoxicated persons.
- (b) Each such sign shall be of a size and configuration approved by the City Manager or his designee, and shall include either the language of the applicable sections, or summaries approved by the City Manager or his designee.
- (c) The City Manager or his designee may design and have printed approved signs, which shall be made available to licensees at a price to be established by the City Manager or his designee.

(Ord. No. 2017-06-05, § 4.5.1, 6-5-2017)

Sec. 4.5.2. Location restrictions.

- (a) No person knowingly and intentionally may sell or offer to sell at retail, except as allowed under subsection (b) of this section:
 - (1) Any wine or malt beverages within 100 yards of any school, school grounds, educational facility, college campus.
 - (2) Any distilled spirits in or within 200 yards of any residence or church or within 200 yards of any school, school grounds, educational facility, college campus.
 - (3) Any distilled spirits, wine or malt beverages within 200 yards of an alcoholic treatment center owned and operated by this city, this state, or any county or municipal government therein.
- (b) No person knowingly and intentionally may sell or offer to sell for consumption on the premises, except as allowed under subsection (f) of this section:
 - (1) Any wine or malt beverages within 100 yards of any school, school grounds, educational facility or college campus;
 - (2) Any distilled spirits in or within 200 yards of any church or within 200 yards of any school building, school grounds, educational facility or college campus;
 - (3) Any distilled spirits, wine or malt beverages within 200 yards of an alcoholic treatment center owned and operated by this city, this state, or any county or municipal government therein.
- (c) The school building, school grounds, college campus, educational facility or educational building referred to in this section applies only to state, county, city, parochial school, daycare, kindergarten or buildings and to such buildings at such other schools in which are taught subjects commonly taught in the common schools and colleges of this state; provided this shall not apply to private universities and colleges.
- (d) For the purpose of this section, distance shall be measured by the most direct route of travel on the ground. Every license application shall include a scale drawing of the location of the proposed premises, showing the distance of the uses described in this section and a certificate of a registered land surveyor or professional engineer that the location complies with these distance requirements.
- (e) No license in effect as of April 30, 1998, shall be revoked before its date of expiration or renewal or transfer denied by reason of the method of measurement set out in this section, if the license was granted in reliance on another method of measurement. No application for a license shall be denied by reason of the method of measurement set out in this section if a prior license for the same location was in effect on April 30, 1998. No application for a license or renewal shall be denied by reason of the method of measurement set out in this section, if such application is pending on April 30, 1998.
- (f) Where an existing licensed location is interfered with by government action under the power of eminent domain, and not by a voluntary act of the licensee, the licensed use may relocate elsewhere on the property, and the new building site will be treated as an existing nonconforming use eligible for license renewal for the purposes of the distance requirements of this section.

(Ord. No. 2017-06-05, § 4.5.2, 6-5-2017)

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

- (a) No person shall be employed in or about the premises of any establishment licensed to sell alcoholic beverages at retail if the employment violates state law, nor shall any person under the age of 18 years sell, take orders for, or deliver alcoholic beverages.

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- (b) Nothing in subsection (a) of this section shall be construed to prohibit employees employed in supermarkets, convenience stores, or drug stores from selling or handling alcoholic beverages which are sold for consumption off the premises as provided in O.C.G.A. § 3-3-24.

(Ord. No. 2017-06-05, § 4.5.3, 6-5-2017; Ord. No. 2017-10-04, § 2(4.5.3), 10-16-2017)

Sec. 4.5.4. Advertising.

- (a) Each licensee for the retail sale of liquors hereunder, except consumption-on-the-premises establishments, shall have printed on a front window or entrance of the licensed premises the name of the licensed establishment together with the inscription "City of Stonecrest Retail License No. ____" in uniform letters not less than four nor more than eight inches in height.
- (b) Each retail licensee, except consumption-on-the-premises establishments, shall have conspicuously displayed within the interior of the licensed premises not less than four copies of a printed price list of the liquors offered for sale or the licensee may have the price placed on the bottles or on the front of the shelf where liquors are exhibited for sale.

(Ord. No. 2017-06-05, § 4.5.4, 6-5-2017)

Sec. 4.5.5. Prohibited types of entertainment, attire and conduct.

- (a) *Purpose.* It is the purpose of this section to regulate establishments licensed to sell, serve, or dispense alcoholic beverages 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 various forms of nudity and physical contact in such establishments between patrons and employees of the establishment. The provisions of this section have neither the purpose nor effect of imposing a restriction on the content or reasonable access to any communicative materials or performances, including sexually oriented materials or performances. Neither is it the purpose nor effect of this section to condone or legitimize the distribution or presentation of obscene material or conduct.
- (b) *Definitions.* The following words, terms, and phrases, when used in this section and section 4.2.8(c), shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

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: 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 the 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 "floor space" maintained for the display, sale, or rental of the items);

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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 "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 "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 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.

Characterized by means describing the essential character or quality of an item. As applied in this article, 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.

Feature means to give special prominence to.

Floor space, as referenced in 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.

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.

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.

Regularly means the consistent and repeated doing of an act on an ongoing basis.

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;

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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.

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.

Specified anatomical areas means and includes:

1. Less than completely and opaquely covered: 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.
- (c) *Findings and rationale.* Based on evidence of adverse secondary effects associated with certain conduct in alcoholic beverage establishments, which effects have been presented in hearings and in reports made available to the city council, and on findings, interpretations, and narrowing constructions incorporated in numerous cases, including, but not limited to, *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 AM*, 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 (1 Cir. 2002); *Boss Capital, Inc. v. City of Casselberry*, 187 F.3d 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), affd, 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 1, 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); Garnmoh 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 - 201112; 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 - 1995-98, 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:

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- (1) Nudity, partial nudity, conduct by bikini-clad persons, and/or sexual conduct coupled with alcohol in public places begets negative secondary effects, including sexual, lewd, lascivious, and salacious conduct among patrons and employees resulting in violation of laws and in dangers to the health, safety and welfare of the public;
 - (2) Physical contact between employees of alcoholic beverage establishments, including "bed" dances, "couch" dances, and "lap" dances as they are commonly called, are associated with and can lead to illicit sexual activities, including masturbation, lewdness, and prostitution, as well as other negative effects, including sexual assault;
 - (3) The city finds that the foregoing conduct, even when the employees are technically not nude or semi-nude, as defined in other portions of Stonecrest city regulations, is substantially similar to and presents similar concerns as conduct by nude and semi-nude performers in sexually oriented businesses;
 - (4) Each of the negative effects targeted by this section constitutes a harm which the city has a substantial government interest in preventing and/or abating. This substantial government interest in preventing such negative effects, which is the city's rationale for this section, exists independent of any comparative analysis between the regulated establishments and other, non-regulated establishments. The city finds that the cases and secondary effects documentation relied on in this section are reasonably believed to be relevant to the city's interest in preventing illicit sexual behavior.

The city adopts and incorporates herein its stated findings and legislative record related to adverse secondary effects, including the judicial opinions and reports related to such secondary effects.

- (d) *On-premises conduct.* No licensee, as defined in this chapter, shall knowingly violate the following regulations or knowingly or recklessly allow an employee or any other person to violate the following regulations:
 - (1) No person shall knowingly engage in masturbation, sexual intercourse, fellatio, cunnilingus, sodomy, bestiality, or flagellation on the licensed premises.
 - (2) No employee shall knowingly touch, engage in physical contact with, caress, or fondle the breast, buttocks, lap, pubic region, or genitals of a patron, whether directly or through clothing or other covering, on the licensed premises.
 - (3) No patron shall knowingly touch, engage in physical contact with, caress, or fondle the breast, buttocks, lap, pubic region, or genitals of an employee, whether directly or through clothing or other covering, on the licensed premises.
 - (4) No employee shall knowingly expose his genitals, pubic hair, buttocks, natal cleft, perineum, anus, vulva, or the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point (except that the exposure of the cleavage of the female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel is not prohibited) to a patron on the licensed premises. This subsection does not apply to conduct in theaters, concert halls, art centers, museums, or similar establishments that are primarily devoted to the arts or theatrical performances, when the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value. The exception in the previous sentence shall not be construed to apply to any sexually oriented business, as defined in this Code.

(Ord. No. 2017-06-05, § 4.5.5, 6-5-2017)

Sec. 4.5.6. Sales on days of national or state elections.

Licensees may open their establishments for the sale of alcoholic beverages on any election day, except within 250 yards of any polling place.

(Ord. No. 2017-06-05, § 4.5.6, 6-5-2017)

Sec. 4.5.7. Failure to require and properly check identification.

- (a) It is unlawful not to require and properly check identification to ensure an underage person is not sold, served or possesses alcoholic beverages while in a licensed establishment. In this section "identification" means any document issued by a governmental agency containing a description of the person, such person's photograph, and giving such person's date of birth and includes, without being limited to, a passport, military ID card, driver license or state department of public safety ID card.
- (b) Licensee must have written policies and procedures and train, instruct and supervise employees to ensure compliance with this section.
- (c) Except as otherwise authorized by law, and in accordance with state law:
 - (i) No person knowingly, directly or through another person, shall furnish, cause to be furnished, or permit any person in such person's employ to furnish any alcoholic beverage to any person under 21 years of age;
 - (ii) No person under 21 years of age shall purchase, attempt to purchase, or knowingly possess any alcoholic beverage;
 - (iii) No person under 21 years of age shall misrepresent such person's age in any manner whatever for the purpose of obtaining illegally any alcoholic beverage;
 - (iv) No person knowingly or intentionally shall act as an agent to purchase or acquire any alcoholic beverage for or on behalf of a person under 21 years of age; and
 - (v) No person under 21 years of age shall misrepresent his identity or use any false identification for the purpose of purchasing or obtaining any alcoholic beverage.
- (d) The prohibitions contained in subsections (c)(i), (ii), and (iv) of this section shall not apply with respect to the sale, purchase, or possession of alcoholic beverages for consumption:
 - (i) For medical purposes pursuant to a prescription of a physician duly authorized to practice medicine in this state; or
 - (ii) At a religious ceremony.
- (e) The prohibitions contained in subsections (c)(i), (ii), and (iv) of this section shall not apply when the person under the age of 21 is given the alcoholic beverage by his parent or guardian for consumption in the home and in the presence of the parent or guardian.
- (f) The prohibition contained in subsection (c)(i) of this section shall not apply with respect to sale of alcoholic beverages by a person when such person has been furnished with proper identification showing that the person to whom the alcoholic beverage is sold is 21 years of age or older. For the purposes of this subsection, the term "proper identification" means any document issued by a governmental agency containing a description of the person, such person's photograph, or both, and giving such person's date of birth and includes, without being limited to, a passport, military identification card, driver license, or an identification card authorized under O.C.G.A. §§ 40-5-100 through 40-5-104. "Proper identification" shall not include a birth certificate and shall not include any traffic citation and complaint form.
- (g) Nothing in this section shall be construed so as to conflict with O.C.G.A. § 3-3-23 or any other provision of state law. Any violations of this section shall be grounds for revocation of the license by the issuing body.

(Ord. No. 2017-06-05, § 4.5.7, 6-5-2017)

Sec. 4.5.8. Retailer to purchase from licensed wholesaler only.

No retailer shall purchase alcoholic beverages from any person other than a wholesaler licensed under this chapter. No wholesaler shall sell any alcoholic beverage to anyone other than a retailer licensed under this chapter.

(Ord. No. 2017-06-05, § 4.5.8, 6-5-2017)

Sec. 4.5.9. Happy hour promotions.

- (a) No licensee under this chapter or employee or agent of a licensee shall, in connection with the sale or other disposition of alcoholic beverages for consumption on the premises, engage in selling, offering to sell, or delivering to any person or persons any alcoholic beverage at a price less than one-half the price customarily charged for such alcoholic beverage, provided nothing contained herein shall be construed to prohibit reducing the price of a drink or drinks by up to one-half the price customarily charged.
- (b) In this section, the term "customarily charged" means the price regularly charged for such alcoholic beverage during the same calendar week.

(Ord. No. 2017-06-05, § 4.5.9, 6-5-2017)

Sec. 4.5.10. Locations where sales by the drink permitted; entrance to establishment.

No distilled spirits may be sold by the drink for consumption on the premises where sold except in eating establishments regularly serving prepared food, with a full-service kitchen prepared to serve food every hour they are open. When located in hotels, motels and high-rise office and apartment buildings, every entrance to the establishment shall be from a public lobby, hallway, mall or other publicly used interior portion of the primary use structure.

(Ord. No. 2017-06-05, § 4.5.10, 6-5-2017)

Sec. 4.5.11. Certain organizations exempt from food establishment requirements.

Veterans' organizations, fraternal organizations and other nonprofit organizations currently having tax-exempt status under either the United States Internal Revenue Code or O.C.G.A. § 48-71-1 et seq. shall not be required to operate a food establishment serving prepared food. However, any such organization selling or dispensing alcoholic beverages shall be subject to all ordinance regulations dealing with general licensing and consumption-on-the-premises establishments.

(Ord. No. 2017-06-05, § 4.5.11, 6-5-2017)

*DIVISION 2. ESTABLISHMENTS LICENSED FOR ON-PREMISES CONSUMPTION OF
DISTILLED SPIRITS*

~~**Sec. 4.5.12. Hours of sale and operation.**~~

- ~~(a) — Distilled spirits shall be sold and delivered to the customer for consumption on the premises during the following hours:~~

-
- ~~(i) Monday through Friday hours are from 9:00 a.m. until 3:55 a.m. of the following day.~~
- ~~(ii) Saturday hours are from 9:00 a.m. until 2:55 a.m. on Sunday.~~
- ~~(iii) Sunday hours are from 11:00 a.m. until 12:00 a.m. midnight on Monday as permitted by section 4.5.15.~~
- ~~(b) Sales and deliveries during all other hours are prohibited. All licensed establishments must close their premises to the public and clear their premises of patrons by 3:30 a.m. and shall not reopen their premises to the public until 9:00 a.m. or thereafter.~~

(Ord. No. 2017-06-05, § 4.5.12, 6-5-2017; Ord. No. 2018-08-02, § 5, 9-5-2018)

Sec. 4.5.13. Sales and deliveries during all other hours are prohibited.

There shall be no consumption on the premises after prohibited hours have been in effect for one-half hour. All licensed establishments must close their premises to the public and clear their premises of patrons within one hour after the time set by this chapter for discontinuance of the sale of alcoholic beverages on the premises and shall not reopen their premises to the public until 9:00 a.m. or thereafter.

(Ord. No. 2017-06-05, § 4.5.13, 6-5-2017)

Sec. 4.5.14. Employees.

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

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

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

(Ord. No. 2017-06-05, § 4.5.14, 6-5-2017; Ord. No. 2017-10-04, § 3(4.5.14), 10-16-2017)

Sec. 4.5.15. Sunday sales.

- (a) Licensed establishments deriving a minimum of 60 percent of their total annual gross food and beverage sales from the sale of prepared meals or food, or licensed establishments deriving at least 60 percent of their total annual income from the rental of rooms for overnight lodging, are authorized to apply for a Sunday sales permit to sell and serve alcoholic beverages, malt beverages and wine by the drink from 11:00 a.m. on Sunday until 12:00 a.m. midnight of the following Monday.
- (b) Applicants for a Sunday sales permit shall complete a form and affidavit furnished by the City Manager or his designee. The City Manager or his designee may, at any time, require that the licensee obtain an audit prepared by a certified public accountant, at the licensee's expense, to ensure compliance. If an audit reveals that incorrect, incomplete or misleading information was submitted on and/or with the Sunday sales form and/or affidavit, then, the permit shall be automatically revoked by the City Manager or his designee. No later than March 31 of the license year, licensee shall submit a report on monthly sales by category for the prior calendar year.
- (c) All annual permit renewals shall be filed with the City Manager or his designee not later than November 30 of the year preceding the license year for which the permit is to be issued. All renewals are subject to audit prior to being renewed to ensure compliance with this chapter.
- (d) Sunday sales permits may be granted for the full calendar year or for the number of months remaining in the calendar year. The permit fee shall be prorated based on the number of months remaining in the calendar year; partial months shall be counted as a full month. Fees are not refundable and permits shall not be transferable.
- (e) Establishments which qualify for a Sunday sales license are authorized to apply for a temporary Sunday sales permit if they desire to open for special events or holidays. The temporary permit shall be valid for one

calendar month and partial months shall be counted as a full month. Licensees must apply 30 days in advance of the issuance date.

(Ord. No. 2017-06-05, § 4.5.15, 6-5-2017; Ord. No. 2018-08-02 , § 5, 9-5-2018)

Sec. 4.5.16. Open area and patio sales.

No consumption and/or sale of distilled spirits shall be allowed in open areas and patios unless first permitted and approved by the City Manager or his designee. The department shall prepare such appropriate regulations as to ensure the safe and orderly operation of these establishments, including, but not limited to, regulations pertaining to maximum capacity, ingress and egress.

(Ord. No. 2017-06-05, § 4.5.16, 6-5-2017)

DIVISION 3. ESTABLISHMENTS LICENSED FOR ON-PREMISES CONSUMPTION OF BEER AND WINE

Sec. 4.5.17. Types of retail establishments.

- (a) No beer or wine shall be sold at retail except in establishments licensed to sell beer and/or wine in the original package, as applicable, which are located in zoning districts in which these establishments are permitted as a conforming use or when such establishment currently exists in the zoning district as a nonconforming use, as defined in chapter 27.
- (b) In cases where a hotel or motel is allowed to sell liquor by the package for the purposes of room service, beer and wine sales by the package shall also be permitted for the purposes of room service to guests of the hotel or motel.

(Ord. No. 2017-06-05, § 4.5.17, 6-5-2017)

Sec. 4.5.18. Hours of sale and operation.

Beer and/or wine shall be sold and delivered to the customer for consumption on the premises only during the following hours:

- (a) Monday through Friday hours are from 9:00 a.m. until 3:55 a.m. of the following day.
- (b) Saturday hours are from 9:00 a.m. until 2:55 a.m. on Sunday.
- (c) Sunday hours are from 11:00 a.m. on Sunday until 12:00 a.m. midnight on Monday as permitted by section 4.5.21.

Sales and deliveries during all other hours are prohibited. All licensed establishments must close their premises to the public and clear their premises of patrons by 3:30 a.m. and shall not reopen their premises to the public until 9:00 a.m. or thereafter.

(Ord. No. 2017-06-05, § 4.5.18, 6-5-2017; Ord. No. 2018-08-02 , § 6, 9-5-2018)

Sec. 4.5.19. Sales and deliveries during all other hours are prohibited.

There shall be no consumption on the premises after prohibited hours have been in effect for one-half hour. All licensed establishments must close their premises to the public and clear their premises of patrons within one hour after the time set by this chapter for discontinuance of the sale of alcoholic beverages on the premises and shall not reopen their premises to the public until 9:00 a.m. or thereafter.

(Ord. No. 2017-06-05, § 4.5.19, 6-5-2017)

Sec. 4.5.20. Employees.

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

- (1) An employee shall meet the same character requirements as set forth in the general ordinances for the licensee, except for the residency requirements.
- (2) No person shall be employed by an establishment holding a license hereunder until such person has been fingerprinted or cleared by the City Manager or his designee and a permit issued indicating that such person is eligible for this employment. The permit issued to a person under this section shall be either of the following:
 - a. Alcoholic beverage permit, which shall be issued only to a person who must be 18 years of age or older and who sells, serves or dispenses alcoholic beverages.
 - b. Nonalcoholic beverage permit, which shall be issued to a person whose employment, includes, but is not limited to, host, hostess, doorperson and bouncer. All employees holding nonalcoholic beverage permits shall be prohibited from selling, serving, or dispensing alcoholic beverages.
- (3) No permit shall be issued until such time as a signed application has been filed with the City Manager or his designee and a search of the criminal record of the applicant completed. The application shall include, but shall not be limited to, the name, date of birth and prior arrest record of the applicant, though the fact of an arrest record shall be used for investigative purposes only, and shall give rise to no presumption or inference of guilt. Due to the inclusion of arrest information, these applications shall be regarded as confidential and shall not be produced for public inspection without a court order.
- (4) The City Manager or his designee shall have a complete and exhaustive search made relative to any police record of the person fingerprinted or cleared. If there is no record of a violation of this division, the department shall issue a permit to the employee, stating that the person is eligible for employment. If it is found that the person fingerprinted or cleared is not eligible for employment, the department shall not issue a permit to the employee.
- (5) All permits issued through administrative error or through an error in completion of a background investigation may be terminated by the City Manager or his designee or the City Manager or his designee.
- (6) This section does not apply to employees whose duties are limited solely to those of a busperson, cook or dishwasher. This section does not apply to employees of theaters, as defined in article 9 of chapter 27 of the Code of the City of Stonecrest, whose duties are limited solely to those of concession sales, ticket sales, and ushers. All employees under this subsection shall be prohibited from selling, serving, or dispensing alcoholic beverages.
- (7) No licensee shall allow any employee required to hold a permit to work on the licensed premises unless the licensee has on file, on the premises, the current, valid permit of each such employee.

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- (8) If any permit holder leaves the employ of a licensed establishment, the licensee shall immediately surrender the permit to the City Manager or his designee.
 - (9) All permits issued hereunder remain the property of the city and shall be produced for inspection upon the demand of the City Manager or his designee.

(Ord. No. 2017-06-05, § 4.5.20, 6-5-2017; Ord. No. 2017-10-04, § 4(4.5.20), 10-16-2017)

Sec. 4.5.21. Sunday sales.

- (a) Licensed establishments deriving a minimum of 60 percent of their total annual gross food and beverage sales from prepared meals or food, or licensed establishments deriving at least 60 percent of their total annual gross income from the rental of rooms for overnight lodging, are authorized to apply for a Sunday sales permit to sell and serve alcoholic beverages by the drink from 11:00 a.m. on Sunday until 12:00 a.m. midnight of the following Monday.
- (b) Applicants for a Sunday sales permit shall complete a form and affidavit furnished by the City Manager or his designee. The City Manager or his designee may, at any time, require that the licensee obtain an audit prepared by a certified public accountant, at the licensee's expense, to ensure compliance. If an audit reveals that incorrect, incomplete or misleading information was submitted on and/or with the Sunday sales form and/or affidavit, then, the permit shall be automatically revoked by the City Manager or his designee. No later than March 31 of the license year, licensee shall submit a report on monthly sales by category for the prior calendar year.
- (c) All annual permit renewals shall be filed with the City Manager or his designee not later than November 30 of the year preceding the license year for which the permit is to be issued. All renewals are subject to audit prior to being renewed to ensure compliance with this chapter.
- (d) Sunday sales permits may be granted for the full calendar year or for the number of months remaining in the calendar year. The permit fee shall be prorated based on the number of months remaining in the calendar year; partial months shall be counted as a full month. Fees are not refundable and permits shall not be transferable.
- (e) Establishments which qualify for a Sunday sales license are authorized to apply for a temporary Sunday sales permit if they desire to open for special events or holidays. The temporary permit shall be valid for one calendar month and partial months shall be counted as a full month. Licensees must apply 30 days in advance of the issuance date.

(Ord. No. 2017-06-05, § 4.5.21, 6-5-2017; Ord. No. 2018-08-02 , § 6, 9-5-2018)

Sec. 4.5.22. Open area and patio sales.

No consumption and/or sale of beer and wine shall be allowed in open areas and patios unless first permitted and approved by the City Manager or his designee. The department shall prepare such appropriate regulations as to ensure the safe and orderly operation of these establishments, including, but not limited to, regulations pertaining to maximum capacity, ingress and egress.

(Ord. No. 2017-06-05, § 4.5.22, 6-5-2017)

DIVISION 4. PRIVATE CLUBS

Sec. 4.5.23. Generally.

Private clubs may sell and dispense alcoholic beverages upon compliance with all applicable ordinances and regulations of the city governing the sale of such beverages and upon payment of such license fees and taxes as may be required by the existing ordinances, rules and regulations of the city.

(Ord. No. 2017-06-05, § 4.5.23, 6-5-2017)

Sec. 4.5.24. Hours of sale and operation.

Alcoholic beverages shall be sold and delivered to patrons for consumption on the premises only during the following hours:

- (a) Monday through Friday hours are from 9:00 a.m. until 3:55 a.m. of the following day.
- (b) Saturday hours are from 9:00 a.m. until 2:55 a.m. on Sunday.
- (c) Sunday hours are from 11:00 a.m. on Sunday until 12:00 a.m. midnight on Monday as permitted by section 4.5.26.

Sales and deliveries during all other hours are prohibited. All licensed establishments must close their premises and clear their premises of patrons within one hour after the time set by this chapter for discontinuance of the sale of alcoholic beverages on the premises and shall not reopen their premises to the public until 9:00 a.m. or thereafter.

(Ord. No. 2017-06-05, § 4.5.24, 6-5-2017; Ord. No. 2018-08-02 , § 7, 9-5-2018)

Sec. 4.5.25. Employees.

The following provisions apply to all private clubs holding a license for consumption of alcoholic beverages on the premises:

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

the City Manager or his designee shall issue a permit to the employee, stating that the person is eligible for employment. If it is found that the person fingerprinted or cleared is not eligible for employment, the City Manager or his designee shall not issue a permit to the employee.

- (5) All permits issued through administrative error or through an error in completion of a background investigation can be terminated by the City Manager or his designee.
- (6) This section does not apply to employees whose duties are limited solely to those of a busperson, cook or dishwasher.
- (7) No licensee shall allow any employee required to hold a permit to work or train on the licensed premises unless the licensee has on file, on the premises, the current, valid permit of each such employee.
- (8) If any permit holder leaves the employ of a licensed establishment, the licensee shall immediately surrender the permit to the City Manager or his designee.
- (9) All permits issued hereunder remain the property of the city, and shall be produced for inspection upon the demand of the City Manager or his designee.

(Ord. No. 2017-06-05, § 4.5.25, 6-5-2017)

Sec. 4.5.26. Sunday sales.

- (a) Licensed establishments deriving a minimum of 60 percent of their total annual gross food and beverage sales from prepared meals or food, or licensed establishments deriving at least 60 percent of their total annual income from the rental of rooms for overnight lodging, are authorized to apply for a Sunday sales permit to sell and serve alcoholic beverages, malt beverages and wine by the drink from 11:00 a.m. on Sunday until 12:00 a.m. midnight of the following Monday. No later than March 31 of the license year, licensee shall submit a report on monthly sales by category for the prior calendar year.
- (b) Applicants for a Sunday sales permit shall complete a form and affidavit furnished by the City Manager or his designee. An audit may be required at any time to ensure compliance. If an audit reveals that incorrect, incomplete or misleading information was submitted on and/or with the Sunday sales form and/or affidavit, then, the permit shall be automatically revoked by the City Manager or his designee.
- (c) All annual permit renewals shall be filed with the City Manager or his designee not later than November 30 of the year preceding the license year for which the permit is to be issued. All renewals are subject to audit prior to being renewed to ensure compliance with this chapter.
- (d) Sunday sales permits may be granted for the full calendar year or for the number of months remaining in the calendar year. The permit fee shall be prorated based on the number of months remaining in the calendar year; partial months shall be counted as a full month. Fees are not refundable and permits shall not be transferable.
- (e) Establishments which qualify for a Sunday sales license are authorized to apply for a temporary Sunday sales permit if they desire to open for special events or holidays. The temporary permit shall be valid for one calendar month and partial months shall be counted as a full month. Licensees must apply 30 days in advance of the issuance date.

(Ord. No. 2017-06-05, § 4.5.26, 6-5-2017; Ord. No. 2018-08-02 , § 7, 9-5-2018)

Sec. 4.5.27. Open area and patio sales.

No consumption and/or sale of distilled spirits or beer or wine shall be allowed in open areas and patios of private clubs unless first permitted and approved by the City Manager or his designee. The department shall prepare such appropriate regulations as to ensure the safe and orderly operation of these establishments, including, but not limited to, regulations pertaining to maximum capacity, ingress and egress.

(Ord. No. 2017-06-05, § 4.5.27, 6-5-2017)

DIVISION 5. DISTILLED SPIRIT PACKAGE STORES

Sec. 4.5.28. Types of establishments where retail sale permitted.

- (a) No distilled spirits by the package shall be sold at retail except in the following:
- (1) Retail establishments devoted exclusively to the retail sale of alcoholic beverages by the package.
 - (2) Retail establishments in which space has been set aside devoted exclusively to the retail sales of distilled spirits by the package, with ingress and egress provided directly to and only to the exterior of the building in which the facility is located and not to any other enclosed part of the building in which the facility is located, except as provided in subsection (a)(3) of this section.
 - (3) In hotels, motels and high-rise office buildings where every public entrance to this use shall be from a lobby, hallway, or other interior portion of the primary use structure.
 - (4) In hotels and motels with a restaurant holding a consumption-on-the-premises license, as part of room service for guests of the hotel or motel.
- (b) Nothing in this section shall prohibit the retail sale within these establishments of liquid commodities and mixes normally used in the preparation and serving of distilled spirits.

(Ord. No. 2017-06-05, § 4.5.28, 6-5-2017)

Sec. 4.5.29. Coin-operated or amusement machines.

No retail dealer in liquors shall permit on the premises any slot machine of any kind or character or any coin-operated machine or any machine operated for amusement purposes. However, cigarette vending machines may be permitted.

(Ord. No. 2017-06-05, § 4.5.29, 6-5-2017)

Sec. 4.5.30. Hours of sale.

Retailers shall not engage in the sale of spirituous liquors except between the hours of 8:00 a.m. and 12:00 noon on Monday through Saturday. The hours within which this business may be carried on shall be determined by the standard time in force at the time of the sale thereof. Retailers shall not engage in the sale of spirituous liquors except between the hours of 12:30 p.m. and 11:00 p.m. on Sunday.

(Ord. No. 2017-06-05, § 4.5.30, 6-5-2017)

Sec. 4.5.31. Employees.

The following provisions apply to all establishments holding a license for package liquor:

- (1) An employee shall meet the same character requirements as set forth in the general ordinances for the licensee, except for the residency requirements.
- (2) No person shall be employed by an establishment holding a license hereunder until this person has been fingerprinted or cleared by the City Manager or his designee and has been issued a permit by the City Manager or his designee indicating that the person is eligible for employment. The permit issued to a person under this section shall be an alcoholic beverage permit, which shall be issued only to a person who must be 18 years of age or older and who sells alcoholic beverages.
- (3) No permit shall be issued until such time as a signed application has been filed with the City Manager or his designee and a search of the criminal record of the applicant completed. The application shall include, but shall not be limited to, the name, date of birth, and prior arrest record of the applicant, though the fact of an arrest record shall be used for investigative purposes only, and shall give rise to no presumption or inference of guilt. Due to the inclusion of arrest information, these applications shall be regarded as confidential and shall not be produced for public inspection without a court order.
- (4) The City Manager or his designee shall have a complete and exhaustive search made relative to any police record of the person fingerprinted or cleared. If there is no record of a violation of this division, the City Manager or his designee shall issue a permit to the employee, stating that the person is eligible for employment. If it is found that the person fingerprinted or cleared is not eligible for employment, the City Manager or his designee shall not issue a permit to the employee.
- (5) All permits issued through administrative error or through an error in completion of a background investigation can be terminated by the City Manager or his designee.
- (6) No licensee shall allow any employee required to hold a permit to work or train on the licensed premises unless the licensee has on file, on the premises, the current, valid permit of each such employee.
- (7) If any permit holder leaves the employ of a licensed establishment, the licensee shall immediately surrender the permit to the City Manager or his designee.
- (8) All permits issued hereunder remain the property of the city, and shall be produced for inspection upon the demand of the City Manager or his designee.

(Ord. No. 2017-06-05, § 4.5.31, 6-5-2017)

Sec. 4.5.32. Location of retail liquor package stores.

No new retail establishment selling distilled spirits by the package shall be located within 1,000 yards of an existing retail establishment selling distilled spirits by the package. This prohibition shall not apply to a hotel or a motel with a restaurant holding a consumption on the premises license which sells package liquor to its guests as part of room service.

(Ord. No. 2017-06-05, § 4.5.32, 6-5-2017)

DIVISION 6. BEER AND WINE PACKAGE STORES

Sec. 4.5.33. Types of retail establishments.

- (a) Except as provided in section 4.5.35, no beer and/or wine shall be sold at retail except in establishments maintaining 80 percent of the floor space and storage area in a manner which is devoted principally to the retail sale of other products and located in zoning districts in which these establishments are permitted as a conforming use or in districts where an existing establishment exists as a nonconforming use or in a facility duly licensed by the city to sell liquor by the package.
- (b) In cases where, under section 4.5.28(a)(4), a hotel or motel is allowed to sell liquor by the package for the purposes of room service, beer and wine sales by the package shall also be permitted for the purposes of room service to guests of the hotel or motel.

(Ord. No. 2017-06-05, § 4.5.33, 6-5-2017)

Sec. 4.5.34. Hours of sale; Sunday sales.

Retail package licensees shall not engage in the sale of beer and/or wine except between the hours of 8:00 a.m. and 12:00 midnight, Monday through Saturday. The hours within which business may be carried on shall be determined by the standard time in force at the time of the sale thereof. Retail package licensees shall not engage in the sale of beer and/or wine except between the hours of 12:30 p.m. and 11:00 p.m. on Sunday.

(Ord. No. 2017-06-05, § 4.5.34, 6-5-2017)

Sec. 4.5.35. Use of tags or labels to indicate prices.

Retailers shall indicate plainly, by tags or labels on the bottles or containers or on the shelf immediately below where the containers are placed, the prices of all beer and wine exposed or offered for sale.

(Ord. No. 2017-06-05, § 4.5.35, 6-5-2017)

Sec. 4.5.36. Ancillary wine tasting license.

- (a) The holder of a package wine license, with or without a package malt beverage license, but in no event with a package distilled spirits license, with licensed premises having a minimum of 200 square feet of floor space dedicated to the display of wine offered for sale, shall be eligible for an ancillary wine tasting license to provide samples of wine offered for sale to customers under the conditions set forth in this section.
- (b) Wine sampling shall be on limited occasions when a customer requests a sample of a wine offered for sale within the premises, or in conjunction with wine education classes and sampling designed to promote wine appreciation and education.
- (c) Wine tasting for customers shall only be conducted at a wine counter area constituting no more than ten percent of the entire floor area of the premises.
- (d) Wine sampling for customers shall be limited to no more than one time per day per customer for a period not to exceed two consecutive hours. Samples shall not exceed two ounces, and no customer shall consume more than eight ounces in any two-hour period.
- (e) Wine bottles shall be opened only by the licensee or an employee, and samples shall only be poured by the licensee and/or an employee.
- (f) No open containers of wine shall be removed from the licensed premises.

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- (g) Not more than three times per week for a period of not to exceed two consecutive hours, the holder of an ancillary wine tasting license may conduct educational classes and sampling for classes. All conditions of sampling set forth in this section shall apply to such classes, except for the limitation on floor areas where the classes can be conducted.
 - (h) Holders of an ancillary wine tasting permit shall not charge for samples or tastings, but may accept donations for a charitable organization of their choice.
 - (i) Wine sampling and tasting is only permitted within the enclosed portion of the premises.
 - (j) The annual fee for an ancillary wine tasting license shall be set and may be revised by resolution of the city council.

(Ord. No. 2017-06-05, § 4.5.36, 6-5-2017)

Sec. 4.5.37. Ancillary malt beverage tasting license.

- (a) The holder of a package malt beverage license, with or without a package wine license, but in no event with a package distilled spirits license, with licensed premises having a minimum of 400 square feet of floor space dedicated to the display of malt beverages offered for sale or which is authorized pursuant to section 4.5.39 to sell growlers, shall be eligible for an ancillary malt beverage tasting license to provide samples of malt beverages offered for sale to customers under the conditions set forth in this section.
- (b) Malt beverage sampling shall be on limited occasions when a customer request a sample of a malt beverage offered for sale within the premises, or in conjunction with malt beverage education classes and sampling designed to promote malt beverage appreciation and education.
- (c) Malt beverage tasting for customers shall only be conducted at a counter area constituting no more than ten percent of the entire floor area of the premises.
- (d) Malt beverage sampling for customers shall be limited to no more than one time per day per customer for a period not to exceed two consecutive hours. Samples shall not exceed two ounces, and no customer shall consume more than eight ounces in any two-hour period.
- (e) Only the licensee or an employee shall open and handle unpackaged malt beverages, and samples shall only be poured by the licensee and/or an employee.
- (f) No open containers shall be removed from the licensed premises.
- (g) Not more than three times per week for a period not to exceed two consecutive hours, the holder of an ancillary malt beverage tasting license may conduct educational classes and sampling for class participants. All conditions of sampling set forth in this section shall apply to such classes, except for the limitation on floor areas where the classes can be conducted.
- (h) Holders of an ancillary malt beverage tasting license shall not charge for samples or tastings, but may accept donations for a charitable organization of their choice.
- (i) Malt beverage sampling and tasting is only permitted within the designated interior portion of the premises.
- (j) The annual fee for an ancillary malt beverage tasting license shall be set, and may be revised, by resolution of the city council.

(Ord. No. 2017-06-05, § 4.5.37, 6-5-2017)

Sec. 4.5.38. Bed and breakfast license.

- (a) A bed and breakfast desiring to sell alcohol on premises shall first obtain a bed and breakfast alcohol license. Such license shall be limited to the sale of beer and wine.
- (b) A bed and breakfast licensed under this article shall:
 - (i) Comply with all local, state and federal licensing and operational requirements, and shall have all licenses and permits required of bed and breakfasts by the same;
 - (ii) Have a full-service kitchen at the licensed location approved by local health and fire departments;
 - (iii) Restrict its sell of alcohol to overnight customers staying on the premises and its customers who are served food that is to be consumed on the premises while dining or attending a culinary class. More than one bottle of wine shall not be sold to any customer in a three-day period. A bed and breakfast shall not allow customers to take alcoholic beverages in any form away from the licensed premises, except that overnight customers may be permitted to remove one unsealed bottle of wine per patron for consumption off premises at the end of their overnight stay;
 - (iv) Submit reports to the City Manager or his designee as required under this chapter.

(Ord. No. 2017-06-05, § 4.5.38, 6-5-2017)

Sec. 4.5.39. On-premises consumption unlawful; growlers.

- (a) It shall be unlawful for any person to consume any alcoholic beverages on premises licensed for the sale of alcoholic beverages by the package. It shall be unlawful for any retail package licensee to open or break the package of any alcoholic beverages for a purchaser or to permit the consumption of alcoholic beverages on the licensed premises. This section shall not apply with respect to:
 - (1) Tastings provided pursuant to an ancillary wine tasting license;
 - (2) Tastings provided pursuant to an ancillary malt beverage tasting license; or
 - (3) Sales pursuant to a license for consumption on the premises.
- (b) Notwithstanding the foregoing prohibition, package malt beverage licensees, who are not also licensed to sell distilled spirits by the package, may fill growlers with draft beer at the licensee's licensed location from kegs lawfully procured by the licensee, subject to the following requirements:
 - (i) The filled growler must be securely sealed, on premises, with a tamper proof plastic cap;
 - (ii) Either at least 90 percent of the licensee's total gross sales are from the packaged sale of malt beverages and/or wine or the licensee's premises have a minimum of 400 square feet of floor space dedicated to the display of malt beverages offered for sale; and
 - (iii) The licensee complies with all state, federal and local packaging and labeling laws regarding alcoholic beverages.

