

CITY OF STONECREST, GEORGIA

Honorable Mayor Jason Lary, Sr.

Council Member Jimmy Clanton, Jr. – District 1

Council Member Rob Turner- District 2

Council Member Jazzmin Cobble – District 3

Council Member George Turner- District 4

Council Member Diane Adoma – District 5

CITY COUNCIL MEETING AGENDA

October 3, 2018

9:00am.

3120 Stonecrest Blvd. Suite 190

Stonecrest, Georgia

- I. CALL TO ORDER:** Mayor Jason Lary
- II. ROLL CALL:** Brenda James, Interim City Clerk
- III. INVOCATION:**
- IV. PLEDGE OF ALLEGIANCE:**
- V. ADOPTION OF THE CITY COUNCIL AGENDA:**
- VI. MINUTES:** Approval of Minutes of the City Council Meeting of September 17, 2018
- VII. PRESENTATIONS:**
- VIII. PUBLIC COMMENTS:**
- IX. AGENDA ITEMS:**
 - 1. Ordinance Amending Chapter 15 – Business License Article XIX Mobile Food Vendors
 - 2. Ordinance Designating Chapter 16 – Miscellaneous Provisions and Offenses
 - 3. Ordinance Adopting Chapter 11 Emergency Management and Services
 - 4. Ordinance Adopting Chapter 9 Parks and Recreation

5. Intergovernmental Agreement for Police Services between DeKalb County and the City of Stonecrest
6. Intergovernmental Agreement for Fire Rescue Services between DeKalb County and the City of Stonecrest
7. Intergovernmental Agreement for 911 Dispatch Services between DeKalb County and the City of Stonecrest
8. Budget Amendment

X. CITY MANAGER COMMENTS:

XI. CITY ATTORNEY COMMENTS:

XII. MAYOR AND COUNCIL COMMENTS:

XIII. ADJOURNMENT:

XIV. EXECUTIVE SESSION:

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

CITY OF STONECREST, GEORGIA

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Council Member Rob Turner- District 2

Council Member Jazzmin Cobble – District 3

Council Member George Turner- District 4

Council Member Diane Adoma – District 5

CITY COUNCIL MEETING AGENDA

September 17, 2018

7:00pm.

3120 Stonecrest Blvd. Suite 190

Stonecrest, Georgia

- I. CALL TO ORDER:** Mayor Jason Lary
- II. ROLL CALL:** All Present
- III. INVOCATION:** Mayor Lary
- IV. PLEDGE OF ALLEGIANCE:**
- V. ADOPTION OF THE CITY COUNCIL AGENDA:**

Mayor Lary said he would like to move Public Comments up under the Public Hearing before the Agenda Items.

Council Member Cobble said she would like to defer item numbers 4,5 & 6 because the city is currently in open and ongoing negotiations with a vendor and the Council requested a large amount of information that they have not received.

Council Member Clanton made a motion to leave the agenda as is and move the Public Comments up before the Agenda Items. Mayor Lary provided the second.

The motion failed with Council Members George Turner, Clanton and Mayor Lary voting Yes. Council Member Rob Turner, Cobble and Adoma voted no.

Council Cobble made a motion to move Public Comments up before the Agenda Items and remove numbers 4, 5 & 6 from the agenda. Council Member Rob Turner provided the second.

Council Member Cobble made a substitute motion to remove items 4,5 & 6, move up Public Comments and substitute the presentation with an update on SPLOST

Management with the exclusion of contract negotiations and details. Council Member Adoma provided the second.

After much discussion, Council Member George Turner made a motion to move up Public Comments and convert items 4,5&6 for Discussion Only and accept the agenda with those changes. Council Member Cobble provided the second. **The motion carried with Council Members Rob turner, Cobble, Clanton, George Turner and Adoma voting yes. Mayor Lary voted not.**

VI. MINUTES: Approval of Minutes of the City Council Meeting of September 5, 2018

Council Member Adoma said the word rescue was in the minutes in several places and it should be recused. She also stated Council Member Clanton asked if we were hearing both Ethics Complaints and wanted that to be added. Council Member Clanton told the Clerk to listen to it and add if she thought it should be added.

Council Member George Turner made a motion to approve the minutes with the stated corrections. Council Member Adoma provided the second. **The motion carried.**

Mayor Lary came down to the podium and said he had to pray over if he was going to make this and stated the following: "I can't do any more than what I am doing. I was going to hold this as long as I could, but I can see it is not going to make a real difference. I have been taking Cancer treatments for a couple of months now; coming here in pain, trying to work, ignoring my family and ignoring what my wife asks me to do. I ask myself this evening for what. If I cannot effectively lead us in the way we are supposed to go, then I need to take some time. I need time to get healthy and time to take the treatment. I need to do that without being extremely aggravated and I will have some say in it. I should preside of the meeting for the rest of the evening, but it is just not in me. I have been at this for 5 years in a row I have pounded the payment trying to make sure we got where we were supposed to go with the help of some good people like Joel Thibodeau, Bernie Knight, Tom Kurrie, Plez and the Clanton's and everybody else and I hope I did not leave anybody out. I need a moment, all of us need a moment, I need a moment to rejuvenate; clearly, I am not being effective at the moment. I had to pray on weather I was going to say it today or not. I want you to hear it from me and not hear some nonsense in the street. I have no problem telling you I cannot endure the pain at the same time. You are in good hands for a couple of months if you will allow it with Mayor Pro Tem George Turner, who has the strength and spirit for it. I will still do the duties you have elected me to do, but I cannot make these Council Meeting right now. Thank you for your prayers." Mayor Lary left the meeting.

