CITY OF STONECREST, GEORGIA

Honorable Mayor Jason Lary, Sr.

Council Member Jimmy Clanton, Jr. – District 1 *Council Member Rob Turner- District 2*

Council Member Jazzmin Cobble – District 3 *Council Member George Turner- District 4*

Council Member Diane Adoma – District 5

WORK SESSION AGENDA

October 11, 2017
6:00P p.m.
Stonecrest Library
3123 Klondike Road, Lithonia, Georgia

I. **CALL TO ORDER:** Mayor Jason Lary

II. **ROLL CALL:** Brenda James, Interim City Clerk

III. **PRESENTATION:** Dr. Barbara Lee

IV. **AGENDA ITEMS:**

1. Intergovernmental Agreement for Business Licenses and Related Taxes with Dekalb County

2. Ordinance to Amend Chapter 4 – Alcoholic Beverage of the City of Stonecrest

3. Discussion on Short-Term Vacation Rentals FAQ's and Recommendations

4. Ordinance to Adopt Article IV-Cable Television in Chapter 8- Franchises

5. Discussion on Blighted Properties in the City of Stonecrest

V. **MAYOR AND COUNCIL COMMENTS:**

VI. **ADJOURNMENT:**

VII. **EXECUTIVE SESSION:**

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

THE CITY OF
STONECREST
GEORGIA

CITY COUNCIL AGENDA ITEM

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

( )	ORDINANCE	( )	POLICY	( )	STATUS REPORT
( )	DISCUSSION ONLY	( )	RESOLUTION	(X)	OTHER

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

SUBMITTED BY: Attorney Laura Cosgray

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

HISTORY:

FACTS AND ISSUES:

OPTIONS:

RECOMMENDED ACTION: Discussion and Recommendation of Council

September 30, 2017

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 1
DEFINITIONS

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

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

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

ARTICLE 2
TERM OF AGREEMENT

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

ARTICLE 3
COMPENSATION AND CONSIDERATION

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

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

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

ARTICLE 4
SERVICES

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

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

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

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

ARTICLE 5
EMPLOYMENT STATUS

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

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

ARTICLE 6
RECORDKEEPING AND REPORTING

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

ARTICLE 7
TRANSITION

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

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

ARTICLE 8
CURE

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

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

ARTICLE 9
AMENDMENTS

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

ARTICLE 10
NOTICES

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

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

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

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

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

ARTICLE 11
NON-ASSIGNABILITY

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

ARTICLE 12
ENTIRE AGREEMENT

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

ARTICLE 13
SEVERABILITY, VENUE AND ENFORCEABILITY

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

ARTICLE 14
BINDING EFFECT

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

ARTICLE 15
COUNTERPARTS

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

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

September 30, 2017

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

DEKALB COUNTY, GEORGIA

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

ATTEST:

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

APPROVED AS TO FORM:

____
Terry G. Phillips
Senior Assistant County Attorney

APPROVED AS TO SUBSTANCE:

____
Zachary L. Williams
Executive Assistant

THE CITY OF STONECREST, GEORGIA

____________________________ (SEAL)
Jason Larry, Sr.
Mayor

APPROVED AS TO FORM:

____
Municipal Clerk (SEAL)

APPROVED AS TO SUBSTANCE:

____
Thompson Kurrie, Jr.
City Attorney

THE CITY OF STONECREST GEORGIA

CITY COUNCIL AGENDA ITEM

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

(X)	ORDINANCE	( )	POLICY	( )	STATUS REPORT
( )	DISCUSSION ONLY	( )	RESOLUTION	( )	OTHER

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

SUBMITTED BY: Attorney Janelle Alleyne

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

HISTORY:

FACTS AND ISSUES:

OPTIONS:

RECOMMENDED ACTION: Discussion and Recommendation of Council

STATE OF GEORGIA
COUNTY OF DEKALB
CITY OF STONECREST ORDINANCE 2017-_______

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

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

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

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

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

NOW THEREFORE BE IT ORDAINED:

SECTION I.

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

Sec. 4.3.1. – Alcohol Review Board establishment; composition

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

(b) At the initial appointment of the ARB, to occur within 30 days of the passing of this ordinance, Mayor and Council shall direct three (3) of the five (5) members to serve a term of two (years). The remaining members shall serve a term of one (1) year.

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

SECTION II.

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

Sec. 4.3.2. - Alcoholic beverage appeals.

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

(a) To hear appeals from decisions of the City Manager or his designee denying the issuance or renewal of any license pertaining to the sale of alcoholic beverages in the city;

(b) To hear appeals from the decisions of the City Manager or his designee revoking or suspending any license pertaining to the sale of alcoholic beverages in the city;

(c) To hear appeals from the decisions of the City Manager or his designee denying the issuance of permits pertaining to employment in a licensed establishment;

(d) To hear appeals from the decisions of the City Manager or his designee revoking or suspending an employee permit to an employee of a licensed establishment.

SECTION III.

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

Sec. 4.3.3. - Hearings.

(a) No license or permit under this chapter shall be denied, suspended or revoked without the opportunity for a hearing as hereinafter provided.

(b) The City Manager or his designee shall provide written notice to the applicant or licensee of the decision to deny, suspend or revoke the license or permit. Such written notification shall notify the applicant or licensee of the right of appeal. Any applicant or licensee who is aggrieved or adversely affected by a final action of the City Manager or his designee may have a review thereof by appeal to the alcoholic beverage appeals hearing officer. Such appeal shall be by written petition filed with the city clerk within fifteen (15) days from the final decision or action by the city.

(c) A hearing shall be conducted on each appeal within thirty days of the date of filing of the appeal, unless a continuance of such date is agreed to by the appellant and the issuing department. The appellant at such hearing shall have the right to be represented by an attorney at the expense of the appellant, and to present evidence, cross-examine witnesses, and have the hearing transcribed.

(d) ~~A majority of the members of the ARB shall constitute a quorum. All findings of the ARB must be approved by a majority of the quorum.~~ The City Manager shall develop additional hearing rules, which shall comply with the guidelines of due process set forth in O.C.G.A § 3-3-2(b).

(e) The findings of the ARB shall be forwarded to the appellant and the City at the conclusion of the hearing.

(f) The findings of the ARB shall be final unless appealed within thirty (30) days of the date of the findings by certiorari to the superior court of the county.

SECTION IV.

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

SECTION V.

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

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

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

SECTION VI.

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

SECTION VII.

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

SECTION VIII.

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

ORDAINED this _______ day of __________________, 2017.

CITY OF STONECREST, GEORGIA

____
Jason Lary, Sr, Mayor

ATTEST:

____
Brenda James, Acting City Clerk

APPROVED AS TO FORM BY:

____
Thompson Kurrie, City Attorney

Coleman | Talley

ATTORNEYS

VALDOSTA | ATLANTA

A Limited Liability Partnership

colemantalley.com

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

MEMORANDUM

To:

From: Janelle Alleyne

Date: October 4, 2017

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

Current Ordinance – Appeal Heard by Board with 5 Members

Establishes an Alcohol Review Board for the City of Stonecrest.

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

Amendment Option 1 – Appeal Heard by Board with 3 Members

Same as Current Ordinance EXCEPT:

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

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

Establishes an Alcohol Review Board for the City of Stonecrest.

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

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

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

STATE OF GEORGIA
COUNTY OF DEKALB
CITY OF STONECREST ORDINANCE 2017-_______

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

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

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

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

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

NOW THEREFORE BE IT ORDAINED:

SECTION I.

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

Sec. 4.3.1. – Alcohol Review Board establishment; composition

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

(b) At the first appointment of the alcohol review board, Mayor and Council shall direct two (2) of the three (3) members shall serve a term of two (years). The remaining member shall serve a term of one (1) year.

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

SECTION II.

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

Sec. 4.3.3. - Hearings.

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

SECTION III.

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

SECTION IV.

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

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

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

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

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

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

ORDAINED this ______ day of _________________, 2017.

CITY OF STONECREST, GEORGIA

____
Jason Lary, Sr, May

ATTEST:

____
Brenda James, Acting City Clerk

APPROVED AS TO FORM BY:

____
Thompson Kurrie, City Attorney

THE CITY OF
STONECREST
GEORGIA

CITY COUNCIL AGENDA ITEM

SUBJECT: DISCUSSION ON SHORT-TERM VACATION RENTALS FAQ'S AND RECOMMENDATIONS

( )	ORDINANCE	( )	POLICY	( )	STATUS REPORT
( )	DISCUSSION ONLY	( )	RESOLUTION	(X)	OTHER

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

SUBMITTED BY: Attorney Janelle Alleyne/Emily Preston

PURPOSE: This is a discussion on short-term vocation rentals.

HISTORY:

FACTS AND ISSUES:

OPTIONS:

RECOMMENDED ACTION: Discussion and Recommendation of Council

Coleman | Talley

ATTORNEYS

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MEMORANDUM

To: Mayor and City Council

From: Coleman Talley LLP

Date: August 25, 2017

Re: City of Stonecrest – Short-Term Vacation Rentals FAQs and Recommendations

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What are short term vacation rentals?

Short-Term Vacation Rentals ("STVR"), sometimes referred to as Short Term Rentals ("STR"), are, generally, a class of rentals which accommodate guests for a period of less than 30 days. These rentals are usually advertised on one of many Short-Term Rental Services (also referred to as "lodging marketplaces") such as AirBnB, Homeaway, and Innclusive.

Have any studies been conducted on STVRs?

In its 2015 legislative session the Georgia Legislature established, through HR 810, the House Study Committee on Short Term Rental Providers. This committee was formed with the purpose of "determining the best methods to ensure the safety of the public, prevent[ing] illegal practices, collect[ing] taxes on business activities, and otherwise properly regulat[ing] short-term rental providers." At the culmination of its existence, the Committee recommended several policies for STVRs which are rented "for more than 15 days per calendar year."

Are there any common concerns with STRVs?

There appear to be two common issues with STRVs:

1) a lack of heath and safety requirements, and
2) lost tax revenue for cities and states.

Does Georgia have any law regarding STRVs?

Towards the end of the 2017 legislative session, House Bill 579 was introduced. This proposed bill contained the following provisions:

1) Prevents municipalities from prohibiting STVRs;
2) Prevents municipalities from enacting any ordinance which restricts STVRs based on their classification, use or occupancy;
3) Allows municipalities to enact regulations of STRVs for the "protection of public health and safety, including rules and regulations related to fire and building codes, health and sanitation, transportation or traffic control, solid or hazardous waste, and pollution control;"
4) Provides the option for lodging marketplaces to register with the Department of Revenue and remit taxes received from marketplace rental directly to the State of Georgia. The Department of Revenue, in turn, will remit the applicable tax to the consolidated government in a "uniform manner."

HB 579 was not voted on in the House of Representatives.

How have other cities handled STVRs?

<u>Savannah</u>

- The first city in the State of Georgia to address STVR was Savannah, adopting an ordinance in January of 2015.
- The ordinance established a certification process and method for taxing and licensing the rentals (required a business tax certificate).
- The city received 90 complaints since the ordinance's adoption in January 2015.
- The city has taken 296 enforcement actions related to certification, occupancy, quality of life, documentation, exterior appearance, taxes, and agent info.
- As of May 1, 2017 there were 748 certified vacation rentals in the city.
- The July 2017 amendment limits the number of vacation rentals that can operate in the city, and places caps on how many STVRs can be located on a block or street due to concerns among the Savannah City Council members and residents that neighborhoods are being overrun with visitors.
- The new proposal would also require property owners to live onsite for new vacation rentals in more residential areas, and there could be a maximum number of days a property can be rented.