Each filled growler must be removed from the premises in its securely sealed condition. Except as provided in subsection (a) of this section, consumption on the premises shall be prohibited.

(Ord. No. 2017-06-05, § 4.5.39, 6-5-2017)

Sec. 4.5.40. Craft beer market.

- (a) No person shall be permitted to own or operate a craft beer market without obtaining from the finance director as provided in this chapter for both a retail package sales of malt beverages license and an ancillary tasting license.
- (b) Notwithstanding any other provision of this chapter or the Code of Ordinances for the city generally, a craft beer market shall be authorized to sell samples of draft beer and pints to patrons over the age of 21 years. Samples shall not exceed four ounces in volume, pints shall not exceed 16 ounces, and beers having an alcohol content in excess of six percent alcohol by volume shall not exceed ten ounces. One individual shall not be offered more than a total of 32 ounces within a 24-hour period.
- (c) A craft beer market or growler shop may, but is not required, to serve food, so long as the establishment complies with all other provisions of the city Code and such food service is properly permitted by the city.
- (d) A craft beer market or growler shop that offers for sale samples or pints shall be exempt from the definitions of restaurants and late night establishments in chapter 27.
- (e) Employees of a craft beer market that offers for sale samples or pints, as defined in this section, shall obtain and the licensee shall maintain on premises an employee license as required in section 4.5.20.

(Ord. No. 2017-06-05, § 4.5.40, 6-5-2017)

ARTICLE VI. WHOLESALERS

Sec. 4.6.1. Generally.

- (a) Any person desiring to sell, at wholesale, any alcoholic beverage in the city shall make application to the City Manager or his designee and obtain a license to do so, which application shall be in writing on the prescribed forms, and pay a fee in the amount established by action of the city council, a copy of which is on file in the office of the clerk of the city.
- (b) No person who has any direct financial interest in a license for the retail sale of distilled spirits shall be allowed to have any interest or ownership in any wholesale distilled spirit license.
- (c) No retailer shall purchase any alcoholic beverage from any person other than a wholesaler licensed under this article. No wholesaler shall sell any distilled spirits to any person other than a retailer licensed under this chapter.
- (d) No alcoholic beverage shall be delivered to any retail sales outlet in the city except by a duly licensed wholesaler. The name of the wholesale distributor shall be clearly marked on the delivery vehicle.

(Ord. No. 2017-06-05, § 4.6.1, 6-5-2017)

Sec. 4.6.2. Excise tax imposed; bond required.

- (a) There is imposed an excise tax upon all alcoholic beverages purchased in the city by persons holding a retail package license and/or a consumption-on-the-premises license at a rate established by action of the city council, a copy of which is on file in the office of the clerk of the city.
- (b) The excise tax shall be collected by all wholesale dealers selling alcoholic beverages to persons holding retail licenses and shall be paid by the wholesale dealers to the City Manager or his designee by the tenth of each month, based upon the units of alcohol sold during the previous month. The wholesale dealer shall keep true

and correct records of all sales and shipments. The monthly remittance shall be accompanied by a sworn statement showing, but not limited to, the type and volume sold to each retail licensee on a form or in a format as approved by the City Manager or his designee.

- (c) Each wholesale dealer, prior to commencement of business operation in the city, shall post a performance bond with the City Manager or his designee equal to 1½ times the estimated highest monthly payment made in a calendar year of the excise tax based on sales collected by the wholesale dealer from the retailers to secure the payments for the tax imposed herein. These bonds shall be secured by cash which shall bear no interest, or a surety bond executed by a surety company licensed to do business in this state and approved by the City Manager or his designee.
- (d) A wholesaler may be excused from posting the performance bond after demonstrating full and satisfactory compliance with the provisions required hereunder for a period of 12 months subsequent to the commencement of business operations within the city. Continued exemption from the requirement of posting the performance bond shall be conditioned upon continued compliance with the terms of this article and the payment of all sums as required by the provisions of this section.
- (e) Any person who fails to pay any tax to the city or any amount of tax required to be collected and paid to the city under this article within the time required shall pay a late payment penalty, in addition to the tax or amount of tax, plus interest on the unpaid tax or any portion thereof as specified by section 4.4.8.

(Ord. No. 2017-06-05, § 4.6.2, 6-5-2017)

Sec. 4.6.3. Audit.

The city shall have the right to audit each wholesale dealer licensed to do business in the city.

(Ord. No. 2017-06-05, § 4.6.3, 6-5-2017)

Sec. 4.6.4. Hours of sale.

Wholesalers shall not engage in the sale of alcoholic beverages except between 6:00 a.m. and 11:00 p.m., Monday through Saturday.

(Ord. No. 2017-06-05, § 4.6.4, 6-5-2017)

ARTICLE VII. CONSUMPTION OF ALCOHOL NOT PURCHASED ON THE PREMISES

Sec. 4.7.1. Brown bagging prohibited.

Except as provided in section 4.7.2, no owner, operator, or agent of any restaurant, music hall, theatre, or any other business licensee of the city shall knowingly allow patrons to bring in and consume any alcoholic beverage that is not purchased on the premises pursuant to a license under this chapter.

(Ord. No. 2017-06-05, § 4.7.1, 6-5-2017)

Sec. 4.7.2. Corkage.

- (a) At the sole discretion of the licensee, establishments having both a full service kitchen and a license for on-premises consumption of alcoholic beverages may allow patrons to carry or otherwise take wine onto the premises for consumption during the service of meals only subject to the following:

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- (1) Only one bottle per patron of legal drinking age at a table or booth shall be allowed;
 - (2) Before opening, the wine must be sealed in the original seal;
 - (3) The bottle must be commercially manufactured;
 - (4) The bottle may not exceed 1,000 mL in volume;
 - (5) The bottle must be given to the licensee or its designee either before or as the patron is seated; and
 - (6) A partially consumed bottle of wine may be returned to the patron after the licensee or its designee re-corks the bottle in a manner to make the cork flush with the top of the bottle. The licensee shall place the re-corked bottle in a bag or other container that is secured in such a manner that is visibly apparent if the container has been subsequently opened or tampered with
- (b) A licensee who allows patrons to carry or otherwise take wine onto the premises for consumption in accordance with subsection (a) of this section may charge a fee to patrons for this service, at the licensee's discretion.

(Ord. No. 2017-06-05, § 4.7.2, 6-5-2017)

ARTICLE VIII. TRANSITION PERIOD

Sec. 4.8.1. Existing license.

Any legal, validly issued existing license or permit issued by DeKalb County within the incorporated boundaries of the City of Stonecrest shall be valid within the City of Stonecrest for the calendar year of 2017. Any such licensee or permit holder shall be required to comply with the requirements of this chapter, including article IV and article V. At the expiration of 2017, any such licensee or permit holder shall be required to comply with section 4.2.9 and section 4.2.10, or any other section regarding the application of an initial permit, as if no previous license or permit had been held.

Nothing in this subsection should be construed as creating a right, vested or otherwise, to the license or permit originally issued by DeKalb County, or the renewal or issuance of said permit or license for any subsequent years by the City of Stonecrest.

(Ord. No. 2017-06-05, § 4.8.1, 6-5-2017)

Sec. 4.8.2. Transition departments.

During the period of transition and startup of the City of Stonecrest, and until the City notifies DeKalb County of its intention to take over alcohol permitting, any duties required by this chapter shall be fulfilled by DeKalb County or any other designee of the City Manager.

(Ord. No. 2017-06-05, § 4.8.2, 6-5-2017)

Chapter 15 LICENSES, PERMITS AND MISCELLANEOUS BUSINESS REGULATIONS

ARTICLE I. IN GENERAL

Sec. 15.1.1. Security information—Required.

All persons subject to the provisions of this chapter shall furnish to the City Manager or his designee, on a form supplied by the City Manager or his designee, any and all information necessary to indicate the security measures located at such person's business, trade or profession and the persons to be notified in the event of an emergency of the business, trade or profession.

(Ord. No. 2017-08-05, § 1(15.1.1), 8-7-2017)

Sec. 15.1.2. Security information—Furnished with license application.

All persons applying for a new or renewal license under the provisions of this chapter shall be required, at the time of application, to furnish the information required in section 15.1.1, and to keep the information current.

(Ord. No. 2017-08-05, § 1(15.1.2), 8-7-2017)

Sec. 15.1.3. Emergency decal.

All persons subject to the provisions of this chapter shall be furnished by the City Manager or his designee with an emergency decal containing thereon a coded number; it shall be the responsibility of the owner, operator or manager of the business to affix the decal to the main entrance of the business. The decal shall be placed at approximate eye level on the main entrance, and if the decal cannot be placed on the main entrance, it shall be placed on the most conspicuous location as close as possible to the main entrance to the business.

(Ord. No. 2017-08-05, § 1(15.1.3), 8-7-2017)

Sec. 15.1.4. Carnivals, sideshows, etc.; permit required prior to issuance of license.

No license shall be granted for the operation of a carnival, sideshow or similar exhibition on a vacant lot or in any open place where performances of any kind are given or where machinery of any kind or devices of any kind are operated for amusement unless a permit is obtained. Applications for this permit, accompanied by a fee in the amount established by action of the City Council, a copy of which is on file in the office of their clerk, shall be filed with the City Manager or his designee. The application shall contain such information as the City Manager or his designee requires.

(Ord. No. 2017-08-05, § 1(15.1.4), 8-7-2017)

Sec. 15.1.5. Table of classification of occupations.

Classification of Occupations

Business Description	NAICS	2017 Class
Accommodation, Food Services, and Drinking Places	72	5
Administrative and Support and Waste Management and Remediation Services	56	3
Agriculture, Forestry, Hunting and Fishing	11	4

Arts, Entertainment and Recreation	71	2
Construction	23	1
Educational Services	61	4
Finance and Insurance	52	6
Health Care and Social Assistance	62	4
Information	51	5
Management of Companies (Holding Companies)	55	6
Manufacturing	31—33	5
Mining	21	2
Scientific, and Technical Services	54	3
Real Estate and Rental and Leasing	53	6
Transportation and Warehousing	48, 49	2
Utilities	22	1
Wholesale and Retail Trade	42, 44, 45	1
Other Services	81	3

(Ord. No. 2017-08-07, § 1, 7-7-2017)

Secs. 15.1.6—15.1.25. Reserved.

ARTICLE II. BUSINESS OCCUPATION TAXES

Sec. 15.2.1. Payment of occupational tax.

- (a) Each person engaged in a business, trade, profession or occupation whether with a location within the city, or in the case of an out-of-state business with no location in Georgia exerting substantial efforts within the city pursuant to O.C.G.A. § 48-13-7 shall pay an occupational tax for said business, trade, profession or occupation.
- (b) Occupation taxes shall be based upon gross receipts in combination with profitability ratio and number of employees. The profitability ratio for the type of business will be determined from nationwide averages derived from statistics, classifications or other information published by the United States Office of Management and Budget, the United States Internal Revenue Service or successor agencies of the United States.
- (c) A schedule of specific business occupation taxes, as adopted from time to time by the City Council is on file in the office of the clerk of, and shall be levied and collected in the amount and manner specified by this article.

(Ord. No. 2017-08-05, § 1(15.2.1), 8-7-2017)

Sec. 15.2.2. Definitions of terms used in this article.

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:

Administrative fee means a component of the occupational tax which approximates the cost of handling and processing the occupational tax.

Applicant or holder means the applicant for, or holder of, a business occupation tax certificate, and shall include the business and any legally or organizationally related entity to which the occupational tax certificate applies.

Business means any person, sole proprietor, partnership, corporation, trade, profession, occupation or other entity and the efforts or activities associated thereby for the purposes of raising revenue or producing income.

Director means the director of finance or his designee.

Dominant line means the type of business within a multiple-line business from which the greatest amount of income is derived.

Employee means an individual whose work is performed under the direction and supervision of the employer and whose employer withholds FICA, federal income tax, or state income tax from such individual's compensation or whose employer issues to such individual for the purposes of documenting compensation a form I.R.S. W-2 but not a form I.R.S. 1099.

Gross receipts.

- (1) The term "gross receipts" means total revenue of the business or practitioner for the period, including without being limited to the following:
 - a. Total income without deduction for the cost of goods sold or expenses incurred;
 - b. Gain from trading in stocks, bonds, capital assets, or instruments of indebtedness;
 - c. Proceeds from commissions on the sale of property, goods, or services;
 - d. Proceeds from fees charged for services rendered;
 - e. Proceeds from rent, interest, royalty, or dividend income; and
 - f. From all other income whatsoever arising from or growing out of the conduct of the business, trade, profession or occupation without any deduction whatsoever.
- (2) The term "gross receipts" shall not include the following:
 - a. Sales, use, or excise taxes;
 - b. Sales returns, allowances, and discounts;
 - c. Interorganizational sales or transfers between or among the units of a parent-subsidiary controlled group of corporations, as defined by 26 USC 1563(a)(1), between or among the units of a brother-sister controlled group of corporations, as defined by 26 USC 1563(a)(2), or between or among wholly-owned partnerships or other wholly-owned entities;
 - d. Payments made to a subcontractor or independent agent;
 - e. Governmental and foundation grants, charitable contributions or the interest income derived from such funds, received by a nonprofit organization which employs salaried practitioners otherwise covered by this article, if such funds constitute 80 percent or more of the organization's receipts; and

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- f. Proceeds from sales to customers outside the geographical boundaries of the state.

License means a permit or certificate issued by the city that allows an entity to operate lawfully in the city. A license does not create any rights to operate in violation of any provision of this Code and it may be denied, suspended or revoked by the city at any time pursuant to the procedures set forth herein. The term "license" applies to any license issued pursuant to this chapter.

Location or office shall include any structure or any vehicle of a business or practitioner of a profession or occupation which has a location or office where a business, profession, or occupation is conducted, but shall not include a temporary or construction work site which serves a single customer or project or delivery vehicles of a business or practitioner of a profession or occupation which has a location or office.

Occupation tax means a tax levied on persons, partnerships, corporations or other entities for engaging in an occupation, trade, profession or business for revenue raising or income producing purposes.

Person, wherever used in this article, shall be held to include sole proprietors, corporations, partnerships, nonprofit or any other form of business organization.

Practitioner of profession or occupation means one who by state law requires state licensure regulating such profession or occupation. The term "practitioner of profession or occupation" shall not include a practitioner who is an employee of a business if the business pays an occupation tax.

Regulatory fees means payments, whether designated as license fees, permit fees or by another name, which are required as an exercise of police power and as a part of or as an aid to regulation of an occupation, profession or business. Regulatory fees shall not include an administrative fee. Regulatory fees do not include development impact fees, as defined by O.C.G.A. § 36-71-2, or other costs or conditions of zoning or land development.

(Ord. No. 2017-08-05, § 1(15.2.2), 8-7-2017)

Sec. 15.2.3. Registration of name of business; payment of taxes required.

- (a) No person shall be engaged in, pursue or carry on any business within the city, in any manner without having registered the name of the business with the City Manager or his designee and either paid the taxes as provided by this article or produced evidence of occupational tax payment to another jurisdiction in this state or proof of payment of a local business occupation tax in another state which purports to tax the business' or practitioner's sales or services in this state. The city shall not require an occupation tax on those receipts that were taxed by occupation tax in other states.
- (b) At the time of business registration, such person shall also identify to the City Manager or his designee the line or lines of business that the business conducts. Classification of businesses for occupation tax purposes shall be based on the dominant line of business conducted.
- (c) Each separate business trade name shall be subject to the provisions of this article and shall fully comply with all city Code requirements before engaging in, pursuing or carrying on any business within the city.
- (d) Failure or refusal to provide information requested by the city for the purpose of classification, assessment or levying of occupation taxes, regulatory fees or administrative costs or regarding the site of a location or office and taxes or fees paid to other local governments shall be punished as a misdemeanor and shall be subject to the provisions of this Code.

(Ord. No. 2017-08-05, § 1(15.2.3), 8-7-2017)

Sec. 15.2.4. Estimation of gross receipts; filing of returns.

- (a) All occupation taxes levied by this article are levied on the amount of business transacted during the current calendar year and the number of employees to be employed in the business conducted. However, for convenience of both the city and the taxpayer those businesses subject to the occupational tax shall, on or before February 1, file with the City Manager or his designee a return showing all gross receipts of that business during the preceding calendar year ending on December 31. This return showing preceding calendar year gross receipts shall be used as an estimate of gross receipts for making payments on the occupation tax for the current calendar year. The number of employees reported for the current year's business operations may be based upon the number of employees employed in the business conducted during the previous year. Applicants or owners engaged in the business shall be reported as employees of the business. Should a business not continue or terminate during the year, such business shall notify the City Manager or his designee's business occupation tax section and file a final return reporting the actual number of employees and those gross receipts not previously reported.
- (b) Where a business subject to the occupation tax for the calendar year has been conducted for only a part of the preceding year, the amount of gross receipts for such part shall be set forth in said return. Said return shall also show a figure putting the receipts for such part of a year on an annual basis with the part-year receipts bearing the same ratio to the whole-year gross receipts as the part year bears to the whole year. Said figure shall be used as the estimate of the gross receipts of the business for the current calendar year in establishing the business tax liability.
- (c) If a business is to begin on or after January 1 of the occupation tax year, the tax on such business shall be due and payable on the date of the commencement of the business and shall be based upon estimated gross receipts of the business from the date of commencement until the end of the calendar year. The business shall also file the required registration form and shall pay the administrative fee required by this article. Notwithstanding the foregoing, if a lawyer begins business after January 1 of the occupation tax year, the tax and administrative fee on such business shall be due and payable on December 31 of the year in which the business begins. Any lawyer failing to pay the occupation tax and administrative fee within 120 days after December 31 shall be considered delinquent and shall be subject to and shall pay a ten percent penalty of the amount of tax or fee due and interest of 1½ (1.5) percent per month. Such penalty shall be assessed in full on May 1 of the year following the tax year in addition to interest on delinquent occupational taxes and administrative fees. In addition, a list of all delinquent lawyers may be sent to the State Bar of Georgia. Certain general penalties applicable to most businesses for continuing violations of this Code shall not apply to violations of this chapter by lawyers. Specifically, failing to comply with the article will not result in the city closing the business or penalizing the continued practice of law by fining, imprisoning or criminalizing noncompliance.
- (d) The city shall not require the payment of more than one occupational tax for each location that a business or practitioner shall have nor shall the city require a business to pay an occupational tax for more than 100 percent of the business' gross receipts.
- (e) Real estate brokers shall pay an occupational tax for each principal office and each separate branch office located in the city based upon gross receipts derived from transactions with respect to property located within the city. Payment of the occupation tax shall permit the broker, the broker's affiliated associates and salespersons to engage in all of the brokerage activities described in O.C.G.A. § 43-40-1 without further licensing or taxing other than the state licenses issued pursuant state law.
- (f) For out of state businesses with no location in the state, occupation taxes include the gross receipts of business, as defined in section 15.2.8.
- (g) For the purposes of this section, prima facie evidence of gross receipts generated during any period shall be a copy of the business' federal income tax return or an affidavit of the business' accounting firm.

(Ord. No. 2017-08-05, § 1(15.2.4), 8-7-2017)

Sec. 15.2.5. Administrative and regulatory fees.

- (a) A non-prorated, nonrefundable administrative fee set by the city council shall be required on all business occupation tax accounts for the initial start-up, renewal or reopening of those accounts.
- (b) A regulatory fee will be imposed on those applicable businesses listed under O.C.G.A. § 48-13-9(b) that the city deems necessary to regulate.

(Ord. No. 2017-08-05, § 1(15.2.5), 8-7-2017)

Sec. 15.2.6. Separate registration for separate locations or separate tradenames.

Where a person conducts business at more than one fixed location or has multiple business tradenames, each location or place and each tradename shall be considered to be separate for the purpose of the occupation tax and the gross receipts of each will be returned on a form furnished by the City Manager or his designee in accordance with the provisions of this article.

(Ord. No. 2017-08-05, § 1(15.2.6), 8-7-2017)

Sec. 15.2.7. Renewal returns and applications; due date; penalty for late payment.

- (a) On or before February 1 of each subsequent year businesses liable for occupation taxes levied under this article for the year shall file with the City Manager or his designee's business occupation tax section, on a form furnished by the City Manager or his designee, a signed return setting forth the actual amount of the gross receipts of such business during the preceding calendar year ending December 31.
- (b) Occupational taxes on businesses continuing from the preceding year shall be due and payable on January 1 of each subsequent year. Occupational taxes due from businesses continuing operation in the current year from the preceding year shall be considered delinquent if not paid by April 15 of each year. Any business failing to pay the occupational taxes and administrative fees within 120 days after January 1 shall be subject to and shall pay a ten percent penalty of the amount of tax or fee due and interest of 1½ (1.5) percent per month. Such penalty shall be assessed in full on May 1 of the tax year in addition to interest on delinquent occupation taxes, regulatory fees and administrative fees.
- (c) If any person or business whose duty it is to obtain a registration in the city begins to transact or offers to transact any kind of business after said registration or occupation tax becomes delinquent, such offender shall be assessed interest according to the rate as provided by state law and penalties under the city Code.
- (d) On any new business begun in the city and not subject to payment of occupational taxes to the city, failure to register the name of the business and the line or lines of business that the business conducts will be subject to the possible penalties or other violations of this Code. Registration under this section is required for ensuring that business conducted complies with city codes or ordinances governing health, safety, and other purposes.
- (e) Notwithstanding the foregoing, occupation taxes and administrative fees for lawyers shall be due and payable on December 31 of the year in which the tax is incurred. Any lawyer failing to pay the occupation tax and administrative fees within 120 days after December 31 shall be considered delinquent and shall be subject to and shall pay a ten percent penalty of the amount of tax or fee due and interest of 1½ (1.5) percent per month. Such penalty shall be assessed in full on May 1 of the year following the tax year in addition to interest on delinquent occupational taxes and administrative fees. In addition, a list of all

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delinquent lawyers may be sent to the Georgia Bar. Certain general penalties applicable to most businesses for continuing violations of this Code shall not apply to violations of this chapter by lawyers. Specifically, failing to comply with the article will not result in the city closing the business or penalizing the continued practice of law by fining, imprisoning or criminalizing noncompliance.

- (f) In addition to the remedies set forth in this section, the City Manager or his designee may issue an execution for failure to pay taxes against the person so delinquent and against such person's property for the amount of the occupational tax required to be paid for the purpose of carrying on any of the businesses enumerated in this article.

(Ord. No. 2017-08-05, § 1(15.2.7), 8-7-2017)

Sec. 15.2.8. Paying occupation tax of business with no location in Georgia.

Registration and the assessment of an occupation tax is hereby imposed on those businesses and practitioners of professions and occupations with no location or office in the state if the business' largest dollar volume of business in Georgia is in the city, and the business or practitioner:

- (a) Has one or more employees or agents who exert substantial efforts within the jurisdiction of the city, for the purpose of soliciting business or serving customers or clients; or
- (b) Owns personal or real property which generates income and which is located within the city.

(Ord. No. 2017-08-05, § 1(15.2.8), 8-7-2017)

Sec. 15.2.9. Professionals classified in O.C.G.A. § 48-13. 9(c), paragraphs 1 through 18.

Practitioners of professions as described in O.C.G.A. § 48-13-9(c)(1) through (18) shall elect as their entire occupation tax one of the following:

- (1) The occupation tax based-on number of employees and gross receipts combined with profitability ratios as set forth in this article;
- (2) An established fee described in O.C.G.A. § 48-13-10(g)(2). Such fee is per practitioner who is licensed by the state to provide the service, such tax to be paid at the practitioner's office or location. Practitioners paying according to this section shall pay the fee per practitioner and shall not be required to provide information relating to gross receipts or number of employees of the business or practitioner; or
- (3) Any practitioner whose office is maintained by and who is employed in practice exclusively by instrumentalities of the United States, the state, a municipality or county of the state, shall not be required to register or pay an occupation tax for that practice.

(Ord. No. 2017-08-05, § 1(15.2.9), 8-7-2017)

Sec. 15.2.10. Purpose and scope of tax.

The occupation tax levied herein is for revenue purposes only and is not for regulatory purposes, nor is the payment of the tax made a condition precedent to the practice of any profession, trade or calling.

(Ord. No. 2017-08-05, § 1(15.2.10), 8-7-2017)

Sec. 15.2.11. Evidence of state registration required if applicable; city and state registration to be displayed.

- (a) Each person who is licensed by the Secretary of State pursuant to Title 43 of the Official Code of Georgia Annotated shall provide evidence of proper and current state licensure before the city registration may be issued.
- (b) Each person who is licensed by the state shall post the state license next to the city registration in a conspicuous place in the licensee's place of business and shall keep both the state license and the city registration there at all times while valid.
- (c) Any transient or nonresident person doing business within the city shall carry their occupational tax receipt either upon such person or in any vehicle or other conveyance which is used in such business, and such person shall exhibit it to any authorized enforcement officer of the city when so requested.

(Ord. No. 2017-08-05, § 1(15.2.11), 8-7-2017)

Sec. 15.2.12. Change of location.

Any person moving from one location to another shall notify the City Manager or his designee of this move and the new address in writing on a form provided by the City Manager or his designee prior to the day of the moving. A new receipt for the occupational tax will be issued for the new location if the new location conforms to the zoning regulations of the city.

(Ord. No. 2017-08-05, § 1(15.2.12), 8-7-2017)

Sec. 15.2.13. Transferability.

Occupational receipts shall not be transferable and a transfer of ownership shall be considered in the same light as the termination of the business and the establishment of a new business. Filing a new registration application and payment of applicable fees and taxes shall be required of the new owner of the business.

(Ord. No. 2017-08-05, § 1(15.2.13), 8-7-2017)

Sec. 15.2.14. Evidence of qualification required if applicable.

Any business required to obtain health permits, bonds, certificates of qualification, certificates of competency or any other regulatory matter shall first, before the issuance of city registration, show evidence of such qualification.

(Ord. No. 2017-08-05, § 1(15.2.14), 8-7-2017)

Sec. 15.2.15. Inspections of books and records; audits; confidential information.

- (a) The City Manager or his designee shall have the right to inspect the books or records of any business for which returns have been made and upon demand of the City Manager or his designee such books or records shall be submitted for inspection by a representative or agent of the city within 30 days. Independent auditors or bookkeepers employed by the city shall be classified as agents for the purposes of this article. Failure of submission of such books and records within 30 days shall be grounds for revocation of the occupation tax registration currently existing in the city. If it is determined that a deficiency exists as a result

of under reporting, additional payment of occupation taxes required to be paid under this article shall be assessed the interest of 1½ (1.5) percent per month. Notwithstanding the foregoing, no attorney shall be required to disclose any information that would violate the attorney/client privilege.

- (b) Information provided by a business or practitioner of an occupation or profession for the purpose of determining the amount of occupation tax for the business or practitioner is confidential and exempt from disclosure under O.C.G.A. § 50-18-70 through 50-18-77.
- (c) Information provided to the city by a business or practitioner of an occupation or profession for the purpose of determining the amount of occupation tax for the business or practitioner may be disclosed to the governing authority of another local government for occupation tax purposes or pursuant to court order or for the purpose of collection of occupation tax or prosecution for failure or refusal to pay occupation tax.
- (d) Nothing herein shall be construed to prohibit the publication by the city of statistics, so classified as to prevent the identification of particular reports or returns and items thereof.

(Ord. No. 2017-08-05, § 1(15.2.15), 8-7-2017)

Sec. 15.2.16. Business classifications for determining tax levy.

- (a) For the purpose of this article, every person engaged in business requiring the payment of occupational taxes is classified in accordance to the major line of business, as defined in the North American Industry Classification System (NAICS), Office of Management and Budget; and profitability classes are assigned in accordance with Statistics of Income, Business Income Tax Returns, United States Treasury Department, Internal Revenue Service. The City Manager or his designee shall review assignment of businesses to profitability classes on an annual basis and shall administratively reassign businesses as necessary to the then most accurate profitability class.
- (b) Classifications by business profitability have been established by the City Council and are incorporated herein by reference and adopted for use in the application of this article. All separate businesses engaged in more than one business activity shall be classified on the basis of their dominant business activity at each location where business is done; except, that a person whose dominant business activity is legally exempt, as defined by this article, shall be classified according to such person's principal subsidiary business, if any, which is subject to the levy and assessment of occupation taxes.
- (c) The occupation tax shall be determined by applying the business' gross receipts and number of employees to the business' profitability classification and rates established for each business type.
- (d) A copy of business classifications shall be maintained in the office of the city clerk and shall be available for inspection by all interested persons.

(Ord. No. 2017-08-05, § 1(15.2.16), 8-7-2017)

Sec. 15.2.17. Casual and isolated transactions.

Nothing in this article shall be interpreted to require any person who may engage in casual or isolated activity and commercial transactions, where they involve personal assets and are not the principal occupation of the individual, to pay occupational tax therefor. Street vendor, transient vendor or flea market vendor activities shall not be considered to be casual and isolated business transactions and shall be required to comply with the provisions of this article.

(Ord. No. 2017-08-05, § 1(15.2.17), 8-7-2017)

Sec. 15.2.18. Exemption for disabled veterans, disabled indigent persons, certain organizations.

- (a) Persons who qualify for a state veteran's or disabled indigent person's license shall be eligible for exemption from the city occupational tax fee. Any such person claiming an exemption shall secure evidence of qualification for the exemption from the proper authority and present it to the City Manager or his designee.
- (b) Organizations which are exempt from federal income taxation under section 501(c)(3) or section 501(c)(4) of the United States Internal Revenue Code shall be eligible for exemption from the city occupational tax. Any such organization claiming an exemption shall provide to the City Manager or his designee a federal tax exemption letter showing the code section under which an exemption is claimed. However, with respect to any activity for which an organization otherwise entitled to an exemption under this section shall be liable for federal income tax on unrelated business income or shall be deemed to be a feeder organization under the United States Internal Revenue Code, the exemption from payment of occupational taxes shall not be available.
- (c) Notwithstanding the exemption from payment of city occupation taxes, an exempt person or business shall comply with the same laws and regulations as are required of other registered businesses.

(Ord. No. 2017-08-05, § 1(15.2.18), 8-7-2017)

Sec. 15.2.19. Exclusions from article; special classifications.

- (a) Wholesale dealers in liquor, wine, beer, and malt beverages are not required to pay the business occupation taxes provided for in this article.
- (b) Registration and occupational tax payment is required from any satellite subscription television system. The term "satellite subscription television system" means services provided to subscribers for sale where the provider of the services utilizes a master antenna type system or earth dish system designed to receive and distribute satellite television signals; particularly, a system to provide service to one or more multiple unit dwellings under common ownership wherein any wiring necessary to operate the system does not cross adjacent non-owned property lines and does not cross city right-of-way in the city. The provisions of this subsection shall not apply to any person that is subject to the city's franchise fee for the holders of a cable or video service provider state franchise.
- (c) Registration and occupational tax payment is required from any broadcast subscription television system. The term "broadcast subscription television system" means services provided to subscribers for sale where the provider of the services transmits premium programming from one or multiple sources by transmitting or retransmitting programs to the public.
- (d) Any vendor or exhibitor who is a member of a group or collection of vendors or exhibitors that has come together at one location for the purpose of selling arts, crafts, antiques, or other goods for a period not to exceed ten consecutive days may be registered individually, or the group or collection may be registered as a special event. Any applicant for a special event shall be considered as the promoter of the special event and shall be responsible for registration of the special event and paying the occupational taxes. Any special event group or collection of vendors or exhibitors shall comply with the same laws and regulations as required of other registered businesses, where applicable.
- (e) As part of the city's economic development incentives and only to the extent as described in O.C.G.A. § 48-13-10, the City Council may by ordinance or resolution provide for an exemption or reduction in occupation tax or a credit against occupation tax owed to one or more types of businesses or practitioners of occupations or professions as part of a plan for economic development or attracting, encouraging, or

maintaining selected types of businesses or practitioners of selected occupations or professions. Such exemptions or reductions in occupation tax shall not be arbitrary or capricious. Exemptions under this subsection shall not exceed ten percent of the business' total annual gross receipts.

(Ord. No. 2017-08-05, § 1(15.2.19), 8-7-2017)

Sec. 15.2.20. Denial, revocation or suspension of business occupation tax certificate.

- (a) *Grounds for denial, revocation, or suspension of business occupation tax certificate.* A business occupation tax certificate issued pursuant to any provision of this article shall be denied, revoked or suspended and considered void, upon one or more of the following grounds:
- (1) The original application or renewal thereof contains false or misleading information, or the applicant omitted material facts in the application;
 - (2) The premises covered by the certificate are found to be in violation of any codes or ordinances of the city;
 - (3) The applicant for, or holder of, the certificate is engaged in the business or occupation under a false or assumed name, or is impersonating another practitioner of a like or different name;
 - (4) The applicant for, or holder of, the certificate is engaging in false, misleading, or deceptive advertising or practices;
 - (5) The holder of the certificate is operating under a business or trade name not listed on the current application on file with the city;
 - (6) The holder of the certificate fails to maintain the initial requirements for obtaining the certificate;
 - (7) The applicant for, or holder of, a certificate is classified as, or becomes classified as, a habitual violator under O.C.G.A. § 40-5-1 et seq., or is found to be operating the business under the influence of alcohol or of illegal drugs or substances;
 - (8) The applicant for, or holder of, the certificate has been convicted of or has pled guilty or nolo contendere to any sexual offense, the offense of false swearing, the offense of operating an adult entertainment establishment in violation of the distance requirements of O.C.G.A. § 36-60-1 et seq., or to any offense involving illegal sale of narcotics or possession or receipt of stolen property, for a period of five years prior to the filing of the application. If after having been granted a certificate, the applicant is convicted, pleads guilty or enters a plea of nolo contendere to any of the above offenses, said certificate shall be subject to suspension and/or revocation;
 - (9) The applicant for, or holder of, the certificate fails to pay occupation taxes and administrative fees when due;
 - (10) The establishment has been declared a public or private nuisance or has created a threat or nuisance to public health, safety or welfare; or
 - (11) Any other violation of this article.
- (b) *False or misleading information.* No business occupation tax certificate shall be issued or renewed pursuant to any provisions of this article to any applicant, business or legally or organizationally related entity if within the 12 months immediately preceding the filing of any application under this article the same applicant, business or legally or organizationally related entity has been denied a certificate or had a certificate revoked for any location based in whole or in part upon having furnished false or misleading information in any application or having omitted material facts in any application.

(c) *Notice of denial, revocation or suspension of certificate.* Upon denial of an application seeking issuance or renewal of a business occupation tax certificate, or revocation or suspension of a business occupation tax certificate, written notification shall be provided of such decision to the applicant or holder of the certificate within five calendar days. The written notification shall state the grounds for the denial, revocation or suspension, and shall be served via hand delivery to the applicant or holder at the business location and sending a copy of such notice via registered mail, return receipt requested, to the address listed by the applicant or holder on the application for a certificate.

(Ord. No. 2017-08-05, § 1(15.2.20), 8-7-2017)

Sec. 15.2.21. Grievances regarding occupation tax assessment or classification.

For grievances regarding the occupation tax assessed or the major line of business classification, the aggrieved person or entity shall first submit in writing a complaint to the city which shall set forth in reasonable detail the matters complained of. The complaint may take letter form, and it shall be the duty of the city to review the complaint and issue a written reply to the taxpayer within 30 calendar days from the date the complaint is received. The written reply shall state in reasonable detail the basis for the decision regarding the initial assessment and classification. Should the aggrieved person or entity desire to seek review of such a decision, or if the city fails to issue a written opinion to the taxpayer within the 30 calendar day-time period, the taxpayer shall be entitled to appeal to the certificate review hearing officer pursuant to the procedure set forth in article XVI of this chapter.

(Ord. No. 2017-08-05, § 1(15.2.21), 8-7-2017)

Sec. 15.2.22. Promulgation of rules, regulations.

The City Manager or his designee shall have the power and authority to make and publish reasonable rules and regulations not inconsistent with this article or other laws of the city and the state, or the constitution of this state or the constitution of the United States, for the administration and enforcement of the provisions of this article and the collection of the occupational tax.

(Ord. No. 2017-08-05, § 1(15.2.22), 8-7-2017)

Sec. 15.2.23. Requirement for public hearings.

The city shall conduct at least one public hearing before adopting any ordinance or resolution regarding the occupation tax, and in any year when revenue from occupational taxes is greater than revenue from occupational taxes for the preceding year in order to determine how to use the additional revenue.

(Ord. No. 2017-08-05, § 1(15.2.23), 8-7-2017)

Secs. 15.2.24—15.2.50. Reserved.

ARTICLE III. ASTROLOGERS (RESERVED)

(Ord. No. 2017-08-05, § 2, 8-7-2017)

ARTICLE IV. GOING-OUT-OF-BUSINESS SALES

DIVISION 1. GENERALLY

Sec. 15.4.1. Definitions.

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

Fire and other altered goods sale means a sale held out in such a manner as to reasonably cause the public to believe that the sale will offer goods damaged or altered by fire, smoke, water or other means.

Going-out-of-business sale means a sale held out in such a manner as to reasonably cause the public to believe that upon the disposal of the stock or goods on hand the business will cease and be discontinued, including, but not limited to, the following sales: Adjuster's; adjustment; alteration; assignee's bankrupt; benefit of administrator's; benefit of creditor's; benefit of trustee's; building coming down; closing; creditor's committee; creditor's end; executor's; final days; forced out; forced out of business; insolvent's last days; lease expires; liquidation; loss of lease; mortgage sale; receiver's; trustee's; and quitting business.

Goods means any goods, wares, merchandise or other property capable of being the object of a sale regulated under this article.

Removal of business sale means a sale held out in such a manner as to reasonably cause the public to believe that the person conducting the sale will cease and discontinue business at the place of sale upon disposal of the stock of goods on hand and will then move to and resume business at a new location or will then continue business from another existing location.

(Ord. No. 2017-08-05, § 3(15.4.1), 8-7-2017)

Sec. 15.4.2. Persons exempt from article.

The provisions of this article do not apply to or affect the following persons:

- (1) Persons acting pursuant to an order or process of a court of competent jurisdiction.
- (2) Persons acting in accordance with their powers and duties as public officials.
- (3) Duly licensed auctioneers, selling at auction.
- (4) Any publisher or newspaper, magazine or other publication that publishes in good faith any advertisement, without knowledge of its false, deceptive or misleading character or without knowledge that there has not been compliance with the provisions of this article.

(Ord. No. 2017-08-05, § 3(15.4.2), 8-7-2017)

Sec. 15.4.3. Duties of licensee.

A licensee under this article shall:

- (1) *Adhere to inventory.* Make no additions during the period of the licensed sale to the stock of goods set forth in the inventory attached to the application for license.