Mayor Pro Tem George Turner asked everyone for a moment of silence in prayer for Mayor Lary.

VII. PUBLIC HEARING:

1. TMOD 18-003 & 004 STVR Use Table and Regulations

Nicole Dozier gave an overview for TMOD 18-003 and 004 STVR for Use Table and Regulations. She said the Planning Commission has recommended approval with modifications.

Council Member Clanton made a motion to open the public hearing with Council Member Rob Turner providing the second. **The motion carried unanimously.**

Spoke in Favor

Michelle Battle

Spoke Against

Faye Coffield

Council Member Cobble made a motion to close the public hearing with Council Member Rob Turner providing the second. **The motion carried unanimously.**

After much discussion, Council Member Cobble made a motion to adopt the Text Amendment with confirmation that there is a process during the licensing for the City Engineer Inspection and Fire Marshall. Council Member Adoma provided the second.

Council Member Clanton asked can we do the part about the inspections since we are going through the process. Attorney Kurrie said Council should vote the amendment the way it is now, and they will bring back an amendment.

Council Member Cobble amended her motion to approve the Text Amendment TMOD 18-003 & 004 with Council Member Adoma providing the second. **The motion carried unanimously.**

2. SLUP 18-005 6617 Eastbriar Drive

Nicole Dozier gave an overview and said the Planning and Zoning Commission recommended approval with conditions.

Council Member Clanton made a motion to open the Public Hearing with Council Member Rob Turner providing the second. **The motion carried unanimously.**

Spoke in Favor

Riva Usher

Spoke Against

No one

Council Member Clanton made a motion to close the Public Hearing with Council Member Cobble providing the second. **The motion carried unanimously.**

After much discussion, Council Member Clanton made a motion to approve the SLUP 18-005 at 6617 Eastbriar Drive with the conditions. Council Member cobble provided the second. **The motion carried unanimously.**

3.. AX 18-0001 6024 Covington Hwy

Nicole Dozier gave an overview regarding the annexation request at 6024 Covington Highway. She said the Planning Commission approved it with fifteen conditions.

Council Member Clanton made a motion to open the Public Hearing with Council Member Rob Turner providing the second. **The motion carried unanimously.**

Spoke in Favor

Michelle Battle

Spoke Against

Bernard Knight

Jane Costello

Roderick Frierson

Kenneth Saunders III

Council Member Rob Turner made a motion to close the Public Hearing with Council Member Adoma providing the second. **The motion carried unanimously.**

After much discussion, Council Member Rob Turner made a motion to defer this matter for additional discussions with Council Member Adoma providing the second. **The motion carried unanimously.**

VIII. PRESENTATIONS: Grice Consulting - None

IX. PUBLIC COMMENTS:

1. Susan Lee spoke on delaying of the items and how frustrated she was by what had happened tonight, pot holes and the need to get the street repaired.
2. Dave Marcus spoke on the city not using RFPs, the cost of Grice for SPLOST Management.
3. Faye Coffield spoke on it being a sad day in government, the use of RFPs or RFQs, following your own policies, on Grice and SPLOST.
4. Michelle Emmanuel spoke on the city's money and council should answer to the citizens, and the need to stop the infighting.
5. Suzanne Frick spoke on roads and maintenance and the Stantec proposal.

X. AGENDA ITEMS:

4. Digital Pavement Analysis
5. RFP/RFQ for SPLOST Program Management
6. RFP/RFQ for Comprehensive Transportation Plan

There was a discussion on all three of the above items together.

Council Member Clanton recommended Ken Hildebrandt give his presentation regarding the Digital Payment Analysis once again.

Council Member Adoma said the presentation has been given two to three times, Council is not going to vote so where are we going tonight. She said she has no desire to hear it again tonight.

Council Member George Turner said the Council unanimously voted to bring on a consultant and this was done before the purchasing policy was in place and somehow that went away, and it was done without Council consent. That is why Council asked them to go back into negotiations. He also said he wanted to wait on the road analysis and let the consultant decide who they would use.

Council Member Clanton said he thinks there is some misunderstanding or willful intent not to understand and we have an opportunity to get this right and for the

record he thinks Council took an incorrect approach. He said he does not hear anyone between the Mayor, himself or staff promoting to get rid of the group. He said sides have been taken.

Council Member Cobble said we did not use an RFP for the road analysis group either and there are still certain parties pursuing the it. During the work of the Consultant Management Group should a road payment analysis be needed they will use the RFP process to solicit that service. The members who voted against the road analysis were clear that should one be needed it should come from the consultant, and we are asked again the vote on the Digital Payment Analysis.

Council Member Adoma said we had a procedural or process breakdown or miscommunication. She said she is now thinking about process and legal consequences. She said Council voted unanimously to retain the vendor, and Georgia law dictates the next step for Council is to start the negotiation process. Council was waiting and there were documents signed and conversations going on about the vendor. She said she must define the motion she made.

Council Member Clanton said he is the only person on the Council in opposition and all of what was done was for Pre SPLOST. He said we are going on the cold term of Good Faith and good faith is not giving a vendor unfair asset to city funds.