<u>Tybee Island</u>

- Tybee Island adopted its own STVR rules in May of 2016.
- The new ordinance provided protocol for collecting unpaid hotel/motel taxes from vacation rental owners, and adopted a city-wide ordinance that establishes a new registration process for these rentals going forward.
- Vacation rental owners and managers represent approximately 35 percent of the island's property — about 1,200 out of 3,366 properties
- Residents of the city complained that guests of short-term vacation rentals were contributing to issues with parking, litter and noise.
- Registration for each property is set at $25 a year.
- The ordinance requires each rental to post emergency contact information on a sign outside.
- Requires payment of the hotel/motel tax
- Properties caught operating as vacation rentals without paying the required taxes will receive a letter from the city notifying them of noncompliance. They'll then be given 15 days to pay the required fees

before the city marshal issues a citation and the city pursues "appropriate remedies for the collection of the tax.

Recommendations for the City of Stonecrest, Georgia:

At the time of drafting of this memo, a search on AirBnB revealed approximately 10 homes in Stonecrest available for short term rental, approximately 7 homes on Homeaway, and 0 homes on Innclusive. In the age of the internet, there are many backdoor rental outlets, such as Craigslist, for individuals to post their homes for short term, and long term, rental. This fact poses special difficulty on the enforcement of regulations specific to STVRs with the possibility of a small revenue returned to the city.

While the City of Stonecrest has a vested interest in keeping citizens and visitors safe, the difficulty presented in regulating these entities coupled with the possibility of statewide regulation in the next legislative session makes it difficult to draft an ordinance that will stand the test of time. However, if Mayor and Council wish to implement business regulations on STVRs immediately, the City Attorney's office is happy to draft an ordinance requiring a business license for those individuals who wish to use their property as a Short Term Vacation Rental.

Georgia House of Representatives

House Study Committee on Short-Term Rental Providers

Members of the Committee

Representative Terry Rogers, Chairman

Representative Matt Dollar

Representative Spencer Frye

Representative Jan Tankersley

Representative Tom Taylor

Staff

Brian Groome

Policy Analyst

House Budget and Research Office

Introduction

HR 810, adopted during the 2015 legislative session, established the House Study Committee on Short-Term Rental Providers. The committee was chaired by Representative Terry Rogers and the other members of the committee included Representatives Matt Dollar, Spencer Frye, Jan Tankersley, and Tom Taylor. HR 810 tasked the committee with determining the best methods to ensure the safety of the public, prevent illegal practices, collect taxes on business activities, and otherwise properly regulate short-term rental providers. The committee was allowed a total of three meetings and utilized two of those meetings to hear from stakeholders and the final meeting to present its recommendations. The meetings were held in the Coverdell Legislative Office Building in Atlanta.

Hearings

The House Study Committee on Short-Term Rental Providers met three times. The first meeting was held on Tuesday, September 22, 2015 in room 606 of the CLOB. During this meeting, the committee members were given the opportunity to express their interest in the subject as well as what they hoped to accomplish while being a part of the committee. The committee also heard testimony from the following:

- Jillian Irvin, Public Policy Director, Airbnb, Inc.
- Ashley Hodgini, Government Relations Specialist, HomeAway, Inc.
- Jim Sprouse, Executive Director, Georgia Hotel and Lodging Association (GHLA)
- Jennifer Herman, Assistant City Attorney, and Bridget Lidy, Director of Tourism Management and Ambassadorship, City of Savannah
- Public Comment
    - Jim Renner, St. Simon's Island resident
    - Holly McHaggee, President, Georgia Innkeepers Association
    - John Barbour, Director of Government Affairs, Georgia Association of Realtors

The second meeting was held on October 6, 2015 in room 506 of the CLOB. During this meeting the committee heard testimony from the following:

- Lynne Riley, Commissioner, and Amy Oneacre, Assistant Director of Tax Policy, Georgia Department of Revenue
- John Sours, Director, Consumer Protection Unit of the Georgia Department of Law
- Catherine Fleming, Government Relations Associate, Georgia Municipal Association (GMA)
- Shaun Adams, Associate Legislative Director, Association County Commisioners of Georgia (ACCG)
- Matt Kiessling, Director of Coalitions and Grassroots, The Travel Technology Association
- Robert Trim, Public Relations Liaison, The Asian American Hotel Owners Association
- Haydon Stanley, Government Relations Consultant, Georgia Apartment Association

- Lanier Coulter, Jr., Legislative Action Committee Chair, Georgia Chapter of the Community Associations Institute
- Public Comment
  - Peter Bassett, Airbnb host
  - Pamela and Mike Smith, Airbnb hosts
  - James Lane, Airbnb host
  - Alix Patino, Airbnb host

Written testimony was received from the following:

- Ben Edwards, President, Vacation Rental Managers Association
- Kirsten Simmons, Airbnb host

After hearing from various stakeholders, the committee had a solid understanding of the issues surrounding short-term rental providers. The common message received from the traditional lodging groups was that short-term rentals are able to compete for the same guests as traditional lodging without having to pay the same taxes/fees or meet the same health and safety and insurance requirements as traditional lodging. The short-term rental groups specified that they are not hotels and stated that one day they are a residence and the next they may be a short-term rental. However, the groups acknowledged the lack of health and safety requirements and generally agreed and welcomed fair and basic regulations including insurance requirements, basic safety requirements (smoke and carbon monoxide detectors, fire extinguishers), and occupancy limits, but disagreed with the idea that they are competing for the same guests. Many short-term rentals are located in areas where traditional lodging is not available, and guests of short-term rentals are not interested in traditional lodging because they would rather have the amenities provided by a residence. There are also instances where an annual event brings a significant influx of travelers to an area for a short period of time. During these times, short-term rentals are available to cover the excess. Several short-term rental groups mentioned the following statement of the United States Conference of Mayors: "onerous regulations of short-term rentals can drive the industry underground, thus evading local regulations and local hotel taxes", and, "fair regulation of short-term rentals ensures greater compliance and greater receipt of local hotel taxes."

Companies operating in the short-term rental market are not all alike. For instance, two major companies, Airbnb, Inc. and HomeAway, Inc. (VRBO, HomeAway, VacationRentals.com, and others), both act as a classified ad for short-term rentals, but one main distinction is that Airbnb, Inc. also processes payments. By processing payments, Airbnb has the ability to remit state and local taxes on behalf of the hosts and currently does in many localities and some states. Since HomeAway, Inc. does not utilize this same business model, it does not have the ability to remit taxes on behalf of the property owners.

The City of Savannah was the first city in Georgia to address the issue of short-term rentals. The Savannah City Council approved an ordinance regarding short-term rentals in November 2014. The ordinance addresses the unique features of Savannah in a way that protects the historical nature of the city while also allowing for short-term rentals. There are also many Homeowner's Associations, Property Owner's Associations, Condo Owner's Associations, and Apartment complexes that currently regulate short-term rental activity through covenants or other rules.

The Georgia Department of Revenue explained what is currently required of short-term rentals, what it is doing to educate short-term rental owners, and what it sees as the largest challenge in dealing with short-term rentals. All short-term rental providers should be paying the state sales and use tax and local hotel/motel taxes. They were not able to provide an amount of tax generated from the industry in past years because the short-term rentals are included in the same NAICS code as traditional lodging. To help ensure that all taxes are being paid by short-term rental providers, the Department has held training sessions in Blue Ridge, an area highly utilized by the short-term rental market. In order to more easily collect taxes from short-term rentals, the department suggested a legislative change that would allow the commissioner to require the company listing the short-term rental to be responsible for paying the taxes associated with that rental.

Committee Recommendations

After a comprehensive review of the short-term rental market in Georgia, the committee understands the complexities that it entails. The fact that many of these properties are someone's primary or secondary residence and not a business asset is not lost. However, homeowner's who frequently utilize their primary or secondary residence as a reliable source of income, is in essence utilizing that property as a business asset. It is with that in mind that the committee has proposed the following recommendations for all short-term rentals that are rented for more than 15 days per calendar year:

- The committee understands the diversity present in Georgia cities and counties and recommends that regulations regarding the operation of short-term rentals be made at the local level.
- The committee would like to urge ACCG and GMA to draft recommended statewide safety and insurance minimums regarding short-term rentals.
- The committee views Homeowner's Associations, Property Owner's Associations, and Condo Owner's Associations as a hyper-local government and wants to continue to allow those organizations to govern short-term rentals through covenants.
- The committee recommends that the $5 hotel/motel fee be extended to include short-term rentals.
- The committee would like to urge the Department of Revenue as well as all local revenue offices to enter into a Memorandum of Understanding with any short-term rental related business that processes payments to collect and remit the applicable taxes on the property owner's behalf.
- Although the committee understands the challenges facing the Department of Revenue, at this time the committee does not believe a legislative change that would allow the Commissioner of the Department of Revenue to mandate that all applicable taxes be paid by the company listing the property for rent is necessary. The committee would like for its recommendation to have time to be implemented and evaluated before any legislative changes are made.

- The committee would like to urge all short-term rental posting companies to incorporate an acknowledgment of tax liability when a property owner signs up to post their property.
- The committee recognizes that it is impossible to collect 100% of all state and local taxes due but would like to urge the Department of Revenue to continue to provide training regarding state taxes due on short-term rentals in communities with a high number of short-term rental properties. In addition, the committee urges all local entities to be aware of the short-term rental market in their area and to ensure that all local taxes due are collected.

Respectfully Submitted,

Terry Rogers

Chairman

LexisNexis®

User Name: Janelle Alleyne

Date and Time: Wednesday, August 09, 2017 9:18:00 AM EDT

Job Number: 51638601

Documents (8)

1. *Sec. 34-260 Purpose and intent.*

   Client/Matter: 11000.004ct

   Search Terms: "short term vacation rental"

   Search Type: Natural Language

   Narrowed by:

Content Type	**Narrowed by**
Statutes & Legislation	All Jurisdictions: Georgia

2. *Sec. 34-261 Application.*

   Client/Matter: 11000.004ct

   Search Terms: "short term vacation rental"

   Search Type: Natural Language

   Narrowed by:

Content Type	**Narrowed by**
Statutes & Legislation	All Jurisdictions: Georgia

3. *Sec. 34-262 Registration fee/renewal.*

   Client/Matter: 11000.004ct

   Search Terms: "short term vacation rental"

   Search Type: Natural Language

   Narrowed by:

Content Type	**Narrowed by**
Statutes & Legislation	All Jurisdictions: Georgia

4. *Sec. 34-263 Good neighbor policy.*

   Client/Matter: 11000.004ct

   Search Terms: "short term vacation rental"

   Search Type: Natural Language

   Narrowed by:

Content Type	**Narrowed by**
Statutes & Legislation	All Jurisdictions: Georgia

5. *Sec. 34-264 Signs.*

   Client/Matter: 11000.004ct

   Search Terms: "short term vacation rental"

   Search Type: Natural Language

Narrowed by:

Content Type	Narrowed by
Statutes & Legislation	All Jurisdictions: Georgia

6. *Sec. 34-265 Emergency contact.*

Client/Matter: 11000.004ct

Search Terms: "short term vacation rental"

Search Type: Natural Language

Narrowed by:

Content Type	Narrowed by
Statutes & Legislation	All Jurisdictions: Georgia

7. *Sec. 34-266 Compliance.*

Client/Matter: 11000.004ct

Search Terms: "short term vacation rental"

Search Type: Natural Language

Narrowed by:

Content Type	Narrowed by
Statutes & Legislation	All Jurisdictions: Georgia

8. *Secs. 34-267, 34-299 Reserved.*

Client/Matter: 11000.004ct

Search Terms: "short term vacation rental"

Search Type: Natural Language

Narrowed by:

Content Type	Narrowed by
Statutes & Legislation	All Jurisdictions: Georgia

Tybee Island, Georgia Code of Ordinances Sec. 34-260

THE CODE of TYBEE ISLAND, GEORGIA Codified through Ordinance No. 02-2017, enacted January 12, 2017. (Supp. No. 19)

Georgia Municipal Codes > Georgia > Tybee Island Code of Ordinances > PART II - CODE OF ORDINANCES > Chapter 34 - LICENSES, PERMITS AND MISCELLANEOUS BUSINESS REGULATIONS > ARTICLE VIII. SHORT-TERM RENTAL PROPERTIES

§ Sec. 34-260 Purpose and intent.