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- (2) *Advertise properly.* Refrain from employing any untrue, deceptive or misleading advertising.
 - (3) *Adhere to advertising.* Conduct the licensed sale in strict conformity with any advertising or holding out incident thereto.
 - (4) *Keep duplicate inventory.* Keep available at the place of sale a duplicate copy of the inventory submitted with the application, and present this duplicate to inspecting officials upon request.
 - (5) *Segregate noninventoried goods.* Keep any other goods separate and apart from the goods listed in the filed inventory as being objects of sale, and make this distinction clear to the public by placing tags on all inventoried goods in and about the place of sale apprising the public of the status of all these goods.

(Ord. No. 2017-08-05, § 3(15.4.3), 8-7-2017)

Sec. 15.4.4. Interval between sales.

Any person who has held a sale as regulated under this article at the location stated in the application within one year last past from the date of the application shall not be granted a license.

(Ord. No. 2017-08-05, § 3(15.4.4), 8-7-2017)

Sec. 15.4.5. Location of sale restricted.

Where a person applying for a license required by the provisions of this article operates more than one place of business, the license issued shall apply only to the one store or branch specified in the application. No other store or branch shall advertise or represent that it is cooperating with this sale or in any way participating in the licensed sale, nor shall the store or branch conducting the licensed sale advertise or represent that any other store or branch is cooperating with it or participating in any way in the licensed sale.

(Ord. No. 2017-08-05, § 3(15.4.5), 8-7-2017)

Sec. 15.4.6. Bankrupt or fire sales.

- (a) *Sale of unaffected or undamaged goods.* It is unlawful for any person conducting any sale, whether by auction or otherwise, of any goods, wares or merchandise which are or have been or which are claimed to be or claimed to have been in or damaged by a fire, or which are or have been or which are claimed to be or claimed to have been sold or purchased on account of any fire, or which are or have been or are claimed to be or claimed to have been the property of any bankrupt or person who has failed in business or has made a general assignment, or which are being sold or offered for sale in any other way than through the usual channels of trade, to sell or offer for sale therein any goods, wares or merchandise not so circumstanced or affected or damaged.
- (b) *Adding to goods.* It is unlawful for any person to add to, or to permit to be added to, or to bring into or permit to be brought into any store, warehouse or other building in the city, any goods for the purpose of adding to these goods, wares or merchandise so circumstanced or affected and on hand in this store, warehouse or other building for the purpose of being sold at this sale.

(Ord. No. 2017-08-05, § 3(15.4.6), 8-7-2017)

Sec. 15.4.7. Advertising restrictions.

- (a) It is unlawful for any person to advertise, in any newspaper, handbill, sign, poster or any other such printed media, or by radio or television broadcast to residents of the city, that the person is conducting a closing-out, going-out-of-business, fire or bankrupt sale or similar sale, as defined in this article, as a means of attracting the general public to the person's place of business when such person does not actually intend to close out or go out of business or has not purchased the license required by this article.
- (b) It is unlawful for any person to advertise by sign, poster, handbill, newspaper or any other such printed or written media any closing-out, going-out-of-business, fire or bankrupt sale or similar sale, as defined in this article, unless all the written or printed matter in this advertisement shall be of the same size and type, including the notice that sales, excise and other taxes are either included or excluded from the advertised price and also whether the advertised price includes an article of the type being advertised to be traded in on the advertised article.

(Ord. No. 2017-08-05, § 3(15.4.7), 8-7-2017)

Secs. 15.4.8—15.4.20. Reserved.*DIVISION 2. LICENSE***Sec. 15.4.21. Required.**

A license issued by the City Manager or his designee shall be obtained by any person before selling or offering to sell any goods at a sale to be advertised or held out by any means to be any of the following kinds:

- (a) Going-out-of-business sale.
- (b) Removal of business sale.
- (c) Fire and other altered stock sale.

(Ord. No. 2017-08-05, § 3(15.4.21), 8-7-2017)

Sec. 15.4.22. Application.

A person desiring to conduct a sale for which a license is required by this division shall make a written application to the City Manager or his designee setting forth the following information:

- (a) The true name and address of the owner of the goods to be the object of the sale.
- (b) The true name and address of the person from whom the applicant purchased the goods to be sold and the price therefor, and if not purchased, the manner of this acquisition.
- (c) A description of the place where the sale is to be held.
- (d) The nature of the occupancy, whether by lease or sublease and the effective date of the termination of such occupancy.
- (e) The dates of the period of time in which the sale is to be conducted.
- (f) A full and complete statement of the facts in regard to the sale, including the reason for the urgent and expeditious disposal of goods thereby and the manner in which it will be conducted.

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- (g) The means to be employed in advertising the sale together with the proposed content of any advertisement.
 - (h) A complete and detailed inventory of the goods to be sold at this sale as disclosed by the applicant's records. This inventory shall be attached to and become part of the required application.

(Ord. No. 2017-08-05, § 3(15.4.22), 8-7-2017)

Sec. 15.4.23. Established business required; exception.

- (a) Any person who has not been the owner of a business advertised or described in the application for a license under this division for a period of at least 12 months prior to the date of the proposed sale shall not be granted a license under this division.
- (b) Upon the death of a person doing business in the city, such person's heirs, devisees or legatees or the representative of such person's estate shall have the right to apply at any time for a license under this division.

(Ord. No. 2017-08-05, § 3(15.4.23), 8-7-2017)

Sec. 15.4.24. Inventory restrictions.

- (a) All goods included in the inventory of an applicant for a license under this division shall have been purchased by the applicant for resale on bona fide orders without cancellation privileges and shall not comprise goods purchased on consignment.
- (b) The inventory shall not include goods ordered in contemplation of conducting a sale regulated under this division. Any unusual purchase or additions to the stock of goods of the business affected within 30 days before the filing of an application under this division shall be deemed to be of this character.

(Ord. No. 2017-08-05, § 3(15.4.24), 8-7-2017)

Sec. 15.4.25. Conditions of issuance.

A license shall be issued under this division on the following terms:

- (a) *Licensing period.* The license shall authorize the sale described in the application for a period of not more than 30 consecutive days, Sundays and legal holidays excluded, following the issuance thereof.
- (b) *Renewal procedure.* The City Manager or his designee shall renew a license for one period of time only, this period to be in addition to the 30 days permitted in the original license and not to exceed 30 consecutive days, Sundays and holidays excluded, when it finds that all of the following exists:
 - (1) Facts justifying the license renewal.
 - (2) The licensee has filed an application for renewal.
 - (3) The licensee has submitted with the application for renewal a revised inventory showing the items listed on the original inventory remaining unsold and not listing any goods not included in the original application and inventory. For the purpose of this subsection, any application for a license under the provisions of this division covering any goods previously inventoried as required hereunder shall be deemed to be an application for renewal, whether presented by the original applicant, or by any other person.

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- (c) *Nature of sale.* The license shall authorize only the type of sale described in the application at the location named therein.
 - (d) *Salable goods.* The license shall authorize only the sale of goods described in the inventory attached to the application.
 - (e) *Surrender of general licenses.* Upon being issued a license hereunder for a going-out-of-business sale, the licensee shall surrender to the City Manager or his designee all other business licenses the licensee may hold at the time applicable to the location and goods covered by the application for a license under this division.
 - (f) *Non-transferability.* Any license provided for shall not be assigned or transferable.

(Ord. No. 2017-08-05, § 3(15.4.25), 8-7-2017)

Sec. 15.4.26. Fees.

- (a) Any applicant for a license under this division shall submit to the City Manager or his designee with the application the required license fee.
- (b) Any applicant for a renewal license under this article shall submit to the City Manager or his designee with the renewal application the required renewal license fee.
- (c) The license fee shall be in the amount established by action of the City Council, a copy of which is on file in the office of the clerk.

(Ord. No. 2017-08-05, § 3(15.4.26), 8-7-2017)

Secs. 15.4.27—15.4.50. Reserved.

ARTICLE V. PAWNSHOPS

Sec. 15.5.1. Definitions.

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

Employee means any person working for an owner or pawnbroker, or any owner or pawnbroker who, in the performance of duties or the management of the business affairs of a pawnshop, comes into substantial contact with members of the public, or is employed on a part-time or full-time basis, either with or without remuneration, by a pawnshop.

Pawn or pledge means a bailment of personal property as security for any debt or engagement, redeemable upon certain terms and with the implied power of sale on default.

Pawnbroker means any person, whether an owner or not, who works in a pawnshop on a regular basis and in a managerial capacity whereby the person has charge of the business or operations of the pawnshop. The term "pawnbroker" includes any person whose business or occupation it is to take or receive, by way of pledge, pawn or exchange, any goods, wares or merchandise or any kind of personal property whatever, as security for the repayment of money lent thereon.

Pawnshop means any business wherein a substantial part thereof is to take or receive, by way of pledge, pawn or exchange, any goods, wares, merchandise or any kind of personal property as security for the repayment of money lent thereon.

(Ord. No. 2017-08-05, § 3(15.5.1), 8-7-2017)

Sec. 15.5.2. Penalties; suspension or revocation of license.

Any person who violates any provision of this article shall, upon conviction, be punished as provided by this Code. Further, any person failing to comply with any provision of this article, or such other laws, ordinances and regulations as may be passed by the City Council for the conduct of the business of a pawnbroker, shall have the license to conduct this business revoked. This revocation shall result from conviction in any court for a violation of any provision of this article or any other ordinance or regulation covering the conduct of the business for which a permit and license have been issued.

(Ord. No. 2017-08-05, § 3(15.5.2), 8-7-2017)

Sec. 15.5.3. Responsibility for enforcement.

The City Manager or his designee shall have the responsibility for the enforcement of this article.

(Ord. No. 2017-08-05, § 3(15.5.3), 8-7-2017)

Sec. 15.5.4. Annual permit.

- (a) All persons, before beginning the business of operating a pawnshop or becoming an employee of a pawnshop or similar place where money is advanced on goods or other effects or merchandise of any kind is taken in pawn, shall first file an application with the City Manager or his designee and obtain an annual permit to conduct or be employed in the business. No permit shall be issued until a fee in the amount established by action of the City Council, a copy of which is on file in the office of the clerk, is paid to the City Manager or his designee.
- (b) The requirements of this section are in addition to the requirements of article II of this chapter.
- (c) The application for the permit required shall state the street and number at which it is proposed to operate the business. The application shall contain the full name, address, phone number, date of birth and Social Security number of all persons, including pawnbrokers, owning any interest in the proposed business, plus any additional information, including fingerprints, deemed necessary by the City Manager.
- (d) No business license shall be issued to a person until the permit required by this section has been granted by the City Manager or his designee.

(Ord. No. 2017-08-05, § 3(15.5.4), 8-7-2017)

Sec. 15.5.5. Employees.

No person shall be employed by a pawnshop in any capacity until such person has been fingerprinted by the City Manager or his designee and has been issued an annual permit authorizing such person to be employed by a pawnshop. It shall be the duty of the pawnbroker to ensure that there is compliance with the provisions of this section.

(Ord. No. 2017-08-05, § 3(15.5.5), 8-7-2017)

Sec. 15.5.6. Character of persons connected with business.

No owner, stockholder, employee, pawnbroker or any other person connected with the business for which a license or permit is sought shall have been convicted of a crime involving moral turpitude or shall have been convicted of any crime involving theft or a crime against property.

(Ord. No. 2017-08-05, § 3(15.5.6), 8-7-2017)

Sec. 15.5.7. Records.

All pawnbrokers shall keep books wherein shall be entered an accurate description of all property at the time of each loan, purchase, or sale. This description shall include, to the extent possible:

- (a) The date of the transaction;
- (b) The name of the person conducting the transaction;
- (c) The name, age, and address of the customer; a description of the general appearance of the customer; and the distinctive number from the customer's driver license or other similar identification card;
- (d) An identification and description of the pledged or purchased goods, including, if reasonably available, the serial, model, or other number, and all identifying marks inscribed thereon;
- (e) The number of the receipt or pawn ticket;
- (f) The price paid or the amount loaned;
- (g) If payment is made by check, the number of the check issued for the purchase price or loan;
- (h) The maturity date of the transaction; and
- (i) The signature of the customer.

These entries shall be made as soon after the transaction as is possible, in no event more than one hour thereafter. The pawnbroker shall photograph the person pawning the merchandise along with a pawnbroker's ticket showing a transaction number. The pawnbroker shall obtain the right index fingerprint, provided it has not been amputated; if so, the next adjoining finger shall be acceptable.

(Ord. No. 2017-08-05, § 3(15.5.7), 8-7-2017)

Sec. 15.5.8. Daily reports; fingerprinting, photographing of persons pawning articles.

- (a) Every pawnbroker shall make a daily report in writing to the City Manager or his designee in such form as may be prescribed by the City Manager or his designee of all property pledged, traded or bought by such pawnbroker during the 24 hours ending at 9:00 p.m. on the date of the report. These reports shall be typewritten. In addition to any other information required by the City Manager or his designee, the reports shall show:
 - (1) The name and address of the pawnbroker.
 - (2) The time of transaction.
 - (3) The serial numbers of pawn tickets.
 - (4) The amount paid or advanced.

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- (5) A full description of articles, including kind, style, material, color, design; kind and number of stones in jewelry and all identifying names, marks and numbers.
 - (6) A description of the person selling or pawning, including name, address, race, weight and height.
 - (b) Insufficient reports shall be rejected, and any pawnbroker making them shall be deemed guilty of an offense.
 - (c) In addition to the other records and information, each pawnbroker shall obtain from each person pawning any articles with such pawnbroker the fingerprint of the right-hand index finger, unless this finger is missing, in which event the print of the next finger in existence on the right hand of the person pawning the articles shall be obtained with a notation as to the exact finger printed. All prints shall be made on forms approved by the City Manager or his designee and the pawnbroker shall obtain all other information called for on the form approved. Fingerprints and the information as required in this section shall be obtained from all persons each time these persons pawn any article with a pawnbroker, regardless of whether the person may have previously pawned an article with the pawnbroker and been fingerprinted.
 - (d) In addition to other records and information, each pawnbroker shall photograph each customer with the photograph showing the pawnbroker's ticket and transaction number. This photograph shall be reduced to a negative form and maintained by the pawnbroker as a permanent record.

(Ord. No. 2017-08-05, § 3(15.5.8), 8-7-2017)

~~**Sec. 15.5.9. Hours of operation.**~~

~~Pawnbrokers may not keep open their places of business except between 7:00 a.m. and 9:00 p.m., Monday through Saturday.~~

(Ord. No. 2017-08-05, § 3(15.5.9), 8-7-2017)

Sec. 15.5.10. Waiting period prior to disposal of articles.

Any pawnbroker or person operating under a pawnbroker's license who takes goods on pawn or buys goods, taking full title thereto, the term "goods" being used in the broadest sense and including all kinds of personal property, shall hold these goods so taken in pawn or purchase for at least 30 days before disposing of them by sale, transfer, shipment or otherwise.

(Ord. No. 2017-08-05, § 3(15.5.10), 8-7-2017)

Sec. 15.5.11. Dealing with minors.

It is unlawful for any pawnbroker, the pawnbroker's agents or employees to receive goods in pawn from minors.

(Ord. No. 2017-08-05, § 3(15.5.11), 8-7-2017)

Secs. 15.5.12—15.5.50. Reserved.

ARTICLE VI. PRECIOUS METAL DEALERS

DIVISION 1. GENERALLY

Sec. 15.6.1. Definitions.

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

Dealer means any person engaged in the business of purchasing precious metals or gems or goods made from precious metals or gems from persons or sources other than manufacturers or manufacturers' representatives or other dealers in precious metals or gems or a person engaged in any other business if, in conjunction with such business, precious metals or gems or goods made from precious metals or gems are purchased from persons or sources other than manufacturers or manufacturers' representatives or other dealers in precious metals or gems when the purchase is for resale in its original form or is changed by remounting, melting, reforming, remolding or recasting, or for resale as scrap or in bulk.

Employee means any person working for a dealer, whether or not the person is in the direct employment of the dealer, who, in the performance of duties or the management of the business affairs of the dealer, handles precious metals or gems, or who prepares any reports or records which are required by this article. The term "employee" does not include any employee of any bank, armored car company, private security company, or other business entity which is acting in the sole capacity of bailee-for-hire in relationship to the dealer.

Gem means any precious or semiprecious stone which is cut and polished.

Precious metal means gold, silver, platinum or any alloy containing gold, silver or platinum.

Purchase means buy, barter, trade, accept as collateral for a loan, or receive for the purpose of melting down, crushing or otherwise altering the appearance of the item.

(Ord. No. 2017-08-05, § 3(15.6.1), 8-7-2017)

Sec. 15.6.2. Purpose; applicability of state law.

The purpose of this article is to regulate and establish qualifications for dealers of precious metals, gems and goods made from precious metals and gems, who engage in business in the city. It is a further purpose of this article to enhance and supplement state law. Any permit fee required by the terms of this article shall be collected in addition to any license or registration fee as may be imposed on dealers by any state law.

(Ord. No. 2017-08-05, § 3(15.6.2), 8-7-2017)

Sec. 15.6.3. Exemptions.

- (a) The provisions of this article shall not apply to dealers exclusively engaged in the sale or exchange of numismatic coins or to transactions exclusively involving numismatic coins or other coinage.
- (b) The provisions of this article shall not apply to pawnshops, pawnbrokers, or employees of pawnbrokers who maintain permanent places of business within the city and are in compliance with article V of this chapter.

(Ord. No. 2017-08-05, § 3(15.6.3), 8-7-2017)

Sec. 15.6.4. Violations.

- (a) It is unlawful for any dealer or employee to violate any of the provisions of this article, whether or not such dealer or employee is the holder of a current, valid permit issued according to the terms of this article. It shall be a violation of this article for any person to:

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- (1) Make any false statement in an application for any permit provided for in this article.
 - (2) Make any false entry in any record or form required by the terms of this article.
 - (3) Violate any criminal law of this state while acting in the course of business as a dealer or employee of a dealer.
- (b) Willful violation of any of the provisions of this article shall be grounds for revocation of the dealer's business license.
- (Ord. No. 2017-08-05, § 3(15.6.4), 8-7-2017)

Sec. 15.6.5. Responsibility for enforcement.

The code enforcement department of the city shall have the responsibility for the enforcement of this article.

(Ord. No. 2017-08-05, § 3(15.6.5), 8-7-2017)

Sec. 15.6.6. Records of transactions.

- (a) Every dealer shall maintain a book in permanent form in which shall be entered at the time of each purchase of precious metals or gems or goods made from precious metals or gems, the following:
- (1) The date and time of the purchase transaction.
 - (2) The name of the person making the purchase from the seller.
 - (3) The name, age and address of the seller of the items purchased and the distinctive number from each seller's driver license or other similar identification card containing a photo of the seller.
 - (4) A clear and accurate identification and description of the purchased goods, including the serial model or other number, and all identifying marks ascribed thereon.
 - (5) The price paid for the goods purchased.
 - (6) The number of the check issued for the purchase price if payment is made by check.
 - (7) The signature of the seller.
- (b) The permanent record book required in this section shall be in legible English. Entries shall appear in chronological order, and shall be numbered in sequence. No blank lines may be left between entries. No obliterations, alterations or erasures may be made. Corrections shall be made by drawing a line of ink through the entry without destroying its legibility. The book shall be maintained for each purchase of precious metals or gems or goods made from precious metals or gems for at least two years. The book shall be open to the inspection of any duly authorized law enforcement officer during the ordinary hours of business or any reasonable time. The book shall be kept at the business premises during ordinary hours of business.
- (c) Dealers exclusively engaged in buying or exchanging for merchandise scrap dental gold and silver from licensed dentists by registered or certified mail may record the post office record of the mail parcel in lieu of the seller's age, driver license number and signature as required in this section.
- (Ord. No. 2017-08-05, § 3(15.6.6), 8-7-2017)

Sec. 15.6.7. Daily reports.

- (a) Every dealer shall record, on cards or forms furnished or approved by the police department the details of each purchase of precious metals or gems or goods made from precious metals or gems. These records shall be entered in legible English at the time of each purchase of such items, and each card or form shall bear the number of the corresponding entry made in the book required by section 15.6.6 of this article. Each record shall include such information as may be reasonably required by the police department and shall include, as a minimum, the following:
 - (1) An accurate description of all articles received in the transaction with the particular seller. This description shall include to the extent possible the maker of each article, any identifying mark, number or initials, any pattern or shape, and a statement of the kind of materials of which it is composed.
 - (2) The date and time of the transaction.
 - (3) The name and address of the dealer.
 - (4) The name of the person making the purchase.
 - (5) The full name, date of birth and address, race and gender of the seller, as well as a general description of the seller.
 - (6) The number of the seller's valid state driver license or state-issued I.D. card, or other similar identification which bears a photograph of the seller.
 - (7) Signature of seller.
 - (8) Such other information as may be required by any state law regulating dealers of precious metals and gems.
- (b) Each card or form required by this section shall be delivered or mailed to the police department within 24 hours after the date on which the transaction occurred, and shall be handled in the following manner:
 - (1) All such forms or cards shall be maintained in a locked container under the direct supervision of the police department and shall be available for inspection only for law enforcement purposes.
 - (2) The police department may allow any person to inspect the records for the purpose of locating stolen property, providing such person demonstrates theft of precious metals or gems by presenting an incident report or other similar document.

(Ord. No. 2017-08-05, § 3(15.6.7), 8-7-2017)

Sec. 15.6.8. Photographs of articles and sellers; photocopies of documents.

- (a) Every dealer shall take a well-focused, properly exposed color photograph of all precious metals, gems or goods made from precious metals or gems, which are purchased by the dealer. In the case of flatware, a photograph may be made of a representative place setting.
- (b) In addition to photographing the items purchased, the dealer shall take a well-focused, properly exposed color photograph of the seller, and shall attach the photograph to the corresponding form or card required by section 15.6.7. In addition to the required photographs, the dealer shall attach to the form or card a photocopy of any bill of sale, receipt or other document tending to show the seller's ownership of the items purchased by the dealer, if any such documents exist, and a photocopy of the seller's driver license or other identification authorized by this article.

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- (c) All photographs required in this section shall be made with a self-developing camera and film system, or such other system as may be authorized in writing by the police department.

(Ord. No. 2017-08-05, § 3(15.6.8), 8-7-2017)

~~**Sec. 15.6.9. Hours of operation.**~~

~~Dealers may not keep open their places of business except between 7:00 a.m. and 9:00 p.m.~~

~~(Ord. No. 2017-08-05, § 3(15.6.9), 8-7-2017)~~

Sec. 15.6.10. Waiting period prior to disposing of articles.

Any dealer who in the course of business acquires precious metals or gems or goods made from precious metals or gems shall hold these items for at least seven calendar days before disposing of them by sale, transfer, shipment, grinding, melting, crushing or otherwise altering the appearance of the items. This section does not prevent any dealer from storing such items off the business premises, or from placing such items in the hands of any bank or security company for safekeeping, provided that no such item shall be removed from the city during the above-described holding period.

(Ord. No. 2017-08-05, § 3(15.6.10), 8-7-2017)

Sec. 15.6.11. Inspection of items held by dealer.

All items held by any dealer in accordance with the terms of section 15.6.10 shall be produced for inspection upon the demand of any authorized law enforcement officer or, if the items are stored off the premises, within one business day thereof, during normal business hours. If the provisions of this section are in conflict with the provisions of section 15.6.10, the provisions of this section shall control.

(Ord. No. 2017-08-05, § 3(15.6.11), 8-7-2017)

Secs. 15.6.12—15.6.25. Reserved.

DIVISION 2. PERMIT

Sec. 15.6.26. Required; prerequisite to issuance of business license.

- (a) No business license shall be issued to conduct the business of purchasing precious metals or gems until the annual permit required by this section has been issued by the police department.
- (b) No dealer shall engage in the business of purchasing precious metals or gems without having first obtained an annual permit issued by the police department and no dealer shall allow an employee to be involved in any way in the purchase of precious metals or gems until that employee has first obtained an annual employee permit from police department and no person shall work as an employee of a dealer until such person has first obtained an annual employee permit. No annual employee permit shall be issued unless the dealer with whom employment is authorized is a holder of a current dealer's permit.

(Ord. No. 2017-08-05, § 3(15.6.26), 8-7-2017)

Sec. 15.6.27. Application.

- (a) The application for the annual dealer's permit required by this division shall include such fingerprints, photographs and information as may be reasonably required by the police department, but shall in any case include the following:
 - (1) The name, age and business address of the person applying for the permit.
 - (2) The telephone number of the applicant.
 - (3) The name, age and business address of all other persons having an ownership interest or actually employed in the business other than publicly held corporations.
 - (4) The address of the premises upon which the business is conducted and the zoning and planning classification of the premises.
 - (5) The applicant shall be required to notify the police department within seven calendar days of any change of address of the applicant or business or any change of ownership in the business.
- (b) The applicant shall attach to this application a completed and signed employee or owner application as described in section 15.6.29 for each person named in the dealer's application. Each such application shall be signed by the owner, managing partner, corporate president or chief executive officer of the business, and there shall be a description of the capacity in which the signator is acting.

(Ord. No. 2017-08-05, § 3(15.6.27), 8-7-2017)

Sec. 15.6.28. Denial.

No permit required by the provisions of this division shall be issued under any of the following circumstances:

- (1) The applicant has no permanent place of business other than a van, mobile home, trailer or similar nonpermanent structure.
- (2) No owner, corporate officer, majority stockholder, partner or managing director of the business entity applying for the license has been a legal resident of the state for a minimum of 90 days preceding the date of application.
- (3) Any person required to be listed in the application for a dealer's permit has been convicted of or has entered a plea of guilty to a misdemeanor involving moral turpitude or any felony under the laws of this state or of the jurisdiction in which the verdict or plea was entered. This section does not apply to any person who has been convicted of or has entered a plea of guilty to a misdemeanor involving moral turpitude or any felony after ten years have expired from the date of the plea, conviction or completion of sentence, whichever is later.
- (4) The person is not eligible to register as a dealer in precious metals or gems by the terms of any law of this state requiring such registration.

(Ord. No. 2017-08-05, § 3(15.6.28), 8-7-2017)

Sec. 15.6.29. Employee or owner application.

- (a) Persons required to obtain an employee permit by this division shall complete an employee or owner application which shall state relevant information, including, but not limited to, the following:

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- (1) Name.
 - (2) Date of birth.
 - (3) Driver license, state identification card or Social Security number.
 - (4) Race.
 - (5) Sex.
 - (6) Residential address and telephone number.
 - (7) Last previous residential address.
 - (8) Height and weight.
 - (9) Hair and eye color.
 - (10) Name, address and telephone number of the dealer.
 - (11) Either a statement that the applicant has never been convicted of, plead guilty to or been sentenced to probation for any offense other than a minor traffic violation, or a list of all such pleas, convictions and sentences of probation.
- (b) The application form shall also provide a place for the applicant's signature. Persons required to be listed in a dealer's application shall also complete an employee or owner application.

(Ord. No. 2017-08-05, § 3(15.6.29), 8-7-2017)

Sec. 15.6.30. Fingerprints.

All persons required to complete an employee or owner application shall also submit to fingerprinting by the agency or individual designated by the police department.

(Ord. No. 2017-08-05, § 3(15.6.30), 8-7-2017)

Sec. 15.6.31. Issuance; fee.

- (a) The police department shall provide the permit application forms required by this division, and shall review each completed application prior to issuing any permit. No employee or dealer permit shall be issued if it appears that the applicant or any person required to complete an employee or owner form has been convicted of, or has entered a plea of guilty to a misdemeanor involving moral turpitude, or any felony.
- (b) After ascertaining that all requisite forms have been completed, all fingerprint cards have been submitted, that no applicant or listed person is disqualified by virtue of a prior criminal record, and that all other requirements of this article have been complied with, the police department shall approve the application, subject to payment of an annual permit fee in the amount established by action of the City Council, a copy of which is on file in the office of the clerk of the city.

(Ord. No. 2017-08-05, § 3(15.6.31), 8-7-2017)

Sec. 15.6.32. Expiration and renewal.

Each permit required by this division shall indicate thereon an expiration date which is at least one year from the date of issue and must be posted in a conspicuous place on the premises. Any permit holder may reapply for a permit at any time following the 60th day preceding the date of expiration. It shall be unlawful for any dealer to

apply for a renewal unless all of the dealer's employees are holders of current, valid employee permits. No permits shall be renewed unless the dealer is the holder of a current, valid business license.

(Ord. No. 2017-08-05, § 3(15.6.32), 8-7-2017)

Sec. 15.6.33. Revocation and surrender of permits.

- (a) Any dealer or employee permit issued in accordance with provisions of this division shall be revoked by operation-of-law upon the occurrence of any of the following:
 - (1) The conviction of the dealer or employee for violating any state law or city ordinance pertaining to making false statements for the purpose of obtaining registration or authorization to become a dealer or employee of a dealer.
 - (2) The conviction of the dealer or employee for violation of a provision of this article after the dealer or employee has been previously convicted of a violation of this article within the preceding three years.
- (b) Upon revocation, the permit holder shall surrender the permit to the police department within one business day of the conviction resulting in revocation, and failure to do so shall constitute a separate violation for each day the permit is withheld.

(Ord. No. 2017-08-05, § 3(15.6.33), 8-7-2017)

Sec. 15.6.34. Appeals.

In any case in which it appears to the police department that an applicant is not entitled to the issuance of a dealer or employee permit under the provisions of this article, the police department shall so notify the applicant in writing by mailing the notice to the last address furnished to the City Manager or his designee by the applicant. If the police department refuses to issue a permit, or if a permit is surrendered pursuant to the provisions of this article, the applicant or permit holder shall be entitled to appeal to the certificate review hearing officer pursuant to the procedure set forth in article XVI of this chapter.

(Ord. No. 2017-08-05, § 3(15.6.34), 8-7-2017)

Secs. 15.6.35—15.6.50. Reserved.

DIVISION 3. TEMPORARY POWERS

Sec. 15.6.51. Powers vested in city manager.

- (a) Until such time as a police department is created in the City of Stonecrest the City Manager or his designee shall have the duty to administer, enforce, and register precious metal dealers under the provisions of this article.
- (b) This section shall be repealed upon the creation of the Stonecrest Police Department.

(Ord. No. 2017-08-05, § 3(15.6.51), 8-7-2017)

ARTICLE VII. PEDDLERS, DOOR-TO-DOOR SALES AND SIMILAR OCCUPATIONS

Sec. 15.7.1. Definition.

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:

Canvassing and/or soliciting means and includes any one or more of the following activities:

- (a) Seeking to obtain orders for the purchase of goods, wares, merchandise, foodstuffs, services of any kind, character or description whatever, for any kind of consideration whatever;
- (b) Seeking to obtain prospective customers for application or purchase of insurance of any type, kind or publication;
- (c) Seeking to obtain donations or charitable contributions; or
- (d) Seeking to obtain subscriptions to books, magazines, periodicals, newspapers and every other type or kind of publication.

Residence means and includes every separate living unit occupied for residential purposes by one or more persons, contained within any type of building or structure.

(Ord. No. 2018-06-01, § 1(15.7.1), 6-18-2018)

Sec. 15.7.2. Permit required.

It shall be unlawful for any person to engage in business as a canvasser or solicitor, calling on the residences within the incorporated areas of the city for the purpose of soliciting orders, sales, subscriptions, or business of any kind, without first registering with the City Manager or his designee and paying the appropriate regulatory fee.

(Ord. No. 2018-06-01, § 1(15.7.2), 6-18-2018)

Sec. 15.7.3. Application.

- (a) Each registrant shall furnish, on a form developed by the City Manager or his designee, at least his name and permanent address, his signature, the name and address of his employer, the nature of products sold or displayed, and the proposed method of operation within the city. Each registrant shall be fingerprinted and photographed by the City Manager or his designee.

- (b) The questionnaire form shall also bear the following statement:

"Georgia Code section 16-10-71 provides that a person who makes a lawful oath or affirmation or who executes a document knowing that it purports to be an acknowledgment of a lawful oath or affirmation commits the offense of false swearing when, in any matter or thing other than a judicial proceeding, he knowingly and willfully makes a false statement."

(Ord. No. 2018-06-01, § 1(15.7.3), 6-18-2018)

Sec. 15.7.4. Regulatory fee.

The City Manager or his designee shall collect a fee of \$100.00 for each registration. Upon approval, a registration card will be issued showing the name of the firm or corporation and the name of the representative. Such registration shall be valid for 90 days from the date of issuance. The registration may be renewed during the same calendar year for an additional 90-day period without another investigation or additional fees.

(Ord. No. 2018-06-01, § 1(15.7.4), 6-18-2018)

Sec. 15.7.5. Identity cards.

Each registrant shall be issued an identity card bearing his name and photograph, the company name, and the expiration date of the registration. Each solicitor must carry such identity card at all times while soliciting or canvassing within the city and shall display such card to each customer and upon appearance at each residence and/or business establishment canvassed or solicited.

(Ord. No. 2018-06-01, § 1(15.7.5), 6-18-2018)

~~Sec. 15.7.6. Hours of operation.~~

~~(a) Soliciting or canvassing on the public streets, areas, or parks of the city shall be conducted only between the hours of 9:00 a.m. and 7:00 p.m.~~

~~(b) Soliciting or canvassing or calling from house to house within the incorporated areas of the city shall be conducted only between the hours of 9:00 a.m. and 6:00 p.m.~~

(Ord. No. 2018-06-01, § 1(15.7.6), 6-18-2018)

Sec. 15.7.7. Restriction on number of persons soliciting.

The number of solicitors or canvassers in the city for any single firm, corporation, or organization shall not exceed five in number at any one time.

(Ord. No. 2018-06-01, § 1(15.7.7), 6-18-2018)

Sec. 15.7.8. Identification to prospective customers.

Prior to any solicitation of funds within the city, each canvasser or solicitor shall identify the organization which he represents. Additionally, each canvasser or solicitor must inform each person solicited of any minimum payment, deposit, or donation required for the acceptance of any merchandise, wares, goods, or any similar items provided by each canvasser or solicitor prior to such acceptance by each person solicited.

(Ord. No. 2018-06-01, § 1(15.7.8), 6-18-2018)

Sec. 15.7.9. Fraud, etc.

It shall be unlawful for a canvasser or solicitor to perform any of the following acts:

- (a) Falsely represent, either directly or by implication, that funds being solicited are on behalf of any person other than the person registered with the City Manager or his designee;
- (b) Without the express prior permission of an occupant or property owner, to solicit at any residence, apartment complex, or shopping center, other than areas open to public parking, where a sign has been posted prohibiting such solicitation;
- (c) To remain on private premises after being asked to leave the premises or to continue solicitation after being refused upon the public streets, areas, or parks; such action shall constitute harassment; or

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- (d) To solicit or canvass on any private premises upon which is displayed a sign, plaque or other posting declaring "No Soliciting" or other similar prohibition.

(Ord. No. 2018-06-01, § 1(15.7.9), 6-18-2018)

Sec. 15.7.10. Exceptions.

- (a) Any person desiring to solicit or canvass upon the public streets, areas, or parks, or call from house to house within the incorporated areas of the city for the purpose of raising funds or seeking donations for any religious, charitable, or eleemosynary organization shall register with and obtain a license from the city.
- (b) Such person on a form developed by the City Manager or his designee, at least:
 - (1) Applicant's name and permanent address;
 - (2) Name, address, and telephone number of the firm, corporation, or organization represented;
 - (3) Names and addresses of all persons canvassing or soliciting within the city;
 - (4) The nature of any merchandise or goods to be sold or offered for sale in conjunction with such solicitation; and
 - (5) Proof of tax-exempt status shall be required when registering with City Manager or his designee.
 - i. The City Manager or his designee shall collect a fee of \$1.00 from each organization to cover costs of processing the license.
 - ii. Each organization shall be issued an identity card bearing the name of each individual who shall engage in solicitation or canvassing on behalf of the organization, the organization's name, and the expiration date of the license. Each applicant does not have to be fingerprinted or photographed.
 - iii. The license shall be valid for 90 days from the date of issuance.

(Ord. No. 2018-06-01, § 1(15.7.10), 6-18-2018)

Sec. 15.7.11. License revocation.

Any license issued under this article may be suspended and/or revoked by the City Manager or his designee due to any violation of any ordinance or resolution of the city, county, or of any state or federal law, or whenever the license holder shall cease to possess the qualifications and character required in this article for the original application.

(Ord. No. 2018-06-01, § 1(15.7.11), 6-18-2018)

Sec. 15.7.12. Activity not regulated hereby.

This section is not intended to, nor shall it operate to, regulate door-to-door visitation for the following purposes: political canvassing or religious canvassing, provided that such canvassing does not include the soliciting of orders, sales, subscriptions or business of any kind.

(Ord. No. 2018-06-01, § 1(15.7.12), 6-18-2018)

Sec. 15.7.13. Penalty.

- (a) Any person violating any of the provisions of this article shall, upon conviction or entering a plea of guilty or nolo contendere in the Stonecrest Municipal Court, shall be punished pursuant to chapter 16 of this Code.
- (b) Continued violation of the provisions of this article may be enjoined by instituting appropriate proceedings for injunction in a court of competent jurisdiction of this state. Such actions may be maintained notwithstanding that other adequate remedies at law may exist. Remedies contained in this article are meant to be cumulative in nature.

(Ord. No. 2018-06-01, § 1(15.7.13), 6-18-2018)

ARTICLE VIII. MASSAGE THERAPY LICENSING

Sec. 15.8.1. Definitions.

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

Director means the director of finance or his designee.

Massage or *massages* or *massage therapy* means the manipulation and/or treatment of soft tissues of the body, including, but not limited to, the use of effleurage, petrissage, pressure, friction, tapotement, kneading, vibration, range of motion stretches, and any other soft tissue manipulation whether manual or by use of massage apparatus, and may include the use of oils, lotions, creams, salt glows, hydrotherapy, heliotherapy, hot packs, and cold packs. The term "massage" or "massage therapy" shall not include diagnosis, the prescribing of drugs or medicines, spinal or other joint manipulations, or any service or procedure for which a license to practice chiropractic, physical therapy, podiatry, or medicine is required by the state.

Massage apparatus means any manual, mechanical, hydraulic, hydrokinetic, electric, or electronic device or instrument or any device or instrument operated by manual, mechanical, hydraulic, hydrokinetic or electric power, which is utilized by a massage therapist for the purpose of administering a massage.

Massage establishment means any business established for profit which employs or contracts with one or more massage therapists, or 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. The term "massage establishment" shall not include hospitals or other professional health care establishments separately licensed as such by the state.

Massage therapist means any person whom for good or valuable consideration administers a massage.

(Ord. No. 2017-08-05, § 5(15.8.1), 8-7-2017)

Sec. 15.8.2. Licenses required.

- (a) *Massage therapist license.* It shall be unlawful for any natural person to administer massages without having obtained a license in accordance with the requirements of this article.
- (b) *Massage establishment license.* It shall be unlawful for any person, natural or corporate, to operate a massage establishment without having obtained a license therefor; or for any person, natural or corporate, to allow a massage therapist to administer massages without having obtained a license in accordance with the requirements of this article.

(Ord. No. 2017-08-05, § 5(15.8.2), 8-7-2017)

Sec. 15.8.3. Scope of regulations.