Council Member Cobble said she agrees that they are not going to agree on the details because at this point we all have our own interpretations of what happen. Unfortunately, in the court of public opinion when one side has already presented their version the people have that impression; so, at this point we do not agree on the details, and she does not think another presentation is needed.

Council Member Rob Turner said this was to be the night of understanding and we were going to have the vender here, so when we bring them they can give the public they will see a better understanding.

Council Member Adoma said for the record if there was a problem with the Grice Proposal it never came back to the Council and if it did maybe we could have corrected it then. She said Council does not have a lot of options, but they must do the right thing for the City of Stonecrest and they must be followers of the law and not tie the city up in litigations.

Council Member George Turner said people constantly ask how we gave this to the vendor without going through the bidding process. Well we were a new city and did not have a purchasing policy and we get a buy on this. However, we did get another presentation from another vendor and they were higher than this vendor,

City Manager Michael Harris said from staff standpoint they have made their presentation to council. As far as the process for the others, he said once they were given the task they started the negotiation process. There have been some back and forth with the vendor and as of today they have received another quote. He said CH2M/Jacobs did make a presentation on this, however we are not pursuing this anymore.

Council Member Cobble said when the two presentations were entertained for the SPLOST Management we chose a company and that company helped up create the language for the referendum and bucket list. She said we are not trying to decide the whom but the numbers for the contract.

Council Member Adoma said she was happy the Council had the discussion and it was productive. She said the public will see that the Council collectively will make the best decision for the City of Stonecrest.

7. Ordinance Amending Chapter 15 – Business License Article XIX Mobile Food Vendor

City Attorney Janelle Alleyne gave an overview of the changes to Ordinance Amending Chapter 15.

This was the first read only.

8. Ordinance Designating Chapter 16- Miscellaneous Provisions and Offenses

Attorney Janelle Alleyne gave an overview of the Ordinance designating Chapter 16 for Miscellaneous Provisions and Offenses.

This was the first read only.

9. Resolution to Establish the Lithonia Industrial Park/Industrial Boulevard Steering Committee

Council Member Clanton made a motion to approve the Resolution to Establish the Lithonia Industrial Park/Industrial Boulevard Steering Committee. Council Member Adoma provided the second. **The motion carried unanimously.**

XI. CITY MANAGER COMMENTS: None

XII. CITY ATTORNEY COMMENTS: None

XIII. MAYOR AND COUNCIL COMMENTS: None

XIV. EXECUTIVE SESSION:

Council Member Adoma made a motion to go into Executive Session for 3 real estate matters at 11:10 with Council Member Clanton providing the second. **The motion carried unanimously.**

Council Member Adoma made a motion to reconvene into the regular meeting with Council Member Rob Turner providing the second. **The motion carried unanimously.**

XV. ADJOURNMENT:

Council Member Cobble made a motion to adjourn the meeting at 11:45pm with Council Member Rob Turner providing the second. **The motion carried unanimously.**



CITY COUNCIL AGENDA ITEM

SUBJECT: Ordinance City of Stonecrest Amending Chapter 15- Business License Article XIX Mobile Food Vendors

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

Date Submitted: 09/12/2018

Council Meeting: 10/03/2018

SUBMITTED BY: City Attorney

PURPOSE: This item is the first reading on the amendments to Chapter 15 for the Business Licenses to add Mobile Food Vendors

HISTORY: First Read was on September 17, 2018

FACTS AND ISSUES:

OPTIONS:

RECOMMENDED ACTION: Adoption of the Ordinance

AN ORDINANCE OF THE CITY OF STONECREST, GEORGIA,
AMENDING CHAPTER 15 – BUSINESS LICENSES
TO ADD ARTICLES XIX – MOBILE FOOD VENDORS.

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

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

WHEREAS, Pursuant to Section 1.03(b)(12) 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 define, regulate, and prohibit acts, practice, conducts, or use of property which is detrimental to the health, safety, and welfare of its citizens; and

WHEREAS, it is the intent of the Mayor and Counsel, in enacting this ordinance to improve the safety and welfare of its citizens through the certification and regulation of certain professions;

WHEREAS, the City recognizes its constitutional duty to interpret and construe its laws and ordinances to comply with constitutional requirements as they are announced; and

WHEREAS, with the passage of any ordinance, the Mayor and City Council accept as binding the applicability of general principles of criminal and civil law and procedure and the rights and obligations under the United States and Georgia Constitutions, Georgia Law, and the Georgia Rules of Civil and Criminal Procedure;

WHEREAS, it is the intent of the Mayor and Council, in enacting this ordinance, to improve the quality of life and economic vitality of the City of Stonecrest, Georgia, and to protect the safety of the general public against certain abusive conduct of persons engaged in solicitation and vending, by imposing reasonable time, manner, and place restrictions on solicitation while respecting the constitutional rights of free speech for all citizens; and

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

41
42 **THEREFORE**, the Mayor and City Council of the City of Stonecrest, Georgia, hereby ordain as
43 follows:

44 **Section 1:**

45 **The Code of the City of Stonecrest, Georgia, is hereby amended by adding an Article XIX,**
46 **that reads as follows:**

47 **ARTICLE XIX –MOBILE FOOD VENDORS**

48 **DIVISION 1. - GENERALLY**

49 **15.19.1 – Definitions**

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

52 *Blind person* means a person whose vision, with correcting glasses, is so defective as to
53 prevent the performance of activities for which eyesight is essential. See O.C.G.A. § 49-4-51(b).