(a) The purpose of this article is to establish regulations for the use of residential dwelling units as short-term vacation rentals and to ensure the collection and payment of hotel/motel fees and occupation tax certificate fees.

(b) "Short-term vacation rental" means an accommodation for transient guests where, in exchange for compensation, a residential dwelling unit is provided for lodging for a period of time less than 30 consecutive days. Such use may or may not include an on-site manager. For the purposes of this definition, a residential dwelling shall include all housing types and shall exclude bed and breakfast accommodations as they are defined by the City of Tybee's Land Development Code. This is also identified as "STVR".

(c) An owner shall be required to designate an agent for any short-term vacation rental unit, whose responsibility it will be to comply with the requirements of this section on behalf of the owner. The owner may be the agent.

(d) "Short-term vacation rental agent" is a local contact person designated by the owner who shall be available at all times to respond to complaints regarding the condition, operation, or conduct of occupants of the STVR. Such person is customarily present at a location within the city for purposes of transacting business, and is responsible for taking remedial action to promptly resolve issues.

(e) 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 residential dwellings unit as a short-term vacation rental unit.

HISTORY NOTE:

(Ord. No. 2016-07B , 5-26-2016)

Annotations

Notes Applicable To Entire Article

EDITORS NOTE:

Ord. No. 2016-07B , adopted May 26, 2016, set out provisions intended for use as Art. VII, 34-195, 34-201. Inasmuch as there were already provisions so designated, these provisions have been included as Art. VIII, 34-260, 34-266.

Effective date of Ord. No. 2016-07B is May 26, 2016.

End of Document

§ Sec. 34-261 Application.

(a) Within 90 days of the effective date of the ordinance from which this article is derived, no person shall rent, lease or otherwise exchange for compensation all or any portion of a dwelling unit as a short-term vacation rental, as defined in section 34-260, without the owner or rental agent first obtaining an occupation tax certificate and registering each STVR with the city.

(b) The city must be notified in writing within seven days when there is a change in property ownership, management, agent, or emergency contact. Failure to do so will void any registration.

(c) Registrant for a short-term vacation rental shall submit, on an annual basis a registration for a short-term vacation rental to the City of Tybee Island. The registration shall be furnished on a form specified by the city manager, accompanied by a non-refundable registration fee as established by city council and on file with the clerk. 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; and,

(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 or her 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 34-265.

(d) The registration form pursuant to this section shall be processed, and added to a database to be kept by staff 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.

HISTORY NOTE:

(Ord. No. 2016-07B , 5-26-2016)

Annotations

Notes Applicable To Entire Article

EDITORS NOTE:

Ord. No. 2016-07B , adopted May 26, 2016, set out provisions intended for use as Art. VII, 34-195, 34-201. Inasmuch as there were already provisions so designated, these provisions have been included as Art. VIII, 34-260, 34-266.

Effective date of Ord. No. 2016-07B is May 26, 2016.

End of Document

THE CODE of TYBEE ISLAND, GEORGIA Codified through Ordinance No. 02-2017, enacted January 12, 2017.
(Supp. No. 19)

Georgia Municipal Codes > Georgia > Tybee Island Code of Ordinances > PART II - CODE OF ORDINANCES > Chapter 34 - LICENSES, PERMITS AND MISCELLANEOUS BUSINESS REGULATIONS > ARTICLE VIII. SHORT-TERM RENTAL PROPERTIES

§ Sec. 34-262 Registration fee/renewal.

(a) The short-term vacation rental application shall be accompanied by an initial registration fee and subject to an annual registration fee every January 1 thereafter, as established by the mayor and city council.

(1) The 2016 rental registration fee shall be $0.00 per rental unit.

(2) The annual registration fee thereafter shall be $25.00 per rental unit. A registration fee is valid from the date the completed registration is filed with the city and payment of the registration fee has been made. Renewals are due not later than January 1 of the upcoming year.

(b) Each property shall be issued a registration number.

(c) Failure to register as prescribed by this law will result in a fine of $100.00 for each month that the unit continues to operate without registration.

HISTORY NOTE:

(Ord. No. 2016-07B , 5-26-2016)

Annotations

Notes Applicable To Entire Article

EDITORS NOTE:

Ord. No. 2016-07B , adopted May 26, 2016, set out provisions intended for use as Art. VII, 34-195, 34-201. Inasmuch as there were already provisions so designated, these provisions have been included as Art. VIII, 34-260, 34-266.

Effective date of Ord. No. 2016-07B is May 26, 2016.

End of Document

Janelle Alleyne

THE CODE of TYBEE ISLAND, GEORGIA Codified through Ordinance No. 02-2017, enacted January 12, 2017.
(Supp. No. 19)

§ Sec. 34-263 Good neighbor policy.

The city shall make available on its website a list of STVR good neighbor policies which STVR agents are encouraged to share with their clients.

HISTORY NOTE:

(Ord. No. 2016-07B , 5-26-2016)

Annotations

Notes Applicable To Entire Article

EDITORS NOTE:

Ord. No. 2016-07B , adopted May 26, 2016, set out provisions intended for use as Art. VII, 34-195, 34-201. Inasmuch as there were already provisions so designated, these provisions have been included as Art. VIII, 34-260, 34-266.

Effective date of Ord. No. 2016-07B is May 26, 2016.

End of Document

Tybee Island, Georgia Code of Ordinances Sec. 34-264

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Georgia Municipal Codes > Georgia > Tybee Island Code of Ordinances > PART II - CODE OF ORDINANCES > Chapter 34 - LICENSES, PERMITS AND MISCELLANEOUS BUSINESS REGULATIONS > ARTICLE VIII. SHORT-TERM RENTAL PROPERTIES

§ Sec. 34-264 Signs.

All one- and two-family STVR units shall post a sign visible from the street listing emergency contact name and phone number. Such sign shall not exceed 24 inches 24 inches. Multi-family units shall post a sign visible from outside the unit listing emergency contact name and phone number. Such signs shall not exceed 8 inches 11 inches. Variances to this sign rule may be administered by staff.

HISTORY NOTE:

(Ord. No. 2016-07B , 5-26-2016)

Annotations

Notes Applicable To Entire Article

EDITORS NOTE:

Ord. No. 2016-07B , adopted May 26, 2016, set out provisions intended for use as Art. VII, 34-195, 34-201. Inasmuch as there were already provisions so designated, these provisions have been included as Art. VIII, 34-260, 34-266.

Effective date of Ord. No. 2016-07B is May 26, 2016.

End of Document

THE CODE of TYBEE ISLAND, GEORGIA Codified through Ordinance No. 02-2017, enacted January 12, 2017.
(Supp. No. 19)

§ Sec. 34-265 Emergency contact.

Not later than January 01, 2017, 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 will be able to readily identify the address and location from where the call is made when dialed.

HISTORY NOTE:

(Ord. No. 2016-07B , 5-26-2016)

Annotations

Notes Applicable To Entire Article

EDITORS NOTE:

Ord. No. 2016-07B , adopted May 26, 2016, set out provisions intended for use as Art. VII, 34-195, 34-201. Inasmuch as there were already provisions so designated, these provisions have been included as Art. VIII, 34-260, 34-266.

Effective date of Ord. No. 2016-07B is May 26, 2016.

End of Document

Tybee Island, Georgia Code of Ordinances Sec. 34-266

THE CODE of TYBEE ISLAND, GEORGIA Codified through Ordinance No. 02-2017, enacted January 12, 2017.
(Supp. No. 19)

Georgia Municipal Codes > Georgia > Tybee Island Code of Ordinances > PART II - CODE OF ORDINANCES > Chapter 34 - LICENSES, PERMITS AND MISCELLANEOUS BUSINESS REGULATIONS > ARTICLE VIII. SHORT-TERM RENTAL PROPERTIES

§ Sec. 34-266 Compliance.

(a) It shall be the responsibility of the owner or agent to pay all required taxes required by chapter 58, article IV, room excise tax.

HISTORY NOTE:

(Ord. No. 2016-07B , 5-26-2016)

Annotations

Notes Applicable To Entire Article

EDITORS NOTE:

Ord. No. 2016-07B , adopted May 26, 2016, set out provisions intended for use as Art. VII, 34-195, 34-201. Inasmuch as there were already provisions so designated, these provisions have been included as Art. VIII, 34-260, 34-266.

Effective date of Ord. No. 2016-07B is May 26, 2016.

End of Document

Janelle Alleyne

Tybee Island, Georgia Code of Ordinances Secs. 34-267, 34-299

THE CODE of TYBEE ISLAND, GEORGIA Codified through Ordinance No. 02-2017, enacted January 12, 2017. (Supp. No. 19)

Georgia Municipal Codes > Georgia > Tybee Island Code of Ordinances > PART II - CODE OF ORDINANCES > Chapter 34 - LICENSES, PERMITS AND MISCELLANEOUS BUSINESS REGULATIONS > ARTICLE VIII. SHORT-TERM RENTAL PROPERTIES

Reserved.

Annotations

Notes Applicable To Entire Article

EDITORS NOTE:

Ord. No. 2016-07B , adopted May 26, 2016, set out provisions intended for use as Art. VII, 34-195, 34-201. Inasmuch as there were already provisions so designated, these provisions have been included as Art. VIII, 34-260, 34-266.

Effective date of Ord. No. 2016-07B is May 26, 2016.

End of Document

CHAPTER 11. - SHORT-TERM VACATION RENTALS[17]

Footnotes:

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Editor's note— Ord. of 11-10-2014(2), adopted November 10, 2014, set out provisions intended for use as §§ 8-10009—8-10017. To preserve the existing style of this Code, and at the editor's discretion, these provisions have been included as §§ 8-10010—8-10018.

Sec. 8-10010. - Intent; purpose.

It is the purpose of this chapter to protect the public health, safety and general welfare of individuals and the community at large; to monitor and provide reasonable means for citizens to mitigate impacts created by occupancy of short-term vacation units; and to implement rationally based, reasonably tailored regulations to protect the integrity of the city's neighborhoods.

(Ord. of 11-10-2014(2))

Sec. 8-10011. - Definitions; general provisions.

Code compliance verification form is 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 an accommodation for transient guests where, in exchange for compensation, a residential dwelling unit is provided for lodging for a period of time not to exceed 30 consecutive days. Such use may or may not include an on-site manager. For the purposes of this definition, a residential dwelling shall include all housing types and shall exclude group living or other lodging uses, as defined in division II, code of general ordinances, part 8, planning and regulation of development, chapter 3, zoning, as amended.

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 purposes of transacting business.

(Ord. of 11-10-2014(2))

Sec. 8-10012. - Short-term vacation rental certificate.

No person shall rent, lease or otherwise exchange for compensation all or any portion of a dwelling unit as short-term vacation rental, as defined in section 8-10011, without first obtaining a business tax certificate from the revenue director 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.

(Ord. of 11-10-2014(2))

Sec. 8-10013. - Application for short-term vacation rental certificate.

(a) Applicants for a short-term vacation rental certificate shall submit, on an annual basis, an application for a short-term vacation rental certificate to the tourism management and ambassadorship director of the City of Savannah. The application shall be furnished under oath on a form specified by the city manager, accompanied by a non-refundable application fee as set forth in the city's annual revenue ordinance. Such application should include:
    (1) The name, address, telephone and email address of the owner(s) of record of the dwelling unit for which a certificate is sought. If such owner is not a natural person, the application shall identify all partners, officers and/or directors of any such entity, including personal contact information;

(2) The address of the unit to be used as a short-term vacation rental;
(3) The name, address, telephone number and email address of the short-term vacation rental agent, which shall constitute his or her 24-hour contact information;
(4) The owner's sworn acknowledgement that he or she has received a copy of this section, has reviewed it and understands its requirements;
(5) The number and location of parking spaces allotted to the premises;
(6) The owner's agreement to use his or her best efforts to assure that use of the premises by short-term vacation rental occupants will not disrupt the neighborhood, and will not interfere with the rights of neighboring property owners to the quiet enjoyment of their properties; and
(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 or her designee shall have the authority to obtain additional information from the applicant as necessary to achieve the objectives of this chapter.