- (a) All licenses issued under this article shall constitute a mere privilege to conduct the business so authorized during the term of the license or permit only and subject to all terms and conditions imposed by the city and state law.
- (b) Nothing in this article shall be construed to regulate, prevent, or restrict in any manner:
 - (i) Any physician, chiropractor, physical therapist, or similar professional licensed and regulated by or through the state while engaged in the practice of said profession;
 - (ii) Any hospital or other professional health care establishment separately licensed as such by the state; or
 - (iii) Any other individual or entity expressly exempted from local legislation by the laws of the state.
- (c) Except as specified in subsection (b) of this section, the requirements of this article shall be in addition to all other licensing, taxing, and regulatory provisions of local, state or federal law, and shall not authorize violations of said other applicable laws.

(Ord. No. 2017-08-05, § 5(15.8.3), 8-7-2017)

Sec. 15.8.4. Application process.

- (a) *Application Requirements.* Any person desiring to obtain a massage establishment license or massage therapist license shall make application to the City Manager or his designee. All applications shall be sworn to by the applicant as true, correct and complete before a notary public or other officer authorized to administer oaths. All applications shall be in writing and shall set forth the following information:
 - (1) The full legal name of the applicant, including all aliases, nicknames, pseudonyms or trade names currently or heretofore used by the applicant;
 - (2) The current and all previous business and residence addresses of the applicant within the three years immediately preceding the date of application;
 - (3) Sworn affidavits of at least three bona fide residents of the city that the applicant is personally known to them and they believe the person to be of good moral character;
 - (4) Written proof that the applicant is over the age of 18 years;
 - (5) The applicant's height, weight and color of eyes and hair;
 - (6) Two current photographs of the applicant at least two inches by two inches in size;
 - (7) The business, occupation or employment of the applicant for three years immediately preceding the date of application;
 - (8) Any massage or similar business license history of the applicant, including whether such person, in any previous operation in any jurisdiction, has had such a license revoked or suspended, the reason therefor, and any business activity or occupation subsequent to the action of suspension or revocation;
 - (9) All convictions, pleas of guilty, or pleas of nolo contendere for violations of any law and the grounds therefor;

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- (10) The applicant shall be fingerprinted by the City Manager or his designee and such fingerprint card and record shall be attached as an exhibit to the application. Payment of all fees charged by the City Manager or his designee in connection with this requirement shall be the responsibility of the applicant;
 - (11) Applicants for a massage therapist license shall provide a certificate dated within 30 days of application from a physician licensed in the state, certifying that the applicant is in sound mental and physical health, and free of all contagious or communicable diseases;
 - (12) Applicants for a massage therapist license must furnish a certified copy of a diploma or certificate of graduation (demonstrating compliance with section 15.8.5(a)(2)), along with a certified statement from the National Certification Board of Therapeutic Massage and Body Work evidencing passage by the applicant thereof of the exam for massage therapists administered by said Board. Applicants for a massage establishment license must furnish an affidavit demonstrating compliance with section 15.8.5(b)(2) and 15.8.5(b)(3);
 - (13) If the applicant is a corporation or partnership, such corporation or partnership shall submit the foregoing information and exhibits with regard to each employee, independent contractor agent and partner, general or limited, associated with the operation of the licensed establishment;
 - (14) If the applicant is a corporation, such corporation shall, in addition to the foregoing information, submit a complete list of the stockholders of said corporation, including names, current addresses and current occupations, and provide the name and address for its registered agent in the county;
 - (15) If the applicant is an individual, the applicant must reside in the state and must submit written, reliable proof thereof. Additionally, if the applicant does not reside in the county, the applicant must provide the name and address for an agent who resides in the county authorized to receive legal process and notices under this article on behalf of the applicant.
- (b) *Fees.* All license applications shall be accompanied by a fee as elsewhere established by the City Council to defray the costs associated with issuance of said licenses. All fees associated with the background check required by subsection (a)(10) of this section shall be the responsibility of the applicant and shall be in addition to the application fee.

(Ord. No. 2017-08-05, § 5(15.8.4), 8-7-2017)

Sec. 15.8.5. Minimum standards.

- (a) *Massage therapist.* No applicant shall be issued a license as a massage therapist unless both of the following standards are first met:
- (1) The applicant must be of good moral character. No applicant shall be found to have met this requirement if said applicant has been convicted, pled guilty, or entered a plea of nolo contendere to any felony, or to any misdemeanor involving moral turpitude, within a period of five years prior to the filing of the application; and
 - (2) The applicant must be the holder of a diploma or certificate earned by the applicant from a state certified school, representative of the fact that the applicant attended a course of massage therapy education and study of not less than 500 classroom hours consisting of a curriculum of anatomy and physiology, basic massage theory, technique and clinical practice, approach to massage, allied modalities and disease awareness, and other such subjects and have passed the National Certification Board of Therapeutic Massage and Body Work exam for massage therapists.
- (b) *Massage establishment.* No applicant shall be issued a license for a massage establishment unless all of the following standards are first met:

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- (1) The applicant, including the partner applying on behalf of a partnership and an agent applying on behalf of a corporation, must be of good moral character. No applicant shall be found to have met this requirement if said applicant has been convicted, pled guilty, or entered a plea of nolo contendere to any felony, or to any misdemeanor involving moral turpitude, within a period of four years prior to the filing of the application;
 - (2) A corporate applicant must be chartered under the laws of Georgia or authorized by the Secretary of State to do business in the state. The applicant shall be the owner or legal agent of the establishment. The corporate applicant must identify an agent for service of process in the county;
 - (3) The owner/applicant, or corporate agent must be a resident of the state;
 - (4) A readable sign shall be posted at the main entrance identifying the establishment as a massage establishment, provided also that all such signs shall comply with the sign requirements of the Code of Ordinances;
 - (5) Minimum lighting shall be provided in accordance with the Uniform Building Code, and, additionally, at least one artificial light of not less than 40 watts shall be provided in each enclosed room or booth;
 - (6) Ordinary beds or mattresses shall not be permitted in any licensed massage establishment;
 - (7) Minimum ventilation shall be provided in accordance with the Standard Mechanical Code and the Georgia Energy Code; and
 - (8) The establishment, prior to the issuance of any license hereunder, must be in compliance with all applicable building and life safety codes, and the building to be occupied must have a valid, current certificate of occupancy.

(Ord. No. 2017-08-05, § 5(15.8.5), 8-7-2017)

Sec. 15.8.6. Issuance of license.

- (a) *Review of applications.* If a license application is submitted in proper form, including all information and exhibits required herein and accompanied by the correct fees, the application shall be accepted and a review of the application and an inspection and investigation shall be conducted by the director. The director shall transmit a copy of the completed application to the City Manager or his designee. Upon the payment by the applicant of the required fees, the City Manager, or its designee, shall cause to be conducted a background investigation of the police record of the applicant, and shall transmit a summary of the investigation results to the director.
- (b) *Action on applications.* Upon receipt of this background investigation, and completion of review of the application in accordance with the terms of this article, the director shall act on the application. The director shall deny any application that:
 - (1) Fails to meet each of the application requirements specified herein;
 - (2) Fails to meet each of the minimum standards specified in section 15.8.5; or
 - (3) Contains false information in the application or attached documents.

Otherwise, the director shall approve the application and the license shall be issued upon the payment of any applicable city business or occupation tax. All licenses issued pursuant to this article shall be valid for a period of one year. If an application for a license is denied under this article, the applicant shall not be authorized to reapply for said denied license for a period of one year from the date of denial.

- (c) *Appeals of denials of applications.* In the event the director denies a license or apprentice permit application, such denial shall be in written form, addressed to the applicant at the application address, and shall state the

grounds upon which the denial is based. Within 15 days of the date of issuance of such notice, the applicant shall be entitled to appeal to the certificate review hearing officer pursuant to the procedure set forth in article XVI of this chapter.

(Ord. No. 2017-08-05, § 5(15.8.6), 8-7-2017)

Sec. 15.8.7. Transfers and sales prohibited.

All licenses issued pursuant to this article are nontransferable.

(Ord. No. 2017-08-05, § 5(15.8.7), 8-7-2017)

Sec. 15.8.8. Change of location.

A change of location of massage establishment premises may be approved by the City Manager or his designee provided all general ordinances are complied with and a change of location fee as elsewhere established by the City Council is first paid.

(Ord. No. 2017-08-05, § 5(15.8.8), 8-7-2017)

Sec. 15.8.9. Renewals.

All valid licenses may be renewed for additional one-year periods, provided a renewal application meeting all of the requirements for an initial license application is submitted prior to expiration of the existing license and approved by the director according to the same standards for initial licenses. The fee for the annual renewal shall be as elsewhere established by the City Council.

(Ord. No. 2017-08-05, § 5(15.8.9), 8-7-2017)

Sec. 15.8.10. Further requirements.

The following additional requirements shall apply to all license holders and establishments:

- (a) All massage therapists and all other persons on the premises, with the exception of the customers, shall be completely clothed at all times when administering a massage. For the purposes of this provision, "completely clothed" shall mean having on the upper portion of the body appropriate undergarments and either blouse or shirt which shall cover all the upper body save the arms and neck and shall mean having on the lower body appropriate undergarments plus either pants or skirt, and said pants or skirt must cover from the waist down to a point at least two inches above the knee. All clothes worn in compliance with this subsection shall be entirely non-transparent.
- (b) Massage of the human genitals or anus within massage establishments is expressly prohibited.
- (c) The storing, serving, sale or consumption of alcoholic beverages within massage establishments is expressly prohibited.
- (d) Every person to whom a license shall have been granted shall display said license in a conspicuous place on the premises that is clearly visible to the visiting public.
- (e) The City Manager or his designee, shall have the right to inspect any licensed massage premises and its records at any time, with or without notice, during business hours to ensure compliance with this article.

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- (f) It shall be unlawful for any person under the age of 18 years to patronize any massage establishment unless at the time of such patronage such person carries with him a written order directing the treatment to be given by a regularly licensed physician, or unless such person provides a written consent to massage therapy treatment signed by the underage patron's parent or guardian. It shall be the duty of the operator of such massage establishment to determine the age of each person patronizing such massage establishment and a violation of this section shall be grounds for revocation of the license of such massage establishment and/or massage therapist administering massage to an underage patron.
 - (g) It shall be the duty of all persons holding a license for a massage establishment under this article to file with the City Manager or his designee the names of all employees and independent contractors other than those holding massage therapist licenses, their home addresses, home telephone numbers and places of employment. Changes in the list of said employees and independent contractors with the names of new employees and independent contractors must be filed with said city department within ten days from the date of any such change.
 - (h) It shall be the duty of any person granted a license under this article to maintain correct and accurate records of the names and addresses of the persons receiving treatment at such establishment; and the name of the person at the establishment administering the treatment. The records shall be subject to inspection at any time by the city through the City Manager or his designee.
 - (i) It shall be the duty of the licensee establishment to actively supervise and monitor the conduct of any and all employees, independent contractors, customers and all other persons on the premises in order to ensure compliance with the provisions of this chapter.

(Ord. No. 2017-08-05, § 5(15.8.10), 8-7-2017)

Sec. 15.8.11. Revocation of license.

- (a) No license issued hereunder shall be revoked except for due cause as herein defined without the opportunity for a hearing as hereinafter set forth before the certificate review hearing officer. Notice of such hearing shall be given in writing and served at least ten days prior to the date of the hearing thereon. In the event the license holder cannot be found, and the service of notice cannot be otherwise made in the manner herein provided, a copy of such notice shall be mailed registered postage fully prepaid, addressed to the license holder or the registered agent thereof at his, her, or its place of business or residence at least ten days prior to the date of such hearing. The notice shall state the grounds for revocation of such license and shall designate the time and place where such hearing will be held.
- (b) Due cause for revocation of such license shall be as provided in section 15.8.12 of this article.
- (c) In all hearings pursuant to this section, the following procedures shall prevail, and the proceeding shall be as informal as compatible with justice:
 - (1) The charges and specifications against the licensee shall be read along with any response filed by the licensee.
 - (2) The certificate review hearing officer shall hear the evidence upon the charges and specifications as filed against the licensee and shall not consider any additional evidence beyond the scope of the charges, and may exclude evidence which is purely cumulative.
 - (3) The order of proof shall be as follows: The city representative shall present his evidence in support of the charges; the licensee shall then present his evidence. Evidence of each party may be supported by submission of pertinent documents. Each party shall be allowed to present pertinent rebuttal evidence.

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- (4) The licensee and city may be represented by counsel, and may present, examine and cross-examine witnesses. Additionally, the certificate review hearing officer may interrogate all parties and witnesses to obtain necessary information. Following the presentation of evidence, the hearing officer may have a reasonable time within which to issue its decision.
 - (5) The findings of the certificate review hearing officer will be final unless within 30 days of the date of the decision, the applicant files a petition for writ of certiorari to the superior court of the county.

(Ord. No. 2017-08-05, § 5(15.8.11), 8-7-2017)

Sec. 15.8.12. Grounds for revocation.

- (a) The license of a massage therapist may be revoked upon one or more of the following grounds:
 - (1) Failure of the holder to maintain initial requirements for obtaining the license;
 - (2) The holder is guilty of fraud in the practice of massage, or fraud or deceit in his being licensed in the practice of massage;
 - (3) The holder is engaged in the practice of massage under a false or assumed name, or is impersonating another therapist of a like or different name;
 - (4) The holder is addicted to the habitual use of intoxicating liquors, narcotics or stimulants to such an extent as to incapacitate such person to the extent that he is unable to perform his professional duties;
 - (5) The holder is guilty of fraudulent, false, misleading or deceptive advertising or practices any other licensed profession without legal authority therefor;
 - (6) The holder has violated any of the provisions of this chapter;
 - (7) The holder has violated any laws relating to sodomy, aggravated sodomy, solicitation of sodomy, public indecency, prostitution, pimping, pandering, pandering by compulsion, masturbation for hire, distribution of obscene materials, distribution of material depicting nudity, or sexual conduct, as defined under Georgia law; or has been convicted, pled guilty, or entered a plea of nolo contendere to any felony, or to any misdemeanor involving moral turpitude;
 - (8) The original application, or renewal thereof, contains materially false information; or the applicant has deliberately sought to falsify information contained therein; or
 - (9) There has been the occurrence of a fact which would have barred the issuance of the original license.
- (b) The license of a massage establishment may be revoked upon one or more of the following grounds:
 - (1) Failure of the holder to maintain initial requirements for obtaining the license;
 - (2) The holder allows or permits any person who is not a licensed massage therapist to administer a massage in said establishment;
 - (3) The premises in which the massage establishment is located are in violation of any federal, state, city, or county laws designated for the health, protection and safety of the occupants or general public;
 - (4) The premises are in violation of the city's building or life safety codes;
 - (5) The original application or renewal thereof, contains materially false information; or the applicant has deliberately sought to falsify information contained therein;
 - (6) The holder of the license, including any person with an ownership interest in the license, has been convicted, pled guilty, or entered a plea of nolo contendere to any felony, or to any misdemeanor involving moral turpitude, or has violated any laws relating to sodomy, aggravated sodomy, solicitation

of sodomy, public indecency, prostitution, pimping, pandering, pandering by compulsion, masturbation for hire, distribution of obscene materials, distribution of material depicting nudity, or sexual conduct, as defined under state law;

- (7) Any of the license holder's employees, independent contractors or agents has been convicted, pled guilty, or entered a plea of nolo contendere to any felony, or to any misdemeanor involving moral turpitude, or has violated any laws relating to sodomy, aggravated sodomy, solicitation of sodomy, public indecency, prostitution, pimping, pandering, pandering by compulsion, masturbation for hire, distribution of obscene materials, distribution of material depicting nudity, or sexual conduct, as defined under state law, in connection with the operation of the massage establishment or on or about the premises of the massage establishment;
 - (8) Failure of the holder to actively supervise and monitor the conduct of the employees, independent contractors, agents, customers, or others on the premises in order to protect the health, safety and welfare of the general public and the customers; or
 - (9) The holder, his employees, agents, or independent contractors associated with the establishment have allowed to occur or have engaged in a violation of any part of this chapter.
- (c) Any massage therapist or massage establishment who has his or its license or permit revoked shall be disqualified from reapplying for such a license or permit for a period of 12 months immediately following the date of revocation.

(Ord. No. 2017-08-05, § 5(15.8.12), 8-7-2017)

Sec. 15.8.13. Violations; penalties.

- (a) Any person, firm, corporation or other entity violating the provisions of this article shall be punishable by a fine not to exceed \$1,000.00 per violation or by imprisonment for a period not to exceed 60 days, or by both such fine and imprisonment. Violation of this article shall also be grounds for immediate suspension or revocation of the license issued hereunder.
- (b) The violation of the provisions of this article may be abated as a nuisance.
- (c) The violation of all provisions of this article by any person may be enjoined by instituting appropriate proceedings for injunction in any court of competent jurisdiction. Such actions may be maintained notwithstanding that other adequate remedies at law exist. Such actions may be instituted in the name of the City Council.

(Ord. No. 2017-08-05, § 5(15.8.12), 8-7-2017)

Sec. 15.8.14. Unlawful operation declared nuisance.

- (a) Any massage establishment operated, conducted or maintained contrary to the provisions of this article shall be and the same is declared to be unlawful and a public nuisance. The city may, in addition, or in lieu of all other remedies, commence an action or actions, proceeding or proceedings for abatement, removal or enjoinder thereof, in the manner provided by law.
- (b) No massage establishment shall operate at any location nor on any premises which does not comply with all zoning, building, and fire safety codes, and other ordinances and laws of the city and the state.

(Ord. No. 2017-08-05, § 5(15.8.13), 8-7-2017)

ARTICLE IX. ESCORT OR DATING SERVICES

Sec. 15.9.1. License.

- (a) Any person desiring to engage in the business of providing or arranging dates, escorts or partners for persons shall, before engaging in such business, file an application for a business license on a form supplied by the City Manager or his designee and shall comply with all the provisions of this article.
- (b) The applicant for a dating or escort service license must be an owner, partner or majority stockholder.
- (c) Each applicant shall submit the following information, as a minimum:
 - (1) Trade name and business address.
 - (2) Applicant's name and residence address.
 - (3) Names and residence addresses of all interested persons, to include owners, partners, stockholders, officers and directors.
 - (4) Manager's name and residence address.
 - (5) Employees' names and residence addresses.

(Ord. No. 2017-08-05, § 5(15.9.1), 8-7-2017)

Sec. 15.9.2. Qualifications of license applicant, others connected with business.

No applicant, owner, partner, stockholder, officer, director or any other interested person connected with the business for which a license is applied under this article shall have been convicted of a crime involving moral turpitude, lottery or illegal sale or possession of narcotics within the preceding ten-year period; any subsequent convictions of the nature described in this section automatically acts to void any such license and permits held.

(Ord. No. 2017-08-05, § 5(15.9.2), 8-7-2017)

Sec. 15.9.3. Permit required.

All applicants for an escort or dating service business license, along with their employees, must also file for a permit with the City Manager or his designee accompanied by a permit fee in the amount established by action of the City Council, a copy of which is on file in the office of the city clerk and providing the information in section 15.9.1 as well as any additional information and fingerprinting as deemed necessary by the City Manager or his designee for the purposes of conducting a background investigation of the applicant.

(Ord. No. 2017-08-05, § 5(15.9.3), 8-7-2017)

Sec. 15.9.4. Employees.

No person under 18 years of age shall be employed by an escort or dating service in any capacity and not before such person has been fingerprinted by the City Manager or his designee. When determined that the employee applicant has not been convicted of a crime involving moral turpitude for the preceding three-year period, an annual personal identification card authorizing such person to be employed by the escort or dating service will be issued. It shall be the responsibility of the business license applicant to ensure that the provisions of this section are complied with and that no employee possesses an expired identification card or permit while in the business' employ.

(Ord. No. 2017-08-05, § 5(15.9.4), 8-7-2017)

Secs. 15.9.5—15.9.25. Reserved.

ARTICLE X. POOLROOMS

DIVISION 1. GENERALLY

Sec. 15.10.1. Definitions.

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

Pool or billiards includes any game played on a table surrounded by an elastic ledge of cushions with balls which are impelled by a cue.

Poolroom means any public place where a person is permitted to play the game of pool or billiards.

(Ord. No. 2017-08-05, § 5(15.10.1), 8-7-2017)

Sec. 15.10.2. Applicability.

O.C.G.A. § 43-8-1 et seq. does not apply within the city. The provisions of this article govern the operation of poolrooms within the city.

(Ord. No. 2017-08-05, § 5(15.10.2), 8-7-2017)

Sec. 15.10.3. Inspection of licensed establishments.

The City Manager or his designee may inspect establishments licensed under this article during the hours in which the premises are open for business. Such inspection shall be made for the purpose of verifying compliance with the requirements of this article.

(Ord. No. 2017-08-05, § 5(15.10.3), 8-7-2017)

Sec. 15.10.4. Gambling.

No gambling or other games of chance shall be permitted in a poolroom.

(Ord. No. 2017-08-05, § 5(15.10.4), 8-7-2017)

Sec. 15.10.5. Manager.

All poolrooms which have three or more pool tables shall have a manager, or designated employee, on-duty during operating hours, whose responsibility is the operation of the pool tables.

(Ord. No. 2017-08-05, § 5(15.10.5), 8-7-2017)

Secs. 15.10.6—15.10.20. Reserved.

DIVISION 2. LICENSE

Sec. 15.10.21. Required.

No person shall operate a poolroom without a business license issued by the City Manager or his designee.
(Ord. No. 2017-08-05, § 5(15.10.21), 8-7-2017)

Sec. 15.10.22. Application.

- (a) All persons desiring to operate a poolroom shall make application for a business license on a form prescribed by the City Manager or his designee.
- (b) The application shall include, but shall not be limited to, the following:
 - (1) The name and address of the owner-applicant.
 - (2) The address of the licensed establishment.
 - (3) The number of pool tables to be operated at the licensed establishment.
 - (4) If the owner-applicant is a partnership, the names and residence addresses of the partners.
 - (5) If the owner-applicant is a corporation, the names of the officers.
 - (6) The name and address of the agent for service of process.
 - (7) The name of the manager.
 - (8) The name of all shareholders holding more than ten percent of any class of corporate stock, or other entity having a financial interest in each entity which is to own or operate the licensed establishment.

If the manager changes, the owner-applicant must furnish the City Manager or his designee with the name and address of the new manager and other information as requested within ten days of such change.

- (c) All applicants shall furnish data, information and records as required by the City Manager or his designee to ensure compliance with the provisions of this article. Failure to furnish data shall automatically serve to dismiss the application with prejudice.
- (d) All applications shall be sworn to by the applicant before a notary public or other officer authorized to administer oaths.
- (e) In all instances in which an application is denied under the provisions of this division, the applicant may not reapply for a license for at least one year from the final date of denial.

(Ord. No. 2017-08-05, § 5(15.10.22), 8-7-2017)

Sec. 15.10.23. Persons eligible.

- (a) No poolroom license shall be granted to any illegal alien.

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- (b) Where the owner-applicant is a partnership or corporation, the provisions of this section shall apply to all its partners, officers, managers and majority stockholders. In the case of a corporation, the license shall be issued jointly to the corporation and to the majority stockholder, if an individual. Where the majority stockholder is not an individual, the license shall be issued jointly to the corporation and its agent registered under the provisions of this section. In the case of a partnership, the license will be issued to one of the partners.
 - (c) No license shall be granted to any person who has been convicted under any federal, state or local law of any misdemeanor involving moral turpitude within ten years prior to the filing of the application for such license.
 - (d) No license shall be granted to any person convicted under any federal, state or local law of any felony within ten years prior to the filing of the application for such license.
 - (e) No license shall be granted to any person who has had any license issued under the police powers of the city or DeKalb County previously revoked or rejected within two years prior to the filing of the application. The City Manager or his designee may decline to issue a license when any person having an interest in the operation of such place of business or control over such place of business does not meet the same character requirements as set forth for the licensee.
 - (f) All licensed establishments must have and continuously maintain in the county a registered agent upon whom any process, notice or demand required or permitted by law or under this article to be served upon the licensee or owner may be served. The licensee shall file the name of such agent, along with the written consent of such agent with the City Manager or his designee in such form as is prescribed.

(Ord. No. 2017-08-05, § 5(15.10.23), 8-7-2017)

Sec. 15.10.24. Expiration; renewal; transfer.

- (a) All licenses granted under this division shall expire on December 31 of each year.
- (b) Licensees who desire to renew their licenses shall file application with all applicable fees with the City Manager or his designee on the form provided for renewal of the license for the following year. Applications for renewal must be filed before November 30 of each year or the applicant shall pay a late payment penalty in addition to an assessment of interest as specified by chapter 2 of this Code. No renewal licenses shall be granted after January 1, but such application shall be treated as an initial application and the applicant shall be required to comply with all requirements for the granting of licenses as if no previous license had been held.
- (c) All licenses granted hereunder shall be for the full calendar year. License fees shall not be prorated and are nonrefundable.
- (d) No license shall be transferred without prior approval of the City Manager or his designee.

(Ord. No. 2017-08-05, § 5(15.10.24), 8-7-2017)

Sec. 15.10.25. Fee.

No poolroom license shall be issued until a fee in the amount established by action of the City Council, a copy of which is on file in the office of the clerk, is paid to the city.

(Ord. No. 2017-08-05, § 5(15.10.25), 8-7-2017)

Sec. 15.10.26. Issuance.

Before a poolroom license is granted, the applicant therefor shall comply with all rules and regulations adopted by the City Council regulating the operation of poolrooms.

(Ord. No. 2017-08-05, § 5(15.10.26), 8-7-2017)

Sec. 15.10.27. Suspension or revocation.

A poolroom license may be suspended or revoked by the City Manager or his designee for failure of a licensee to comply with the provisions of this article or where the licensee furnishes fraudulent or false information in the license application.

(Ord. No. 2017-08-05, § 5(15.10.27), 8-7-2017)

Sec. 15.10.28. Appeals.

- (a) No poolroom license shall be denied, suspended or revoked without the opportunity for a hearing.
- (b) The City Manager or his designee shall provide written notice to the owner-applicant and licensee of the order to deny, suspend or revoke the license. Such written notification shall set forth in reasonable detail the reasons for such action and shall notify the owner-applicant and licensee of the right to appeal under the provisions of this chapter. Any owner-applicant or licensee who is aggrieved or adversely affected by a final action of the city may have a review thereof in accordance with the appeals procedures specified in article XVI of this chapter.

(Ord. No. 2017-08-05, § 5(15.10.28), 8-7-2017)

Secs. 15.10.29—15.10.50. Reserved.

ARTICLE XI. VEHICLES FOR HIRE

Sec. 15-11-1. Definitions.

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

Open stand means locations on the streets of the city that may be used by any taxicab on a nonexclusive, first-come-first-served basis, and not by private vehicles or other public conveyances.

Taxicab means a motor vehicle used to transport passengers for a fee or fare and which is fitted with a taximeter or other device that is used to compute such fee or fare. Taxicabs shall not include limousine carriers or ride share drivers, as defined in O.C.G.A. § 40-1-90(1) and (3).

Taxicab company means an entity or person operating a taxicab or providing taxi services, as defined in O.C.G.A. § 40-1-90(5).

Taximeter means an instrument or device attached to a motor vehicle and designed to measure the distance traveled by such vehicle, or an instrument or device attached to a motor vehicle and designed to compute and indicate the fare or fee to be charged to the passenger.

(Ord. No. 2018-06-01, § 1(15.11.00), 6-18-2018)

Sec. 15-11-2. Doing business defined.

Any taxicab company operating a taxicab within the incorporated boundaries of the city or with an established business relationship with independent contractors operating a taxicab shall be deemed doing business in the city under this article if such person is picking up passengers in the city and accepting or soliciting any consideration, charge or fee which is determined by agreement, by mileage, by the length of time the vehicle is used or by contract for the use of any motor vehicle or other vehicle designed or used for the purpose of transporting passengers.

(Ord. No. 2018-06-01, § 1(15.11.00), 6-18-2018)

Sec. 15-11.3. Cruising and use of vehicle stands.

Cruising is defined as moving about the streets of the city for the purpose of picking up and transporting passengers who have not previously requested such service by telephone or by personal command. Taxicab companies shall ensure that their drivers use open stands on a nonexclusive, first-come-first-served basis.

(Ord. No. 2018-06-01, § 1(15.11.00), 6-18-2018)

Sec. 15-11-4. Call jumping.

Taxicab companies under this article shall not participate in nor allow their drivers to practice call jumping or the act of intercepting a passenger who has requested service from another company.

(Ord. No. 2018-06-01, § 1(15.11.00), 6-18-2018)

Sec. 15-11-5. Schedule of fares.

- (a) All taxicab companies doing business in the incorporated boundaries of the city shall charge a schedule of fares as provided in the city fee schedule.
- (b) All taxicab companies permitted under this article shall have the right to charge a charge as provided in the city fee schedule if the meter is not utilized.
- (c) Taximeters shall be calibrated by the permitted taxicab company to calculate the fares in accordance with the schedule set forth in this section. The taxi shall have, installed, lead and wire seals to the taximeter once it is calibrated so that no adjustments, alterations or replacements may be made to the taximeter that affects in any way its accuracy or indications.

(Ord. No. 2018-06-01, § 1(15.11.00), 6-18-2018)

Sec. 15-11-6. Temporary fuel surcharge.

- (a) The City Manager or his designee shall assess fuel prices in the city every three months, the first assessment to occur immediately after approval of the ordinance from which this article is derived and again thereafter on November 1, February 1, May 1, and August 1 of each calendar year and repeating every November 1, February 1, May 1, August 1 and/or an assessment may be needed based on a sudden increase in gasoline prices between those dates.

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- (b) At the time of the assessment, if the City manager or his designee finds that the price of fuel in the city exceeds by 20 percent the average price of fuel in the Atlanta metropolitan area in the preceding year, as published by the American Automobile Association, the City manager or designee shall be authorized to institute temporary fuel surcharges as set forth in this article.
 - (c) Within ten days of the assessment of fuel prices, if the price exceeds the standards of subsection (b) of this section, the City Manager or his designee shall notify all taxicab companies, taxicab drivers, taxicab trade associations, and all other affected persons or entities operating in the taxicab industry within the city of temporary fuel surcharges that may be imposed on customers.
 - (d) If the City Manager or designee authorizes the assessment of temporary fuel surcharges, all taxicab companies and drivers shall charge, in addition to the schedule of fares set forth in section 15-11-5, a fuel surcharge as provided in the city fee schedule.
 - (e) No other temporary fuel charges may be assessed against customers and the temporary fuel surcharges applied only remains in effect until the time of the next periodic fuel price assessment by the police chief or designee.
 - (f) All taxicab drivers must and shall conspicuously display a printed passenger notice on the taxicab dashboard describing the temporary fuel surcharge.
 - (g) The printed notice shall advise passengers that a temporary fuel surcharge will be added to the metered fare or to the flat rate fare due to increases in gasoline prices in the city and shall advise passengers of the amount of the fee as described in subsection (d) of this section.

(Ord. No. 2018-06-01, § 1(15.11.00), 6-18-2018)

ARTICLE XII. SEXUALLY ORIENTED BUSINESSES

Sec. 15.12.1. Findings; public purpose.

- (a) *Purpose.* It is the purpose of this article 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 article 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 article 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 article to condone or legitimize the distribution of obscene material.
- (b) *Findings and rationale.* Based on evidence of adverse secondary effects associated with certain conduct in alcoholic beverage establishments, which effects have been presented in hearings and in reports made available to the City Council, and on findings, interpretations, and narrowing constructions incorporated in numerous cases, including, but not limited to, *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 AM*, 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 F.3d 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 Faloan 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 - 2011-12; 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 - 1995-98, 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) 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 article, 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 article are reasonably believed to be relevant to the secondary effects.
- (c) *Adoption of findings of 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.

(Ord. No. 2017-08-05, § 7(15.12.1), 8-7-2017)

Sec. 15.12.2. Definitions.

For the purposes of this article, 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:

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: 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;

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- (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 "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 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 term "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 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.

Characterized by means describing the essential character or quality of an item. As applied in this article, 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.

Employ, employee, and employment describe and pertain to any person who performs any service on the premises of a sexually oriented business, on a full-time, part-time, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, lessee, or otherwise. The term "employee" does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

Establish or establishment means and includes any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business;
- (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or
- (3) The addition of any sexually oriented business to any other existing sexually oriented business.

Feature means to give special prominence to.

Floor space means the floor area inside an establishment that is visible or accessible to patrons for any reason, excluding restrooms.

Hearing officer means an attorney, not an employee of the city, who is licensed to practice law in the state, and retained to serve as an independent tribunal to conduct hearings under this article.

Influential interest means any of the following:

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- (1) The actual power to operate the sexually oriented business or control the operation, management or policies of the sexually oriented business or legal entity which operates the sexually oriented business;
 - (2) Ownership of a financial interest of 30 percent or more of a business or of any class of voting securities of a business; or
 - (3) Holding an office (e.g., president, vice-president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the sexually oriented business.

Licensee means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In the case of an employee, the term "licensee" means the person in whose name the sexually oriented business employee license has been issued.

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.

Operator means any person on the premises of a sexually oriented business who manages, supervises, or controls the business or a portion thereof. A person may be found to be an operator regardless of whether such person is an owner, part owner, or licensee of the business.

Person means an individual, proprietorship, partnership, corporation, association, or other legal entity.

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.

Regularly means the consistent and repeated doing of an act on an ongoing basis.

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.

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, or any establishment that does not regularly advertise itself or hold itself out, in any medium, as an establishment that caters to adult sexual interests.

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 Code.

Specified anatomical areas means and includes:

- (1) Less than completely and opaquely covered: 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.

Specified criminal activity means any of the following specified crimes for which less than five years has elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:

- (1) Rape, child molestation, sexual assault, sexual battery, aggravated sexual assault, aggravated sexual battery, or public indecency;
- (2) Prostitution, keeping a place of prostitution, pimping, or pandering;
- (3) Obscenity, disseminating or displaying matter harmful to a minor, or use of child in sexual performance;
- (4) Any offense related to any sexually-oriented business, including controlled substance offenses, tax violations, racketeering, crimes involving sex, crimes involving prostitution, or crimes involving obscenity;
- (5) Any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; or
- (6) Any offense in another jurisdiction that, had the predicate acts been committed in the state, would have constituted any of the foregoing offenses.

Specified sexual activity means any of the following:

- (1) Intercourse, oral copulation, masturbation or sodomy; or
- (2) Excretory functions as a part of or in connection with any of the activities described in subsection (1) of this definition.

Transfer of ownership or control of a sexually oriented business means any of the following:

- (1) The sale, lease, or sublease of the business;
- (2) The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or
- (3) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

Viewing room means the room, booth, or area where a patron of a sexually oriented business would ordinarily be positioned while watching a film, videocassette, digital video disc, or other video reproduction.

(Ord. No. 2017-08-05, § 7(15.12.2), 8-7-2017)

Sec. 15.12.3. License required.

- (a) *Business license.* It is unlawful for any person to operate a sexually oriented business in the city without a valid sexually oriented business license.
- (b) *Employee license.* It is unlawful for any person to be an employee of a sexually oriented business in the city without a valid sexually oriented business employee license, except that a person who is a licensee under a valid sexually oriented business license shall not be required to also obtain a sexually oriented business employee license.
- (c) *Application.* An applicant for a sexually oriented business license or a sexually oriented business employee license shall file in person at the office of the City Manager or his designee a completed application made on a form provided by the City Manager or his designee. A sexually oriented business may designate an individual with an influential interest in the business to file its application for a sexually oriented business license in person on behalf of the business. The application shall be signed as required by subsection (d) of this section and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in this subsection, accompanied by the appropriate licensing fee:
 - (1) The applicant's full legal name and any other names used by the applicant in the preceding five years.
 - (2) Current business address or another mailing address for the applicant.
 - (3) 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.
 - (4) If the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number of the sexually oriented business.
 - (5) If the application is for a sexually oriented business license, the name and business address of the statutory agent or other agent authorized to receive service of process.
 - (6) A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity, as defined in this article, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.
 - (7) A statement of whether any sexually oriented business in which an applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):
 - a. Been declared by a court of law to be a nuisance; or
 - b. Been subject to a court order of closure.
 - (8) An application for a sexually oriented business license shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor area occupied by the business and a statement of floor area visible or accessible to patrons for any reason, excluding restrooms. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. Applicants who

are required to comply with the stage, booth, and/or room configuration requirements of this article shall submit a diagram indicating that the setup and configuration of the premises meets the requirements of the applicable regulations. The City Manager may waive the requirements of this subsection for a renewal application if the applicant adopts a legal description and a sketch or diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

The information provided pursuant to this subsection (c) of this section shall be supplemented in writing by certified mail, return receipt requested, to the City Manager or his designee within ten working days of a change of circumstances which would render the information originally submitted false or incomplete.

- (d) *Signature.* A person who seeks a sexually oriented business employee license under this section shall sign the application for a license. If a person who seeks a sexually oriented business license under this section is an individual, he shall sign the application for a license as applicant. If a person who seeks a sexually oriented business license is other than an individual, each person with an influential interest in the sexually oriented business or in a legal entity that controls the sexually oriented business shall sign the application for a license as applicant. Each applicant must be qualified under this article and each applicant shall be considered a licensee if a license is granted.
- (e) *Confidentiality.* The information provided by an applicant in connection with an application for a license under this article shall be maintained by the office of the City Manager or his designee on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by governing law or court order. Any information protected by the right to privacy as recognized by state or federal law shall be redacted prior to such disclosure.

(Ord. No. 2017-08-05, § 7(15.12.3), 8-7-2017)

Sec. 15.12.4. Issuance of license.

- (a) *Business license.* Upon the filing of a completed application for a sexually oriented business license, the City Manager or his designee shall immediately issue a temporary license to the applicant if the completed application is from a preexisting sexually oriented business that is lawfully operating in the city and the completed application, on its face, indicates that the applicant is entitled to an annual sexually oriented business license. The temporary license shall expire upon the final decision of the city to deny or grant an annual license. Within 30 days of the filing of a completed sexually oriented business license application, the City Manager or his designee shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The City Manager or his designee shall issue a license unless:
 - (1) An applicant is less than 18 years of age.
 - (2) An applicant has failed to provide information required by this article for issuance of a license or has falsely answered a question or request for information on the application form.
 - (3) The license application fee required by this article has not been paid.
 - (4) The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this article.
 - (5) The sexually oriented business, as defined herein, is not in compliance with the locational requirements of any other part of this Code. However, this ground for denial of a license to operate a sexually oriented business shall not prevent issuance or renewal of a license for a sexually oriented business that was in a location where a sexually oriented business was allowed under law prior to the effective date of the ordinance from which this article is derived, provided that the sexually oriented business has not been discontinued for a continuous period of six months; has not been enlarged;

expanded, moved, or otherwise altered in any manner that increases the degree of nonconformity; and has not had its structure destroyed to an extent exceeding 60 percent of the structure's fair market value at the time of destruction.

- (6) Any sexually oriented business in which an applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):
 - a. Been declared by a court of law to be a nuisance; or
 - b. Been subject to an order of closure.
- (7) An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this article.