54 *Disabled veteran* means a resident of the state who may be either a war veteran or veteran
55 of peace-time service as set forth below and such person must obtain a certificate of exemption
56 issued by the state commissioner of veterans' service.

57 (1) A war veteran must furnish satisfactory proof that he or she has a physical
58 disability which is disabling to the extent of 10 percent or more; that his or her
59 service in the armed forces of the United States was terminated under conditions
60 other than dishonorable; and that his or her service or some part thereof was
61 rendered during a war period as defined by an act of the Congress of the United
62 States, approved March 20, 1933, entitled "An Act to Maintain the Credit of the
63 United States," and commonly known as Public Law No. 2, 73rd Congress; or
64 that some part of his or her service was rendered on or after December 7, 1941,
65 and before December 31, 1946; or that some part of his or her service was
66 rendered on or after June 27, 1950, and before January 31, 1955; or that some part
67 of his or her service was rendered on or after August 5, 1964, and before May 8,
68 1975. Proof of such 10 percent disability shall be established upon the written
69 certificate of two physicians as to such disability, or by a letter or other written
70 evidence from the United States Department of Veterans Affairs or the
71 Department of Veterans Service stating the degree of disability, or by written
72 evidence from the branch of the armed forces of the United States in which such
73 veteran served.

74 (2) A veteran of peace-time service in the United States armed forces must furnish
75 proof that he or she has a physical disability to the extent of 25 percent or more
76 incurred in the line of duty during the period of such service by a letter or other

evidence from the United States Department of Veterans Affairs or the Department of Veterans Service stating the degree of disability or by written evidence from the branch of the armed forces of the United States in which such veteran served and that his or her service in the armed forces of the United States was terminated under conditions other than dishonorable..

- (3) That disabled veterans and blind persons shall only have to show proof of their disability upon their initial application, as opposed to annually. If the current language of O.C.G.A. § 43-12-2 is amended, then this definition of disabled veteran shall be controlled by O.C.G.A. § 43-12-2, as amended.

Food truck means any motor vehicle used for vending of prepared food items to the public from designated food truck areas.

Items permissible for sale means items which may be offered for sale by and are limited to non-alcoholic pre-packaged beverages; pre-packaged food; prepared food; and prepared non-alcoholic beverages. Items permissible for sale shall not include any tobacco products.

Moral turpitude means the act or behavior of baseness, vileness or the depravity in private and social duties which people owe to their fellow people, or to society in general, contrary to accepted and customary rule of right and duty between person and person; act or behavior that gravely violates moral sentiment or accepted moral standards of community and is a morally suitable quality held to be present in some criminal offenses as distinguished from others.

Non-alcoholic pre-packaged beverages means beverages sealed in plastic or aluminum single serving containers excluding all beverages in glass containers, and excluding all alcoholic, including but not limited to malt beverages, wine and distilled spirits.

Operating area means:

(1) The area in which a vendor may operate from a vending cart and which may not exceed 28 square feet of sidewalk including the area of the vending cart, and, when externally located, the operator and trash receptacle; or

(2) The parameters of the food truck.

Pre-packaged food means single serving sealed packaged foods including but not limited to candy, popsicles, chips/bagged snacks which do not require any heating or powered refrigeration, and the service of which does not require authorization by the DeKalb County Board of Health.

Prepared non-alcoholic beverages means beverages prepared on site and which are not served in glass containers, and excluding all alcoholic beverages, including but not limited to malt beverages, wine and distilled spirits.

112 *Prepared food* means food prepared on site, the sale of which requires authorization by
113 the DeKalb County Board of Health.

114 *Public property and public space* both mean, for the purpose of this article, any property
115 owned by the City of Stonecrest within street rights-of-way, including any roadways and
116 sidewalks, but excluding city-owned parks.

117 *Vending* means vending activity as permitted on privately owned commercial or
118 industrial property under the jurisdiction of the City of Stonecrest and in specifically designated
119 city-owned parks or property. Vending shall only be permitted in city-owned parks or property
120 where such activity is associated with a special event and/or subject to regulation under a more
121 specific permit.

122 *Valid vendor permit* means a permit issued by the City of Stonecrest for a vendor of a
123 vending cart or food truck. Such permit shall consist of a photo identification card which
124 contains the vendor's name, photograph, vending type and classification, authorized valid vendor
125 location(s) and time period for which such permit is valid.

126 *Vending cart* means a vending cart at which prepared food, prepared non-alcoholic
127 beverages, pre-packaged food and non-alcoholic pre-packaged beverages may be offered for
128 sale.

129 *Vendor* means any person who has been issued a valid vendor permit.

130 **Sec. 15-19-2. - Purpose, intent and applicability.**

131 (a) Vending on public property in the incorporated boundaries of the city, as defined in this
132 article, shall be prohibited. Vending on privately owned commercial or industrial
133 property without a permit issued pursuant to this article shall be unlawful and a person
134 violating this article shall, upon conviction, be punished as provided by this Code.

135 (b) It is the intent of council in enacting this article to:

136 (1) Serve and protect the health, safety and welfare of the general public.

137 (2) Establish a uniform set of rules and regulations which are fair and equitable.