(b) Attached to and concurrent with submission of the application described in this section, the owner shall provide:
(1) The owner's sworn code compliance verification form;
(2) A written exemplar agreement, which shall consist of the form of document to be executed between the owner and occupant(s) and which shall contain the following provisions:
a. The occupant(s)' agreement to abide by all of the requirements of this chapter, any other City of Savannah ordinances, state and federal law and acknowledgement that his or her rights under the agreement may not be transferred or assigned to anyone else;
b. The occupant(s)' acknowledgement that it shall be unlawful to allow or make any noise or sound that exceeds the limits set forth in the City's noise ordinance; and
c. The occupant(s)' acknowledgement and agreement that violation of the agreement or this chapter may result in immediate termination of the agreement and eviction from the short-term vacation rental unit by the owner or agent, as well as the potential liability for payments of fines levied by the city.
(3) Proof of the owner's current ownership of the short-term vacation rental unit;
(4) Proof of insurance; and
(5) A written certification from the short-term vacation agent that he or she agrees to perform the duties specified in subsection 8-10014(b).

(c) Certificate holder shall publish a short-term vacation rental certificate number in every print, digital, or internet advertisement and any property listing in which the short-term vacation rental is advertised.

(Ord. of 11-10-2014(2))

Sec. 8-10014. - Short-term vacation rental agent.

(a) The owner of a short-term vacation rental shall designate a short-term vacation rental agent on its application for a short-term vacation rental certificate. A property owner may serve as the short-term vacation rental agent. Alternatively, the owner may designate a natural person as his or her agent who is over age 18.

(b) The duties of the short-term vacation rental agent are to:
(1) Be reasonably available to handle any problems arising from use of the short-term vacation rental unit;
(2) Appear on the premises of any short-term vacation rental unit within two hours following notification from the city of issues related to the use or occupancy of the premises. This includes, but is not limited to, notification that occupants of the short-term vacation rental unit have created unreasonable noise or disturbances, engaged in disorderly conduct or committed violations of the City of Savannah Code of Ordinances or other applicable law pertaining to noise, disorderly conduct, overcrowding, consumption of alcohol or use of illegal drugs. Failure of the agent to timely appear to two or more complaints regarding violations may be grounds for penalties as set forth in this chapter. This is not intended to impose a duty to act as a peace officer or otherwise require the agent to place himself or herself in a perilous situation;
(3) Receive and accept service of any notice of violation related to the use or occupancy of the premises; and
(4) Monitor the short-term vacation rental unit for compliance with this chapter.

(c) An owner may change his or her designation of a short-term vacation rental agent temporarily or permanently; however there shall only be one such agent for a property at any given time. To change the designated agent, the owner shall notify the tourism management and ambassadorship director in writing of the new agent's identity, together with all information regarding such person as required by the applicable provisions of section 8-10013.

(Ord. of 11-10-2014(2))

Sec. 8-10015. - Grant or denial of application.

Review of an application shall be conducted in accordance with due process principles and shall be granted unless the applicant fails to meet the conditions and requirements of this chapter, or otherwise fails to demonstrate the ability to comply with local, state or federal law. Any false statements or information provided in the application are grounds for revocation, suspension and/or imposition of penalties, including denial of future applications.

(Ord. of 11-10-2014(2))

Sec. 8-10016. - Short-term vacation rental units.

(a) A legible copy of the short-term vacation rental unit certificate shall be posted within the unit and include all of the following information:
   (1) The name, address, telephone number and email address of the short-term vacation rental agent:
   (2) The business tax certificate number;
   (3) The maximum occupancy of the unit;
   (4) The maximum number of vehicles that may be parked at the unit; and
(b) Short-term vacation rental units must be properly maintained and regularly inspected by the owner to ensure continued compliance with applicable zoning, building, health and life safety code provisions.

(Ord. of 11-10-2014(2))

Sec. 8-10017. - Short-term vacation regulation procedure.

(a) To ensure the continued application of the intent and purpose of this chapter, the tourism management and ambassadorship director of the city shall notify the owner of a short-term vacation rental unit of all instances in which nuisance behavior of the rental guest or the conduct of his or her short-term vacation rental unit agent results in a citation for a code violation or other legal infraction.
(b) The tourism management and ambassadorship director shall maintain in each short-term vacation rental location file a record of all code violation charges, founded accusations and convictions occurring at or relating to a short-term vacation rental unit. When a property owner has accumulated three code violations for a particular property within a period of 12 consecutive months, the city shall revoke any pending certificates and reject all applications for the subject premises for a period of 12 consecutive months.
(c) If a short-term vacation rental unit owner has been cited and found to be in violation of any zoning, building, health or life safety code provision, the owner must demonstrate compliance with the applicable code prior to being eligible to receive a short-term vacation rental certificate.
(d) Citations for code violations and any other violation of the city code may be heard by a short-term vacation rental staff board or the recorder's court of Chatham County. The staff board shall be comprised of full-time city employees as appointed by the city manager or his/her designee and shall include at least one staff member selected from revenue, zoning, tourism and the Savannah-Chatham Metropolitan Police Department. The staff board will receive evidence; however, the official rules of evidence will not govern the proceeding. The staff board will issue a written finding as to each alleged infraction, specifically identifying each founded accusation, which shall constitute a violation.
(e) Violations of this chapter are subject to the following fines, which may not be waived or reduced and which may be combined with any other legal remedy available to the City:
   (1) First violation: $500.00.
   (2) Second violation within the preceding 12 months: $750.00.
   (3) Third violation within the preceding 12 months: $1,000.00.

(f) A person aggrieved by the city's decision to revoke, suspend or deny a short-term vacation rental certificate may appeal the decision to the city manager. The appeal must be filed with the city manager's office in writing, within 30 calendar days after the adverse action and it shall contain a concise statement of the reasons for the appeal. Timely filing of an appeal shall stay the revocation, suspension or denial pending a decision by the city manager.
(g) The city manager or appointed designee shall consider the appeal within 30 days after receipt by the city manager of a request unless otherwise agreed in writing by the city and aggrieved party. All interested parties shall have the right to be represented by counsel, to present testimony and evidence, and to cross-examine witnesses. The city manager shall render a determination, which will constitute a final ruling on the application.
(h) Nothing in this section shall limit the city from enforcement of its code, state or federal law by any other legal remedy available to the city. Nothing in this section shall be construed to limit or supplant the power of any city inspector, deputy marshal or other duly empowered officer under the city's ordinances, rules and regulations and the authority granted under state law, as amended, to take necessary action, consistent with the law, to protect the public from property which constitutes a public nuisance or to abate a nuisance by any other lawful means of proceedings.

(Ord. of 11-10-2014(2))

Sec. 8-10018. Taxes.

Short-term vacation rental unit owners are subject to state sales tax, city taxes, including but not limited to the hotel/motel tax, and are liable for payment thereof as established by state law and the city code. The city may seek to enforce payment of all applicable taxes to the extent provided by law, including injunctive relief.

(Ord. of 11-10-2014(2))

House Bill 579

By: Representatives Dollar of the 45th, Ehrhart of the 36th, Pezold of the 133rd, Kelley of the 16th, Beverly of the 143rd, and others

A BILL TO BE ENTITLED

AN ACT

To amend Title 36 of the Official Code of Georgia Annotated, relating to local government, so as to provide that local governments cannot ban or regulate short-term and vacation rentals; to provide for definitions; to provide for exceptions; to provide for the imposition and collection of certain taxes; to provide for the confidentiality of certain records; to provide for certain reports; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended by adding a new chapter to read as follows:

"CHAPTER 77

36-77-1.

As used in this chapter, the term:

(1) 'Lodging accommodations' means any space offered to the public for lodging, including any hotel, motel, inn, tourist home or house, dude ranch, resort, campground, studio or bachelor hotel, lodging house, rooming house, residential home, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure or space.

(2) 'Lodging marketplace' means a person that provides a platform through which an unaffiliated third party offers to rent a vacation rental or short-term rental to an occupant and collects the consideration for the rental from the occupant.

(3) 'Lodging operator' means a person that rents to an occupant any lodging accommodation offered through a lodging marketplace.

(4) 'Lodging transaction' means a charge to an occupant by a lodging operator for the occupancy of any lodging accommodation.

(5) 'Unaffiliated third party' means a person that is not owned or controlled, directly or indirectly, by the same interests.

(6) 'Vacation rental' or 'short-term rental' means any individually or collectively owned single-family house or dwelling unit or any unit or group of units in a condominium, cooperative, or timeshare, or owner occupied residential home, that is offered for a fee and for less than 30 consecutive days. Vacation rental or short-term rental shall not include a unit that is used for any nonresidential use, including retail, restaurant, banquet space, event center, or another similar use.

36-77-2.

(a) No county, municipality, or consolidated government shall prohibit vacation rentals or short-term rentals.

(b) No county, municipality, or consolidated government shall enact or enforce any law, ordinance, regulation, or plan that prohibits or regulates short-term rentals except as provided in this Code section. No county, municipality, or consolidated government shall restrict the use of or regulate vacation rentals or short-term rentals based on their classification, use, or occupancy. A county, municipality, or consolidated government may enact or enforce a law, ordinance, regulation, or plan that regulates short-term rentals for the following purposes:

(1) Protection of public health and safety, including rules and regulations related to fire and building codes, health and sanitation, transportation or traffic control, solid or hazardous waste, and pollution control, provided that enforcement would not expressly or in practical effect prohibit the use of a property as a short-term rental, and designation of an emergency point of contact, if the county, municipality, or consolidated government demonstrates that such rule or regulation is for the primary purpose of protecting public health and safety;

(2) Adopting and enforcing residential use and zoning ordinances, including ordinances related to noise, protection of welfare, property maintenance, and other nuisance issues, if the ordinance is applied in the same manner as other similar properties; and

(3) Limiting or prohibiting the use of vacation rentals or short-term rentals for the purposes of housing sex offenders, operating or maintaining a structured sober living home, selling illegal drugs, liquor control or pornography, obscenity, nude or topless dancing, and other adult oriented businesses.

This subsection shall not apply to private entities or homeowners' associations.

36-77-3.

(a) A lodging marketplace may elect to register with Department of Revenue for a license for the payment of taxes levied by this state and any counties, municipalities, or consolidated governments for taxes due from a lodging operator on any lodging transaction facilitated by the lodging marketplace.

(b) Notwithstanding any other law to the contrary, a lodging operator shall be entitled to an exclusion from any applicable taxes for any lodging transaction facilitated by a lodging marketplace for which the lodging operator has obtained from the lodging marketplace written notice that the lodging marketplace is registered with Department of Revenue to collect applicable taxes for all lodging transactions facilitated by the lodging marketplace and the transaction history documenting taxes collected by the lodging marketplace.

(c) A lodging marketplace that is registered with Department of Revenue shall not be required to list or otherwise identify any individual lodging operator.

36-77-4.

(a) Except as provided by this Code section, a county, municipality, or consolidated government shall not levy a transaction sales, use, franchise, or other similar tax or fee, however denominated, on the business of operating a lodging marketplace or, in the case of a lodging marketplace that is registered pursuant to Code Section 36-77-3, on any lodging transaction facilitated by the lodging marketplace or on any lodging operator with respect to any lodging transaction for which it has received documentation that the lodging marketplace has remitted or will remit the applicable tax to the Department of Revenue pursuant to this chapter.

(b) The tax base for a vacation rental or short-term rental shall be the gross proceeds of sales or gross income received by a lodging operator, except that the tax base shall not include the gross proceeds or gross income received by a lodging operator from any lodging transactions for which the lodging operator has received documentation from a registered lodging marketplace showing that the lodging marketplace has remitted or will remit the applicable tax to the Department of Revenue.