(b) *Employee license.* The City Manager or his designee shall issue a license unless:

- (1) The applicant is less than 18 years of age.
- (2) The applicant has failed to provide information as required by this article for issuance of a license or has falsely answered a question or request for information on the application form.
- (3) The license application fee required by this article has not been paid.
- (4) Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):
 - a. Been declared by a court of law to be a nuisance; or
 - b. Been subject to an order of closure.
- (5) The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this article.

(c) *License information.* The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensees, the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time that the business is occupied by patrons or is open to the public. A sexually oriented business employee shall keep the employee's license on his person or on the premises where the licensee is then working or performing.

(d) *Location requirements.* A license granted under this section does not excuse compliance with, or authorize the violation of, any location or zoning requirements for sexually oriented businesses in effect in the city.

(Ord. No. 2017-08-05, § 7(15.12.4), 8-7-2017)

Sec. 15.12.5. Fees.

The fees charged for the initial license and annual renewal licenses for sexually oriented business and sexually oriented business employee licenses shall be as established by the council, or its designee, in the city's fee schedule.

(Ord. No. 2017-08-05, § 7(15.12.5), 8-7-2017)

Sec. 15.12.6. Inspection.

Sexually oriented businesses and sexually oriented business employees shall permit the City Manager and his agents to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this article, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed by the city to authorize reasonable inspections of the licensed premises pursuant to this article, but not to authorize a harassing or excessive pattern of inspections.

(Ord. No. 2017-08-05, § 7(15.12.6), 8-7-2017)

Sec. 15.12.7. Expiration and renewal of license.

- (a) Each license shall remain valid for a period of one calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in this article.
- (b) Application for renewal of an annual license should be made at least 90 days before the expiration date of the current annual license, and when made less than 90 days before the expiration date, the expiration of the current license will not be affected.

(Ord. No. 2017-08-05, § 7(15.12.7), 8-7-2017)

Sec. 15.12.8. Suspension.

- (a) The City Manager shall issue a written notice of intent to suspend a sexually oriented business license for a period not to exceed 30 days if the sexually oriented business licensee has knowingly or recklessly violated this article or has knowingly or recklessly allowed an employee or any other person to violate this article.
- (b) The City Manager shall issue a written notice of intent to suspend a sexually oriented business employee license for a period not to exceed 30 days if the employee licensee has knowingly or recklessly violated this article.

(Ord. No. 2017-08-05, § 7(15.12.8), 8-7-2017)

Sec. 15.12.9. Revocation.

- (a) The City Manager shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if the licensee knowingly or recklessly violates this article or has knowingly or recklessly allowed an employee or any other person to violate this article and a suspension of the licensee's license has become effective within the previous 12-month period.
- (b) The City Manager shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if:
 - (1) The licensee has knowingly given false information in the application for the sexually oriented business license or the sexually oriented business employee license;
 - (2) The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises of the sexually oriented business;
 - (3) The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises of the sexually oriented business;

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- (4) The licensee knowingly or recklessly-operated the sexually oriented business during a period of time when the license was finally suspended or revoked;
 - (5) The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity or specified criminal activity to occur in or on the premises of the sexually oriented business;
 - (6) The licensee has knowingly or recklessly allowed a person under the age of 21 years to consume alcohol on the premises of the sexually oriented business; or
 - (7) The licensee has knowingly or recklessly allowed a person under the age of 18 years to appear in a semi-nude condition or in a state of nudity on the premises of the sexually oriented business.
- (c) The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.
 - (d) When, after the notice and hearing procedure described in this article, the city revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for one year from the date revocation becomes effective.

(Ord. No. 2017-08-05, § 7(15.12.9), 8-7-2017)

Sec. 15.12.10. Hearing; license denial, suspension, revocation; appeal.

- (a) Notice of intent; response.
 - (1) When the City Manager or his designee issues a written notice of intent to deny, suspend, or revoke a license, the City Manager or his designee shall immediately send such notice, which shall include the specific grounds under this article for such action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the City Manager or his designee for the respondent. The notice shall also set forth the following: The respondent shall have ten days after the delivery of the written notice to submit, at the office of the City Manager or his designee, a written request for a hearing. If the respondent does not request a hearing within the ten days, the City Manager's or designee's written notice shall become a final denial, suspension, or revocation, as the case may be, on the 30th day after it is issued, and shall be subject to the provisions of subsection (b) of this section.
 - (2) If the respondent does make a written request for a hearing within the ten days, then the City Manager or his designee shall, within ten days after the submission of the request, send a notice to the respondent indicating the date, time, and place of the hearing. The hearing shall be conducted not less than ten days nor more than 20 days after the date that the hearing notice is issued. The city shall provide for the hearing to be transcribed.
 - (3) At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his behalf, and cross examine any of the City Manager's or designee's witnesses. The city shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The hearing officer shall issue a final written decision, including specific reasons for the decision pursuant to this article, to the respondent within five days after the hearing.
 - (4) If the decision is to deny, suspend, or revoke the license, the decision shall advise the respondent of the right to appeal such decision to the superior court of the county, and the decision shall not become

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effective until the 30th day after it is rendered. If the hearing officer's decision finds that no grounds exist for denial, suspension, or revocation of the license, the hearing officer shall, contemporaneously with the issuance of the decision, order the City Manager or his designee to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the City Manager or his designee shall contemporaneously therewith issue the license to the applicant.

- (b) If any court action challenging a licensing decision is initiated, the city shall prepare and transmit to the court a transcript of the hearing within 30 days after receiving written notice of the filing of the court action. The city shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any sexually oriented business that is lawfully operating as a sexually oriented business, or any sexually oriented business employee that is lawfully employed as a sexually oriented business employee, on the date on which the completed business or employee application, as applicable, is filed with the City Manager: Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the city's enforcement of any denial, suspension, or revocation of a temporary license or annual license, the City Manager shall immediately issue the respondent a provisional license. The provisional license shall allow the respondent to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the city's enforcement.

(Ord. No. 2017-08-05, § 7(15.12.10), 8-7-2017)

Sec. 15.12.11. Transfer of license.

A licensee shall not transfer his license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application.

(Ord. No. 2017-08-05, § 7(15.12.11), 8-7-2017)

~~Sec. 15.12.12. Hours of operation.~~

~~No sexually oriented business shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day after July 1, 2017.~~

(Ord. No. 2017-08-05, § 7(15.12.12), 8-7-2017)

Sec. 15.12.13. Regulations pertaining to exhibition of sexually explicit films on premises.

- (a) A person who operates or causes to be operated a sexually oriented business which exhibits in a booth or viewing room on the premises, through any mechanical or electronic image-producing device, a film, videocassette, digital video disc, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.
- (1) Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all operator's stations, booths or viewing rooms, overhead lighting fixtures, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain equipment for displaying films, videocassettes, digital video discs, or other video reproductions. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or

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- architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The City Manager may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
- (2) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.
 - (3) The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five footcandles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described in this subsection is maintained at all times that the premises is occupied by patrons or open for business.
 - (4) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no specified sexual activity occurs in or on the licensed premises.
 - (5) It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:
 - a. That the occupancy of viewing rooms less than 150 square feet is limited to one person.
 - b. That specified sexual activity on the premises is prohibited.
 - c. That the making of openings between viewing rooms is prohibited.
 - d. That violators will be required to leave the premises.
 - e. That violations of these regulations are unlawful.
 - (6) It shall be the duty of the operator to enforce the regulations articulated in subsections (a)(5)(a) through (e) of this section.
 - (7) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed 32 square feet of floor area. If the premises has two or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose, excluding restrooms, from at least one of the operator's stations. The view required in this subsection must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this subsection remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.
 - (8) It shall be the duty of the operator to ensure that no porous materials are used for any wall, floor, or seat in any booth or viewing room.
- (b) It is unlawful for a person having a duty under subsections (a)(1) through (8) of this section to knowingly or recklessly fail to fulfill that duty.
 - (c) No patron shall knowingly or recklessly enter or remain in a viewing room less than 150 square feet in area that is occupied by any other patron.

(d) No patron shall knowingly or recklessly be or remain within one foot of any other patron while in a viewing room that is 150 square feet or larger in area.

(e) No person shall knowingly or recklessly make any hole or opening between viewing rooms.

(Ord. No. 2017-08-05, § 7(15.12.13), 8-7-2017)

Sec. 15.12.14. Loitering, exterior lighting and monitoring, and interior lighting requirements.

(a) It shall be the duty of the operator of a sexually oriented business to ensure that at least two conspicuous signs stating that no loitering is permitted on the premises are posted on the premises; designate one or more employees to monitor the activities of persons on the premises by visually inspecting the premises at least once every 90 minutes or inspecting the premises by use of video cameras and monitors; and provide lighting to the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. Said lighting shall be of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than one (1.0) footcandle as measured at the floor level. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.

(b) It shall be the duty of the operator of a sexually oriented business to ensure that the interior premises shall be equipped with overhead lighting of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than five (5.0) footcandles as measured at the floor level and the illumination must be maintained at all times that any customer is present in or on the premises.

(c) No sexually oriented business shall erect a fence, wall, or similar barrier that prevents any portion of the parking lots for the establishment from being visible from a public right-of-way.

(d) It is unlawful for a person having a duty under this section to knowingly or recklessly fail to fulfill that duty.

(Ord. No. 2017-08-05, § 7(15.12.14), 8-7-2017)

Sec. 15.12.15. Penalties and enforcement.

(a) A person who violates any of the provisions of this article shall be guilty of a violation and, upon conviction, shall be punishable by fines not to exceed \$1,000.00 per violation, or by imprisonment for a period not to exceed six months, or by both such fine and imprisonment. Each day a violation is committed, or permitted to continue, shall constitute a separate offense and shall be fined as such.

(b) Any premises, building, dwelling, or other structure in which a sexually oriented business is repeatedly-operated or maintained in violation of this article shall constitute a nuisance and shall be subject to civil abatement proceedings in a court of competent jurisdiction.

(c) The city's legal counsel is authorized to institute civil proceedings necessary for the enforcement of this article to enjoin, prosecute, restrain, or correct violations hereof. Such proceedings shall be brought in the name of the city; provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this article, or any of the laws in force in the city or to exempt anyone violating this Code or any part of the laws from any penalty which may be incurred.

(Ord. No. 2017-08-05, § 7(15.12.15), 8-7-2017)

Sec. 15.12.16. Applicability of article to existing businesses.

- (a) *Licensing Requirements.* All preexisting sexually oriented businesses lawfully operating in the City in compliance with all state and local laws prior to the effective date of the ordinance from which this article is derived, and all sexually oriented business employees working in the City prior to the effective date of the ordinance from which this article is derived, are hereby granted a De Facto Temporary License to continue operation or employment for a period of 120 days following the effective date of the ordinance from which this article is derived. By the end of said 120 days, all sexually oriented businesses and sexually oriented business employees must apply for a license under this article.
- (b) *Interior Configuration Requirements.* Any preexisting sexually oriented business that is required to, but does not, have interior configurations or stages that meet at least the minimum requirements of section 15.12.13 and subsection 15.12.17(b) shall have 120 days from the effective date of the ordinance from which this article is derived to conform its premises to said requirements. During said 120 days, any employee who appears within view of any patron in a semi-nude condition shall nevertheless remain, while semi-nude, at least six feet from all patrons.

(Ord. No. 2017-08-05, § 7(15.12.16), 8-7-2017)

Sec. 15.12.17. Prohibited conduct.

- (a) No patron, employee, or any other person shall knowingly or intentionally, in a sexually oriented business, appear in a state of nudity or engage in a specified sexual activity.
- (b) No person shall knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six feet from all patrons and on a stage at least 18 inches from the floor in a room of at least 600 square feet.
- (c) No employee who appears semi-nude in a sexually oriented business shall knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business. No customer shall knowingly or intentionally touch such an employee or the clothing of such an employee on the premises of a sexually oriented business.
- (d) No person shall possess, use, or consume alcoholic beverages on the premises of a sexually oriented business after July 1, 2017.
- (e) No person shall knowingly or recklessly allow a person under the age of 18 years to be or remain on the premises of a sexually oriented business.
- (f) No operator of a sexually oriented business shall knowingly or recklessly allow a room in the sexually oriented business to be simultaneously occupied by any patron and any employee who is semi-nude or who appears semi-nude on the premises of the sexually oriented business, unless an operator of the sexually oriented business is present in the same room.
- (g) No operator or licensee of a sexually oriented business shall violate the regulations in this section or knowingly or recklessly allow an employee or any other person to violate the regulations in this section.
- (h) A sign in a form to be prescribed by the City Manager, and summarizing the provisions of subsections (a) through (e) of this section, shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry. No person shall cover, obstruct, or obscure the sign.

(Ord. No. 2017-08-05, § 7(15.12.17), 8-7-2017)

Sec. 15.12.18. Scierter required to prove violation or business licensee liability.

This article does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a reckless mental state is necessary to establish a violation of a provision of this article. Notwithstanding anything to the contrary, for the purposes of this article, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the sexually oriented business licensee for the purposes of finding a violation of this article, or for the purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

(Ord. No. 2017-08-05, § 7(15.12.18), 8-7-2017)

Sec. 15.12.19. Spacing requirements.

- (a) It is 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.
- (b) It is 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. No. 2017-08-05, § 7(15.12.19), 8-7-2017)

ARTICLE XIII. MULTIFAMILY RENTAL DWELLINGS

Sec. 15-13-1. Definitions.

For the purpose of this article, certain terms and words are defined. Where words have not been defined, but are defined in chapter 1, those words shall have the meaning defined therein. The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them as directed below, except where the context clearly indicates a different meaning:

Certified building inspector means a person who has been authorized to perform inspections pursuant to the process established by this article, provided that such person maintains the qualifications for certification as established by this article.

Compliance certificate means a certificate, in a form authorized by the City Manager or his designee, executed by a certified building inspector showing compliance with those minimum requirements described in the inspection report attached thereto.

Inspection report means the report attached to the code compliance certificate describing minimum requirements for inspection of each unit.

Lease means any written or oral agreement that sets forth any and all conditions concerning the use and occupancy of multifamily rental dwellings or multifamily rental units.

Multifamily rental dwelling means any dwelling unit designed for and containing more than one lodging or dwelling unit, as defined in chapter 27, article 9, of the City of Stonecrest Code of Ordinances, that is leased to a residential tenant or tenants for use as a home, residence, or sleeping unit. The term "multifamily rental dwelling," includes, but is not limited to, multifamily dwelling units, multifamily apartments, duplexes, triplexes, boardinghouses, rooming houses, group homes, and flats.

Multifamily rental unit means any one area, room, structure, flat, apartment, or facility of a multifamily rental dwelling that is leased or available for lease to an occupant.

Occupant means any person who is a tenant, lessee, or a person residing within a multifamily rental dwelling or multifamily rental unit.

Owner means any person, agent, firm, or corporation having a legal or equitable interest in the premises.

Premises means any lot or parcel of real property on which exists one or more multifamily rental dwellings or multifamily rental units.

(Ord. No. 2018-06-01, § 3(15.13.1), 6-18-2018)

Sec. 15-13-2. Certification process, requirements, forms and appeals.

- (a) *Process.* The City Manager or his designee shall create the process for certifying building inspectors, shall establish the requirements and application for becoming a certified building inspector, and shall administer the process. A nonrefundable administrative fee set by the city council shall be required to be submitted with all applications to be a certified building inspector. Persons who have successfully completed the certification process issued by the City Manager or his designee shall be designated as certified building inspectors authorized to perform the inspections required by this article.
- (b) *Compliance certificates and inspection reports.* The City Manager or his designee is authorized to create the forms for compliance certificates and inspection reports. At a minimum, inspection reports submitted to the city must contain the certified building inspector's signature and date of certification. A certified building inspector shall personally perform the inspections required by this article. The certified building inspector signing the inspection report and performing the inspection shall not be an employee of, otherwise related to, or affiliated in any way with any owner or occupant of the multifamily rental dwelling or multifamily rental dwelling unit being inspected. Failure to have a certified building inspector personally perform an inspection shall nullify any such compliance certificate.
- (c) *Certified building inspectors.*
 - (1) *Minimum requirements.* At a minimum, a certified building inspector shall be a licensed architect or engineer or shall hold one of the following certifications from the International Code Council: property maintenance and housing inspector, housing rehabilitation inspector, building inspector, building plan examiner or commercial combination inspector.
 - (2) *Denial of certification.* Upon receipt of a complete application to be a certified building inspector, the City Manager or his designee shall have 45 days to grant or deny the application. If denied, the City Manager or his designee shall notify the applicant in writing of the reasons for the denial at the address set forth on the application.
 - (3) *Revocation of certification.* Upon a certified building inspector's conviction of a violation of section 15-13-4(c) of this article, or if a certified building inspector no longer meets the minimum requirements set forth in this article, the City Manager or his designee shall revoke the authority of that individual to act as a certified building inspector. The City Manager or his designee shall notify the individual in writing of the reasons for the revocation at the address set forth on the application to be a certified building inspector.

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- (4) *Appeals.* Any applicant or certified building inspector believes the provisions of this article have been applied in error may file an appeal therefrom in accordance with article XVI of this chapter.

(Ord. No. 2018-06-01, § 3(15.13.2), 6-18-2018)

Sec. 15-13-3. Inspection, certificate and fee required.

Commencing on January 1, 2019, it shall be unlawful for any owner or agent of an owner to engage in the leasing of a multifamily rental unit without first possessing a compliance certificate.

- (a) *Compliance certificate.* A compliance certificate shall contain the certification of a certified building inspector that all multifamily rental dwellings and/or multifamily rental units subject to this article have been inspected within the 12-month period immediately preceding the date of certification and are in compliance with applicable provisions of the Code and the requirements set forth in the code compliance certificate and inspection report.
- (1) Commencing on January 1, 2019, all owners of multifamily rental dwellings and/or multifamily rental units within the incorporated parts of the city that receive income from four or more such units and meet the requirements of O.C.G.A. § 48-13-5 for having a location or office within the incorporated parts of the city shall file, simultaneously with their business occupation tax return, code compliance certificates covering 100 percent of the owner's multifamily rental units located within the incorporated parts of the city.
- (2) After submission of the initial code compliance certificates, owners shall submit code compliance certificates annually with their business occupational tax return. Each subsequent code compliance certificate shall show an internal and external inspection of at least 20 percent of the units on a premises and all units on the premises shall be inspected, at a minimum, every five years. All units inspected shall be listed individually on the code compliance certificate submitted by the certified building inspector.
- (b) *Fee.* A nonrefundable administrative fee set by the city council shall be required to be submitted with all code compliance certificates.
- (c) *Inspections and repairs.* Upon initial inspection of multifamily rental dwellings and multifamily rental units subject to this article, should a certified building inspector determine that further work is necessary to comply with the minimum standards set forth in the Code, an acceptable plan shall be submitted to the building official, outlining the time and scope of work necessary to bring the units into compliance. If the plan is accepted by the building official as reasonable and justified, an extension of the time for compliance with this article may be granted for up to six months so that necessary repairs may be completed. No extension shall be granted if life or safety issues are involved, and none of the units where life or safety issues are involved shall be leased until brought into compliance with the minimum standards set forth in the Code. For years subsequent to the initial year, the six month extension for repairs is not available.
- (d) *Written record of inspection.* Each owner and certified building inspector shall for a period of five years from the date of inspection keep a written record of inspection for each multifamily rental dwelling and/or multifamily rental unit, including the date of the inspection, items inspected, and all violations, if any, observed. These records shall be presented to the building official within ten business days after a request is made in writing to the owner or inspector. Failure to provide these records shall nullify the compliance certificate for such dwellings or units.
- (e) *Exemptions.* Provided all other required permits, certificates and/or permissions are obtained from the city, this section shall not apply to multifamily rental dwellings or multifamily rental units for a period of five years following issuance of a certificate of occupancy for such dwelling or unit.

(Ord. No. 2018-06-01, § 3(15.13.3), 6-18-2018)

Sec. 15-13-4. Violations.

- (a) No business occupation tax certificate shall be issued to any owner until the owner provides the city with a code compliance certificate in the form and manner required by this article.
- (b) Any person who does anything prohibited or fails to do anything required by this article, shall upon conviction, be punished as provided by this Code.
- (c) An owner who knowingly furnishes or participates in furnishing a code compliance certificate to the city falsely certifying that all multifamily rental dwellings or multifamily rental units inspected are in compliance with the requirements set forth in the code compliance certificate shall be guilty of a violation of this article for each multifamily rental dwelling or multifamily rental unit for which the certification is shown to be false.
- (d) A certified building inspector who knowingly furnishes or participates in furnishing an inspection report containing false information that a multifamily rental dwelling or multifamily rental unit meets the minimum housing standards of the city as shown by the inspection report shall be guilty of a violation of this article.

(Ord. No. 2018-06-01, § 3(15.13.4), 6-18-2018)

Secs. 15-13-5—15-13.51. Reserved.

ARTICLE XIV. FILM PRODUCTION

Sec. 15.14.1. Definitions.

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

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

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

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

Department means the Department of Economic Development.

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

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

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

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

Filming means creating motion picture images on public property or private property, including the on-site/on-location pre-production activities associated therewith, where the final product is intended to be commercially released and/or commercially distributed. Filming does not include activities performed as part of:

- 1) Documenting current affairs; or
- 2) Producing newscasts.

In addition, filming does not include location scouting.

Impact with regards to public property, means (1) Use of intellectual property belonging to the city; (2) Closure of a city or state street, lane and/or sidewalk; (3) Use of pyrotechnics or other explosives; (4) Smoke effects, water effects or flame effects; (5) Display of real or artificial fire arms, grenades or other weapons that would cause the public to fear violence; (6) Vehicle chases and/or vehicle crashes; (7) Use of large or any other equipment that has a reasonable likelihood of causing damage to public property; (8) Use of wild animals controlled under federal or state law or county and/or municipal ordinances; (9) Use of city or state streets and/or lanes for the parking of trailers or vehicles associated with the filming activity that are likely to restrict the flow of traffic; (10) If another permit and/or license or any type of inspection is required by the ordinances of the city for the filming activity; (11) A gathering that lasts for more than one hour, has more than 75 attendees; or (12) any combination of the above.

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

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

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

Private property means real property owned or leased by an individual or non-governmental entity, including, for example, residential homes and commercial developments.

(Ord. No. 2017-10-03, § 1(15.14.1), 10-16-2017; Ord. No. 2023-01-02, § 1(Exh. A), 1-23-2023)

Sec. 15.14.2. Purpose and intent.

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

(Ord. No. 2017-10-03, § 1(15.14.2), 10-16-2017)

Sec. 15.14.3. Department of economic development as resource and liaison.

The Department of Economic Development will serve as a resource for Stonecrest's residents and businesses, providing information upon request about current or scheduled filming, helping to resolve problems that arise from entertainment industry work, and acting as a liaison between residents, businesses and the

entertainment industry to address inconvenience experienced generally and with regard to a specific project. The Department of Economic Development will also serve as an ambassador to the entertainment industry, providing information, answering questions, helping to resolve challenges and facilitating the industry's work in the city. The Department of Economic Development will implement other mechanisms that enhance the experience of all people performing and effected by entertainment industry work, which may include an informational webpage and on-line permitting. While permits are required for entertainment industry work that occurs on public and private property, the Department of Economic Development will be a resource and liaison for all entertainment industry work, including work that occurs on private property.

(Ord. No. 2017-10-03, § 1(15.14.3), 10-16-2017; Ord. No. 2023-01-02 , § 1(Exh. A), 1-23-2023)

Sec. 15.14.4. Permits for filming.

- (1) Any producer that wishes to perform filming must first obtain a filming permit. No person shall use any public property or facility, or private property, facility or residence where such use will have an Impact on public property for the purpose of filming without first applying for and obtaining a permit pursuant to this Article.
- (2) Filming permits shall be issued by the Department of Economic Development. Permits shall be issued to the producer.
- (3) A permit will specify the filming that may occur at a particular location at a particular time. The permit will authorize elements to be performed as part of the filming, provided that the elements have been approved by the Department of Economic Development. After receiving a permit, a producer may request modifications to the permit as described in subsection 15.14.8(1) below.
- (4) Where the filming application includes a request to close a city street, lane and/or sidewalk during the transition period for the City of Stonecrest, the request will be processed by DeKalb County in accordance with DeKalb County's ordinances, guidelines, and regulations.
- (5) A producer that receives a permit is responsible for knowing and complying with all other laws, including other ordinances and regulations, that establish prerequisites, authorizations and other required permissions applicable to the filming.
- (6) Where permitted filming includes signs or other displays of speech which would require a permit under chapter 21 or otherwise be prohibited under the Code, the signs and/or displays must be removed upon the expiration of the permit.
- (7) Notwithstanding any other part of this Code, any producer that performs filming without receiving a permit, violates the material terms of a permit, or is otherwise in violation of this entertainment filming ordinance, shall be subject to the provisions of section 1-11 of the Code.
- (8) While it is the intent of the city to honor each permit, the issuance of such permit shall not grant the producer a constitutionally protected property interest.

(Ord. No. 2017-10-03, § 1(15.14.4), 10-16-2017; Ord. No. 2023-01-02 , § 1(Exh. A), 1-23-2023)

Sec. 15.14.5. Exemption from filming permit requirement; first amendment activity.

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

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- (1) Filming associated with any permitted or unpermitted rally, protest or demonstration, except when the same is staged for the sole purpose of being included in the filming's final product.
 - (2) Filming associated with an outdoor event that is authorized by a city-issued permit, except when the same is staged for the sole purpose of being included in the filming's final product.
 - (3) The provisions of this article shall not apply to film activities for the purpose of News Media.
 - (4) The recording of visual images (motion or still photography) solely for private use and not for commercial use associated with personal/family video.
 - (5) Film activities (motion or still photography) conducted at or within a properly-licensed studio.
 - (6) The owner of any small business, as defined by the size standards of the Small Business Administration (SBA), may film a commercial for said business at their properly licensed business location without a permit, so long as the filming takes place wholly inside the private premises of the business location or immediately outside the premises so long as the filming does not substantially interfere with any vehicular or pedestrian traffic on the public right-of-way.

(Ord. No. 2017-10-03, § 1(15.14.5), 10-16-2017; Ord. No. 2023-01-02 , § 1(Exh. A), 1-23-2023)

Sec. 15.14.6. Filming elements.

- (1) An applicant shall indicate on the application each of the elements listed below that will be included in the filming.
- (2) The final decision of whether to allow the element shall be made by the Department of Economic Development, and communicated to the applicant by the Department of Economic Development. Prior to denying permission to perform an element, representatives of the Department of Economic Development shall consult with the producer in an attempt to find alternative ways to accommodate the producer's filming needs.
- (3) Where the element requires approval from an additional governmental jurisdiction, the producer must obtain that approval as well.
- (4) The elements are as follows:
 - (a) Night-time filming with the use of outdoor lighting where a residence exists within 150 feet from the location of an outdoor light;
 - (b) Filming in buildings that are owned by the city and not leased to a third-party, or in buildings of which the city is a lessee;
 - (c) Use of intellectual property belonging to the city;
 - (d) Closure of a street, lane and/or sidewalk;
 - (e) Use of pyrotechnics or other explosives;
 - (f) Smoke effects, water effects, or flame effects;
 - (g) Display of real or artificial fire arms, grenades, or other weapons that would cause the public to fear violence;
 - (h) Vehicle chases and/or vehicle crashes:
 - (i) Dangerous stunts that have a reasonable likelihood of causing substantial personal injury;
 - (j) Use of large or any other equipment that has a reasonable likelihood of causing damage to public property;

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- (k) Filming in a city park; and
 - (l) Use of wild animals controlled under federal, state, county, or city law and/or ordinances.

(Ord. No. 2017-10-03, § 1(15.14.6), 10-16-2017; Ord. No. 2023-01-02 , § 1(Exh. A), 1-23-2023)

Sec. 15.14.7. Processing of permit applications.

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

- (1) The application shall include, but not be limited to, the following:
 - a. The filming project name;
 - b. The name and contact information of the applicant, including postal address, email address, and telephone number;
 - c. A valid photo identification of the applicant;
 - d. The name and contact information of the producer (if the applicant is not the producer);
 - e. The dates, times and locations of the filming for which a permit is being requested, and a general description of the filming activity that will occur at each location;
 - f. A description of any elements that may be performed during the filming, including the dates, times and locations of each;
 - g. A description of any aspects of the filming, other than the elements, that may require city services;
 - h. A description of any assistance the producer may need from the city and/or concerns that the producer wants the city to be aware of; and
 - i. Where the producer is a student, an official letter or document from his school confirming that he is currently enrolled there. In addition, the student must appear in person and present his current student identification card and a valid driver license. Where the student does not have a driver license, he may present a different form of identification that includes his photo.
- (2) When more than one application is received for filming at substantially the same place and time, and the director reasonably determines that the filmings cannot logistically and/or safely occur together, the earlier or earliest of the applications that is received by the Department of Economic Development in a substantially completed form, which includes submission of the requisite application fee, shall be given priority as to the time and place requested. The Department of Economic Development shall make reasonable efforts to consult with the other applicants in an attempt to find alternative times and/or locations that are acceptable.
- (3) Film permit applications must be submitted to the Department of Economic Development at least three days prior to the proposed effective date of the permit to avoid rush permit fees as outlined in section 15.4.11.
- (4) The Department of Economic Development shall compile and maintain rules and guidelines for filming, including the elements that are part of the filming, and shall apply those rules and guidelines equally regardless of the subject matter of the filming and/or the content of the speech therein.

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- (5) In the event that permission to perform an element is denied pursuant to subsection 15.14.6(2) above, the Department of Economic Development will process the remainder of the permit and grant all other aspects of the filming for which the requirements have been met.
 - (6) The Department of Economic Development may deny an application only if the director reasonably determines that one or more of the below-listed conditions exists. Prior to denial, the Department of Economic Development shall make reasonable efforts to consult with the producer in an attempt to resolve issues of concern and/or find alternative ways to accommodate the producer's filming needs, as described in subsections (7) through (10) of this section.
 - a. The filming poses an unreasonable risk of personal injury or property damage to people or property not associated with the filming;
 - b. The filming poses an unreasonable risk of damage to public property that could not be quickly and/or fully remediated;
 - c. The date and time requested for a particular filming location conflicts with previously-issued permits or permissions for filming, outdoor events, or other activities;
 - d. Use of the filming location, or use of the location during the date or time requested, would unreasonably interfere with the operation of city functions;
 - e. Use of the filming location or the proposed activity at the location would violate a law, ordinance, statute or regulation, regardless of whether the illegal activity is part of the message or content of the filming. A permit shall not be denied based upon simulation of an illegal activity where the actual illegal activity is not being performed;
 - f. The producer owes an outstanding debt to the city;
 - g. The producer previously caused significant damage to public property and, at the time of submitting the application under consideration, failed to adequately repair the damage or pay in full the city's invoice for damage repair and restoration services;
 - h. The producer previously violated this entertainment filming ordinance on two or more occasions, including without limitation by violating a material condition and/or restriction of a permit;
 - i. On two or more occasions, the producer's entertainment industry work in the city violated a city ordinance or other applicable law; and
 - j. The applicant made a material misrepresentation or gave incorrect material information on the application.
 - (7) Prior to denying an application, if the Department of Economic Development determines that the requested filming includes one or more of the conditions described in subsection (6)a., b., c., or d. of this section, the Department of Economic Development shall employ reasonable efforts to identify alternative filming locations, times and/or dates that eliminate the unacceptable conditions and that are mutually acceptable to the producer and the city. The producer shall modify the application to incorporate any agreed-upon alternatives.
 - (8) Prior to denying an application, if the Department of Economic Development determines that the requested filming or related activity creates a violation as described in subsection (6)c. of this section, the Department of Economic Development shall allow the producer to revise the application so that the filming activities comply with applicable law.
 - (9) Prior to denying an application pursuant to subsection (6)f. or g. of this section, the Department of Economic Development shall notify the producer of the potential denial and allow her/him to remedy the conditions described in those subsections. The Department of Economic Development shall process the application after such repair, restoration or payment is complete, and may require the producer to

obtain a refundable sanitation bond for the filming permit in an amount equivalent to the cost of the repair, restoration or debt.

- (10) Prior to denying an application pursuant to subsection (6)h., i. or j. of this section, the Department of Economic Development shall provide the applicant an opportunity to present documents or other evidence that refutes the director's finding of previous permit violations, of previous violations of the law, or of misrepresentation or misinformation on the application, as applicable.
- (11) Where the director has complied with subsections (7), (8), (9) and/or (10) of this section and reasonably determines that one or more of the conditions set forth in subsection (6) of this section continues to exist and that the application should therefore be denied, the director shall issue a written communication to the applicant that includes a detailed explanation for the denial. Nothing in this subsection shall preclude the director from also notifying the applicant orally.
- (12) If the director denies an application, the applicant shall have the right to appeal the decision to the city manager or his designee, provided that a written request for such appeal is made to the city manager within three business days after the applicant's receipt of the director's determination. The person considering the appeal must be impartial, and must have had no involvement in the director's decision. The appeal shall be heard or considered within three business days after the city receives the applicant's request, and shall be decided de novo. The person considering the appeal shall evaluate the application and the director's decision in accordance with the criteria of this article XIV.
- (13) The person considering the appeal may issue his decision verbally, and shall issue a written decision within three business days of receiving written evidence from the applicant and/or meeting with the applicant, whichever is later. The written decision shall be the final decision of the city regarding the application. The applicant or producer may appeal the decision by writ of certiorari to the Superior Court of DeKalb County pursuant to the procedures set forth by Georgia law.
- (14) In no event shall the director's or any city employee's evaluation of whether to grant or deny the application, including any of the elements, include consideration of:
 - a) The race, color, creed, religion, gender, age, disability, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, political affiliation or associational relationships of the applicant, producer or any person associated with the filming; or
 - b) The message or content of the filming.

(Ord. No. 2017-10-03, § 1(15.14.7), 10-16-2017; Ord. No. 2023-01-02 , § 1(Exh. A), 1-23-2023)

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

- (1) After receiving a permit, the producer may request a material modification of the permit at any time by submitting to the Department of Economic Development a change request and change fee as set forth in section 15.14.11. The Department of Economic Development's ability to process the change request shall be determined pursuant to the provisions established for processing applications, as set forth in subsections 15.14.7(2) and (3) above. The director's decision of whether to grant or deny the modification request shall be determined as set forth in subsections 15.14.7(4) through (14). Submission of a change request will not impact the validity of the permit already issued, except upon written request of the producer.
- (2) Where a producer has obtained a permit and abides by the material requirements thereof, the permit shall prevent the city's stoppage of activities that are authorized by the permit, except as otherwise set forth in subsection (3) of this section or as a result of applicable law.

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

(Ord. No. 2017-10-03, § 1(15.14.8), 10-16-2017)

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

- (1) A producer or producer's designee must have the permit on-site at the time and location of the filming, and must also have on-site any other permits required for that location by the department or any other governmental agency.
- (2) A producer must confine filming to the locations, times, guidelines and conditions specified in the permit and must abide by all other material terms of the permit.
- (3) Permits are not transferable.
- (4) A producer must clean and repair the filming location, and restore it to the condition it was in immediately prior to the filming, unless otherwise agreed upon in writing by the director and the producer. The department will inspect the filming location after the filming is completed to ascertain whether this requirement has been met. Where a producer fails to fulfill this requirement, the director will bill the

producer for the cleaning, repair and/or restoration costs borne by the city, and the producer must pay the invoice in full within 30 days of receipt.

- (5) Permits shall require the producer to notify the department within three hours or sooner of learning of any emergency event regarding or arising from the filming that involves the media, the police or fire departments or emergency medical services.
- (6) A producer is responsible for:
 - (a) Knowing and complying with all city ordinances and other laws applicable to the filming and to the other activities arising from the producer's permit; and
 - (b) Requiring and using commercially reasonable efforts to enforce the requirement that any person working for or at the direction of the producer (including without limitation contractors) complies with all city ordinances and other laws applicable to the filming and to the other activities arising from the permit.
- (7) The requirements of subsection (6) of this section shall include without limitation that the producer is responsible for obtaining any and all permissions, licenses or other required authorizations for use of intellectual property, including intellectual property which is on public property but is not owned by the city.
- (8) Permits shall prohibit a producer from acting as a representative or agent of the city, and from indicating city endorsement of the filming, except as otherwise agreed to in writing by the director. This provision shall not prohibit the producer's use of the city logo in the filming credits.
- (9) The director shall require that notification be given to residents and businesses within a three-block radius of a location for which a filming permit has been issued. The director may provide the notification, may require the producer to provide the notification, or may utilize a different mechanism for providing notification. The notification must state that a filming permit has been issued, and must include the dates, times, locations and activities that are authorized by the permit. Additionally, the director shall require that notification be given to the councilmember representing the district in which the filming will occur. The director shall determine the most effective means and timing of notification based upon factors such as the type of impact that the filming will have on the neighborhood, the time between receipt of the application and commencement of the filming, the producer's budget and previous communications from a neighborhood regarding notification preferences.

(Ord. No. 2017-10-03, § 1(15.14.9), 10-16-2017)

Sec. 15.14.10. Other permit requirements.

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

- (1) The producer signs an indemnification provision on the permit whereby the producer agrees to indemnify the city and its officials and employees from all claims, losses and expenses, including attorneys' fees and costs, that may arise from the permit and any of the activities performed pursuant to the permit by, on behalf of, or at the direction of the producer;
- (2) The producer signs a provision agreeing to comply with all applicable environmental laws, including an agreement not to allow legally-prohibited contaminants from entering the sewage and stormwater drainage systems serving the area where the filming will occur. The producer must sign a separate indemnification clause, such as the one described in subsection (1) of this section, that pertains specifically to environmental breaches and includes without limitation the fines and clean-up costs associated therewith;

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- (3) The producer obtains insurance coverage in an amount determined by the director, covers the city as an additional insured on the policy, and provides proof of the coverage.
 - (4) The producer pays the permit fee and any other applicable fees set forth in section 15.14.11 below.

(Ord. No. 2017-10-03, § 1(15.14.10), 10-16-2017)

Sec. 15.14.11. Fee schedule.

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

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

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

(Ord. No. 2017-10-03, § 1(15.14.11), 10-16-2017)

Secs. 15.14.12—15.14.100. Reserved.

ARTICLE XV. NONCONSENSUAL TOWING

Sec. 15.15.1. Definitions.

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

Nonconsensual towing means towing without the prior consent or authorization of the owner or operator of the motor vehicle being towed.

Wrecker means an automotive vehicle with hoisting apparatus and equipment for towing or hauling wrecked or disabled automobiles or other vehicles. The term "wrecker" includes any vehicle otherwise equipped and used for the purpose of towing or hauling wrecked or disabled automobiles or vehicles.

(Ord. No. 2017-08-05, § 8(15.15.1), 8-7-2017)

Sec. 15.15.2. License required; nontransferable.

It is unlawful for any person to operate or cause to be operated, any wrecker or tow truck engaging in nonconsensual towing within the boundaries of the city without first having obtained a nonconsensual towing license from the city. The nonconsensual towing license shall not be transferable.