138 (3) Provide economic development opportunities for small entrepreneurs in the city.

139 (4) Provide a variety of goods and services for sale.

140 (5) Promote stable vendors who will enrich the city's ambiance and be assets to
141 public security.

142 **Sec. 15-19-3. - Vending business required to remit sales taxes and keep records.**

143 (a) Every vendor shall file with Georgia Department of Revenue ("GDOR") the appropriate
144 forms and remit monthly sale tax revenues to GDOR. Nothing in this section shall
145 prohibit the revocation of any permit in accordance with the provisions of Division 2 of
146 this article.

(b) Prospective vendors, by filing a business license application, agree to produce documents and records which may be considered pertinent to the ascertainment of facts relative to the issuance and maintenance of the permit, including but not limited to the following:

(1) The prospective vendor's bank or other financial institution records, including those which are personal or from any business in which the vendor has any interest, such as savings and checking account records, bank statements, ledgers, deposit tickets, withdrawal slips, canceled checks, check stubs, bank drafts, cashier's checks, certificates of deposit, money market accounts, pass books and applications for each account;

(2) Personal state and federal income tax statements for the past five years; and

(3) Records of sales and receipts for purchases and expenses from any business in which a vendor has any interest.

Sec. 15-19-4. - Vending operational rules.

(a) Hours of operation shall be between 7:00 a.m. and 6:00 p.m., or as previously approved by the City Manager or his designee in connection with a special event permit.

(b) Any and all signage must comply with the City of Stonecrest Code of Ordinances, Chapter 21.

(c) Vendors may offer items permissible for sale only.

(d) All vendors shall display their valid vending permits, photo identification card, and any required copies of licensing agreements at the valid vendor location.

(e) All vendors must maintain an auditable point-of-sale system to track and report on sales revenue and appropriate taxation in accordance with the requirements of section 15-19-3.

(f) Vending operations may not obstruct vehicular traffic flow except for up to 15 minutes to load and unload vending carts and merchandise.

(g) Vending operations, including but not limited to the display of merchandise and may not exceed the approved operating area.

(h) Vending carts and/or food trucks shall not be left unattended or stored at any time in the operating area when vending is not taking place or during restricted hours of operation.

(i) Vending carts and/or food trucks should not occupy more than one standard parking space.

(j) Vending carts and/or food trucks shall not operate on vacant or undeveloped lots.

(k) Vending carts and/or food trucks shall be located within one-hundred (100) yards of the principal structure of the lot upon which it intends to vend.

(l) Vending carts and/or food trucks are allowed to stay at any one place of operation for a maximum of four hours.

(m) Vendors offering prepared food shall obtain the proper authorization and permits from the DeKalb County Board of Health or the comparable department of another municipality.

(n) Vendors offering pre-packed food and prepackaged beverages shall obtain the proper authorization from the Georgia Department of Agriculture.

Sec. 15-19-4. - Aesthetic standards.

Vending carts must comply with the following aesthetic standards:

(a) Length of the cart may not exceed seven feet and width may not exceed four feet height-excluding canopies, umbrellas, or transparent enclosures-may not exceed five feet;

(b) Canopies shall have a minimum clearance of seven feet and a maximum height of nine feet six inches above the sidewalk;

(c) Canopies may not exceed 48 square feet (eight feet × six feet);

(d) All carts must be mobile, and able to roll on wheels;

(e) The design, materials, and colors are to be of natural wood or metal products and considerate of the immediate surroundings of the proposed location;

(f) Materials must be in working order, and may not include peeling paint, visible defects or areas requiring maintenance;

(g) The wheels located under the car are preferred, however projecting wheels must have fenders;

(h) Hitches attached to the cart must be removable and detached when in operation; and

(i) If used, propane tanks must be enclosed.

Secs. 15.19.5—15.19-20. - Reserved.

DIVISION 2. - PERMITS AND LICENSES

Sec. 15-19-21. - Vendor permit and business license required.

(a) No vending shall occur without a permit issued pursuant to this article.

(b) No person shall engage in the business or trade of vending without first obtaining a business license. Disabled veterans and blind persons, as defined by O.C.G.A. § 43-12-1 and Sec. 15.19.1 of this Code are exempt from payment of business license fees, but must obtain such licenses.

(c) All valid vendor permits are nontransferable, and must be displayed in clear view, together with the vending permit photo identification card, at the permitted location or designated food truck area at all times when the vendor or assistant vendor is present.

Sec. 15-19-22. - Application.

- (a) An application shall be required by all persons seeking issuance of a valid vendor permit. Each applicant must apply in person and complete an application form. Application forms may be obtained from and filed with the office of revenue.
- (b) Permit fees and applicable maintenance fees are due and payable in the manner required by the City Manager or his designee if and when the application is approved by the City.
- (c) An application for permit, including the proposed vending area(s), must be submitted the City Manager or his designee for approval at least thirty (30) calendar days prior to the proposed vending start date. The City Manager or his designee shall approve, deny, or request addition information from the applicant within fourteen (14) business days.
- (d) The application shall, at a minimum, consist of the following data:
- (1) Applicant's name and current address.
 - (2) Applicant's previous addresses within the last five years.
 - (3) Social security number.
 - (4) Proposed vending location(s).
 - (5) Certification of approval of vending location from the private property owner.
 - (6) A dimensional site plan drawing for each vending location within the city which clearly shows the footprint and placement of the cart and the operating area.
 - (7) The times and days/dates during which the vendor estimates they will vend on the proposed property.
 - (8) GDOR retail identification tax number.
 - (9) State issued picture identification.
 - (10) City business license.
 - (11) A general description of the items permissible for sale to be sold or offered for sale.
- (e) All applicants shall furnish all data, information and records requested of them by the City Manager or his designee within 10 days from the date of request. Failure to furnish such information within 10 days shall automatically dismiss, with prejudice, the application.