(c) In the case of a lodging marketplace that is registered pursuant to Code Section 36-77-3, a county, municipality, or consolidated government may levy a transaction sales, use, franchise, or other similar tax or fee on the lodging marketplace, subject to the definition of tax base in subsection (b) of this Code section and subject to the following conditions:

(1) Such tax shall be uniform on lodging marketplaces, lodging operators, and other taxpayers of the same class within the jurisdictional boundaries of the county, municipality, or consolidated government; and

(2) Such tax shall be administered, collected, and enforced by the Department of Revenue and remitted to the county, municipality, or consolidated government in a uniform manner.

(d) Taxes shall not be collected from a lodging operator with respect to any lodging transaction or transactions for which the lodging operator has received written notice or documentation from a registered lodging marketplace that it has remitted or will remit the applicable tax with respect to those transactions to the Department of Revenue pursuant to this chapter.

(e) A lodging operator:

(1) Remains ultimately responsible, accountable, and liable for both:

(A) The accuracy of information the lodging operator furnishes to the lodging marketplace; and

(B) The return and payment of the full tax liability;

(2) Is subject to audit, as provided by law, of the records in the lodging operator's possession that are submitted to the lodging marketplace for the purposes of the consolidated return; and

(3) May withdraw any of the lodging operator's properties from the consolidated return on 30 days' written notice to the lodging marketplace, the Department of Revenue, and the tax collector of the county, municipality, or consolidated government, as applicable.

(f) The Department of Revenue shall annually report to the public the revenues collected and distributed to each county, municipality, and consolidated government from lodging marketplaces pursuant to this chapter. Such a report shall be anonymized and otherwise comply with the privacy requirements set forth in Code Section 36-77-5.

36-77-5.

(a) Except as permitted in subsection (b) of this Code section, the Department of Revenue shall not disclose information provided by a lodging marketplace without the written consent of the lodging marketplace. Such information shall not be:

(1) Subject to disclosure pursuant to Article 4 of Chapter 18 of Title 50; and

(2) Disclosed to any agency of this state or of any county, municipality, consolidated government, or other political subdivision of this state.

(b) The Department of Revenue may only disclose confidential information provided by a lodging marketplace to:

(1) The taxpayer whom the information concerns;

(2) The office of the Attorney General solely for its use in an investigation or proceeding involving tax administration;

(3) Any person only to the extent necessary for effective tax administration in connection with:

(A) The processing, storage, transmission, destruction, and reproduction of the information;

(B) The programming, maintenance, repair, testing, and procurement of equipment for purposes of tax administration; or

(C) The collection of the taxpayer's civil liability; or

(4) Any state or federal judicial or administrative proceeding pertaining to tax administration if:

(A) The taxpayer is a party to the proceeding; and

(B) The proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of the taxpayer's civil liability, with respect to any tax imposed under this chapter. However, nothing in this Code section shall be interpreted to limit the right to protect confidential information."

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.

THE CITY OF
STONECREST
GEORGIA

CITY COUNCIL AGENDA ITEM

SUBJECT: ORDINANCE TO ADOPT ARTICLE IV- CABLE TELEVISION FRANCISES IN CHAPTER 8- FRANCHISES

(X)	ORDINANCE	( )	POLICY	( )	STATUS REPORT
( )	DISCUSSION ONLY	( )	RESOLUTION	( )	OTHER

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

SUBMITTED BY: Attorney Destiny Washington

PURPOSE: This ordinance is to adopt Article IV- Cable Television Franchises, in Chapter 8- Franchises, granting to Comcast of Georgia LLC and Assigns a nonexclusive Franchise to occupy and use the street within the franchise area in order to construct, operate, maintain, upgrade, repair, remove the cable system and provide cable service through the cable system.

HISTORY:

FACTS AND ISSUES:

OPTIONS:

RECOMMENDED ACTION: Discussion and Recommendation of Council

STATE OF GEORGIA
COUNTY OF DEKALB
CITY OF STONECREST ORDINANCE 2017-_______

AN ORDINANCE TO ADOPT ARTICLE IV – CABLE TELEVISION FRANCHISES, IN CHAPTER 8 – FRANCHISES, GRANTING TO COMCAST OF GEORGIA I, LLC AND COMCAST CABLE COMMUNICATIONS, LLC, AND THEIR SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE FRANCHISE TO OCCUPY AND USE THE STREETS WITHIN THE FRANCHISE AREA IN ORDER TO CONSTRUCT OPERATE, MAINTAIN, UPGRADE, REPAIR, AND REMOVE THE CABLE SYSTEM, AND PROVIDE CABLE SERVICES THROUGH THE CABLE SYSTEM; TO FIX THE TERMS AND CONDITIONS OF SUCH GRANT; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES

WHEREAS, Pursuant to subsection (31) of Section 1.03 of the Charter of the City of Stonecrest, Georgia (the "City"), the City has been vested with the power to "grant franchises or make contracts for, or impose taxes on, public utilities, cable companies and public service companies; and to prescribe the rates, fares, regulations, and standards and conditions of service applicable to the service to be provided by the franchise grantee or contractor, insofar as not in conflict with valid regulations of the Public Service Commission"; and

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

WHEREAS, the Mayor and City Council find it desirable and in the interest of the health, safety and welfare of the citizens of the City to grant to Comcast of Georgia I, LLC and Comcast Cable Communications, LLC a non-exclusive franchise to provide cable service through the cable system in the City.

BE IT ORDAINED by the Mayor and Council of the City of Stonecrest, Georgia, and it is hereby ordained by authority of same, Article IV – *Cable Television Franchises* in Chapter 8 – *Franchises* is hereby adopted as follows:

"ARTICLE IV. – CABLE TELEVISION FRANCHISES

Sec. 8-4-1. – Agreement.

This ***AGREEMENT*** is effective as of the 1st day of January, 2017 (the "Effective Date"), and is between the City of Stonecrest, Georgia, an incorporated Georgia city (the "Franchising Authority" or the "City"), and Comcast of Georgia I, LLC (together, the "Company"). For purposes of this Agreement, unless otherwise defined in this Agreement, the capitalized terms, phrases, words, and their derivations, shall have the meanings set forth in Section 8-4-2.

The Franchising Authority, having determined that the financial, legal, and technical ability of the Company is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the current and future cable-related needs of the community and that, as of the Effective Date, the Company is in material compliance with the terms and conditions of the cable franchise preceding this Agreement, desires to enter into this Agreement with the Company for the construction, operation, and maintenance of a Cable System on the terms and conditions set forth herein. In consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

Sec. 8-4-2. – Definitions.

For purposes of this Article, the following terms, phrases, words, and their derivations shall have the meanings set forth herein, unless the context clearly indicates that another meaning is intended.

"**Agreement**" means the franchise agreement between Comcast of Georgia, I, LLC and Comcast Cable Communications, LLC.

"**Basic Service**" means any service tier that includes the retransmission of local television broadcast Signals and any equipment or installation used in connection with Basic Service.

"**Cable Act**" means Title VI of the Communications Act of 1934 as amended, 47 U.S.C. § 521, *et seq.*

"**Cable Service**" means the one-way transmission to Subscribers of Video Programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service. "Cable Service" does not include any Video Programming provided by a commercial mobile service provider as defined in 47 U.S.C. §332(d).

"**Cable Service Provider**" or "**CSP**" means any person or group of persons (A) who provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System.

"**Cable System**" means a facility, consisting of a set of closed transmission paths and associated Signal generation, reception, and control equipment, that is designed to provide Cable Service, which includes Video Programming and which is provided to multiple Subscribers within a community, but "Cable System" does not include:

(A) a facility that serves only to retransmit the television Signals of one (1) or more television broadcast stations;

(B) a facility that serves Subscribers without using any public right-of-way as defined herein;

(C) a facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§201–276, except that such facility shall be considered a Cable System, other than for purposes of 47 U.S.C. § 541(c), to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

(D) an open video system that complies with 47 U.S.C. § 573; or

(E) any facilities of any electric utility used solely for operating its electric utility system.

"**Channel**" means a "cable channel" or "channel" as defined in 47 U.S.C. § 522(4).

"**Company**" means Comcast of Georgia I, LLC and Comcast Cable Communications, LLC, a limited liability company validly existing under the laws of the State of Georgia and Delaware, or lawful successor, transferee, designee, or assignee thereof.

"**FCC**" means the Federal Communications Commission, its designee, or any successor thereto.

"**Franchise Area**" means the incorporated areas of the City of Stonecrest, Georgia, including any areas annexed by the Franchising Authority during the term of the Franchise.

"**Franchising Authority**" means the City of Stonecrest, Georgia, or lawful successor, transferee, designee, or assignee thereof.

"**Gross Revenues**" means all revenues received from Subscribers for the provision of Cable Service or Video Service, including franchise fees for Cable Service Providers and Video Service Providers and advertising and home shopping services, and shall be determined in accordance with Generally Accepted Accounting Principles ("GAAP"). Gross Revenues shall not include:

(A) amounts billed and collected as a line item on the Subscriber's bill to recover any taxes, surcharges, or governmental fees that are imposed on or with respect to the services provided or measured by the charges, receipts, or payments therefore; provided, however, that for purposes of this definition of "Gross Revenue," such tax, surcharge, or governmental fee shall not include any ad valorem taxes, net income taxes, or generally applicable business or occupation taxes not measured exclusively as a percentage of the charges, receipts, or payments for services to the extent such charges are passed through as a separate line item on Subscriber's bills;

(B) any revenue not actually received, even if billed, such as bad debt;

(C) any revenue received by any affiliate or any other person in exchange for supplying goods or services used by the provider to provide Cable or Video Programming;

(D) any amounts attributable to refunds, rebates, or discounts;

(E) any revenue from services provided over the network that are associated with or classified as non-Cable or non-Video Services under federal law, including without limitation revenues received from telecommunications services, information services other than Cable or Video Services, Internet access services, directory or Internet advertising revenue including without limitation yellow pages, white pages, banner advertisements, and electronic publishing advertising. Where the sale of any such non-Cable or non-Video Service is bundled with the sale of one or more Cable or Video Services and sold for a single non-itemized price, the term "Gross Revenues" shall include only those revenues that are attributable to Cable or Video Services based on the provider's books and records, such revenues to be allocated in a manner consistent with generally accepted accounting principles;

(F) any revenue from late fees not initially booked as revenues, returned check fees or interest;

(G) any revenue from sales or rental of property, except such property as the Subscriber is required to buy or rent exclusively from the Cable or Video Service Provider to receive Cable or Video Service;

(H) any revenue received from providing or maintaining inside wiring;

(I) any revenue from sales for resale with respect to which the purchaser is required to pay a franchise fee, provided the purchaser certifies in writing that it will resell the service and pay a franchise fee with respect thereto; or

(J) any amounts attributable to a reimbursement of costs including but not limited to the reimbursements by programmers of marketing costs incurred for the promotion or introduction of Video Programming.

"**Person**" means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit, but shall not mean the Franchising Authority.

"**Signal**" means any transmission of radio frequency energy or of optical information.

"**Streets**" means the surface of, and the space above and below, any and all streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, docks, bulkheads, wharves, piers, public grounds, and public places or waters within and belonging to the Franchising Authority and any other property within the Franchise Area to the extent to which there exist public easements or public rights-of-way.

"**Subscriber**" means any Person lawfully receiving Video Service from a Video Service Provider or Cable Service from a Cable Service Provider.

"Video Programming" means programming provided by or generally considered comparable to programming provided by a television broadcast station, as set forth in 47 U.S.C. § 522(20).