(Ord. No. 2017-08-05, § 8(15.15.2), 8-7-2017)

Sec. 15.15.3. Revocation of license.

- (a) The City Manager or his designee shall revoke the nonconsensual towing license of any wrecker owner or operator when such person has been found in violation of any of the terms of this article or upon any of the following grounds:
 - (1) If the registration was procured by fraudulent conduct or false statement of a material fact as to ownership, use, possession or operation.
 - (2) If the owner or licensee is found at the scene of an accident in violation of this Code.
 - (3) If the licensee impounds any vehicle, without the consent of its owner, to any impound lot located more than five miles outside of the limits of the city.
- (b) This revocation shall terminate all authority and permission granted by the registration to the wrecker owner. Any person whose registration has been revoked shall not be eligible to again apply for a license for a period of one year from the date of the issuance of the original license.
- (c) Any person whose license has been revoked may file an appeal therefrom in accordance with article XVI of this chapter.

(Ord. No. 2017-08-05, § 8(15.15.3), 8-7-2017)

Sec. 15.15.4. Fees charged for nonconsensual towing.

Any wrecker service engaged in the business of providing nonconsensual towing service shall not charge the owner or operator of any towed motor vehicle more than the maximum rates published in the Nonconsensual Towing Maximum Rate Tariff prescribed by the state department of public safety. No storage fees shall be charged for the first 24-hour period from the time the motor vehicle is removed from the property. The fees stated in the maximum rate tariff shall be all inclusive; no additional fees may be charged for the use of dollies, trailers, lifts, slimjims or any other equipment or service. Only charges or rates for storage and removal that are approved by the state department of public safety and contained in the state department of public safety's maximum rate tariff for nonconsensual towing shall be billed or collected by the wrecker service for towing or storage services; and it is a violation of this rule for any wrecker service to bill or collect fees or charges which are not expressly permitted by such maximum rate tariff.

(Ord. No. 2017-08-05, § 8(15.15.4), 8-7-2017)

ARTICLE XVI. APPEALS

Sec. 15.16.1. Administration; procedure for grievances and appeals.

The City Manager or his designee shall administer and enforce the provisions of this article. Should an aggrieved person or entity desire to appeal a decision under this chapter, the following procedure shall apply:

- (a) A notice of appeal must be filed within 15 calendar days after receipt of the decision complained of. The notice of appeal shall be in the form of a letter, and shall clearly identify all objections or exceptions taken to the decision city manager or his designee. The notice of appeal shall also contain an address for receipt of future notices and decisions of the certificate hearing officer. Should the aggrieved person or entity fail to file a notice of appeal within the time allowed, the right to appeal is lost.

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- (b) Upon receipt of a timely and proper notice of appeal, appellant shall be notified, in writing, of the date, time and place where a hearing will be held. The hearing shall be held before the certificate hearing officer within 45 calendar days of the date the notice of appeal is filed, but not sooner than ten calendar days after the appellant receives notice of the hearing. City Manager or his designee shall transmit to the hearing officer all documents or materials constituting the record of the action or proceedings below.
 - (c) If the City Manager or his designee deems it necessary that an audit of the financial books/records of appellant be conducted, the city shall notify appellant in writing of a reasonable date, time and place for the audit, which shall be conducted prior to the date of a hearing on the matter. City Manager or his designee may hire outside auditors for this purpose. The expense of hiring outside auditors shall be borne by the city if the position of the appellant is sustained by the audit. If not, the expense of the outside auditors shall be due and payable from appellant as part of the costs of appeal.

(Ord. No. 2017-08-05, § 8(15.16.1), 8-7-2017)

Sec. 15.16.2. Stay of proceedings while under appeal.

An appeal under this article shall stay all legal proceedings with regard to collection of the occupation tax from an appellant; however, such appeal shall not preclude the city from pursuing legal proceedings to enjoin any violation of this article or of any other article of this Code.

(Ord. No. 2017-08-05, § 8(15.16.2), 8-7-2017)

Sec. 15.16.3. Certificate review hearing officer.

A certificate review hearing officer shall be appointed by the mayor and approved by the City Council. The certificate review hearing officer shall have the following duties:

- (a) To hear appeals from decisions of the City Manager or his designee denying the issuance or renewal of any license pertaining to this chapter, except those licenses issued pursuant to article XII of this chapter;
- (b) To hear appeals from the decisions of the City Manager or his designee revoking or suspending any license pertaining to this chapter, except those licenses issued pursuant to article XII of this chapter;
- (c) To hear appeals from the decisions of the City Manager or his designee denying the issuance of permits pertaining to this chapter, except those permits issued pursuant to article XII of this chapter;
- (d) To hear appeals from the decisions of the City Manager or his designee revoking or suspending an employee permit to this chapter, except those permits issued pursuant to article XII of this chapter.

(Ord. No. 2017-08-05, § 8(15.16.3), 8-7-2017)

Sec. 15.16.4. Hearings.

In all hearings pursuant to this chapter, the following procedures shall prevail, and the proceeding shall be as informal as compatible with justice:

- (a) A certificate review hearing officer shall convene the hearing.
- (b) The proceeding before the certificate hearing officer shall be recorded, and all documents and other materials considered by the certificate hearing officer shall be preserved as the record of the

proceedings. The record of the proceedings shall be preserved for not less than 150 calendar days after the hearing.

- (c) Any alleged violations or misconduct levied against the appellant and scheduled for a hearing before the certificate hearing officer shall be read completely to appellant at the commencement of the hearing, unless waived by appellant.
- (d) The certificate hearing officer may receive evidence in support of the alleged violations or misconduct as filed against appellant. Decisions of the certificate review hearing officer are to be supported by the evidence accepted and admitted during the hearing.
- (e) The city shall bear the burden of proof. The standard of proof shall be by a preponderance of the evidence.
- (f) The order of proof shall be as follows: The city representative shall present the case-in-chief in support of the alleged violations or misconduct; the appellant may present a case-in-chief, if desired. Each party may be allowed to present one case-in-rebuttal.
- (g) The appellant and city may be represented by counsel, may present evidence, and may examine and cross-examine witnesses. Additionally, the certificate review hearing officer is permitted to question witnesses. A party is permitted no more than 15 minutes to present that party's case-in-chief; a case-in-rebuttal is permitted no more than ten minutes of presentation. Presentation of arguments and evidence may be in oral or written form, except that affidavits of individuals who are unavailable for cross-examination shall not be accepted, admitted, or considered by the certificate review hearing officer.
- (h) Following the presentation of evidence, the hearing officer shall issue a written decision within 30 calendar days of the date of the hearing. A copy of the decision shall be mailed, via registered or certified mail, to the parties or the parties' representatives. For the appellant, the decision shall be mailed to the address provided on the notice of appeal. Should the certificate hearing officer fail to issue a timely decision, on the 31st day after the date of the hearing appellant may seek review as if a decision adverse to appellant had been rendered.
- (i) The findings of the certificate hearing officer shall be final unless a party files a petition for writ of certiorari to the superior court of the county within 30 calendar days of the decision of the certificate hearing officer.

(Ord. No. 2017-08-05, § 8(15.16.4), 8-7-2017)

Sec. 15.16.5. Service of notices.

For the purpose of this article, notice shall be deemed delivered when personally served or, when served by mail, within three days after the date of deposit in the United States mail.

(Ord. No. 2017-08-05, § 8(15.16.5), 8-7-2017)

ARTICLE XVII. TRANSITION PERIOD

Sec. 15.17.1. Existing license.

Any legal, validly issued existing license or permit issued by DeKalb County within the incorporated boundaries of the City of Stonecrest shall be valid within the City of Stonecrest for the calendar year of 2017. Any such licensee or permit holder shall be required to comply with the requirements of this chapter. At the expiration

of 2017, any such licensee or permit holder shall be required to comply with this chapter regarding the application of an initial permit, as if no previous license or permit had been held.

Nothing in this section should be construed as creating a right, vested or otherwise, to the license or permit originally issued by DeKalb County, or the renewal or issuance of said permit or license for any subsequent years by the City of Stonecrest.

(Ord. No. 2017-08-05, § 8(15.17.1), 8-7-2017)

ARTICLE XVIII. SHORT TERM VACATION RENTALS

Sec. 15.18.1. Purpose; intent.

The purpose of this article is to protect the public health, safety and general welfare of individuals and the community at-large through the establishment of reasonable regulations for the use of residential dwelling units as short-term vacation rentals

(Ord. No. 2018-06-01, § 4(15.18.1), 6-18-2018)

Sec. 15.18.2. Definitions.

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

Code compliance verification form means a document executed by a short-term vacation owner certifying that the short-term vacation unit complies with applicable zoning, building, health and life safety code provisions. No person shall allow occupancy or possession of any short-term vacation rental unit if the premises is in violation of any applicable zoning, building, health or life safety code provisions.

Short-term vacation rental occupants means guests, tourists, lessees, vacationers or any other person who, in exchange for compensation, occupy a dwelling unit for lodging for a period of time not to exceed 30 consecutive days.

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."

Short-term vacation rental agent means a natural person designated by the owner of a short-term vacation rental on the short-term vacation rental certificate application. Such person shall be available for and responsive to contact at all times and someone who is customarily present at a location within the city for the purposes of transacting business.

(Ord. No. 2018-06-01, § 4(15.18.2), 6-18-2018)

Sec. 15.18.3. Application.

- (a) No person shall rent, lease, or otherwise exchange for compensation all or any portion of a single-family dwelling as short-term vacation rental, as defined in section 15.18.2, without first obtaining a business tax certificate from the City Manager or his designee and complying with the regulations contained in this

section. No certificate issued under this chapter may be transferred or assigned or used by any person other than the one to whom it is issued, or at any location other than the one for which it is issued.

- (b) Applicants for a business tax certificate shall submit, on an annual basis, a registration for a short-term vacation rental to the City. The application shall be furnished on a form specified by the City Manager, accompanied by a non-refundable application fee as established in 15.18.4. Such application should include:
- (1) The complete street address of the STVR;
 - (2) Ownership, including the name, address, e-mail and telephone number of each person or entity with an ownership interest in the property;
 - (3) The number of bedrooms, the maximum occupancy and the number and location of off-street parking spaces on the premises and any off-premises parking applicable;
 - (4) The name, address and telephone number of a short-term vacation rental agent or local emergency contact if applicable;
 - (5) Any other information that this chapter requires the owner to provide to the city as part of the registration for a short-term vacation rental. The city manager or his designee shall have the authority to obtain additional information from the applicant as necessary to achieve the objectives of this chapter;
 - (6) The emergency contact number required by section 15.18.5;
 - (7) Any other information that this chapter requires the owner to provide to the city as part of an application for a short-term vacation rental certificate. The city manager or his designee shall have the authority to obtain additional information from the applicant as necessary to achieve the objectives of this chapter.
- (c) The application form pursuant to this section shall be processed and added to a database to be kept by the City Manager or his designee listing STVR unit information and any citations that occur. The city shall notify the owner and agent of any instances that result in a citation for a code violation or other legal infraction.
- (d) The owner or agent shall not be relieved of any personal responsibility or personal liability for noncompliance with any applicable law, rule or regulation pertaining to the use and occupancy of the single-family dwellings as a short-term vacation rental unit.

(Ord. No. 2018-06-01, § 4(15.18.3), 6-18-2018)

Sec. 15.18.4. Application fee/renewal.

- (a) The short-term vacation rental application shall be accompanied by an initial application fee and be subject to an annual application fee every January 1 thereafter, as established by the mayor and city council.
- (1) The 2018 rental application fee shall be \$100.00 per rental unit.
 - (2) The annual application fee thereafter shall be \$100.00 per rental unit. The annual application fee shall be due January 1 of each year and if not paid within 90 days thereof shall be subject to delinquency and penalties provisions of chapter 15, article II of the Code of Ordinances for Stonecrest, Georgia, as applicable to occupation tax/business license provisions. Every person holding a license as specified herein shall secure that license within 90 days after January 1 of each year, and pay for same as herein provided.
- (b) Each property shall be issued a business tax certificate.
- (c) Failure to apply for a business tax certificate as prescribed by this law will result in a fine of \$100.00 for each month that the unit continues to operate a valid business tax certificate.

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- (d) The annual application fee is not transferrable and should ownership of a unit change, the new owner must reapply and remit the application fee.
 - (e) In the event a management company changes, a new application will be required with a fee of \$25.00 to cover administrative costs.
 - (f) The business tax certificate number shall be included in any advertisement of the STVR.

(Ord. No. 2018-06-01, § 4(15.18.4), 6-18-2018)

Sec. 15.18.5. Emergency contact.

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. STVR applicants and agents are to work with city staff as to the implementation of such emergency contact facilities or equipment and, until the appropriate connection for emergency contact is established, occupancy of the STVR location without the connection is prohibited.

(Ord. No. 2018-06-01, § 4(15.18.5), 6-18-2018)

Sec. 15.18.6. Compliance.

All STVRs are responsible for complying with and remitting the City of Stonecrest's hotel and motel tax ordinance.

(Ord. No. 2018-06-01, § 4(15.18.6), 6-18-2018)

ARTICLE XIX. MOBILE FOOD VENDORS

DIVISION 1. GENERALLY

Sec. 15.19.1. Definitions.

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

Blind person means a person whose vision, with correcting glasses, is so defective as to prevent the performance of activities for which eyesight is essential. See O.C.G.A. § 49-4-51(b).

Disabled veteran means a resident of the state who may be either a war veteran or veteran of peace-time service as set forth below and such person must obtain a certificate of exemption issued by the state commissioner of veterans' service.

- (1) A war veteran must furnish satisfactory proof that he has a physical disability which is disabling to the extent of ten percent or more; that his service in the armed forces of the United States was terminated under conditions other than dishonorable; and that his service or some part thereof was rendered during a war period, as defined by an act of the Congress of the United States, approved March 20, 1933, entitled "An Act to Maintain the Credit of the United States," and commonly known as Public Law No. 2, 73rd Congress; or that some part of his service was rendered on or after December 7, 1941, and before December 31, 1946; or that some part of his service was rendered on or after June 27, 1950, and before January 31, 1955; or that some part of his service was rendered on or after August 5,

1964, and before May 8, 1975. Proof of such ten percent disability shall be established upon the written certificate of two physicians as to such disability, or by a letter or other written evidence from the United States Department of Veterans Affairs or the Department of Veterans Service stating the degree of disability, or by written evidence from the branch of the armed forces of the United States in which such veteran served.

- (2) A veteran of peace-time service in the United States armed forces must furnish proof that he has a physical disability to the extent of 25 percent or more incurred in the line of duty during the period of such service by a letter or other evidence from the United States Department of Veterans Affairs or the Department of Veterans Service stating the degree of disability or by written evidence from the branch of the armed forces of the United States in which such veteran served and that his service in the armed forces of the United States was terminated under conditions other than dishonorable.
- (3) That disabled veterans and blind persons shall only have to show proof of their disability upon their initial application, as opposed to annually. If the current language of O.C.G.A. § 43-12-2 is amended, then this definition of disabled veteran shall be controlled by O.C.G.A. § 43-12-2, as amended.

Food truck means any motor vehicle used for vending of prepared food items to the public from designated food truck areas.

Items permissible for sale means items which may be offered for sale by and are limited to non-alcoholic pre-packaged beverages; pre-packaged food; prepared food; and prepared non-alcoholic beverages. Items permissible for sale shall not include any tobacco products.

Moral turpitude means the act or behavior of baseness, vileness or the depravity in private and social duties which people owe to their fellow people, or to society in general, contrary to accepted and customary rule of right and duty between person and person; act or behavior that gravely violates moral sentiment or accepted moral standards of community and is a morally suitable quality held to be present in some criminal offenses as distinguished from others.

Non-alcoholic pre-packaged beverages means beverages sealed in plastic or aluminum single serving containers excluding all beverages in glass containers, and excluding all alcoholic, including, but not limited to, malt beverages, wine and distilled spirits.

Operating area means:

- (1) The area in which a vendor may operate from a vending cart and which may not exceed 28 square feet of sidewalk including the area of the vending cart, and, when externally located, the operator and trash receptacle; or
- (2) The parameters of the food truck.

Pre-packaged food means single serving sealed packaged foods, including, but not limited to, candy, popsicles, chips/bagged snacks which do not require any heating or powered refrigeration, and the service of which does not require authorization by the DeKalb County Board of Health.

Prepared non-alcoholic beverages means beverages prepared on-site and which are not served in glass containers, and excluding all alcoholic beverages, including, but not limited to, malt beverages, wine and distilled spirits.

Prepared food means food prepared on-site, the sale of which requires authorization by the DeKalb County Board of Health.

Public property and public space both mean, for the purpose of this article, any property owned by the City of Stonecrest within street rights-of-way, including any roadways and sidewalks, but excluding city-owned parks.

Vending means vending activity as permitted on privately-owned commercial or industrial property under the jurisdiction of the City of Stonecrest and in specifically designated city-owned parks or property. Vending shall

only be permitted in city-owned parks or property where such activity is associated with a special event and/or subject to regulation under a more specific permit.

Valid vendor permit means a permit issued by the City of Stonecrest for a vendor of a vending cart or food truck. Such permit shall consist of a photo identification card which contains the vendor's name, photograph, vending type and classification, authorized valid vendor locations and time period for which such permit is valid.

Vending cart means a vending cart at which prepared food, prepared non-alcoholic beverages, pre-packaged food and non-alcoholic pre-packaged beverages may be offered for sale.

Vendor means any person who has been issued a valid vendor permit.

(Ord. No. 2018-10-01, § 1(15.19.1), 10-3-2018)

Sec. 15-19-2. Purpose, intent and applicability.

- (a) Vending on public property in the incorporated boundaries of the city, as defined in this article, shall be prohibited. Vending on privately-owned commercial or industrial property without a permit issued pursuant to this article shall be unlawful and a person violating this article shall, upon conviction, be punished as provided by this Code.
- (b) It is the intent of council in enacting this article to:
 - (1) Serve and protect the health, safety and welfare of the general public.
 - (2) Establish a uniform set of rules and regulations which are fair and equitable.
 - (3) Provide economic development opportunities for small entrepreneurs in the city.
 - (4) Provide a variety of goods and services for sale.
 - (5) Promote stable vendors who will enrich the city's ambiance and be assets to public security.

(Ord. No. 2018-10-01, § 1(15-19-2), 10-3-2018)

Sec. 15-19-3. Vending business required to remit sales taxes and keep records.

- (a) Every vendor shall file with Georgia Department of Revenue (GDOR) the appropriate forms and remit monthly sale tax revenues to GDOR. Nothing in this section shall prohibit the revocation of any permit in accordance with the provisions of division 2 of this article.
- (b) Prospective vendors, by filing a business license application, agree to produce documents and records which may be considered pertinent to the ascertainment of facts relative to the issuance and maintenance of the permit, including, but not limited to, the following:

Records of sales and receipts for purchases and expenses from any business in which a vendor has any interest.

(Ord. No. 2018-10-01, § 1(15-19-3), 10-3-2018)

Sec. 15-19-4. Vending operational rules.

- (a) Hours of operation shall be between 7:00 a.m. and 6:00 p.m., or as previously approved by the City Manager or his designee in connection with a special event permit.
- (b) Any and all signage must comply with the City of Stonecrest Code of Ordinances, chapter 21.

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- (c) Vendors may offer items permissible for sale only.
 - (d) All vendors shall display their valid vending permits, photo identification card, and any required copies of licensing agreements at the valid vendor location.
 - (e) All vendors must maintain an auditable point-of-sale system to track and report on sales revenue and appropriate taxation in accordance with the requirements of section 15-19-3.
 - (f) Vending operations may not obstruct vehicular traffic flow except for up to 15 minutes to load and unload vending carts and merchandise.
 - (g) Vending operations, including, but not limited to, the display of merchandise and may not exceed the approved operating area.
 - (h) Vending carts and/or food trucks shall not be left unattended or stored at any time in the operating area when vending is not taking place or during restricted hours of operation.
 - (i) Vending carts and/or food trucks should not occupy more than one standard parking space.
 - (j) Vending carts and/or food trucks shall not operate on vacant or undeveloped lots.
 - (k) Vending carts and/or food trucks shall be located within 100 yards of the principal structure of the lot upon which it intends to vend.
 - (l) Vending carts and/or food trucks are allowed to stay at any one place of operation for a maximum of four hours.
 - (m) Vendors offering prepared food shall obtain the proper authorization and permits from the DeKalb County Board of Health or the comparable department of another municipality.
 - (n) Vendors offering pre-packed food and prepackaged beverages shall obtain the proper authorization from the Georgia Department of Agriculture.
- (Ord. No. 2018-10-01, § 1(15-19-4), 10-3-2018)

Sec. 15-19-5. Aesthetic standards.

Vending carts must comply with the following aesthetic standards:

- (a) Length of the cart may not exceed seven feet and width may not exceed four feet in height, excluding canopies, umbrellas, or transparent enclosures; may not exceed five feet;
- (b) Canopies shall have a minimum clearance of seven feet and a maximum height of nine feet, six inches above the sidewalk;
- (c) Canopies may not exceed 48 square feet (eight feet by six feet);
- (d) All carts must be mobile, and able to roll on wheels;
- (e) The design, materials, and colors are to be of natural wood or metal products and considerate of the immediate surroundings of the proposed location;
- (f) Materials must be in working order, and may not include peeling paint, visible defects or areas requiring maintenance;
- (g) The wheels located under the cart are preferred; however projecting wheels must have fenders;
- (h) Hitches attached to the cart must be removable and detached when in operation; and
- (i) If used, propane tanks must be enclosed.

(Ord. No. 2018-10-01, § 1(15-19-4), 10-3-2018)

Secs. 15-19-6—15-19-20. Reserved.

DIVISION 2. PERMITS AND LICENSES

Sec. 15-19-21. Vendor permit and business license required.

- (a) No vending shall occur without a permit issued pursuant to this article.
- (b) No person shall engage in the business or trade of vending without first obtaining a business license. Disabled veterans and blind persons, as defined by O.C.G.A. § 43-12-1 and section 15.19.1 of this Code, are exempt from payment of business license fees, but must obtain such licenses.
- (c) All valid vendor permits are nontransferable, and must be displayed in clear view, together with the vending permit photo identification card, at the permitted location or designated food truck area at all times when the vendor or assistant vendor is present.

(Ord. No. 2018-10-01, § 1(15-19-21), 10-3-2018)

Sec. 15-19-22. Application.

- (a) An application shall be required by all persons seeking issuance of a valid vendor permit. Each applicant must apply in person and complete an application form. Application forms may be obtained from and filed with the office of revenue.
- (b) Permit fees and applicable maintenance fees are due and payable in the manner required by the City Manager or his designee if and when the application is approved by the City.
- (c) An application for permit, including the proposed vending areas, must be submitted the City Manager of his designee for approval at least 30 calendar days prior to the proposed vending start date. The City Manager or his designee shall approve, deny, or request addition information from the applicant within 14 business days.
- (d) The application shall, at a minimum, consist of the following data:
 - (1) Applicant's name and current address.
 - (2) Applicant's previous addresses within the last five years.
 - (3) Social Security number.
 - (4) Proposed vending locations.
 - (5) Certification of approval of vending location from the private property owner.
 - (6) A dimensional site plan drawing for each vending location within the city which clearly shows the footprint and placement of the cart and the operating area.
 - (7) The times and days/dates during which the vendor estimates they will vend on the proposed property.
 - (8) GDOR retail identification tax number.
 - (9) State issued picture identification.
 - (10) City business license.

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(11) A general description of the items permissible for sale to be sold or offered for sale.

- (e) All applicants shall furnish all data, information and records requested of them by the City Manager or his designee within ten days from the date of request. Failure to furnish such information within ten days shall automatically dismiss, with prejudice, the application.

(Ord. No. 2018-10-01, § 1(15-19-22), 10-3-2018)

Sec. 15-19-23. Term and renewal of permits.

- (a) A valid vendor permit will be issued for a one-year period. When the one-year permit expires, a vendor may apply for a renewal permit which allows the vendor to vend for another one-year period. All valid vendor permits are required to be renewed annually on or before March 1. All annual permit fees and applicable annual maintenance fees are due and payable at the time of renewal.
- (b) Vendors may present to the City Manager or his designee an application for a renewal permit. Upon a review and approval of the renewal application, satisfaction of all other license and permit requirements, and upon payment of the appropriate fees as indicated in section 15-19-24, the vendor shall be furnished with a renewal permit.
- (c) Each applicant for a renewal application shall submit an application which shall at a minimum consist of the data required for the issuance of an initial permit as set forth in section 15-19-22.

(Ord. No. 2018-10-01, § 1(15-19-23), 10-3-2018)

Sec. 15-19-24. Annual fees.

- (a) Annual permit fees and applicable annual maintenance fees are due and payable upon approval of the application.
- (b) The annual permit fee for all valid vendor permits shall be \$75.00.

(Ord. No. 2018-10-01, § 1(15-19-24), 10-3-2018)

Sec. 15-19-25. Location.

- (a) Valid vendor locations shall:
- (1) Not be within 15 feet of street intersections or pedestrian crosswalks or 15 feet of building entrances/exits or within 50 feet of hotels/motels;
 - (2) Not be within 15 feet of a driveway, bus stop, crosswalk, or intersection;
 - (3) Provide a minimum of five feet of unobstructed pedestrian space;
 - (4) Not be within 15 feet of a fire hydrant driveway; and
 - (5) Not be within 600 feet of the closet property line of any public or private elementary, middle or high school.

(Ord. No. 2018-10-01, § 1(15-19-25), 10-3-2018)

Sec. 15-19-26. Notification of name change or change of address.

Whenever either the name or address provided by the vendor on the application for a valid vendor permit changes, the vendor shall notify the City Manager or his designee in writing within ten days of such change and provide same with the name change or address change. Vendors shall ensure that a current and correct name, residence address and mailing address are on file with the City Manager or his designee at all times.

(Ord. No. 2018-10-01, § 1(15-19-26), 10-3-2018)

Sec. 15-19-27. Denials, fines, suspensions and revocations.

- (a) No valid vendor permit shall be issued to any person who has been convicted within five years immediately prior to the filing of the application for any felony or misdemeanor relating to drug possession and related matter; crimes of moral turpitude; larceny, fraudulent conveyance, perjury and/or false swearing, or subrogation. Any conviction for dealing and/or trafficking in illegal drugs will automatically disqualify an applicant.
- (b) Failure to maintain initial qualifications shall be grounds for revocation or denial of a renewal permit.
- (c) A denial, fine, suspension, revocation of any permit issued pursuant to this article may be imposed for any of the following causes:
 - (1) Fraud, misrepresentation or false statements contained in the application.
 - (2) Failure on the part of a vendor to maintain initial eligibility qualifications.
 - (3) Failure to furnish any and all documentation requested by either the police department, the office of revenue or the license review board for the purposes of the investigation of any application or for the inspection of records pursuant to this division within 30 days of such request.
 - (4) Any failure to comply with any requirement set forth in this article or this Code.
- (d) Any person whose permit is revoked may not reapply until one year following the effective date of the revocation.
- (e) In addition to carrying out all other investigations as may be permitted under this article, the license and permits unit shall investigate any alleged violation of this article upon receipt of a written, sworn complaint by any person who witnesses or becomes aware of a potential violation. Such complaint shall be signed under penalty of perjury, and shall be accompanied by any supporting evidence.

(Ord. No. 2018-10-01, § 1(15-19-27), 10-3-2018)

Sec. 15-19-28. Appeal on suspension, fine, revocation or denial.

A person to whom the city refuses to issue a vendor's permit or whose vendor's permit is suspended or revoked may file an appeal therefrom in accordance with article XVI of this chapter.

(Ord. No. 2018-10-01, § 1(15-19-27), 10-3-2018)

Sec. 15-19-29. Vendors selling ice cream or other pre-packaged food and/or non-alcoholic pre-packaged beverages out of motor vehicles.

- (a) Vendors selling ice cream or other pre-packaged food and/or non-alcoholic pre-packaged beverages out of motor vehicles shall be subject to this section. Vendors permitted in accordance with this section shall not be permitted to sell prepared food or prepared non-alcoholic beverages.
- (b) Every vendor selling ice cream or other pre-packaged food and/or non-alcoholic pre-packaged beverages out of motor vehicles pursuant to this section shall, before making any sale, park the vehicle at the right curb and at least eight feet from any other vehicle that may be parked on the street and not less than 100 feet from any intersecting street. When the vending vehicle stops, all sound equipment or other devices used to notify customers of the presence of the vendor shall be stopped and shall not be resumed until the vehicle is again put in motion.
- (c) No vehicle using sound equipment or other method of attracting customers shall operate such equipment between the hours of 9:00 p.m. and 9:00 a.m. daily. On days in which schools are actually in session, no motor vehicle shall be operated within 600 feet of any public school in the city one hour before or one hour after published school hours.
- (d) Vendors selling ice cream or other pre-packaged food and/or non-alcoholic pre-packaged beverages out of motor vehicles pursuant to this section, shall not stop or stand and do business for more than 30 minutes.
- (e) Vendors selling ice cream or other pre-packaged food and/or non-alcoholic pre-packaged beverages out of motor vehicles pursuant to this section shall not be restricted to an operational area or location specifically described in section 15-19-25.

(Ord. No. 2018-10-01, § 1(15-19-29), 10-3-2018)

Chapter 16 MISCELLANEOUS PROVISIONS AND OFFENSES

TEXT AMENDMENT

ARTICLE I. IN GENERAL

TMOD 24-002 HOURS OF OPERATION BASED ON USE

TMOD 24-003 ALCOHOL/ HOURS OF OPERATION BASED ON USE

Sec. 16-1. Fines and punishment.

Unless otherwise specified, any person found guilty of violating any provision of this chapter shall be punished in a manner consistent with this Code and Georgia law.

(Ord. No. 2018-10-03, § 16-1, 10-15-2018)

Sec. 16-2. Criminal impersonation.

- (a) As used in this section, the term "intent to defraud" means the use of deception with the intention to injure another's interest which has economic or monetary value.

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- (b) A person commits the offense of criminal impersonation if the individual:
- (1) Assumes a false identity and commits any act in their assumed character with the intent to defraud another; or
 - (2) Pretends to be a representative of some person or organization and commits any act in their pretended capacity with the intent to defraud another.

(Ord. No. 2018-10-03, § 16-2, 10-15-2018)

Sec. 16-3. False representation of age.

It shall be unlawful for any person to misrepresent his age in any manner whatever for the purpose of gaining entrance to events or establishments that require a minimum age, including, but not limited to, bars, nightclubs, movies, video stores, bookstores or bingo parlors.

(Ord. No. 2018-10-03, § 16-3, 10-15-2018)

Sec. 16-4. Aiding, encouraging minor to commit unlawful act.

No person shall aid, abet or encourage a minor to do any act which constitutes a violation of any State law or this Code.

(Ord. No. 2018-10-03, § 16-4, 10-15-2018)

Secs. 16-5—16-19. Reserved.

ARTICLE III. OFFENSES AGAINST PUBLIC PEACE, ORDER AND SAFETY

DIVISION 1. GENERALLY

Sec. 16-20. Disorderly conduct.

- (a) It shall be unlawful for any person to disturb or endanger the public peace or decency by any disorderly conduct.
- (b) The following acts, among others, are declared to be disorderly conduct:
- (1) Act in a violent or tumultuous manner toward another whereby any person is placed in fear of the safety of such person's life limb or health;
 - (2) Act in a violent or tumultuous manner toward another whereby the property of any person is placed in danger of being damaged or destroyed;
 - (3) Cause, provoke or engage in any fight, brawl or riotous conduct so as to endanger the life, limb, health or property of another;
 - (4) Assemble or congregate with another or others for the purpose of gaming;
 - (5) Be in or about any place, alone or with others, with the purpose of or intent to engage in any fraudulent scheme, trick or device to obtain any money or valuable thing or to aid or abet any person doing so;

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- (6) Be in or about any place where gaming or illegal sale or possession of alcoholic beverages or narcotics or dangerous drugs are practiced, allowed or tolerated, for the purpose of or intent to engage in gaming or the purchase, use, possession or consumption of such illegal drugs, narcotics or alcohol;
 - (7) Direct fighting words toward another, that is, words which by their very nature tend to incite an immediate breach of the peace;
 - (8) Interfere, by acts of physical obstruction, with another's pursuit of a lawful occupation;
 - (9) Congregate with another or others in or on any public way so as to halt the flow of vehicular or pedestrian traffic, and to fail to clear that public way after being ordered to do so by a City official, police officer or other lawful authority;
 - (10) Stand or remain in or about any street, sidewalk, overpass, or public way so as to impede the flow of vehicular or pedestrian traffic, and to fail to clear such street, sidewalk, overpass or public way after being ordered to do so by a City Official, police officer or other lawful authority;
 - (11) Disrupt by actions which tend to cause an immediate breach of the peace the undisturbed activities of any house of worship, hospital, or home for the elderly; or
 - (12) Throw bottles, paper, cans, glass sticks, stones, missiles, or any other debris on public property.
 - (13) Hosting a "party house," as defined in the zoning ordinance, in violation of any provisions related to same in the zoning code or any other applicable ordinance of the city.
 - (14) Attending a "party house," as defined in the zoning ordinance, and causing any disturbance in violation of the city's noise ordinance or being visibly drink in the front yard of the "party house" or public street.

(Ord. No. 2018-10-03, § 16-20, 10-15-2018; Ord. No. 2019-11-04 , § III, 11-25-2019)

Sec. 16-21. Obstruction and interference.

- (a) It shall be unlawful for any person to intentionally interfere or hinder a city official, employee, or agent when such official, employee or agent either has properly identified himself or is otherwise identifiable as such and is engaged in the lawful performance of his official duties.
- (b) It shall be unlawful for any person to give a false name, address or date of birth, or any other false information, to any city official, employee, or agent in the lawful discharge of his official duties with the intent to mislead such official, employee or agent in any way.
- (c) It shall be unlawful for any person to refuse to provide identification, address or date of birth to a code enforcement officer, police officer or fire marshal while said officer is conducting an investigation and the officer has reasonable belief that said individual committed a crime, is committing a crime or is about to commit a crime. However, said person shall not be compelled to answer any other inquiry.

(Ord. No. 2018-10-03, § 16-21, 10-15-2018)

Sec. 16-22. Begging, panhandling or soliciting on public property, sidewalks and streets; certain designated places prohibited.

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

Aggressively beg, panhandle or solicit means any request made in person for a donation of money or some other article of value from another person by an unwanted touching, detaining, impeding or intimidation.

Aggressive begging, panhandling or soliciting usually includes approaching or following pedestrians; repetitive begging, panhandling or soliciting despite refusals; the use of abusive or profane language; unwanted physical contact; or the intentional blocking of pedestrian and vehicular traffic. Also, any person who intentionally blocks the passage of another person or a vehicle, which requires another person to take evasive action to avoid physical contact, is an aggressive panhandler.

Beg, panhandle or solicit means any request made in person for a donation of money or some other article of value, either by words, bodily gestures, signs or other means, from another person.

Beg, panhandle, or solicit from any operator or occupant of a vehicle that is in traffic on a public street means any request made in person for a donation of money or some other article of value, either by words, bodily gestures, signs or other means, from any operator or occupant of a vehicle, coupled with an actual exchange of money or some other article of value between the person begging, panhandling or soliciting and any operator or occupant of a vehicle while that vehicle is on the portion of a public street currently in use by vehicular traffic.

Beggar, panhandler or solicitor means any person traveling either by foot, vehicle or other conveyance, from place to place, requesting in person a donation of money or some other article of value, either by words, bodily gestures, signs or any other means, from another person.

Obstruct pedestrian or vehicular traffic means to walk, stand, sit, lie or place an object in such a manner as to intentionally block passage of another person or a vehicle, or to require another person or driver of a vehicle to take evasive action to avoid physical contact. Acts authorized as an exercise of one's constitutional right to picket or to legally protest, and acts authorized by permit are not included within the definition of this term.

Public place means an area generally visible to public view and, includes, but is not limited to, alleys, bridges, buildings, driveways, parking lots, parks, plazas, sidewalks and streets open to the general public, including those areas that serve food or drink or provide entertainment or other services, outdoor cafes, public restrooms, and the doorways and entrances to buildings or dwellings and the grounds enclosing them.

(b) *Restrictions and requirements.*

- (1) Beggars, panhandlers or solicitors are prohibited from intentionally obstructing pedestrian or vehicular traffic.
- (2) Beggars, panhandlers or solicitors are prohibited from aggressively begging, panhandling or soliciting.
- (3) Beggars, panhandlers or solicitors are prohibited from begging, panhandling or soliciting from any operator or occupant of a vehicle that is in traffic on a public street, as those terms are defined in this article.
- (4) Any operator or occupant of a vehicle that is in traffic on a public street is prohibited from offering money or some other article of value to a beggar, panhandler or solicitor resulting in the actual exchange of money or some other article of value between the person begging, panhandling or soliciting and the operator or occupant of a vehicle while that vehicle is on the portion of a public street currently in use by vehicular traffic.
- (5) No person shall stand on a traffic median, bicycle path or public street to beg, panhandle or solicit when to do so would obstruct vehicular traffic.
- (6) Begging, panhandling, soliciting or aggressive begging, panhandling or soliciting are prohibited at the following places:
 - a. At an outdoor cafe;
 - b. Within 12 feet of an outdoor cafe;
 - c. In a public restroom;
 - d. From any person standing in line to enter a building or event;

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- e. Within 12 feet of a line to enter a building or event;
 - f. Within 12 feet of the entrance or exit of a building;
 - g. From any person using an automated teller machine, or any electronic information processing device which accepts or dispenses cash in connection with a credit, deposit or convenience account (ATM);
 - h. Within 12 feet of an ATM;
 - i. From any person using a pay phone;
 - j. Within 12 feet of a pay phone.

(Ord. No. 2018-10-03, § 16-22, 10-15-2018)

Sec. 16-23. Reserved.

A.

B.