Sec. 15-19-23. - Term and renewal of permits.

- (a) A valid vendor permit will be issued for a one-year period. When the one-year permit expires, a vendor may apply for a renewal permit which allows the vendor to vend for another one-year period. All valid vendor permits are required to be renewed annually on or before March 1. All annual permit fees and applicable annual maintenance fees are due and payable at the time of renewal.
- (b) Vendors may present to the City Manager or his designee an application for a renewal permit. Upon a review and approval of the renewal application, satisfaction of all other license and permit requirements, and upon payment of the appropriate fees as indicated in section 15-19-24, the vendor shall be furnished with a renewal permit.

- (c) Each applicant for a renewal application shall submit an application which shall at a minimum consist of the data required for the issuance of an initial permit as set forth in section 15-19-22.

Sec. 15-19-24. - Annual fees.

- (a) Annual permit fees and applicable annual maintenance fees are due and payable upon approval of the application.
- (b) The annual permit fee for all valid vendor permits shall be \$75.00.

Sec. 15-19-25. - Location.

- (a) Valid vendor locations shall:

- (1) Not be within 15 feet of street intersections or pedestrian crosswalks or 15 feet of building entrances/exits or within 50 feet of hotels/motels;
- (2) Not be within 15 feet of a driveway, bus stop, crosswalk, or intersection;
- (3) Provide a minimum of five feet of unobstructed pedestrian space;
- (4) Not be within 15 feet of a fire hydrant driveway; and
- (5) Not be within 600 feet of the closet property line of any public or private elementary, middle or high school.

Sec. 15-19-26. - Notification of name change or change of address.

Whenever either the name or address provided by the vendor on the application for a valid vendor permit changes, the vendor shall notify the City Manager or his designee in writing within ten days of such change and provide same with the name change or address change. Vendors shall assure that a current and correct name, residence address and mailing address are on file with the City Manager or his designee at all times.

Sec. 15-19-27. - Denials, fines, suspensions and revocations.

- (a) No valid vendor permit shall be issued to any person who has been convicted within five years immediately prior to the filing of the application for any felony or misdemeanor relating to drug possession and related matter; crimes of moral turpitude; larceny, fraudulent conveyance, perjury and/or false swearing, or subrogation. Any conviction for dealing and/or trafficking in illegal drugs will automatically disqualify an applicant.
- (b) Failure to maintain initial qualifications shall be grounds for revocation or denial of a renewal permit.
- (c) A denial, fine, suspension, revocation of any permit issued pursuant to this article may be imposed for any of the following causes:
- (1) Fraud, misrepresentation or false statements contained in the application.
 - (2) Failure on the part of a vendor to maintain initial eligibility qualifications
 - (3) Failure to furnish any and all documentation requested by either the police department, the office of revenue or the license review board for purposes of the investigation of any application or for the inspection of records pursuant to this division within 30 days of such request.

(4) Any failure to comply with any requirement set forth in this article or this Code.

(d) Any person whose permit is revoked may not reapply until one year following the effective date of the revocation.

(e) In addition to carrying out all other investigations as may be permitted under this article, the license and permits unit shall investigate any alleged violation of this article upon receipt of a written, sworn complaint by any person who witnesses or becomes aware of a potential violation. Such complaint shall be signed under penalty of perjury, and shall be accompanied by any supporting evidence.

Sec. 15-19-27. – Appeal on suspension, fine, revocation or denial.

A person to whom the city refuses to issue a vendor's permit or whose vendor's permit is suspended or revoked may file an appeal therefrom in accordance with Article XVI of this Chapter.

Sec. 15-19-29. - Vendors selling ice cream or other pre-packaged food and/or non-alcoholic pre-packaged beverages out of motor vehicles.

(a) Vendors selling ice cream or other pre-packaged food and/or non-alcoholic pre-packaged beverages out of motor vehicles shall be subject to this section. Vendors permitted in accordance with this section shall not be permitted to sell prepared food or prepared non-alcoholic beverages.

(b) Every vendor selling ice cream or other pre-packaged food and/or non-alcoholic pre-packaged beverages out of motor vehicles pursuant to this section shall, before making any sale, park the vehicle at the right curb and at least eight feet from any other vehicle that may be parked on the street and not less than 100 feet from any intersecting street. When the vending vehicle stops, all sound equipment or other devices used to notify customers of the presence of the vendor shall be stopped and shall not be resumed until the vehicle is again put in motion.

(c) No vehicle using sound equipment or other method of attracting customers shall operate such equipment before 12:00 a.m. or after 9:00 p.m. daily. On days in which schools are actually in session, no motor vehicle shall be operated within 600 feet of any public school in the city one hour before or one hour after published school hours.

(d) Vendors selling ice cream or other pre-packaged food and/or non-alcoholic pre-packaged beverages out of motor vehicles pursuant to this section, shall not stop or stand and do business for more than 30 minutes.