"Video Service" means the provision of Video Programming through wireline facilities located at least in part in the public rights-of-way without regard to delivery technology, including Internet protocol technology. This definition does not include any Video Programming provided by a commercial mobile service provider as defined in 47 U.S.C. § 332(d) or Video Programming provided as part of, and via, a service that enables users to access content, information, electronic mail, or other services offered over the public Internet.

"Video Service Provider" or **"VSP"** means an entity providing Video Service as defined herein, but does not include a Cable Service Provider.

Sec. 8-4-3. – Grant of Authority.

1.1 Grant of Franchise. The Franchising Authority hereby grants under the Cable Act a nonexclusive franchise (the "Franchise") to occupy and use the Streets within the Franchise Area in order to construct operate, maintain, upgrade, repair, and remove the Cable System, and provide Cable Services through the Cable System, subject to the terms and conditions of this Agreement. This Franchise authorizes Cable Service, and it does not grant or prohibit the right(s) of the Company to provide other services.

1.2 Term of Franchise. This Franchise shall be in effect for a period of ten (10) years commencing on the Effective Date, unless renewed or lawfully terminated in accordance with this Agreement and the Cable Act.

1.3 Renewal. Subject to Section 626 of the Cable Act (47 U.S.C. § 546) and such terms and conditions as may lawfully be established by the Franchising Authority, the Franchising Authority reserves the right to grant or deny renewal of the Franchise.

1.4 Reservation of Authority. Nothing in this Agreement shall (i) abrogate the right of the Franchising Authority to perform any public works or public improvements of any description, (ii) be construed as a waiver of any codes or ordinances of the Franchising Authority or of the Franchising Authority's right to require the Company or any Person utilizing the Cable System to secure the appropriate permits or authorizations for its use, or (iii) be construed as a waiver or release of the rights of the Franchising Authority in and to the Streets. Notwithstanding the above, in the event of any conflict between this Agreement and any code or ordinance adopted by the Franchising Authority, the terms and conditions of this Agreement shall prevail.

1.5 Competitive Equity and Subsequent Action Provisions.

1.5.1 Purposes. The Company and the Franchising Authority acknowledge that there is increasing competition in the video marketplace among cable operators, direct broadcast satellite providers, telephone companies, broadband content providers, and others; new technologies are emerging that enable the provision of new and advanced services to City residents; and changes in the scope and application of the traditional regulatory framework governing the provision of Video Services are being considered in a variety of federal, state, and local venues. To foster an environment where all Cable Service Providers and Video Service Providers using the Streets can compete on a competitively neutral and nondiscriminatory basis; encourage the provision of new and advanced services to City residents; promote local communications infrastructure investments and economic opportunities in the City; and provide flexibility in the event of subsequent changes in the law, the Company and the Franchising Authority have agreed to the provisions in this Section 1.5, and these provisions should be interpreted and applied with these purposes in mind. The parties agree that the Franchising Authority shall not be required to execute a franchise agreement or authorization with a competitive CSP or VSP that is identical, word-for-word, with this Agreement to avoid triggering the provisions of this Section 1.5, so long as the regulatory and financial burdens on and benefits to each CSP or VSP are materially equivalent to the burdens on and benefits to the Company. "Materially equivalent" provisions include but are not limited to: franchise fees and the definition of Gross Revenues; system build-out requirements; security instruments; public, education and government access channels and support; customer service standards; and audits.

1.5.2 Fair Terms for All Providers. Notwithstanding any other provision of this Agreement or any other provision of law,

(a) If any VSP or CSP enters into any agreement with the Franchising Authority to provide Video Services or Cable Services to Subscribers in the Franchise Area, the Franchising Authority and the Company, upon written request of the Company, will use best efforts in good faith to negotiate the Company's proposed Franchise modifications, and such negotiation will proceed and conclude within sixty (60) days, unless that period is reduced or extended by mutual agreement of the parties. If the Franchising Authority and the Company agree to Franchise modifications pursuant to such negotiations, then the Franchising Authority shall amend this Agreement to include the modifications.

If there is no written agreement or other authorization between the new VSP or CSP and the Franchising Authority, the Company and the Franchising Authority shall use the sixty (60) day period to develop and enter into an agreement or other appropriate authorization (to the extent the Company determines an agreement or authorization is necessary) that to the maximum extent possible contains provisions that will ensure competitive equity between the Company and other VSPs or CSPs, taking into account the terms and conditions under which the new VSP or CSP is allowed to provide Video Services or Cable Services to Subscribers in the Franchise Area.

(b) Following the Franchise modification negotiations provided for in Section 1.5.2(a), if the Franchising Authority and the Company fail to reach agreement in such negotiations, the Company may, at its option, elect to replace this Agreement by opting in to the same franchise agreement or other lawful authorization that the Franchising Authority has granted to the new VSP or CSP. If the Company so elects, the Franchising Authority shall adopt the Company's replacement agreement at the next regularly scheduled city council meeting.

(c) The Franchising Authority shall at all times enforce the state and federal ban on providing Cable Service without a franchise. The Franchising Authority's enforcement efforts shall be continuous and diligent throughout the term of this Agreement. Should the Franchising Authority not commence enforcement efforts within sixty (60) days of becoming aware of a VSP or CSP providing Video Service or Cable Service within the Franchise Area, the Company shall have the right to petition the Franchising Authority for the relief provided in Section 1.5.2 above.

(d) This Section 1.5.2 shall not apply for VSPs or CSPs providing Video Service or Cable Service in the Franchise Area under the authorization of the Georgia Consumer Choice for Television Act (O.C.G.A. § 36-76-1, *et seq.*).

1.5.3 Subsequent Change in Law. If there is a change in federal, state, or local law that provides for a new or alternative form of authorization, subsequent to the Effective Date, for a VSP or CSP utilizing the Streets to provide Video Services or Cable Services to Subscribers in the Franchise Area, or that otherwise changes the nature or extent of the obligations that the Franchising Authority may request from or impose on a VSP or CSP providing Video Services or Cable Services to Subscribers in the Franchise Area, the Franchising Authority agrees that, notwithstanding any other provision of law, upon the written request and at the option of the Company, the Franchising Authority shall: (i) permit the Company to provide Video Services or Cable Services to Subscribers in the Franchise Area on substantially the same terms and conditions as are applicable to a VSP or CSP under the changed law; (ii) modify this Agreement to comply with the changed law; or (iii) modify this Agreement to ensure competitive equity between the Company and other VSPs or CSPs, taking into account the conditions under which other VSPs or CSPs are permitted to provide Video Services or Cable Services to Subscribers in the Franchise Area. The Franchising Authority and the Company shall implement the provisions of this Section 1.5.3 within sixty (60) days after the Company submits a written request to the Franchising Authority. Should the Franchising Authority fail to implement these provisions within the time specified, this Agreement shall, at the Company's option and upon written notice to the Franchising Authority, be deemed amended as initially requested by the Company under this Section 1.5.3. Notwithstanding any provision of law that imposes a time or other limitation on the Company's ability to take advantage of the changed law's provisions, the Company may exercise its rights under this Section 1.5.3 at any time, but not sooner than thirty (30) days after the changed law goes into effect.

1.5.4 Effect on This Agreement. Any agreement, authorization, right, or determination to provide Cable Services or Video Services to Subscribers in the Franchise Area under this Section 1.5 shall supersede this Agreement.

Sec. 8-4-4. – The Cable System.

2.1 The System and Its Operations.

2.1.1 Service Area. As of the Effective Date, the Company operates a Cable System within the Franchise Area.

2.1.2 System. As of the Effective Date, the Company maintains and operates a Cable System capable of providing over 250 Channels of Video Programming, which Channels may be delivered by analog, digital, or other transmission technologies, at the sole discretion of the Company.

2.1.3 System Technical Standards. Throughout the term of this Agreement, the Cable System shall be designed, maintained, and operated such that quality and reliability of System Signal will be in compliance with all applicable consumer electronics equipment compatibility standards, including but not limited to Section 624A of the Cable Act (47 U.S.C. § 544a) and 47 C.F.R. § 76.630, as may be amended from time to time.

2.1.4 Testing Procedures; Technical Performance. Throughout the term of this Agreement, the Company shall operate and maintain the Cable System in accordance with the testing procedures and the technical performance standards of the FCC.

2.2 Requirements with Respect to Work on the System.

2.2.1 General Requirements. The Company shall comply with ordinances, rules, and regulations established by the Franchising Authority pursuant to the lawful exercise of its police powers and generally applicable to all users of the Streets. To the extent that local ordinances, rules, or regulations clearly conflict with the terms and conditions of this Agreement, the terms and conditions of this Agreement shall prevail, except where such conflict arises from the Franchising Authority's lawful exercise of its police powers.

2.2.2 Protection of Underground Utilities. Both the Company and the Franchising Authority shall comply with the Georgia Utility Facility Protection Act (O.C.G.A. § 25-9-1, *et seq.*), relating to notification prior to excavation near underground utilities, as may be amended from time to time.

2.3 Permits and General Obligations.

2.3.1 The Company shall be responsible for obtaining all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain, or repair the Cable System, or any part thereof, prior to the commencement of any such activity. The Franchising Authority shall not charge the Company, and the Company shall not be required to pay, any fee or charge for the issuance of permits, licenses, or other approvals, as such payments are included in the franchise fees described in Section 8.4.6 below. The Franchising Authority shall make all reasonable efforts to issue permits, licenses, or other approvals within ten (10) business days. The Company shall be solely responsible, either through its employees or its authorized contractors, for constructing, installing, and maintaining the Cable System in a safe, thorough, and reliable manner in accordance with all applicable standards and using materials of good and durable quality. The Company shall assure that any person installing, maintaining, or removing its facilities is fully qualified and familiar with all applicable standards. No third party shall tamper with, relocate, or otherwise interfere with the Company's facilities in the rights-of-way without the Company's approval and supervision; provided, however, that the Company shall make all reasonable efforts to coordinate with other users of the Streets to facilitate the execution of projects and minimize disruption in the public rights-of-way. All transmission and distribution structures, poles, other lines, and equipment installed by the Company for use in the Cable System in accordance with this Agreement shall be located so as to minimize interference with the proper use of the Streets and the rights and reasonable convenience of property owners who own property adjoining the Streets.

2.3.2 Code Compliance. The Company shall comply with all applicable building, safety, and construction codes. The parties agree that at present, Cable Systems are not subject to the low voltage regulations of the National Electric Code, National Electrical Safety Code, or other such codes or regulations. In the event that the applicable codes are revised such that Cable Systems become subject to low voltage regulations without being grandfathered or otherwise exempted, the Company will thereafter be required to comply with those regulations.

2.4 Conditions on Street Occupancy.

2.4.1 New Grades or Lines. If the grades or lines of any Street within the Franchise Area are lawfully changed at any time during the term of this Agreement, then the Company shall, upon at least ninety (90) days' advance written notice from the Franchising Authority and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with the new grades or lines. If public funds are available to any Person using the Street for the purpose of defraying the cost of any of the foregoing work, the Franchising Authority shall make application for such funds on behalf of the Company. The Company shall be entitled to reimbursement of its costs should any other utility be so compensated as a result of a required protection, alteration, or relocation of its facilities. Notwithstanding the above, the Company shall not be liable for the cost of protecting, altering, or relocating facilities, aerial or underground, where such work is required to accommodate a streetscape, sidewalk, or private development project.

2.4.2 Relocation at Request of Third Party. The Company shall, upon reasonable prior written request of any Person holding a permit issued by the Franchising Authority to move any structure, temporarily move its wires to permit the moving of such structure; provided (i) the Company may impose a reasonable charge on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and (ii) the Company agrees to arrange for such temporary relocation to be accomplished as soon as reasonably practicable, not to exceed ninety (90) days without the prior agreement of the Franchising Authority.

2.4.3 Restoration of Streets. If in connection with construction, operation, maintenance, or repair of the Cable System, the Company disturbs, alters, or damages any Street, the

Company agrees that it shall at its own cost and expense restore the Street according to the standards set forth in the Georgia Department of Transportation's Utility Accommodation Policy and Standards Manual. If the Franchising Authority reasonably believes that the Company has not restored the Street appropriately, then the Franchising Authority, after providing ten (10) business days' advance written notice and a reasonable opportunity to cure, may have the Street restored and bill the Company for the cost of restoration.