C. Hours of Operation Based on Uses

- a. Pawnbrokers may not keep open their places of business except between 7 a.m. and 9:00 p.m. Monday through Saturday (Section 15.5.9)
- b. Precious Metal Dealers may not keep open their places of business except between 7:00 a.m. and 9:00 p.m. (Section 15.6.9)
- c. Peddlers, Door to Door Sales and Similar Occupations
- d. Soliciting or canvassing on the public streets, areas, or parks of the city shall be conducted only between the hours of 9:00 a.m. and 7:00 p.m.
- e. Soliciting or canvassing or calling from house to house within the incorporated areas of the city shall be conducted only between the hours of 9:00 a.m. and 6:00 p.m. (Section 15.7.6)"
- f. Massage therapists shall conduct business only between the hours of 7:00 a.m. and 9:00 p.m.
- g. No sexually oriented business shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day after July 1, 2017. (Section 15.12.12)
- h. Distilled Spirits a) Distilled spirits shall be sold and delivered to the customer for consumption on the premises during the following hours:
 - (i) ~~Monday through Friday hours are from 9:00 a.m. until 1:55 a.m. of the following day. 12am~~
 - (ii) ~~Saturday hours are from 9:00 a.m. until 12:55-00a.m. on Sunday.—~~
 - (iii) ~~Sunday hours are from 11:00 a.m. until 12:00 a.m. midnight on Monday.—~~

(b) Sales and deliveries during all other hours are prohibited. All licensed establishments must close their premises to the public and clear their premises of patrons by ~~3:30 a.m. 12am~~ and shall not reopen their premises to the public until 9:00 a.m. or thereafter. (Section 4.5.12)"
- i. Sunday Sales: Licensed establishments deriving a minimum of 60 percent of their total annual gross food and beverage sales from the sale of prepared meals or food, or licensed establishments deriving at

least 60 percent of their total annual income from the rental of rooms for overnight lodging, are authorized to apply for a Sunday sales permit to sell and serve alcoholic beverages, malt beverages and wine by the drink from 11:00 a.m. on Sunday until 12:00 a.m. ~~midnight of the following Monday.~~ (Section 4.5.15)

- j. **Restaurants.** All restaurants or drive-ins within the limits of the city are required to close the same before 12:00 midnight and same is not to be reopened until 6:00 a.m. the following day. ~~An exception to this requirement is those restaurant businesses when applying for a business licenses specify the exception. who have received a~~ However, public service facilities may remain open up to twenty-four (24) hours a day with a prior permit of the mayor and council. Service facilities include but are not limited to government buildings and/or hospitals as interpreted by the Planning and Zoning Director or his/her designee.
- k. **Outdoor amusement and recreation parks and facilities.** All outdoor amusement and recreation parks and facilities are required to cease all operations by 11:00 p.m. Monday through Sunday, and such parks and facilities shall not open before 12:00 noon on Sundays. If go-cart activities are permitted by the city at any such parks or facilities, such activities shall cease by 9:00 p.m. Monday through Saturday and shall only be allowed from 12:00 noon until 6:00 p.m. on Sundays.
- l. **Convenience Store.** All convenience stores within the city limits are required to close the same before 12:00 midnight and same is not to be reopened until 6:00 a.m. the following day.
- m. **Quarry work shall not begin before 7:00 a.m. and shall end on or before 5:30 p.m. No work shall be permitted on Sundays. Blasting and the explosion of dynamite and explosives shall be limited between the hours of 11:00 a.m. and 1:00 p.m. *September 12, 2024***
September 12, 2024-CPIM suggested amendment
~~Quarry work shall not begin before 7:00 a.m. and shall end on or before 5:30 p.m. No work shall be permitted on Sundays.~~ Blasting and the explosion of dynamite and explosives shall be limited between the hours of 11:00 a.m. and 1:00 p.m.
- n. **Billiard and Pool Halls; Bowling Alleys.** No person operating a bowling alley or pool, or billiard hall covered by the provisions of this article shall permit any table to be played upon after 12:00 midnight Sunday night and 2:00 a.m. Monday through Saturday. Such playing shall be prohibited until 6:00 a.m. each day. If operated in conjunction with any other business, the proprietor/operator shall keep dark and not allow public access to that part of the business in which the pool or billiard tables are located after such closing hours.

(Ord. No. 2018-10-03, § 16-23, 10-15-2018)

Sec. 16-24. Reserved.

(Ord. No. 2018-10-03, § 16-24, 10-15-2018)

Sec. 16-25. Shoplifting.

- (a) *Unlawful act.* It shall be unlawful for any person to commit the offense of theft by shoplifting within the corporate limits of the city when the property which is the subject of the theft is \$500.00 or less in value.
- (b) *Defined.* A person commits the offense of theft by shoplifting when alone or in concert with another person, with the intent of appropriating merchandise to such person's own use without paying for the same or to deprive the owner of possession thereof or of the value thereof, in whole or in part, does any of the following:

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- (1) Conceals or takes possession of the goods or merchandise of any store or retail establishment;
 - (2) Alters the price tag or other price marking on goods or merchandise of any store or retail establishment;
 - (3) Transfers the goods or merchandise of any store or retail establishment from one container to another;
 - (4) Interchanges the label or price tag from one item of merchandise with a label or price tag for another item of merchandise; or
 - (5) Wrongfully causes the amount paid to be less than the merchant's stated price for the merchandise.

(Ord. No. 2018-10-03, § 16-25, 10-15-2018)

Sec. 16-26. Public defecation or urination.

It shall be unlawful for any person to defecate or urinate on or adjacent to any street or sidewalk, or in the halls, elevators, stairways, or any other area designated for public passage within any public or commercial buildings, or on any property open to public view.

(Ord. No. 2018-10-03, § 16-26, 10-15-2018)

Sec. 16-27. Urban camping prohibited.

- (a) *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:

Camp means residing in or using a public street, sidewalk, or park for private living accommodations, such as erecting tents or other temporary structures or objects providing shelter; sleeping in a single place for any substantial prolonged period of time; regularly cooking or preparing meals; or other similar activities.

Public park means all municipal parks, public playgrounds, public plazas, attractions, and monuments.

Public street means all public streets and highways, public sidewalks, public benches, public parking lots, and medians.

Storing personal property means leaving one's personal effects, such as, but not limited to, clothing, bedrolls, cookware, sleeping bags, luggage, knapsacks, or backpacks, unattended for any substantial prolonged length of time. The term "storing personal property" shall not include parking a bicycle or other mode of transportation.

- (b) *Public parks.* It shall be unlawful to camp or to store personal property in any park owned by the city.
- (c) *Public streets.* It shall be unlawful to camp, to sleep, to store personal property, to sit or to lie down on any public street.
- (d) *Other public property; blocking ingress and egress.* It shall be unlawful to camp, to sleep, to store personal property, to sit or to lie down on any public property so as to interfere with ingress or egress from buildings.
- (e) *Warning.* No person may be arrested for violating this section until he has received an oral or written warning to cease the unlawful conduct. If the violator fails to comply with the warning issued, he is subject to arrest for urban camping.
- (f) *Exceptions.* This section shall not be construed to prohibit the following behavior:
 - (1) Persons sitting or lying down as a result of a medical emergency;
 - (2) Persons in wheelchairs sitting on sidewalks;

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- (3) Persons sitting down while attending parades;
 - (4) Persons sitting down while patronizing sidewalk cafes;
 - (05) Persons lying down or napping while attending performances, festivals, concerts, fireworks, or other special events;
 - (6) Persons sitting on chairs or benches supplied by a public agency or abutting private property owner;
 - (7) Persons sitting on seats in bus zones occupied by people waiting for the bus;
 - (8) Persons sitting or lying down while waiting in an orderly line outside a box office to purchase tickets to any sporting event, concert, performance, or other special event;
 - (9) Persons sitting or lying down while waiting in an orderly line awaiting entry to any building, including shelters, or awaiting social services, such as provision of meals; or
 - (10) Children sleeping while being carried by an accompanying person or while sitting or lying in a stroller or baby carriage.

(Ord. No. 2018-10-03, § 16-27, 10-15-2018)

Sec. 16-28. Residential picketing prohibited.

- (a) It shall be unlawful for any person to engage in picketing upon, before, or about the private residence or home of any individual.
- (b) Picketing shall include, but not be limited to, the following types of activity:
 - (1) Staging a public or private protest of any kind.
 - (2) Obstructing passage to or from a residence.
 - (3) Promoting a strike or a boycott at a residence.
 - (4) To intimidate or otherwise harass the resident.
- (c) It is the purpose of this section to protect and preserve the home, inasmuch as the public health and welfare and the good order of the city require that citizens of the city enjoy a feeling of peace, well-being, and privacy in their homes at all times.

(Ord. No. 2018-10-03, § 16-28, 10-15-2018)

Sec. 16-29. Loitering and prowling.

- (a) It shall be unlawful for a person to be in a place at a time or in a manner not usual for law-abiding individuals under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether alarm is warranted is the fact that the person takes flight upon the appearance of a law enforcement officer, refuses to identify himself, or manifestly endeavors to conceal himself or any object. Unless flight by the person or other circumstances make it impracticable, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to dispel any alarm or immediate concern which would otherwise be warranted by requesting the person to identify himself and explain his presence and conduct. No person shall be convicted of an offense under this section if the law enforcement officer failed to comply with the foregoing procedure or if it appears at trial that the explanation given by the person was true and would have dispelled the alarm or immediate concern.

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- (b) It shall be unlawful for a person aged 17 years or younger to be in a place at a time or in a manner not usual for law-abiding individuals under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether alarm is warranted is the fact that the person takes flight upon the appearance of a law enforcement officer, refuses to identify himself, is present at such a place during school hours, or manifestly endeavors to conceal himself or any object. Unless flight by the person or other circumstances make it impracticable, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to dispel any alarm or immediate concern which would otherwise be warranted by requesting the person to identify himself and explain his presence and conduct. No person shall be convicted of an offense under this section if the law enforcement officer failed to comply with the foregoing procedure or if it appears at trial that the explanation given by the person was true and would have dispelled the alarm or immediate concern.
 - (c) It shall be unlawful for any parent guardian or other persona having the custody or control of any minor to permit, allow or encourage such minor to violate subsection (a) of this section.
 - (d) It shall be unlawful for the proprietor, manager or other person having charge or control of any public or other place to permit, allow or encourage any minor to violate subsection (a) of this section in such place.
- (Ord. No. 2018-10-03, § 16-29, 10-15-2018)

Sec. 16-29.1. Loitering for the purpose of procuring others to engage in sexual acts for hire.

It shall be unlawful for any person to loiter in public for the purpose of soliciting or procuring others to engage in any sexual acts for hire.

(Ord. No. 2018-10-03, § 16-29.1, 10-15-2018)

Sec. 16-29.2. Loitering for the purposes of engaging in drug-related activity.

(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.

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- (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 a controlled substance into the human body;
 2. To enhance the effect of 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 a controlled substance for introduction into the human body;
 5. To conceal any quantity of a controlled substance; or
 6. To contain or hold 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;

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- 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 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, subject to any requirements of state law.

(Ord. No. 2018-10-03, § 16-29.2, 10-15-2018; Ord. No. 2022-07-01 , § 1, 8-22-2022)

Sec. 16-30. Preventing or disrupting lawful meetings, gatherings or processions.

It shall be unlawful for a person to knowingly prevent or disrupt a lawful meeting or gathering of the city council or any board, committee or instrumentality thereof or of the state to substantially obstruct or interfere with the meeting or gathering by physical action or verbal utterance. The term "lawful meeting or gathering" shall mean any such time and place where a quorum is present.

(Ord. No. 2018-10-03, § 16-30, 10-15-2018)

Sec. 16-31. Unauthorized persons entering vacant buildings.

It shall be unlawful for any person to enter or to remain in a vacant or unoccupied building or on any portion of vacant land upon which such vacant building is located unless with permission of an authorized agent of said property, provided such building or vacant property is prominently marked by a posted notice which is easily seen from a distance of at least 50 feet that informs the public such property is vacant or unoccupied and unauthorized persons are prohibited from entering.

(Ord. No. 2018-10-03, § 16-31, 10-15-2018)

Sec. 16-32. Discharge of weapons.

It shall be unlawful for any person to fire a gun, rifle, pistol, revolver, cannon, air rifle, firearm of any type or shoot a slingshot, crossbow or bow within the city, except in defense of a person or property. This section shall not apply to:

- (a) Any law enforcement officer while in the discharge of official duties; and
- (b) Any bow or crossbow hunter that holds a valid hunting permit issued by and who complies with the regulations of the Georgia Department of Natural Resources with respect to deer hunting within DeKalb County.

(Ord. No. 2018-10-03, § 16-32, 10-15-2018)

Sec. 16-33. Reckless operation of motor vehicle upon parking facility or walkway.

No person shall operate a motor vehicle upon any parking facility, public or private, vehicle-access or pedestrian walkway of any parking facility by sudden starting, stopping or turning so as to endanger the person or property of another.

(Ord. No. 2018-10-03, § 16-33, 10-15-2018)

Sec. 16-34. Creating hazardous or offensive condition.

No person shall create a hazardous or physically offensive condition by an act which serves no legitimate purpose.

(Ord. No. 2018-10-03, § 16-34, 10-15-2018)

Sec. 16-35. Halting or impeding flow of traffic.

No person shall congregate with another or others in or on any public right-of-way or place so as to halt or impede the flow of vehicle or pedestrian traffic after having been directed to clear such public right-of-way or place by a police officer or any other authorized law enforcement officer.

(Ord. No. 2018-10-03, § 16-35, 10-15-2018)

Sec. 16-36. Civil trespass.

No person shall knowingly and without authority enter upon the land or premises of another person after receiving, prior to such entry, notice from the owner, rightful occupant, or authorized representative of the owner or rightful occupant that such entry is forbidden. Posted "no solicitation" signs shall be deemed adequate notice.

(Ord. No. 2018-10-03, § 16-36, 10-15-2018)

Secs. 16-37—16-50. Reserved.

DIVISION 2. DRUG AND ALCOHOL-RELATED OFFENSES

Sec. 16-51. Public possession or consumption.

- (a) Alcohol consumption near package stores. It shall be unlawful for any person to open or to consume all or any part of any type of alcoholic beverage within 100 feet of any retail store where alcoholic beverages are sold in package form or within the boundary lines of the property on which such retail store is located, whichever constitutes the greater distance, unless otherwise permitted by chapter 4.
- (b) Drinking in public.
 - (1) It shall be unlawful for any person to drink any vinous, malt or other alcoholic beverage while on any streets, sidewalks, alleyways, parking areas or other open areas operated and controlled by the city. This subsection (b) does not apply to parks.
 - (2) Subsection (b)(1) of this section shall not apply to gatherings or activities for which a temporary liquor license has been issued by the city, subject to any conditions attached to the issuance of the permit.

(Ord. No. 2018-10-03, § 16-51, 10-15-2018)

Sec. 16-52. Public intoxication.

It shall be unlawful for any person to be disorderly while under the influence of illicit drugs, alcohol, concentrated vapors, or inhalants on the streets, sidewalks or other public places within the corporate limits of the city. Any person who acts in a reckless manner so as to create an unreasonable risk to himself, to others or to property in the vicinity while under the influence of alcohol or drugs is in violation of this section. The condition of intoxication or incapacitation must be outwardly manifested by boisterousness, public indecency, as defined by this chapter, indecent acts, vulgar, profane, or loud and unbecoming language, unconsciousness, disorientation or the inability to care for his own needs or recognize obvious dangers.

(Ord. No. 2018-10-03, § 16-52, 10-15-2018)

Sec. 16-53. Furnishing, purchasing, or possession of alcoholic beverages by person less than 21 years of age.

- (a) Except as otherwise authorized by law:
 - (1) No person directly or through another person shall furnish, cause to be furnished, or permit any person in such person's employ to furnish any alcoholic beverage to any person less than 21 years of age;
 - (2) No person less than 21 years of age shall purchase, drink or knowingly possess any alcoholic beverages;
 - (3) No person less than 21 years of age shall misrepresent such person's age in any manner whatever for the purpose of obtaining illegally any alcoholic beverage;
 - (4) No person shall knowingly or intentionally act as an agent to purchase or acquire any alcoholic beverage for or on behalf of a person less than 21 years of age;
 - (5) No person less than 21 years of age shall misrepresent such person's identity or use any false identification for the purpose of purchasing or obtaining any alcoholic beverages; or
 - (6) No person shall keep or maintain a place where persons less than 21 years of age are allowed and permitted to come and purchase, drink or possess any alcoholic beverage.
- (b) The prohibitions contained in subsections (a)(1), (2) and (4) of this section shall not apply with respect to:

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- (1) The sale, purchase or possession of alcohol beverages for consumption for medical purposes pursuant to a prescription of a physician duly authorized to practice medicine in this state;
 - (2) The sale, purchase or possession of alcohol beverages for consumption at a religious ceremony;
 - (3) The possession of alcoholic beverages for consumption by a person under 21 years of age when the parent or guardian of the person less than 21 years of age gives the alcoholic beverage to the person and when possession is in the home of the parent or guardian and such parent or guardian is present;
 - (4) The sale of alcoholic beverages by a person when such person has been furnished with proper identification showing that the person to whom the alcoholic beverage is sold is 21 years of age or older. For the purposes of this subsection, the term "proper identification" means any document issued by a governmental agency containing a description of the person, such person's photograph, or both, and giving such person's date of birth and includes, without being limited to, a passport, military identification card, driver license, or an identification card authorized under O.C.G.A. § § 40-5-100 through 40-5-104. The term "proper identification" shall not include a birth certificate.
- (c) If such conduct is not otherwise prohibited pursuant to O.C.G.A. § 3-3-24, nothing contained in this section shall be construed to prohibit any person less than 21 years of age from:
- (1) Dispensing, serving, selling or handling alcoholic beverages as a part of employment in any licensed establishments;
 - (2) Being employed in any establishment in which alcoholic beverages are distilled or manufactured; or
 - (3) Taking orders for and having possession of alcoholic beverages as a part of employment in a licensed establishment.
- (d) Testimony by any person under 21 years of age, when given in an administrative or judicial proceeding against another person for violation of any provision of this section, shall not be used as an admission in any administrative or judicial proceedings brought against such testifying person less than 21 years of age.
- (e) Any person convicted of violating any prohibition contained in subsection (a) of this section shall be punished by a fine not to exceed \$1,000.00 or imprisonment for not more than 180 days, or both; except that any person convicted of violating subsection (a)(2) of this section shall be punished by not more than 30 days imprisonment or a fine of not more than \$300.00 or both. Any defendant charged under this section shall be entitled upon request to have the case against such defendant transferred to the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred. Any person charged with a second or subsequent offense under this section shall be punished as for a misdemeanor of a high and aggravated nature in the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred.
- (f) Whenever any person who has not been previously convicted of any offense under this section or under any other law of the United States or any other state relating to alcoholic beverages pleads guilty to or is found guilty of a violation of subsection (a)(2) or (3) of this section, the court, without entering a judgment of guilt and with the consent of such person, may defer further proceedings and place such person on probation upon such reasonable terms and conditions as the court may require.
- (1) The terms of probation shall preferably be such as to require the person to undergo a comprehensive rehabilitation program, including, if necessary, medical treatment, not to exceed three years, designed to acquaint such person with the ill effects of alcohol abuse and to provide such person with knowledge of the gains and benefits which can be achieved by being a good member of society.
 - (2) Upon violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed accordingly.

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- (3) Upon fulfillment of the terms and conditions of probation, the court shall discharge such person and dismiss the proceedings against such person. Discharge and dismissal under this subsection shall be without court adjudication of guilt and shall not be deemed a conviction for the purposes of this subsection or for the purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Discharge and dismissal under this subsection may occur only once with respect to any person.
- (g) Unless the officer has reasonable cause to believe such person is intoxicated, an officer may arrest, by issuance of a citation, a person accused of violating only subsection (a)(2) of this section. The citation shall enumerate the specific charges against the person and either the date upon which the person is to appear and answer the charges or a notation that the person will be later notified of the date upon which the person is to appear and answer the charges. If the person charged shall fail to appear as required, the judge, having jurisdiction of the offense may issue a warrant or other order directing the apprehension of such person and commanding that such person be brought before the court to answer the charges contained within the citation and the charge of such person's failure to appear as required. Nothing in this subsection shall be construed to invalidate an otherwise valid arrest by citation of a person who is intoxicated.

(Ord. No. 2018-10-03, § 16-53, 10-15-2018)

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 found guilty of violating this section shall be punished by a fine.
- (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.

(Ord. No. 2018-10-03, § 16-54, 10-15-2018; Ord. No. 2022-07-01 , § 2, 8-22-2022)

Secs. 16-55—16-70. Reserved.

DIVISION 3. OFFENSES INVOLVING SCHOOLS

Sec. 16-71. Unauthorized persons entering school buildings.

No person shall enter or remain in any public, private or parochial school building between the hours of 7:30 a.m. and 6:00 p.m. on days that school is in session (or until 10:00 p.m. at those schools which have extended

sessions), who is not a regularly enrolled student, teacher or employee at that school, unless the person shall have first and immediately proceeded to the administrative offices and identified themselves to the principal or the principal's agent and receives permission to remain on the premises.

(Ord. No. 2018-10-03, § 16-71, 10-15-2018)

Sec. 16-72. Unauthorized persons not to remain in school buildings or on school grounds after being requested to leave.

It shall be unlawful for any person to enter and remain in any public, private, or parochial school or on the surrounding school grounds after being directed to leave by the principal of the school or by someone with lawful authority.

(Ord. No. 2018-10-03, § 16-72, 10-15-2018)

Sec. 16-73. Creating a disturbance.

- (a) It shall be unlawful for any person to create a disturbance in any public, private or parochial school or on the surrounding school grounds lawfully used for school activities while such recreational areas are in use or other activities are in progress thereon.
- (b) A disturbance, for the purposes of this section, shall be defined as any act which may be reasonably expected to interfere with the activities within the school or school activities on the school grounds or fields while such activities are in progress thereon.

(Ord. No. 2018-10-03, § 16-73, 10-15-2018)

Sec. 16-74. Operation of motorized vehicles on school property.

The operation of motorized vehicles of any nature in or on any yard, campus, playing field or open area of any public school, college or institution in the city, except on those areas designated by school authorities for use of motorized vehicles, is prohibited.

(Ord. No. 2018-10-03, § 16-74, 10-15-2018)

TMOD 24-004

City of Stonecrest Planning & Zoning Department
3120 Stonecrest Blvd.
Ste. 190
Stonecrest, GA 30038
[www. Stonecrestga.gov](http://www.Stonecrestga.gov)



TO: City of Stonecrest Planning Commission

FROM: City of Stonecrest Planning and Zoning Department

SUBJECT: TMOD-24-004 Tree Ordinance
Article VI Tree Protection

ADDRESS: City-Wide

MEETING DATE: October 1, 2024

Summary: The purpose of the text modification review the Ordinance text to create a document with established guidelines and a more comprehensive application process for tree preservation and removal within the City.

STAFF RECOMMENDATION: APPROVAL



FACTS & ISSUES

- There is an existing Tree Ordinance for the City of Stonecrest.
- Staff has created a document that will allow for easy reading and implementation of the Tree Ordinance that includes policies, procedures and guidelines.
- Staff has reviewed Article VI Tree Protection for the creation of a City of Stonecrest Guide for Tree Removal.

Attachment(s) Included:

- **Proposed *redlined* revision/review of Tree Ordinance Article VI Tree Protection.**

- CODE OF ORDINANCES
Chapter 14 - LAND DEVELOPMENT
APPENDIX A

(Ord. No. 2018-06-03, app. A, 6-3-2018)

Secs. 14-531—14-540. Reserved.

TMOD-24-004

STONECREST CODE OF ORDINANCE UPDATE

-ARTICLE VI. TREE PROTECTION

Sec. 14-516. Purpose and applicability.

(a) *Statement of purpose.*

- (1) The purpose of these standards is to facilitate the preservation and/or replacement of trees as a part of land development in the city.
- (2) The City of Stonecrest mayor and council hereby finds that the preservation of existing trees is a public purpose that protects the public health, safety, general welfare and aesthetics of the City of Stonecrest and all its citizens.
- (3) The citizens of the city and their many communities enjoy many benefits that can be directly attributed to our trees.
 - a. Trees produce oxygen, which is essential to the well-being of all animal life, including humans.
 - b. Trees help to reduce the amounts of airborne pollutants. For example, trees remove carbon dioxide, that is a major environmental concern due to its current high levels.
 - c. Trees and their foliage intercept dust and particulate matter, thereby helping to purify our air and limiting health risks.
 - d. Trees and their root systems reduce soil erosion and stormwater runoff. This decreases sedimentation problems and improves water quality.
 - e. Trees provide food and shelter for desirable urban wildlife.
 - f. Trees provide screening, which in turns aids in the reduction of noise and glare.
 - g. Trees help moderate our air temperature to provide us with a comfortable environment.
 - h. Trees provide scenic amenities to soften the harshness of city buildings and streets. They are aesthetically pleasing to all that view them.
 - i. Trees may affect property values and can have a positive impact upon the economy of an area.
 - j. Trees can enhance the natural functions of streams and related buffers.
- (4) Protect specimen and historical trees in a manner consistent with the City of Stonecrest Tree Protection Ordinance.
- (5) Provide standards for the preservation of trees as part of the land development process.
- (6) Prevent clear-cutting and mass grading of land that results in the loss of mature trees, and to ensure appropriate replanting when tree loss does occur.
- (7) Protect trees during construction to enhance the quality of life in the City of Stonecrest.
- (8) Protect trees in construction of public facilities and utilities.

(b) *General applicability.*

- (1) The terms and provisions of the tree protection ordinance shall apply to all real property in the City of Stonecrest except as otherwise provided in this article.

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- (2) The terms and provisions of the tree protection ordinance shall further apply to any residential or nonresidential development which requires the issuance of a land disturbance permit, development permit, or building permit, except as otherwise provided in this article.
 - (3) The terms and provisions of the tree protection ordinance shall also apply to development on any city-owned property, including property owned by city agencies, boards, and authorities, except as otherwise provided in this article.

(Ord. No. 2018-06-03, § 14-516, 6-3-2018)

Sec. 14-517. Exemptions.

- (a) The following are exempt from this article:
 - (1) The removal of five or fewer trees, other than specimen trees, on any single-family residential property, within a single calendar year.
 - (2) The removal of more than five trees, other than specimen trees, from an owner-occupied, single-family lot may be approved by the Director of Community Development if the owner must remove trees in order to build a newly permitted structure, or to build an addition to or make improvements to an existing structure, or to improve the health of other trees in the landscape.
 - (3) Zonings conditioned by DeKalb County to a specific site plan prior to adoption of the tree protection ordinance on February 9, 1999 by DeKalb County, provided that said zoning contains specific conditions for both tree preservation and tree replacement.
 - (4) The removal of trees found to be diseased or insect infested by the county extension service, the state forestry commission, a certified arborist, the Director of Community Development or urban forester.
 - (5) The removal of trees from horticultural properties, such as farms, nurseries or orchards. This exemption shall not include tree harvesting.
 - (6) The removal of any tree which has become, or threatens to become, a danger to human life or property.
 - (7) Agricultural activities on land zoned RE.
 - (8) Approved utility construction within permanent utility easements.
 - (9) Construction, expansion, and operation of county landfills.
 - (10) Building permits that do not require or authorize land disturbance.

(Ord. No. 2018-06-03, § 14-517, 6-3-2018)

Sec. 14-518. Procedures.

- (a) Application requirements.
 - (1) *Pre-application conference.* Prior to submission of an application for development, the applicant is encouraged to meet with the Director of Community Development to discuss the tree protection ordinance as it relates to the applicant's property. The purpose of the pre-application conference is to clarify the provisions and procedures of the tree protection ordinance and review applicable standards and guidelines for the submittal of documents and required tree protection, replacement, and maintenance measures.

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- (2) *Tree survey.* Except as provided elsewhere in this article, a tree survey shall be required as part of any application for a land disturbance permit, development permit, building permit or preliminary subdivision plat. Except as provided elsewhere in this section, all trees 18 inches (DBH) and larger shall be identified. Specimen trees shall be identified by size, species and location. Trees larger than two inches (DBH) may be identified and counted for unit credit on the tree protection plan. Single residential lots on which the applicant intends to reside may be exempted from the tree survey requirements at the discretion of the director. With the prior approval of the Director of Community Development sampling methods may be used to determine tree densities for forested areas.
- (b) Tree protection plan. A tree protection plan shall be submitted with other permit drawings as part of the development permits process. This plan may either be a separate drawing, or part of a landscape plan, and shall include the following information:
- (1) Definition of spatial limits:
 - (i) Limits of land disturbance, clearing, grading, and trenching;
 - (ii) Tree save areas;
 - (iii) Specimen trees; and
 - (iv) Areas of revegetation.
 - (2) Detailed drawings of tree protection measures and their location:
 - (i) Location, species and size (DBH) of existing significant trees and an indication of which significant trees would remain on the site.
 - (ii) Tree fences;
 - (iii) Erosion control fences;
 - (iv) Tree protection signs;
 - (v) Tree wells;
 - (vi) Aeration systems;
 - (vii) Transplanting specifications;
 - (viii) Staking specifications; and
 - (ix) Other applicable drawings as determined by the Director.
 - (3) The tree protection plan shall show all utility lines existing and proposed, including irrigation and electric lighting lines. The applicant shall coordinate the location of these utility lines with the utility companies in order to prevent root damage within the critical root zones of protected trees, and to minimize damage to trees located in protected zones.
 - (4) Procedures and schedules for the implementation, installation, and maintenance of tree protection measures.
 - (5) Calculations of tree density proposed on-site per section 14-520, tree preservation and replacement requirements.
 - (6) Tree protection inspection. Following the receipt of a complete application, the Director of Community Development shall schedule and conduct an inspection of the proposed development site. The applicant or applicant's designee shall be advised as to the date and time of the inspection and given an opportunity to participate.

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- (7) Following inspection said plans shall be reviewed by the Director for conformance with applicable zoning conditions, the tree protection ordinance, and any applicable administrative guidelines, and will either be approved or denied. Reasons for denial shall be noted on the tree protection plan or otherwise stated in writing.
 - (8) No development or building permit shall be issued until the tree protection plan has been approved by the Director of Community Development.
 - (9) All tree protection measures shall be installed prior to land disturbance.
 - (10) Single lots in platted residential subdivisions on which the applicant intends to reside may be exempted from the tree protection plan requirements at the discretion of the Director.
- (c) Final inspection. No certificate of occupancy shall be issued by the Director with respect to any permit subject to this article unless and until the Director of Community Development shall have inspected the site and confirmed that all existing trees to remain are in healthy condition and all replacement trees have been planted in accordance with this article.
- (d) Issuance of a building or land development permit shall be conditioned on the approved tree protection plan and conformance to the provisions of these regulations. Any permit may be voided if its terms are violated.
- (Ord. No. 2018-06-03, § 14-518, 6-3-2018)

Sec. 14-519. Fees (reserved).

(Ord. No. 2018-06-03, § 14-519, 6-3-2018)

Sec. 14-520. Tree preservation and replacement requirements.

The following tree preservation and replacement requirements are hereby established:

- (1) If significant trees exist on a tract of land for which a permit subject to this article is sought, either 120 inches (DBH) per acre or 25 percent of existing significant trees per acre of such significant trees, whichever is less, shall be preserved on the site. Except for zoned C-1, C-2, M, or M-2 sites, trees and tree save areas counting toward this requirement shall not be located in required buffer zones. Trees and tree save areas counting toward this requirement on sites zoned C-1, C-2, M or M-2 may be located in stream buffers and state buffer zones, transitional buffer zones and designated floodplains.

If the Director of Community Development determines that special constraints of a site result in an inability to build or develop without removing significant trees on a site, where there are only 120 inches (DBH) per acre or less of existing significant trees, the arborist may permit the removal of one or more significant trees. Trees removed pursuant to this section must be replaced with trees one (1.0) times the diameter inches of those removed.
- (2) There shall be at least two two-inch (DBH) over story trees in every front yard of properties zoned RE, RLG, R-100, R-85, and R-75. There shall be at least one two-inch (DBH) over story tree in every front yard of properties zoned RSM and R-60.
- (3) The applicant shall landscape the areas with trees and other plant materials in accordance with the following standards:
 - (i) Residential developments. All residential subdivisions shall have an average density of 15 density units per acre. Required trees may be located on individual lots or in subdivisions in which there is commonly-owned property may be located on such commonly-owned property.

- (ii) Nonresidential and multifamily developments. The quantity of total existing/replacement trees on-site must be sufficient so as to produce a total site density factor of no less than 30 density units per acre.
 - (iii) With the exception of C-1, C-2, M, or M-2 zoned property, the total tree density units required for a parcel or lot shall be computed based on the area of the parcel or lot, excluding all area within the 100-year floodplain. Total tree density units required for C-1, C-2, M, or M-2 zoned property shall be computed based on the area of the parcel or lot, including all area within the 100-year floodplain.
- (4) Procedures for calculating the required tree density are provided in Charts 1, 2 and 3 of this article. Tree unit values are assigned as follows:

CHART 1. Conversion from Diameter to Density Factor Units for Existing Deciduous Trees to Remain On-Site

DBH	Units	DBH	Units	DBH	Units
2 to 3	.8	25	6.8	38	15.8
4 to 6	1.6	26	7.4	39	16.6
7 to 9	2.4	27	8.0	40	17.4
10 to 12	3.2	28	8.6	41	18.4
13 to 15	4.0	29	9.2	42	19.2
16 to 18	4.8	30	9.8	43	20.2
19 to 21	5.4	31	10.4	44	21.2
22 to 24	6.0	32	11.2	45	22.0
		33	11.8	46	23.0
		34	12.6	47	24.0
		35	13.4	48	25.2
		36	14.2	49	26.2
		37	15.0	50	27.2

CHART 2. Conversion from Diameter to Density Factor Units for Evergreens and Conifers

DBH	
2 to 9	0.2 less unit than deciduous trees
10 to 15	0.1 less unit than deciduous trees
All others	Same as deciduous trees

CHART 3. Conversion from Caliper Diameter to Density Factor Units for Deciduous Replacement Trees

Caliper inches	Units
0.0 to 0.9	Not allowed
1.0 to 1.9 no replants under 2 caliper inches	Not allowed
2.0 to 2.9	0.4
3.0 to 3.9	0.5
4.0 to 4.9	0.7
5.0 to 5.9	0.8
6.0 to 6.9	1.0
7.0 to 7.9	1.1

8.0 to 8.9	1.2
9.0 to 9.9	1.3
10.0 to 10.9	1.5
11.0 to 11.9	1.6
12 inches or greater	2.0

Container-grown pine trees are given replacement value as follows:

Size	Units
7-gallon	0.05

The use of one- and three-gallon pines will be permitted only with prior approval. There will be no replacement value given for such trees.

- (5) Nothing in these regulations shall be construed to allow the removal of any tree or vegetation in a required stream buffer, transitional buffer zone or state buffer zone except buffer improvements as authorized by the Director.
- (6) Tree relocation and credit for existing trees replacement units will be granted to trees relocated on-site. Tree relocation is subject to approval of the Director of Community Development. Existing trees between two caliper inches and 7.9 caliper inches may be used for credit on the tree replacement plan.
- (7) Understory vegetation. Tree preservation areas shall leave intact the naturally occurring groundcover and understory vegetation except where directed otherwise by the Director of Community Development in order to allow the removal of undesirable groundcover or understory vegetation.
- (8) Specimen trees.
 - (i) Specimen trees shall be identified by the City Arborist, and shall be located on the tree protection plan.
 - (ii) Standards for the identification, preservation, and protection of specimen trees shall be as follows: Any tree in fair or better condition which equals or exceeds the following diameter sizes:
 - a. Large hardwoods, i.e., oaks, hickories, yellow poplars, and similar species: 30 inches DBH.
 - b. Large softwoods, e.g., pines, evergreens, and similar species: 30 inches DBH.
 - c. Small trees, e.g., dogwoods, redbuds, sourwoods, and similar species: Ten inches DBH.
 - (iii) A tree in fair or better condition should meet the following minimum standards:
 - a. A life expectancy of greater than 15 years.
 - b. A relatively sound and solid trunk with no extensive decay or hollow, and less than 20 percent radial trunk dieback.
 - c. No major insect or pathological problem.
 - (iv) A lesser-sized tree can be considered a specimen if:
 - a. It is a rare or unusual species or of historical significance.
 - b. It is specifically used by a builder, developer, or design professional as a focal point in a project or landscape.
 - c. It is a tree with exceptional aesthetic quality.

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- (v) The Director of Community Development may identify and require the preservation of a tree stand if it contains one or more specimen trees and the specimen trees are interlocked with other members of the stand in such a way as to imperil the specimen tree if other members of the stand were to be removed.
 - (vi) It shall be prohibited to cut specimen trees existing on a tract of land that is the subject of a land disturbance permit, development permit or building permit without a special exception granted by the Zoning Board of Appeals if removal of the specimen tree has not been approved by the Director of Community Development.
 - (vii) Any specimen tree removed from a parcel shall be replaced by 1.5 times the equivalent inches (DBH) of replacement trees or existing trees in excess of the requirements of this section, tree preservation and replacement requirements, using species with potentials for comparable size and quality at maturity.
- (9) Protection of trees during construction. Methods and standards for tree protection shall be established in administrative guidelines to this article.
- (i) Trees identified to be preserved and counted as credit for meeting required unit density shall have four-foot orange tree protection fencing installed at the critical root zones.
 - (ii) No person engaged in the construction of any structures or improvements or any activity shall encroach or place solvents, material, construction machinery or temporary soil deposits within six feet of the area outside the critical root zone, as defined herein, or any existing significant tree within a tree save area, transitional buffer zone, stream buffer, or state buffer zone.
 - (iii) All tree protection devices must remain in functioning condition until completion of the project or until the certificate of occupancy is issued.
 - (iv) Any tree, designated in the plan to be saved, which is negligently damaged during construction or as a result of negligent construction, as determined by the Director of Community Development, shall be treated according to accepted National Arborists Association standards. If fatally damaged, trees shall be replaced with four-inch caliper trees equal to the unit value of the tree removed. However, any specimen tree negligently damaged as described above shall be replaced with four-inch caliper trees equal to 1.5 times the equivalent inches (DBH) of the tree removed or damaged.
- (10) Removal of trees from floodplain not permitted. Trees shall not be cut or removed from the floodplain, except as follows:
- (i) Those trees found to be diseased or insect infested by the county extension service, the Georgia Forestry Commission, a certified arborist, or a certified forester.
 - (ii) As necessary for construction, repair or maintenance of public roads, utilities or stormwater management facilities.
 - (iii) As part of an approved wetland mitigation plan.
 - (iv) Trees in the 100-year floodplain or required stream buffer may not be cut nor shall they be counted, except as otherwise provided in this section, tree preservation and replacement requirements, for C-1, C-2, M, and M-2 zoned property, to accomplish requirements of the tree protection ordinance.
- (11) The Director of Community Development shall be responsible for distribution of appropriate public educational materials concerning the procedures of the tree protection ordinance, the value of maintaining existing trees, and proper methods of tree planting, preservation, and care.

(Ord. No. 2018-06-03, § 14-520, 6-3-2018)

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(Supp. No. 3)

Sec. 14-521. Tree replacement standards.

- (a) The tree protection plan shall include planting schedules with proposed tree names (botanical and common), quantity, size spacing, and any special planting notes. Trees used for credit on the tree replacement plan must be chosen from the preferred list attached hereto as Appendix A to this article. At least 50 percent of replacement trees must be overstory trees; no more than 25 percent may be of any single species, and no more than 25 percent may be of evergreen species.
- (b) Unless otherwise approved by the Director of Community Development, trees selected for replanting must meet the minimum standards as provided in the American Standard for Nursery Stock (ANSI Z60.1, 1980) and must be on the tree species selection list found in Appendix A to this article. Trees selected must be free of injury, pests, disease, nutritional disorders or root defects, and must be in good vigor to ensure a reasonable expectation of survival. Standards for transplanting shall be in keeping with those established in the International Society of Arboriculture publication Tree and Shrub Planting Manual or a similar publication.
- (c) It is desirable that replanted trees be ecologically compatible with the site and neighboring sites. When practical, the replanted trees shall be of the same or similar species as those removed.
- (d) Replacement trees shall be planted in manner that provides adequate space for nourishment, light, and maturation as recommended by the Director of Community Development.
- (e) Planting and staking details are addressed in the administrative guidelines and shall be specified in the required tree protection plan.