(e) Vendors selling ice cream or other pre-packaged food and/or non-alcoholic pre-packaged beverages out of motor vehicles pursuant to this section shall not be restricted to an operational area or location specifically described in Section 15-19-25.

Secs. 15.19-30—15.19-50. - Reserved.

Section 6:

1. It is hereby declared to be the intention of the Mayor and City Council that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are and were, upon their enactment, believed by the Mayor and City Council to be fully valid, enforceable and constitutional.
2. It is hereby declared to be the intention of the Mayor and City Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Mayor and City Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.
3. In the event that any phrase, clause, sentence, paragraph or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Mayor and City Council that such invalidity, unconstitutionality, or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinance and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.
4. All ordinances or resolutions and parts of ordinances or resolutions in conflict herewith are hereby expressly repealed.
5. The within ordinance shall become effective upon its adoption.
6. The provisions of this Ordinance shall become and be made part of The Code of the City of Stonecrest, Georgia, and the sections of this Ordinance may be renumbered to accomplish such intention.

SO ORDAINED AND EFFECTIVE this the ____ day of _____, 2018.

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Attest:

City Clerk

Approved:

Jason Lary, Sr., Mayor

As to form:

City Attorney



CITY COUNCIL AGENDA ITEM

SUBJECT: Ordinance City of Stonecrest Designating Chapter 16-Miscellaneous Provisions and Offenses

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

Date Submitted: 09/12/2018

Council Meeting: 10/03/2018

SUBMITTED BY: City Attorney

PURPOSE: This item is to designate Chapter 16 for Miscellaneous Provisions and Offenses

HISTORY: First Read was September 17, 2018

FACTS AND ISSUES:

OPTIONS:

RECOMMENDED ACTION: Adoption of the Ordinance

AN ORDINANCE OF THE CITY OF STONECREST, GEORGIA,

WHEREAS, Pursuant to subsection (29) of Section 1.03 of the Charter of the City of Stonecrest, Georgia, the City of Stonecrest (the "City") has been vested with the power to "To provide for the prevention and punishment of loitering, disorderly conduct, drunkenness, riots, and public disturbances"; 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 adopt an ordinance regulating miscellaneous offenses;

Section 1: The Mayor and City Council of the City of Stonecrest, Georgia, hereby adopt an ordinance designated as "Chapter 16- Miscellaneous Provisions and Offenses" to read and to be codified as follows:

CHAPTER 16 - MISCELLANEOUS PROVISIONS AND OFFENSES

ARTICLE I. - IN GENERAL

Sec. 16-1. - Fines and punishment.

Unless otherwise specified, any person found guilty of violating any provision of this chapter shall be punished in a manner consistent with this Code and Georgia law.

Sec. 16-2. - Criminal impersonation.

(a) As used in this section, "intent to defraud" means the use of deception with the intention to injure another's interest which has economic or monetary value.

(b) A person commits the offense of criminal impersonation if the individual:

(1) Assumes a false identity and commits any act in their assumed character with the intent to defraud another; or

(2) Pretends to be a representative of some person or organization and commits any act in their pretended capacity with the intent to defraud another.

Sec. 16-3. - False representation of age.

It shall be unlawful for any person to misrepresent his/her age in any manner whatever for the purpose of gaining entrance to events or establishments that require a minimum age including, but not limited to, bars, nightclubs, movies, video stores, bookstores or bingo parlors.

Sec. 16-4. - Aiding, encouraging minor to commit unlawful act.

No person shall aid, abet or encourage a minor to do any act which constitutes a violation of any State law or this Code.

Secs. 16-5 – 16-19. – Reserved.

ARTICLE III. - OFFENSES AGAINST PUBLIC PEACE, ORDER AND SAFETY

DIVISION 1. - GENERALLY

Sec. 16-20. - Disorderly conduct.

(a) It shall be unlawful for any person to disturb or endanger the public peace or decency by any disorderly conduct.

(b) The following acts, among others, are declared to be disorderly conduct:

- (1) Act in a violent or tumultuous manner toward another whereby any person is placed in fear of the safety of such person's life limb or health;
- (2) Act in a violent or tumultuous manner toward another whereby the property of any person is placed in danger of being damaged or destroyed;
- (3) Cause, provoke or engage in any fight, brawl or riotous conduct so as to endanger the life, limb, health or property of another;
- (4) Assemble or congregate with another or others for the purpose of gaming;
- (5) Be in or about any place, alone or with others, with the purpose of or intent to engage in any fraudulent scheme, trick or device to obtain any money or valuable thing' or to aid or abet any person doing so;
- (6) Be in or about any place where gaming or illegal sale or possession of alcoholic beverages or narcotics or dangerous drugs are practiced, allowed or tolerated, for the purpose of or intent to engage in gaming or the purchase, use, possession or consumption of such illegal drugs, narcotics or alcohol;
- (7) Direct fighting words toward another, that is, words which by their very nature tend to incite an immediate breach of the peace;
- (8) Interfere, by acts of physical obstruction, with another's pursuit of a lawful occupation;

- (9) Congregate with another or others in or on any public way so as to halt the flow of vehicular or pedestrian traffic, and to fail to clear that public way after being ordered to do so by a City official, police officer or other lawful authority;
- (10) Stand or remain in or about any street, sidewalk, overpass, or public way so as to impede the flow of vehicular or pedestrian traffic, and to fail to clear such street, sidewalk, overpass or public way after being ordered to do so by a City Official, police officer or other lawful authority;
- (11) Disrupt by actions which tend to cause an immediate breach of the peace the undisturbed activities of any house of worship, hospital, or home for the elderly; or
- (12) Throw bottles, paper, cans, glass sticks, stones, missiles, or any other debris on public property.