2.4.4 Trimming of Trees and Shrubbery. The Company shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Franchise Area so as to prevent contact with the Company's wires, cables, or other equipment, the cost of which trimming shall not be borne by the Franchising Authority.

2.4.5 Aerial and Underground Construction. If at the time of Cable System construction all of the transmission and distribution facilities of all of the respective public or municipal utilities in the construction area are underground, the Company shall place its Cable System's transmission and distribution facilities underground. At the time of Cable System construction, in any place within the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Company shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground; however, at such time as all existing aerial facilities of the respective public or municipal utilities are placed underground, the Company shall likewise place its facilities underground, subject to the provisions of Section 2.4.1. Company facilities placed underground at the property owner's request in any area where any of the transmission or distribution facilities of the respective public or municipal utilities are aerial shall be installed with the additional expense paid by the property owner. Nothing in this Section 2.4.5 shall be construed to require the Company to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

2.4.6 New Developments. The Franchising Authority shall provide the Company with written notice of the issuance of building or development permits for planned developments within the Franchise Area requiring undergrounding of cable facilities. The Franchising Authority agrees to require the developer to give the Company access to open trenches for deployment of cable facilities and at least thirty (30) days' written notice of the date of availability of open trenches. Notwithstanding the foregoing, the Company shall not be required to utilize any open trench.

2.4.7 Use of Existing Poles. Where possible, the Company shall attach its facilities to existing utility poles and shall use all reasonable efforts to enter into a pole attachment agreement with the owners of such existing utility poles.

2.5 Change in Franchise Area. In the event that the borders of the Franchise Area change, through annexation or otherwise, the Franchising Authority shall provide to the Company written notice of such change, including an updated map and an electronic list of all addresses in the

Franchise Area. Franchise fees on gross revenues earned from Subscribers in annexed areas shall not be payable to the Franchising Authority until sixty (60) days after the Company's receipt of such updated map and electronic list of addresses, and shall not be remitted to the Franchising Authority until the next regularly scheduled quarterly franchise fee payment as provided in Section 4.1.2 below.

Sec. 8-4-5. – Customer Service.

Customer Service. The Company shall comply in all respects with the 47 C.F.R. §76-309, pages 561-63. Individual violations of those requirements do not constitute a breach of this Agreement.

Sec. 8-4-6. – Compensation and Other Payments.

4.1 Compensation to the Franchising Authority. As compensation for the Franchise, the Company shall pay or cause to be paid to the Franchising Authority the amounts set forth in this Section 4.1.

4.1.1 Franchise Fees—Amount. The Company shall pay to the Franchising Authority franchise fees in an amount equal to five percent (5%) of Gross Revenues derived from the operation of the Cable System to provide Cable Services in the Franchise Area.

4.1.2 Franchise Fees—Payment. Payments of franchise fees shall be made on a quarterly basis and shall be remitted not later than thirty (30) days after the last day of March, June, September, and December throughout the term of this Agreement.

4.1.3 Company to Submit Franchise Fee Report. The Company shall submit to the Franchising Authority, not later than thirty (30) days after the last day of March, June, September, and December throughout the term of this Agreement, a report setting forth the basis for the computation of Gross Revenues on which the quarterly payment of franchise fees is being made, which report shall enumerate, at a minimum, the following revenue categories: limited and expanded basic video service, digital video service, premium video service, pay-per-view and video-on-demand, equipment, installation and activation, franchise fees, guide, late fees, ad sales, home shopping commissions, and bad debt.

4.1.4 Franchise Fee Payments Subject to Audit; Remedy for Underpayment. No acceptance of any franchise fee payment by the Franchising Authority shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount or a release of any claim that the Franchising Authority may have for further or additional sums payable under this Agreement. The Franchising Authority may conduct an audit no more than once annually to ensure payments in accordance with this Agreement. The audit of the Company's records shall take place at a location, in the State of Georgia, determined by the Company. The Franchising Authority is prohibited from removing any records, files, spreadsheets, or any other documents from the site of the audit. In the event that the Franchising Authority takes notes of any documents, records, or files of the Company for use in the preparation of an audit report, all notes shall be returned to the Company upon completion of the audit. The audit period shall be limited to three (3) years preceding the end of the quarter of the most recent payment. Once the Company has provided information for an audit with respect to any period, regardless of whether the audit was completed, that period shall not again be the subject of any audit.

If, as a result of an audit or any other review, the Franchising Authority determines that the Company has underpaid franchise fees in any twelve (12) month period by ten percent (10%) or more, then, in addition to making full payment of the relevant obligation, the Company shall reimburse the Franchising Authority for all of the reasonable costs associated with the audit or review, including all reasonable out-of-pocket costs for attorneys, accountants, and other consultants. The Franchising Authority shall provide the Company with a written notice of audit results and a copy of the final report presented to the Franchising Authority. The Company shall remit any undisputed amounts owed to the Franchising Authority as the result of the audit within forty-five (45) days, or other mutually acceptable timeframe, after the date of an executed settlement and release agreement.

4.2 Payments Not to Be Set Off Against Taxes or Vice Versa. The parties agree that the compensation and other payments to be made pursuant to this Section 8-4-6 are not a tax and are not in the nature of a tax. The Company and the Franchising Authority further agree that the provisions of O.C.G.A. § 36-76-6(h) apply to this Agreement. The Franchising Authority and the Company further agree that no additional business license fees, occupational license fees, or permit fees shall be assessed on the Company related to the provision of services or the operation of the Cable System, nor shall the Franchising Authority levy any other tax, license, fee, or assessment on the Company or its Subscribers that is not generally imposed and applicable to a majority of all other businesses.

4.3 Interest on Late Payments. If any payment required by this Agreement is not actually received by the Franchising Authority on or before the applicable date fixed in this Agreement, the Company shall pay interest thereon, from the due date to the date paid, at a rate of one percent (1%) per month.

4.4 Service to Governmental and Institutional Facilities.

4.4.1 Complimentary Installation and Service. The Company shall, within thirty (30) days of receipt of a written request by the Franchising Authority, provide complimentary standard installation and complimentary Basic Service on one outlet for each public primary or secondary school and public library located within the Franchise Area no more than one hundred twenty-five (125) feet from the nearest point of connection to the distribution plant. If a public primary or secondary school or public library within the Franchise Area is located more than one hundred twenty-five (125) feet from the nearest point of connection to the distribution plant, the Company shall, within thirty (30) days of receipt of a written request from the Franchising Authority, provide a written estimate for the cost of extending the distribution plant to the school or library, as well as any necessary interior wiring costs.

4.4.2 Government Discounts. The Company may provide a government discount rate if the Franchising Authority requests additional outlets at a public school or public library or requests Cable Service to any other government facility within the Franchise Area.

Sec. 8-4-7. – Compliance Reports.

5.1 Compliance. The Franchising Authority hereby acknowledges that as of the Effective Date, the Company is in material compliance with the terms and conditions of the cable franchise preceding this Agreement and all material laws, rules, and ordinances of the Franchising Authority.

5.2 Reports. Upon written request by the Franchising Authority and subject to Section 631 of the Cable Act, the Company shall promptly submit to the Franchising Authority such information as may be necessary to reasonably demonstrate the Company's compliance with any term or condition of this Agreement.

5.3 File for Public Inspection. Throughout the term of this Agreement, the Company shall maintain and make available to the public those documents required pursuant to the FCC's rules and regulations.

5.4 Treatment of Proprietary Information. The Franchising Authority agrees to treat as confidential, to the maximum extent allowed under the Georgia Open Records Act (O.C.G.A. § 50-18-70, *et seq.*) or other applicable law, any requested documents submitted by the Company to the Franchising Authority that are labeled as "Confidential" or "Trade Secret" prior to submission. In the event that any documents submitted by the Company to the Franchising Authority are subject to a request for inspection or production, including but not limited to a request under the Georgia Open Records Act, the Franchising Authority shall notify the Company of the request as soon as practicable and in any case prior to the release of such information, by email or facsimile to the addresses provided in Section 9.6 of this Agreement, so that the Company may take appropriate steps to protect its interests in the requested records, including seeking an injunction against the release of the requested records. Upon receipt of said notice, the Company may review the requested records in the Franchising Authority's possession and designate as "Confidential" or "Trade Secret" any additional portions of the requested records that contain confidential or proprietary information.

5.5 Emergency Alert System. Company shall install and maintain an Emergency Alert System in the Franchise Area only as required under applicable federal and state laws. Additionally, the Franchising Authority shall permit only those Persons appropriately trained and authorized in accordance with applicable law to operate the Emergency Alert System equipment and shall take reasonable precautions to prevent any use of the Company's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, the Franchising Authority shall hold the Company and its employees, officers, and assigns harmless from any claims arising out of use of the Emergency Alert System, including but not limited to reasonable attorneys' fees and costs.

Sec. 8-4-8. – Enforcement.

6.1 Notice of Violation. If the Franchising Authority believes that the Company has not complied with the terms of this Agreement, the Franchising Authority shall first informally discuss the matter with the Company. If discussions do not lead to a resolution of the problem, the Franchising Authority shall notify the Company in writing of the nature of the alleged noncompliance ("Violation Notice").

6.2 Company's Right to Cure or Respond. The Company shall have thirty (30) days from the receipt of the Violation Notice, or any longer period specified by the Franchising Authority, to respond; cure the alleged noncompliance; or, if the alleged noncompliance, by its nature, cannot be cured within thirty (30) days, initiate reasonable steps to remedy the matter and provide the Franchising Authority a projected resolution date in writing.

6.3 Hearing. If the Company fails to respond to the Violation Notice received from the Franchising Authority, or the alleged noncompliance is not remedied within the cure period set forth above, the Franchising Authority's governing body shall schedule a hearing if it intends to continue its investigation into the matter. The Franchising Authority shall provide the Company at least thirty (30) days' prior written notice of the hearing, specifying the time, place, and purpose of the hearing. The Company shall have the right to present evidence and to question witnesses. The Franchising Authority shall determine if the Company has committed a violation and shall make written findings of fact relative to its determination. If a violation is found, the Company may petition for reconsideration before any competent tribunal having jurisdiction over such matters.

6.4 Enforcement. Subject to applicable federal and state law, if after the hearing provided for in Section 6.3, the Franchising Authority determines that the Company is in default of the provisions addressed in the Violation Notice, the Franchising Authority may

(a) seek specific performance;

(b) commence an action at law for monetary damages or seek other equitable relief; or

(c) in the case of a substantial default of a material provision of this Agreement, seek to revoke the Franchise in accordance with subsection 6.5 below.

6.5 Revocation.

6.5.1 After the hearing and determination provided for in Section 6.3 and prior to the revocation or termination of the Franchise, the Franchising Authority shall give written notice to the Company of its intent to revoke the Franchise on the basis of an alleged substantial default of a material provision of this Agreement. The notice shall set forth the exact nature of the alleged default. The Company shall have thirty (30) days from receipt of such notice to submit its written objection to the Franchising Authority or to cure the alleged default. If the Franchising Authority is not satisfied with the Company's response, the Franchising Authority may seek to revoke the Franchise at a public hearing. The Company shall be given at least thirty (30) days' prior written notice of the public hearing, specifying the time and place of the hearing and stating the Franchising Authority's intent to revoke the Franchise.

6.5.2 At the public hearing, the Company shall be permitted to state its position on the matter, present evidence, and question witnesses, after which the Franchising Authority's governing board shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to the Company within ten (10) business days. The decision of the Franchising Authority's governing board shall be made in writing and shall be delivered to the Company. The Company may appeal such decision to an appropriate court, which shall have the power to review the decision of the Franchising Authority's governing board. The Company may continue to operate the Cable System until all legal appeals procedures have been exhausted.