(Ord. No. 2018-06-03, § 14-521, 6-3-2018)

Sec. 14-522. Buffers.

- (a) *Stream buffers.* Stream buffers shall be consistent with the requirements of article VII of this chapter.
- (b) *Land use transition buffers.* Buffers shall be provided between dissimilar districts or uses in accordance with the provisions of the zoning ordinance or as a condition of zoning, special land use permit or variance approval.
 - (1) Buffer planting shall meet the minimum width requirements contained in chapter 27 of the City of Stonecrest Code of Ordinances, except as authorized to be reduced by a condition of zoning, special land use permit or variance approval.
 - (2) Disturbance or encroachments.
 - (i) Ditches, swales, stormwater conveyance facilities, stormwater detention ponds, sanitary sewer conveyance facilities, and any associated easements, shall not encroach into a buffer except that necessary access and utility crossings (e.g., stormwater or sanitary sewer pipes) may encroach into the buffer as near to perpendicular as practical.
 - (ii) Supplemental plantings or replantings of vegetation or authorized non-vegetative screening devices shall be authorized to encroach into a buffer provided there is minimal disturbance of any existing vegetation.
 - (iii) Dying, diseased or dead vegetation may be removed from a buffer provided minimal disturbance occurs. Vegetation thus removed shall be replaced where necessary to meet the screening requirements contained herein.
 - (3) Protection during land disturbing activities.

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- (i) During authorized land disturbing activities, transitional buffer zones, stream buffers, and state buffer zones shall be clearly demarcated and protected prior to commencement of, and during, construction.
 - (ii) The method of demarcation and protection utilized shall be in accordance with best management practices or as required by the arborist.

(Ord. No. 2018-06-03, § 14-522, 6-3-2018)

Sec. 14-523. Parking lot landscaping.

- (a) Off-street parking lots which contain more than 20 off-street parking spaces on any single lot shall contain landscaping and plantings as provided in chapter 27 of the City of Stonecrest Code of Ordinances.
- (b) Variances to reduce required parking spaces may be granted by the Zoning Board of Appeals when necessary to preserve a significant tree that otherwise would be lost if the parking requirements were strictly applied. Such variance may only be granted if the arborist certifies to the Zoning Board of Appeals that such trees will be lost either by necessary removal for construction of the parking lot or as a consequence of construction having an adverse impact on the survivability of the tree by virtue of damage to the root system of the trees.
- (c) Any variance granted under the provisions of this article shall include a condition that should the subject trees die as a consequence, direct or indirect, of construction, despite granting of the variance, the tree or trees shall be replaced at the property owner's or applicant's expense, in accordance with a tree replacement plan approved by the arborist.
- (d) The maximum variance allowed under this provision shall be four parking spaces, or ten percent of the total number of parking spaces required by the zoning ordinance, whichever is greater.

(Ord. No. 2018-06-03, § 14-523, 6-3-2018)

Sec. 14-524. Street trees.

Street trees and continuous landscape strips shall be provided, in conformance with the design requirements specified in chapter 27 of the City of Stonecrest Code of Ordinances, along newly constructed streets, and along existing streets which are widened or realigned subsequent to the adoption of this chapter, in all office, commercial, and industrial developments and along newly constructed streets of residential developments with a net residential density exceeding three dwelling units per acre or as otherwise directed by conditions of zoning or special land use permits.

(Ord. No. 2018-06-03, § 14-524, 6-3-2018)

Sec. 14-525. Maintenance.

Trees which are used to meet the density requirements for this article, except on single-family residential lots, shall be maintained for two growing seasons after the date of final inspection. The property owner shall maintain required tree density. The applicant or builder will be responsible for identifying newly planted trees to the homeowner and to inform the homeowner as to their proper maintenance.

(Ord. No. 2018-06-03, § 14-525, 6-3-2018)

Sec. 14-526. Alternative compliance.

The Director of Community Development must review and approve all requests for alternative compliance. In no instance shall 100 percent of the required site density be met through alternative compliance. Where the Director of Community Development has determined that special constraints of a site result in an inability to provide the required tree density, the number of trees will be determined by the Director of Community Development based on-site review. Such site review shall require the developer to re-landscape each parcel using a density calculated as the maximum number of trees that can be sustained on the parcel less the impervious area of that parcel. The balance of trees shall be provided in common areas. If common areas are not sufficient, any remaining balance of trees may be provided for plantings on public grounds. Tree bank arrangements can be made through the Director. The minimum size of trees replanted through the tree bank shall be two caliper inches and shall be planted in accordance with the species list attached as Appendix A hereto and in accordance with the requirements in section 14-521, tree replacement standards.

- (1) *Common area planting.* If trees are to be planted at another location, the following note must appear on the approved tree protection plan: "A tree protection plan addendum for this project shall be submitted to the Director of Community Development at least 30 days prior to requesting a final inspection. This plan shall include the species, size and location of trees to be planted off-site to meet the tree density deficit shown. Issuance of a certificate of occupancy is subject to approval of this plan, as well as verification of the installation of the trees."
- (2) *Tree banking.* If trees cannot be planted on-site and there is insufficient common area for replanting, the balance of trees will be accepted by the director for tree banking within the City of Stonecrest. Participants in the tree banking program administered by the Director, including the signing of an off-site reforestation agreement.

(Ord. No. 2018-06-03, § 14-526, 6-3-2018)

Sec. 14-527. Tree harvesting.

Selective tree harvesting may be permitted upon authorization by the Zoning Board of Appeals in consultation with the arborist. Permits authorizing tree harvesting shall be in accordance with the following standards:

- (1) A 75-foot undisturbed buffer shall be provided and maintained along the entire perimeter of the property, including road frontages, during the land disturbing activity, except for authorized access crossings.
- (2) Notwithstanding the other provisions of this article, no property owner shall be required to preserve an undisturbed buffer that covers more than 25 percent of the total land area of the property, excluding area inside the 100-year floodplain. In any such case, an alternative buffer width shall be provided, as determined by the Zoning Board of Appeals pursuant to its review of the application for a tree harvesting permit.
- (3) The property shall be required to meet a tree density standard of 30 units per acre, not including the 75-foot buffer, upon completion of authorized land disturbing activities.
- (4) The owner/applicant shall utilize the recommended best management practices as established by the Georgia Forestry Commission.
- (5) No tree harvesting shall be allowed within the city except after approval of a special exception by the Zoning Board of Appeals as is provided in article V, division 4 of chapter 27 of the City of Stonecrest Code of Ordinances. Further, subsequent to such approval of a special exception, no such tree

harvesting shall be undertaken on any nonresidential parcel of land unless the transitional buffer zones required by the zoning regulations of the district in which located, are preserved in a natural and undisturbed state.

- (6) Once tree harvesting takes place in conformity with the above regulations, no development of the property shall be permitted that would require the cutting of trees preserved under subsections (3) and (5) of this section for a period of five years following authorization of tree harvesting.

(Ord. No. 2018-06-03, § 14-527, 6-3-2018)

Sec. 14-528. Utility company guidelines.

- (a) All utility companies shall be required to obtain an annual permit issued by the Director. All applications for an annual permit shall include a list of subcontractors with names, addresses, and City business license numbers.
- (b) Periodic work schedules are to be submitted to the arborist showing the proposed location and extent of tree work to be performed.
 - (1) All tree trimming and pruning to be performed by public utilities, public agencies, and their subcontractors on trees growing on private or public rights-of-way shall be done according to the National Arborist Association Standards for Pruning of Shade Trees.
 - (2) The routing of public and private utility easements shall be subject to review and comment by the Director of Community Development.

(Ord. No. 2018-06-03, § 14-528, 6-3-2018)

Sec. 14-529. Enforcement.

It shall be the duty of the Director to enforce this tree protection ordinance. The Director shall have the authority to, and the Director of Community Development may recommend that, the Director revoke, suspend or void any land disturbance permit, development permit or building permit or suspend all work on a site or portion thereof in order to effect compliance with this article.

- (1) Violation and penalty. Any person, firm or corporation violating any of the provisions of this article, after having been first issued a warning, shall be deemed guilty of an offense and upon conviction in Municipal Court shall be punished as is provided in chapter 1 of the City of Stonecrest Code of Ordinances. Each tree removed or killed in violation of this article shall be considered a separate offense. The owner of any buildings or premises or parts thereof, where anything in violation of this section 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.
- (2) Any trees eight inches (DBH) and over which have been removed in violation of this article shall be replaced by the violator with four-inch caliper replacement trees equal to the unit value of the trees removed. However, any specimen tree removed from a parcel shall be replaced with four-inch caliper trees 1.5 times the equivalent inches (DBH) of replacement trees or existing trees in excess of the requirements of section 14-520, tree preservation and replacement requirements, using species with potentials for comparable size and quality at maturity.
- (3) Additional legal remedies. In addition to all other actions and penalties authorized in this section, the City Attorney is hereby authorized to institute injunctive, abatement or any other appropriate judicial or administrative actions or proceedings to prevent, enjoin, abate, or remove any violations of this article.

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- (4) Appeals; power and duty of the board to hear appeals of decisions of administrative officials. The Zoning Board of Appeals shall have the power and duty to hear and decide appeals where it is alleged by an aggrieved party that there is error in any final order, requirement, or decision made by the Director based on or made in the enforcement of the tree protection ordinance. All such appeals shall be heard and decided following the notice requirements, criteria and procedural requirements in chapter 27 of the City of Stonecrest Code of Ordinances.
- (5) Administrative variances. Front, side and rear yard setbacks and parking requirements may be reduced by an amount not to exceed 50 percent where it is determined by the Director of Community Development to be necessary in order to preserve existing specimen or significant trees. Appropriate conditions to said administrative variances shall be imposed so as to ensure the continued health of said trees following the granting of such variances, including mandatory replacement requirements. Such administrative variances shall be considered and decided consistent with the procedures and criteria contained in chapter 27 of the City of Stonecrest of Ordinances. Appeals of final decisions regarding administrative variances may be taken as provided in subsection (4) of this section.
- (6) Special exception. The Zoning Board of Appeals is authorized to consider requests for special exception for the removal of an unauthorized specimen tree. All such requests shall be filed, notice given, and all procedures shall be as is required in the zoning ordinance. No such special exception for the unauthorized removal of a specimen tree shall be granted by the Zoning Board of Appeals unless the applicant has demonstrated and the Board has found that the property is not capable of earning a reasonable economic return absent the grant of the special exception. In making this determination the Board shall consider the following factors:
 - (i) Value of the trees in question, considering their age, size, health, and significance;
 - (ii) The current level of economic return on the property;
 - (iii) The marketability of the property; and the unfeasibility of alternate design or uses. Appeals from final decisions of the Board shall be as provided for in chapter 27 of the City of Stonecrest Code of Ordinances.

(Ord. No. 2018-06-03, § 14-529, 6-3-2018)

Sec. 14-530. Establishment of tree bank.

- (a) There is hereby established a City of Stonecrest Tree Bank (the "tree bank") for the acceptance, maintenance and disbursement of funds required to be paid pursuant to the terms of this article.
- (b) Notwithstanding anything in this article to the contrary, the tree bank may also accept funds donated for the purposes of preservation and/or replacement of the trees of the City of Stonecrest.
- (c) The director of the planning and zoning department (the "director"), or the director's designee, shall have the authority to disburse funds from the tree bank, as directed by the Stonecrest City Council, for the purposes of preservation and/or replacement of the trees of the City of Stonecrest.

(Ord. No. 2021-11-03 , § 1, 11-22-2021)

APPENDIX A

City of Stonecrest Overstory Trees Acceptable for Replanting Credits

Scientific Name	Common Name	Recommended	Leaf Habit
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<i>Acer rubrum</i>	Red Maple	October Glory, Red Sunset	Deciduous
<i>Betula nigra</i>	Riverbirch	Duraheat	Deciduous
<i>Carpinus betuls</i>	European Hornbeam		Deciduous
<i>Carya aquatica</i>	Water Hickory	Availability	Deciduous
<i>Carya cordiformis</i>	Bittemut Hickory	Availability	Deciduous
<i>Carya glabra</i>	Pignut Hickory	Availability	Deciduous
<i>Carya illinoensis</i>	Pecan		Deciduous
<i>Carya tomentosa</i>	Mockernut Hickory	Availability	Deciduous
<i>Cedrus atlantica</i>	Atlas Cedar		Evergreen
<i>Cedrus libani</i>	Cedar of Lebanon		Evergreen
<i>Cedrus deodara</i>	Deodar Cedar		Evergreen
<i>Cryptomeria japonica</i>	Japanese Cryptomeria		Evergreen
<i>Fagus grandifolia</i>	American Beech		Deciduous
<i>Fraxinus tomentosa</i>	Pumpkin Ash		Deciduous
<i>Gingko biloba</i>	Gingko	Plant male only. Autumn Bold, Fairmont	Deciduous
<i>Ilex opaca</i>	American Holly		Evergreen
<i>Juniperus virginiana</i>	Red Cedar	Brodie	Evergreen
<i>Liquidambar styraciflua</i>	Sweetgum	Limited Use-Rotundiloba (Avail.)	Deciduous
<i>Liriodendron tulipifera</i>	Tulip Poplar	Limited Use	Deciduous
<i>Magnolia acuminata</i>	Cucumbertree		Deciduous
<i>Magnolia grandiflora</i>	Southern Magnolia	Bracken's Brown Beauty, Greenback	Evergreen
<i>Magnolia virginiana</i>	Sweetbay Magnolia		Deciduous
<i>Metasequoia glyptostroboides</i>	Dawn Redwood	Limited Use	Deciduous
<i>Nyssa sylvatica</i>	Black Gum		Deciduous
<i>Pinus echinata</i>	Shortleaf Pine		Evergreen
<i>Pinus taeda</i>	Loblolly Pine		Evergreen
<i>Platanus occidentalis</i>	Sycamore		Deciduous
<i>Quercus acutissima</i>	Sawtooth Oak		Deciduous
<i>Quercus alba</i>	White Oak		Deciduous
<i>Quercus bicolor</i>	Swamp White Oak		
<i>Quercus coccinea</i>	Scarlet Oak		Deciduous
<i>Quercus falcata</i>	Southern Red Oak		Deciduous
<i>Quercus georgiana</i>	Georgia Oak		Deciduous
<i>Quercus imbricaria</i>	Shingle Oak		Deciduous
<i>Quercus lyrata</i>	Overcup Oak		Deciduous
<i>Quercus laurifolia</i>	Laurel Oak		Deciduous
<i>Quercus michauxii</i>	Swamp Chestnut Oak		Deciduous
<i>Quercus macrocarpa</i>	Bur Oak		Deciduous
<i>Quercus nigra</i>	Water Oak		Deciduous

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Quercus nuttalli	Nuttall Oak		Deciduous
Quercus phellos	Willow Oak		Deciduous
Quercus prinus	Chestnut Oak	Availability	Deciduous
Quercus rubra	Northern Red Oak		Deciduous
Quercus shumardii	Shumard Red Oak		Deciduous
Quercus stellata	Post Oak		Deciduous
Quercus velutina	Black Oak		Deciduous
Taxodium distichum	Bald Cypress	Shawnee Brave	Deciduous
Tilia spp.	Linden		Deciduous
Thuja x 'Green Giant'	Arborvitae	'Green Giant'	Evergreen
Thuja plicata	Giant (Western) Arborvitae		Evergreen
Ulmus americana	American Elm	Princeton and other resistant varieties	Deciduous
Ulmus parviflora	Lacebark Elm	Allee, Athena, Bosque	Deciduous
Zelkova serrata	Japanese Zelkova	Green Vase	Deciduous

City of Stonecrest Understory and Other Small Trees Acceptable for Replanting Credits

Scientific Name	Common Name	Recommended	Leaf Habit
Acer barbatum	Florida Maple		Deciduous
Acer buergerianum	Trident Maple	Street Wise	Deciduous
Acer campestre	Hedge Maple		Deciduous
Acer leucoderme	Chalk Maple		Deciduous
Acer palmatum	Japanese Maple		Deciduous
Acer saccharum	Sugar Maple		Deciduous
Aesculus pavia	Red Buckeye		Deciduous
Alnus serrulata	Alder		Deciduous
Amelanchier x grandiflora	Serviceberry	Princess Diana, Autumn Brilliance	Deciduous
Aralia spinosa	Devils Walking Stick		Deciduous
Betula nigra	River Birch	Little King	Deciduous
Carpinus caroliniana	American Hornbeam		Deciduous
Castanea pumila	Chinkapin		Deciduous
Celtis tenuifolia	Georgia Hackberry		Deciduous
Celtis laevigata	Sugarberry		Deciduous
Cercidiphyllum japonicum	Katsura Tree		Deciduous
Cercis canadensis	Eastern Redbud		Deciduous
Cercis reniformis	Redbud	Oklahoma	
Chioanthus retusus	Chinese Fringetree		Deciduous
Chioanthus virginicus	White Fringetree		Deciduous
Cladrastis kentukea	Yellowwood		Deciduous
Cornus spp.	Dogwood	Florida and Kousa crosses	Deciduous
Cornus florida	Flowering Dogwood	Aurora	Deciduous

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Cornus kousa	Kousa Dogwood		Deciduous
Crataegus spp.	Hawthorn	Thornless cultivars	Deciduous
Crataegus phaenopyrum	Washington Hawthorn		Deciduous
Diospyros virginiana	Persimmon		Deciduous
Halesia carolina	Silverbell		Deciduous
Halesia diptera	Two Winged Silverbell		Deciduous
Hamamelis virginiana	Witch-hazel		Deciduous
Ilex spp.	Holly	Burford, Carolina #2, Foster, Neillie R. Stevens, Savannah, Yaupon	Evergreen
Ilex decidua	Possumhaw		Deciduous
Juniperus virginiana	Red Cedar		
Koelreuteria paniculata	Golden Raintree		Deciduous
Lagerstromia indica x faurieri	Crape Myrtle	Tree form cultivars disease resistant and hardy, eg., Choctaw, Natchez	Deciduous
Magnolia grandiflora	Southern Magnolia	Alta, Bracken's Brown Beauty, Greenback, Claudia Wannamaker	Evergreen
Magnolia x loebneri	Loebner Magnolia	Merrill	Deciduous
Magnolia macrophylla	Bigleaf Magnolia		Deciduous
Magnolia soulangiana	Saucer Magnolia		Deciduous
Magnolia stellata	Star Magnolia	Star Man	
Magnolia tripetala	Umbrella Magnolia		Deciduous
Magnolia virginiana	Sweetbay Magnolia		Evergreen
Malnus floribunda	Japanese Flowering Crabapple		Deciduous
Myrica cerifera	Waxmyrtle		Evergreen
Osmanthus americanus	Devilwood		Evergreen
Ostrya virginiana	Eastern Hophombeam		Deciduous
Oxydendrum arboreurn.	Sourwood		Deciduous
Pinus Virginiana	Virginia Pine	Slopes, Screen	Evergreen
Pistacia chinesis	Chinese Pistache		Deciduous
Prunus spp.		Okame, Autumnalis	Deciduous
Sassafras albidurn	Sassafras		Deciduous
Styrax americana	Snowbell		Deciduous
Ulmus alata	Winged Elm		Deciduous
Vaccinium arboreum	Sparkleberry		Evergreen

City of Stonecrest Recommended Trees for Under Powerlines

Scientific Name	Common Name	Recommended
Acer buergeranum	Trident Maple	

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Acer palmatum	Japanese Maple	
Cercis canadensis	Redbud	
Chionanthus retusus	Chinese Fringetree	
Chionanthus virginicus	White Fringetree	
Cornus spp.	Dogwood	Florida and Kousa crosses
Cornus florida	Flowering Dogwood	Disease resistant varieties, Aurora
Cornus kousa	Kousa Dogwood	
Crataegus phaenopyrum	Washington Hawthorn	
Ilex spp.	Holly	Nellie R. Stevens, tree form Burford, Yaupon
Koelreuteria paniculata	Golden Raintree	
Magnolia x loebneri	Loebner Magnolia	Merrill
Magnolia soulangiana	Saucer Magnolia	
Magnolia stellata	Star Magnolia	Star Man
Oxydendrum arboreum	Sourwood	
Prunus spp.		Okame, Autumnalis

Recommended Trees for Parking Lots

Scientific Name	Common Name	Recommended
Acer buergeranum	Trident Maple	Street Wise
Acer rubrum	Red Maple	October Glory, Red Sunset
Betula nigra	River Birch	Duraheat
Chionanthus virginicus	Fringetree	
Cladrastis kentukea	Yellowwood	
Crataegus phaenopyrum	Washington Hawthorn	
Juniperus virginiana	Red Cedar	Brodie
Ilex spp.		Tree form Yaupon, Burford, Carolina #2
Lagerstromia indica x faurier	Crape Myrtle	Tree form cultivars, disease resistant and hardy, eg. Natchez, Choctaw
Nyssa sylvatica	Black Gum	
Pistacia chinensis	Chinese Pistache	
Quercus michauxii	Swamp Chestnut Oak	
Quercus nigra	Water Oak	
Quercus nuttalli	Nuttall Oak	
Quercus palustris	Pin Oak	
Quercus phellos	Willow Oak	
Quercus rubra	Northern Red Oak	
Taxodium distichum	Bald Cypress	Shawnee Brave
Ulmus parvifolia	Lacebark Elm	Athena
Zelkova serrata	Japanese Zelkova	Green Vase



Planning and Zoning Department
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City of Stonecrest Guide for Tree Removal

1 The purpose and intent of the City of Stonecrest Tree Protection Ordinance (Article VI*) standards and guidelines is to facilitate the preservation and/or replacement of trees as a part of land development in the city. The citizens of the city and their many communities enjoy many benefits that can be directly attributed to our trees. The City of Stonecrest mayor and council finds that the preservation of existing trees is a public purpose that protects the public health, safety, general welfare and aesthetics of the City of Stonecrest and all its citizens.

It is also the intent to protect specimen and historical trees in a manner consistent with the City of Stonecrest Tree Protection Ordinance. Provide standards for the preservation of trees as part of the land development process. Prevent clear-cutting and mass grading of land that results in the loss of mature trees, and to ensure appropriate replanting when tree loss does occur. As well as protect trees during construction to enhance the quality of life in the City of Stonecrest.

The City of Stonecrest is aware that;

- ✓ Trees produce oxygen, which is essential to the well-being of all animal life, including humans.
- ✓ Trees help to reduce the amounts of airborne pollutants.
- ✓ Trees remove carbon dioxide, that is a major environmental concern due to its current high levels. Trees and their foliage intercept dust and particulate matter, thereby helping to purify our air and limiting health risks.
- ✓ Trees and their root systems reduce soil erosion and stormwater runoff. This decreases sedimentation problems and improves water quality.
- ✓ Trees provide food and shelter for desirable urban wildlife.
- ✓ Trees provide screening, which in turns aids in the reduction of noise and glare.
- ✓ Trees help moderate our air temperature to provide us with a comfortable environment.



- ✓ Trees provide scenic amenities to soften the harshness of city buildings and streets. They are aesthetically pleasing to all that view them.
- ✓ Trees may affect property values and can have a positive impact upon the economy of an area.
- ✓ Trees can enhance the natural functions of streams and related buffers.

As a part of the policy and procedures to regulate the tree canopy, The City of Stonecrest shall require that a **Notice of Tree Removal form** request be submitted for the removal of;

- Five (5) or fewer trees other than specimen size trees, on any single-family residential* property, within a calendar year.
- The removal of more than five (5) trees, other than specimen trees,
- Zoning conditions to a specific site plan providing that said zoning ordinance contains specific conditions for both tree preservation and tree replacement.
- Trees certified by the certified arborist or Director of Community Development that are diseased or infested.
- The removal of trees from horticultural properties, such as farms, nurseries or orchards. Not including tree harvesting.
- Tree removal that has become or threatens to become, a danger to human life or property.
- Agricultural zoned activities on land that require maintenance.
- Approved utility construction within permanent utility easements.
- Construction, expansion, and operation of (county) landfills.
- Building permits that do not require or authorize land disturbance.
- With the submission of a letter of intent with an application for a pre-application conference.
- With the submission of a tree survey and tree protection plan.
- All others as required and/or requested by the Community Development Department Director and the designated representative.

The written notice (*form attached*) shall contain a health/risk assessment conducted by a Certified Arborist. The **Notice of Tree Removal form** shall be submitted to the City of Stonecrest before any tree removal operations take place. Failure to do so shall be a violation.

A **Notice of Tree Removal form** is not required for any tree which has become, or threatens to become, a danger to human life or property as documented by a certified tree professional performing a tree risk assessment. Dead, diseased or hazardous trees may be removed at any time. *Section 14-517*. This assessment shall be conducted by a certified arborist.

A **Notice of Tree Removal form** is not required to remove any tree with a DBH less than 5”.

*The removal of up to five (5) healthy trees on a single-family residential property per calendar year is allowed without the submittal of a **Notice of Tree Removal** application, provided that these trees are not specimen trees.

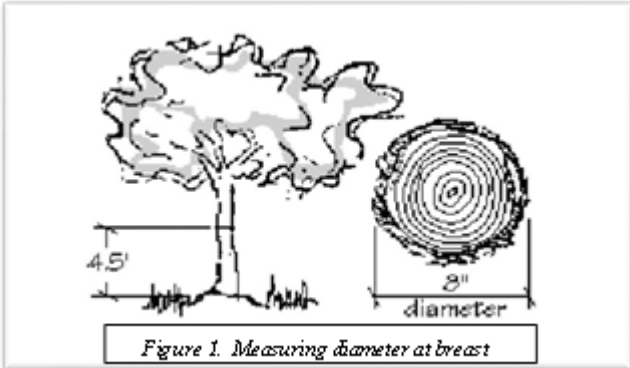
The removal of more than five (5) trees or specimen tree(s), from an owner-occupied, single-family lot may be approved if the owner must remove trees in order to build a new structure, to build an addition to or to make improvements to an existing structure, or to improve the health of other trees in the landscape. It is noted that additional permits, e.g., construction/building, clearing and grubbing, or land-disturbance permit,



may be required.

Trees must be removed within sixty (60) days after submittal of the Notification of Tree Removal form accompanied by a tree survey with an approved tree replacement plan and land disturbance permit.

A significant tree is any existing, healthy, living tree eight (8") inches or more in diameter when measured four and one-half feet (4.5') above the ground. This measurement is referred to as diameter at breast height, **DBH**, of the tree.



Circumference of Trunk $\div \pi = \text{DBH}$

Ex.: 25" Circumference $\div 3.14 = 8"$ DBH

Specimen Trees

A specimen tree is defined as a tree with a life expectancy of 15 years or more, with a healthy trunk with no extensive decay or hollow/cavity (less than 20%), and no major insect or pathological problem that meets the following size guidelines:

- Overstory large hardwoods trees, ex.: Oak, yellow poplar & pine – DBH is greater than or equal to 30 inches (which equates to a circumference of 94.2 inches). Large soft woods trees, ex: evergreens, pines DBH is equal to 30 inches.



- Understory (small) trees, ex: Dogwood, redbud – DBH is greater than or equal to 10 inches (which equates to a circumference of 31.4 inches).



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Guidelines and Procedures for Tree Removal

Compliance with City of Stonecrest Tree Ordinance

Sec. 14-518. - Procedures.

(a) Application Requirements

- (1) Pre-Application Conference: Applicant are encouraged to meet with Community Development Director discuss compliance with the City of Stonecrest Tree Ordinance prior to submitting any applications (Preliminary Plat, Development Application or Land Disturbance Application)
- (2) Tree Survey: Tree survey is required for Preliminary Plat, Land Disturbance Permit, Development Permit and Building Permit. All trees, 18 inches (DBH) and larger shall be identified. Specimen Trees shall be identified by size, species and location. Trees larger than two inches (DBH) may be identified and counted for unit credit on the tree protection plan.

(b) Tree Protection Plan: Tree Protection Plan shall be submitted as part of any Development Plan.

Sec. 14-520 Tree Preservation and Replacement Requirements

- (1) Either 120 inches (DBH) per acre or 25 percent of existing significant trees per acre of such significant trees, whichever is less, shall be preserved on the site. Trees located in stream buffers and state buffer zones, transitional buffer zones and designated floodplains shall not be counted in developments except sites zoned C-1, C-2, M or M-2.
- (2) There shall be at least two two-inch (DBH) over story trees in every front yard of properties zoned RE, RLG, R-100, R-85, and R-75. There shall be at least one two-inch (DBH) over story tree in every front yard of properties zoned RSM and R-60.
- (3) (i) All residential subdivisions shall have an average density of 15 density units per acre. Required trees may be located on individual lots or in subdivisions in which there is commonly-owned property may be located on such commonly-owned property.
(ii) All Nonresidential and multifamily developments, the quantity of total existing/replacement trees on-site must be sufficient so as to produce a total site density factor of no less than 30 density units per acre.
- (4) Procedures for calculating tree density shall be based on this section. (14-520 (4))
- (5) Nothing in these regulations shall be construed to allow the removal of any tree or vegetation in a required stream buffer, transitional buffer zone or state buffer zone except buffer improvements as authorized by the Director.
- (6) Existing trees between two caliper inches and 7.9 caliper inches may be used for credit on the tree replacement plan.
- (7) Tree preservation areas shall leave intact the naturally occurring groundcover and understory vegetation.
- (8) Specimen Trees
 - (a) Large hardwoods, i.e., oaks, hickories, yellow poplars, and similar species: 30 inches DBH.
 - (b) Large softwoods, e.g., pines, evergreens, and similar species: 30 inches DBH.
 - (c) Small trees, e.g., dogwoods, redbuds, sourwoods, and similar species: Ten inches DBH.
 - (d) Any specimen tree removed from a parcel shall be replaced by 1.5 times the equivalent inches (DBH) of replacement trees or existing trees in excess of the requirements of this section, tree preservation and replacement requirements, using species with potentials for comparable size and quality at maturity. Permits, unless exempted otherwise by the County Arborist, are required for the removal of a specimen tree or the removal of more than five (5) trees with a DBH of more than 5" on residential, single-family, properties.

A Notification of Tree Removal is not required to remove any tree with a DBH less than 5" as well as dead, diseased or hazardous trees as assessed by a certified tree professional.

Trees must be removed within sixty (60) days after approval of the submitted Notification of Tree Removal application approved by the City of Stonecrest.



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**CITY OF STONECREST OF COMMERCIAL TREE
REMOVAL APPLICATION**

Address of Proposed Tree Removal:							
Name of Owner:							
Owner's Address:							
Owner's Phone Number and Email Address:							
Name of Applicant and Certification Number:							
Name of Tree Company:							
Applicant's Phone Number and Email Address:							
The Owner or Authorized Agent hereby applies for a Permit for the purpose of removing the following tree(s):							
Tree Species	Reason for Removal	DBH (inches)	Specimen? (Y/N)	Dead? (Y/N)	75' Buffer? (Y/N)	Boundary? (Y/N)	Target in Drop Zone? (Y/N)
Number of existing trees 2" DBH or greater remaining on property after removal:							
Property Lot/Size in Acres:				Type of Commercial Development:			
Signature of Certified Arborist:							
Signature of Authorized Staff:							

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TREE CONDITION EVALUATION GUIDELINE

A tree's condition is determined by assessing the tree's roots, trunk, limb/branch structure, twigs and foliage. The conditions are identified on each component of the tree. This is a guideline only.

ROOTS

- ✓ Root anchorage.
- ✓ Restricted root system relative to canopy.
- ✓ Mechanical injury.
- ✓ Girdling roots.
- ✓ Compaction or water-logged roots.
- ✓ Presence of insects or diseases.

TRUNK

- ✓ Sound bark and wood, no cavities.
- ✓ Upright trunk (well tapered).
- ✓ Included bark between co-dominant stems.
- ✓ Mechanical or fire injury.
- ✓ Cracks.
- ✓ Swollen or sunken area.
- ✓ Presence of insects and diseases.

LIMB AND BRANCH STRUCTURE

- ✓ Strong attachments, no included bark.
- ✓ Free of decay and cavities.
- ✓ Well proportioned, good form.
- ✓ Wound closure.
- ✓ Dead limbs/epicormic sprouting.
- ✓ Presence of decay, insects and diseases.

TWIGS

- ✓ Shoot vigor compared to past 3-year growth.



- ✓ Presence of weak or dead twigs.
- ✓ Presence of insects and diseases.

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The Recognition of Hazardous Trees

Pollards
Often indicated by a sudden change in stem diameter. Decay may be present but hidden by regrowth.

Break-out cavity
Decay may develop in wounds caused by branches breaking.

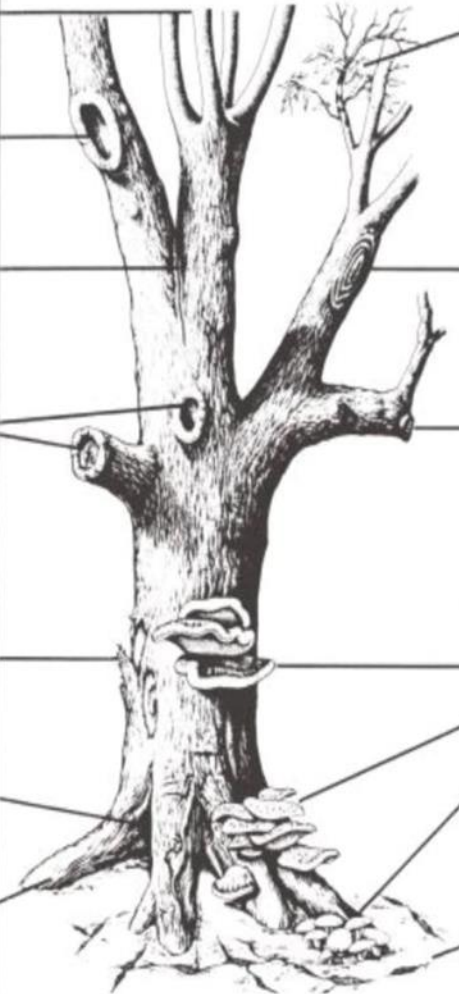
Weak fork
Tight V-shaped crotches may be structurally weak, sometimes giving rise to cracks; decay can develop in them.

Pruning wounds
The wound surface or a layer of paint (if present) may appear sound but the wood behind may be decayed.

Loose bark
Bark coming away from the stem may indicate the presence of rotten wood beneath.

Basal cavities in the wood
These are particularly dangerous if present between more than one pair of buttresses.

Damaged roots
Site disturbance may sever or kill roots; poor soil conditions may lead to restricted rooting. Tree stability may be affected.



Leaves (or needles), Dead twigs and branches
Generally small, sparse or pale. Tree flushes late or drops its leaves early. These symptoms sometimes indicate root decay or death.

Perennial or target canker
Such cankers may result in weakness of branch or stem.

Abrupt bends
Resulting from past breakage or pruning. Decay may be present.

Fungal fruit bodies
Bracket fungi on the stem are positive indicators of internal decay. Fruit bodies on or near roots may indicate they are decayed, but the species of fungus should be identified as many harmless or beneficial kinds also grow in this area.

Soil cracks
Heaving of ground may occur when a tree with an unstable root system moves in a wind.

Courtesy of <http://arbor-talk.co.uk>

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CITY OF STONECREST
NOTICE OF
TREE REMOVAL

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Address of Proposed Tree Removal:							
Name of Owner:							
Owner's Address:							
Owner's Phone Number and Email Address:							
Name of Applicant and Certification Number:							
Name of Tree Company:							
Applicant's Phone Number and Email Address:							
The Owner or Authorized Agent hereby applies for a Permit for the purpose of removing the following tree(s):							
Tree Species	Reason for Removal	DBH (inches)	Specimen? (Y/N)	Dead? (Y/N)	75' Buffer? (Y/N)	Boundary? (Y/N)	Target in Drop Zone? (Y/N)
Number of existing trees 2" DBH or greater remaining on property after removal:							
Property Lot/Size in Acres:				Year Home Built:			
Signature of County Arborist:							



❖ **Reason(s) for removal(s):**

- **Addition to a Single-Family House:** (must include scaled site plan depicting location of proposed addition and tree(s) to be removed).
- **Pool:** (must include scaled site plan depicting location of pool/pool deck on property and tree(s) to be removed).
- **Retaining Wall or Fence installation.**
- **Septic Tank and/or Well:** (must include Public Health Department Permit and approved site plan).
- **Unhealthy or Damaged Tree(s):** Includes but is not limited to insect or fungal damage, lightning strike, inadequate area for healthy growth.
- **Other** (specify).

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I HEREBY CERTIFY that the site plan and tree survey is a true representation of all facts concerning the proposed tree removal activity. This application is made with my approval as Owner or Authorized Agent for the Owner, as evidenced by my signature below. FOR THE DURATION OF THE TREE REMOVAL ACTIVITIES, I ASSUME LEGAL RESPONSIBILITY FOR ANY AND ALL VIOLATIONS OF THE CITY OF STONECREST LAND DEVELOPMENT CODE AND PERMIT CONDITIONS ON THE PROPERTY DESCRIBED ABOVE.

Name of Owner or Authorized Agent (Please print)

Signature of Owner or Authorized Agent

Date



CITY OF STONECREST NOTICE OF TREE REMOVAL

SITE PLAN

- Include tree(s) to be removed and existing trees, existing structures, fence, gates, driveway and frontage street, sidewalks, stream and transition buffers. Note whether trees are located in a buffer or on a property line, i.e., boundary tree.
- Include above and below ground utilities including electrical, phone, cable, water, sewer and fire hydrants, street signs and intersection, streetlamps/lighting poles.
- Include proposed addition/improvements and tree(s) to be removed and tree(s) to remain.
- Submit photographs with this site plan. Photos must include an overall picture of the subject tree and its relationship with a building structure. Also, several close-up photos of the tree's hazardous conditions must be provided.

CITY OF STONECREST CERTIFIED ARBORIST AFFIDAVIT

I _____ am an ISA Certified Arborist. I understand the City of Stonecrest Ordinance regarding **Notice of Tree Removal, Replacement and Recompense, guidelines**. Based on this knowledge, I attest the trees identified on the accompanying **Notice of Tree Removal form** fulfill one or more of the criteria of the City's Ordinance.

I attest that the tree(s) on the attached application should be removed for the following reasons:

1. **The tree is unhealthy or damaged for which there is no practical remedy to assist with its preservation (explain).**
2. **The tree is causing damage to public or private property for which there is no other remedy to resolve (explain).**
3. **The tree is interfering with the installation or function of solar energy equipment, line of sight at intersection, above or below ground utilities.**
4. **The tree is unsightly or is in undesirable condition as a result of a previous site disturbance or tree density issue (explain).**

I assume responsibility for any and all violations of any codes or ordinances related to tree removal and permit conditions as identified for this property.

Name: _____ ISA or ASCA Certification Number: _____

Certified Arborist: _____ Date: _____