6.5.3 Notwithstanding the provisions of this Section 8-4-8, the Company does not waive any of its rights under federal law or regulation.

6.6 Technical Violations. The parties hereby agree that it is not the Franchising Authority's intention to subject the Company to penalties, fines, forfeiture, or revocation of the Agreement for so-called "technical" breach(es) or violation(s) of the Agreement, where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Franchise Area or where strict performance would result in practical difficulties and hardship to the Company which outweigh the benefit to be derived by the Franchising Authority or Subscribers.

Sec. 8-4-9. – Assignments and Other Transfers.

The Franchise shall be fully transferable to any successor in interest to the Company. A notice of transfer shall be filed by the Company to the Franchising Authority within forty-five (45) days of such transfer. The transfer notification shall consist of an affidavit signed by an officer or general partner of the transferee that contains the following:

(a) an affirmative declaration that the transferee shall comply with the terms and conditions of this Agreement, all applicable federal, state, and local laws, regulations, and ordinances regarding the placement and maintenance of facilities in any public right-of-way that are generally applicable to users of the public right-of-way and specifically including the Georgia Utility Facility Protection Act (O.C.G.A. § 25-9-1, *et seq.*);

(b) a description of the transferee's service area; and

(c) the location of the transferee's principal place of business and the name or names of the principal executive officer or officers of the transferee.

No affidavit shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Company in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation.

Sec. 8-4-10. – Insurance and Indemnity.

8.1 Insurance.

8.1.1 Liability Insurance. Throughout the term of this Agreement, the Company shall, at its sole expense, maintain comprehensive general liability insurance, issued by a company licensed to do business in the State of Georgia with a rating of not less than "A minus," and provide the Franchising Authority certificates of insurance demonstrating that the Company has obtained the insurance required in this Section 8.1.1. This liability insurance policy or policies shall be in the minimum amount of One Million Dollars ($1,000,000.00) for bodily injury or death of any one person, One Million Dollars ($1,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and One Million Dollars ($1,000,000.00) for property damage resulting from any one accident. The policy or policies shall not be canceled except upon thirty (30) days' prior written notice of cancellation to the Franchising Authority.

8.1.2 Workers' Compensation. The Company shall ensure its compliance with the Georgia Workers' Compensation Act.

8.2 Indemnification. The Company shall indemnify, defend, and hold harmless the Franchising Authority, its officers, employees, and agents acting in their official capacities from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of the Company's construction, operation, maintenance, or removal of the Cable System, including but not limited to reasonable attorneys' fees and costs, provided that the Franchising Authority shall give the Company written notice of its obligation to indemnify and defend the Franchising Authority within ten (10) business days of receipt of a claim or action pursuant to this Section 8.2. If the Franchising Authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Franchising Authority. Notwithstanding the foregoing, the Company shall not be obligated to indemnify the Franchising Authority for any damages, liability, or claims resulting from the willful misconduct or gross negligence of the Franchising Authority or for the Franchising Authority's use of the Cable System.

8.3 Liability and Indemnity. In accordance with Section 635A of the Cable Act, the Franchising Authority, its officials, employees, members, or agents shall have no liability to the Company arising from the regulation of Cable Service or from a decision of approval or disapproval with respect to a grant, renewal, transfer, or amendment of this Franchise. Any relief, to the extent such relief is required by any other provision of federal, state, or local law, shall be limited to injunctive relief and declaratory relief.

Sec. 8-4-11. – Miscellaneous.

9.1 Controlling Authorities. This Agreement is made with the understanding that its provisions are controlled by the Cable Act, other federal laws, state laws, and all applicable local laws, ordinances, and regulations. To the extent such local laws, ordinances, or regulations clearly conflict with the terms and conditions of this Agreement, the terms and conditions of this Agreement shall prevail, except where such conflict arises from the Franchising Authority's lawful exercise of its police powers.

9.2 Appendices. The Appendices to this Agreement and all portions thereof are, except as otherwise specified in this Agreement, incorporated by reference in and expressly made a part of this Agreement.

9.3 Enforceability of Agreement; No Opposition. By execution of this Agreement, the Company and the Franchising Authority acknowledge the validity of the terms and conditions of this Agreement under applicable law in existence on the Effective Date and pledge that they will not assert in any manner at any time or in any forum that this Agreement, the Franchise, or the processes and procedures pursuant to which this Agreement was entered into and the Franchise was granted are not consistent with the applicable law in existence on the Effective Date.

9.4 Governmental Powers. The Franchising Authority expressly reserves the right to exercise the full scope of its powers, including both its police power and contracting authority, to promote the public interest and to protect the health, safety, and welfare of the citizens of the City of Stonecrest, Georgia.

9.5 Entire Agreement. This Agreement, including all Appendices, embodies the entire understanding and agreement of the Franchising Authority and the Company with respect to the subject matter hereof and merges and supersedes all prior representations, agreements, and understandings, whether oral or written, between the Franchising Authority and the Company with respect to the subject matter hereof, including without limitation all prior drafts of this Agreement and any Appendix to this Agreement, and any and all written or oral statements or representations by any official, employee, agent, attorney, consultant, or independent contractor of the Franchising Authority or the Company. All ordinances or parts of ordinances or other agreements between the Company and the Franchising Authority that are in conflict with the provisions of this Agreement are hereby declared invalid and superseded.

9.6 Notices. All notices shall be in writing and shall be sufficiently given and served upon the other party by first class mail, registered or certified, return receipt requested, postage prepaid; by third-party commercial carrier; or via facsimile (with confirmation of transmission) and addressed as follows:

THE FRANCHISING AUTHORITY:
City of Stonecrest
Attn: City Manager
3120 Stonecrest Boulevard
Lithonia, Georgia

COMPANY:
Comcast of Georgia I, LLC
Attn: Vice President, External Affairs
6200 The Corners Parkway, Suite 200
Norcross, Georgia 30092

With a copy to:
Comcast Cable Communications, LLC
Attn: Vice President, Government Affairs
600 Galleria Parkway, Suite 1100
Atlanta, Georgia 30339

And: Comcast Cable Communications, LLC
Attn: Legal Dept.
One Comcast Center
Philadelphia, Pennsylvania 19103

9.7 Additional Representations and Warranties. In addition to the representations, warranties, and covenants of the Company to the Franchising Authority set forth elsewhere in this Agreement, the Company represents and warrants to the Franchising Authority and covenants and agrees (which representations, warranties, covenants and agreements shall not be affected or waived by any inspection or examination made by or on behalf of the Franchising Authority) that, as of the Effective Date:

9.7.1 Organization, Standing, and Authorization. The Company is a limited liability company validly existing and in good standing under the laws of the State of Georgia and Delaware, respectively, and is duly authorized to do business in the State of Georgia and in the Franchise Area.

9.7.2 Compliance with Law. The Company, to the best of its knowledge, has obtained all government licenses, permits, and authorizations necessary for the operation and maintenance of the Cable System.

9.8 Maintenance of System in Good Working Order. Until the termination of this Agreement and the satisfaction in full by the Company of its obligations under this Agreement, in consideration of the Franchise, the Company agrees that it will maintain all of the material properties, assets, and equipment of the Cable System, and all such items added in connection with any upgrade, in good repair and proper working order and condition throughout the term of this Agreement.

9.9 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, permitted transferees, and assigns. All of the provisions of this Agreement apply to the Company, its successors, and assigns.

9.10 No Waiver; Cumulative Remedies. No failure on the part of the Franchising Authority or the Company to exercise, and no delay in exercising, any right or remedy hereunder including without limitation the rights and remedies set forth in this Agreement, shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other right or remedy, all subject to the conditions and limitations established in this Agreement. The rights and remedies provided in this Agreement including without limitation the rights and remedies set forth in Section 8.4.8 of this Agreement, are cumulative and not exclusive of any remedies provided by law, and nothing contained in this Agreement shall impair any of the rights or remedies of the Franchising Authority or Company under applicable law, subject in each case to the terms and conditions of this Agreement.

9.11 Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions of this Agreement, which shall continue in full force and effect.

9.12 No Agency. The Company shall conduct the work to be performed pursuant to this Agreement as an independent entity and not as an agent of the Franchising Authority.

9.13 Governing Law. This Agreement shall be deemed to be executed in the City of Stonecrest, Georgia, and shall be governed in all respects, including validity, interpretation, and effect, by and construed in accordance with the laws of the State of Georgia, as applicable to contracts entered into and to be performed entirely within that state.

9.14 Claims Under Agreement. The Franchising Authority and the Company, agree that, except to the extent inconsistent with Section 635 of the Cable Act (47 U.S.C. § 555), any and all claims asserted by or against the Franchising Authority arising under this Agreement or related thereto shall be heard and determined either in a court of the United States located in Georgia ("Federal Court") or in a court of the State of Georgia of appropriate jurisdiction ("Georgia State Court"). To effectuate this Agreement and intent, the Company agrees that if the Franchising Authority initiates any action against the Company in Federal Court or in Georgia State Court, service of process may be made on the Company either in person or by registered mail addressed to the Company at its offices as defined in Section 9.6, or to such other address as the Company may provide to the Franchising Authority in writing.

9.15 Modification. The Company and Franchising Authority may at any time during the term of this Agreement seek a modification, amendment, or waiver of any term or condition of this Agreement. No provision of this Agreement nor any Appendix to this Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Franchising Authority and the Company, which amendment shall be authorized on behalf of the Franchising Authority through the adoption of an appropriate resolution, letter of agreement, or order by the Franchising Authority, as required by applicable law.

9.16 Delays and Failures Beyond Control of Company. Notwithstanding any other provision of this Agreement, the Company shall not be liable for delay in performance of, or failure to perform, in whole or in part, its obligations pursuant to this Agreement due to strike, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, accident, fire, flood or other act of God, technical failure, sabotage, or other events, where the Company has exercised all due care in the prevention thereof, to the extent that such causes or other events are beyond the control of the Company and such causes or events are without the fault or negligence of the Company. In the event that any such delay in performance or failure to perform affects only part of the Company's capacity to perform, the Company shall perform to the maximum extent it is able to do so and shall take all steps within its power to correct such cause(s). The Company agrees that in correcting such cause(s), it shall take all reasonable steps to do so in as expeditious a manner as possible. The Company shall promptly notify the Franchising Authority in writing of the occurrence of an event covered by this Section 9.16.

9.17 Duty to Act Reasonably and in Good Faith. The Company and the Franchising Authority shall fulfill their obligations and exercise their rights under this Agreement in a reasonable manner and in good faith. Notwithstanding the omission of the words "reasonable," "good faith," or similar terms in the provisions of this Agreement, every provision of this Agreement is subject to this section.

9.18 Contractual Rights Retained. Nothing in this Agreement is intended to impair the contractual rights of the Franchising Authority or the Company under this Agreement.

9.19 No Third-Party Beneficiaries. Nothing in this Agreement, or any prior agreement, is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of such agreements or Franchise."

SO ORDAINED AND EFFECTIVE this the ____ day of _______, 2017.

Approved:

____
Jason Lary, Sr., Mayor

As to form:

____
Thompson Kurrie, Jr., City Attorney

Attest:

____
Brenda James, City Clerk

THE CITY OF
STONECREST
GEORGIA

CITY COUNCIL AGENDA ITEM

SUBJECT: DISCUSSION ON BLIGHTED PROPERTIES IN THE CITY OF STONECREST

( )	ORDINANCE	( )	POLICY	( )	STATUS REPORT
( )	DISCUSSION ONLY	( )	RESOLUTION	(X)	OTHER

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

SUBMITTED BY: Council Member Adoma

PURPOSE: Council Member Adoma would like to discuss the issue of blighted properties in the City of Stonecrest.

HISTORY:

FACTS AND ISSUES:

OPTIONS:

RECOMMENDED ACTION: Discussion and Recommendation of Council