Sec. 16-21. - Obstruction and interference.

- (a) It shall be unlawful for any person to intentionally interfere or hinder a city official, employee, or agent when such official, employee or agent has properly identified either himself or is otherwise identifiable as such and is engaged in the lawful performance of his official duties.
- (b) It shall be unlawful for any person to give a false name, address or date of birth, or any other false information, to any city official, employee, or agent in the lawful discharge of his official duties with the intent to mislead such official, employee or agent in any way.
- (c) It shall be unlawful for any person to refuse to provide identification, address or date of birth to a code enforcement officer, police officer or fire marshal while said officer is conducting an investigation and the officer has reasonable belief that said individual committed a crime, is committing a crime or is about to commit a crime. However, said person shall not be compelled to answer any other inquiry.

Sec. 16-22. - Begging, panhandling or soliciting on public property, sidewalks and streets; certain designated places prohibited.

(a) Definitions. Except where the content otherwise requires, as used in this chapter:

- (1) Aggressively beg, panhandle or solicit means any request made in person for a donation of money or some other article of value from another person by an unwanted touching, detaining, impeding or intimidation. Aggressive begging, panhandling or soliciting usually includes approaching or following pedestrians; repetitive begging, panhandling or soliciting despite refusals; the use of abusive or profane language; unwanted physical contact; or the intentional blocking of pedestrian and vehicular traffic. Also, any person who intentionally blocks the passage of another person or a vehicle, which requires another person to take evasive action to avoid physical contact, is an aggressive panhandler.

(2) Beg, panhandle or solicit, for purposes of this ordinance, means any request made in person for a donation of money or some other article of value, either by words, bodily gestures, signs or other means, from another person.

(3) Beg, panhandle, or solicit from any operator or occupant of a vehicle that is in traffic on a public street means any request made in person for a donation of money or some other article of value, either by words, bodily gestures, signs or other means, from any operator or occupant of a vehicle, coupled with an actual exchange of money or some other article of value between the person begging, panhandling or soliciting and any operator or occupant of a vehicle while that vehicle is on the portion of a public street currently in use by vehicular traffic.

(4) Obstruct pedestrian or vehicular traffic means to walk, stand, sit, lie or place an object in such a manner as to intentionally block passage of another person or a vehicle, or to require another person or driver of a vehicle to take evasive action to avoid physical contact. Acts authorized as an exercise of one's constitutional right to picket or to legally protest, and acts authorized by permit are not included within the definition of this term.

(5) Public place means an area generally visible to public view and includes, but is not limited to, alleys, bridges, buildings, driveways, parking lots, parks, plazas, sidewalks and streets open to the general public, including those areas that serve food or drink or provide entertainment or other services, outdoor cafes, public restrooms, and the doorways and entrances to buildings or dwellings and the grounds enclosing them.

(6) For purposes of this ordinance, beggar, panhandler or solicitor means any person traveling either by foot, vehicle or other conveyance, from place to place, requesting in person a donation of money or some other article of value, either by words, bodily gestures, signs or any other means, from another person.

(b) Restrictions and requirements.

(1) Beggars, panhandlers or solicitors are prohibited from intentionally obstructing pedestrian or vehicular traffic.

(2) Beggars, panhandlers or solicitors are prohibited from aggressively begging, panhandling or soliciting.

(3) Beggars, panhandlers or solicitors are prohibited from begging, panhandling or soliciting from any operator or occupant of a vehicle that is in traffic on a public street, as those terms are defined in this article.

(4) Any operator or occupant of a vehicle that is in traffic on a public street is prohibited from offering money or some other article of value to a beggar, panhandler or solicitor resulting in the actual exchange of money or some other article of value between the person begging, panhandling or soliciting and the operator or occupant of a vehicle while that vehicle is on the portion of a public street currently in use by vehicular traffic.

(5) No person shall stand on a traffic median, bicycle path or public street to beg, panhandle or solicit when to do so would obstruct vehicular traffic.

(6) Begging, panhandling, soliciting or aggressive begging, panhandling or soliciting are prohibited at the following places:

- a. At an outdoor cafe;
- b. Within 12 feet of an outdoor cafe;
- c. In a public restroom;
- d. From any person standing in line to enter a building or event;
- e. Within 12 feet of a line to enter a building or event;
- f. Within 12 feet of the entrance or exit of a building;
- g. From any person using an automated teller machine, or any electronic information processing device which accepts or dispenses cash in connection with a credit, deposit or convenience account (ATM);
- h. Within 12 feet of an ATM;
- i. From any person using a pay phone;
- j. Within 12 feet of a pay phone.

Sec. 16-23 – Reserved.

Sec. 16-24. - Selling, soliciting on public rights-of-way; exceptions.

(a) It shall be unlawful to sell, offer for sale or solicit for sale any prepackaged food or beverage for human consumption from any vending cart or other type of motor vehicle on the public streets, sidewalks or in the public rights-of- way within the city limits unless specifically allowed as set forth in this section.

(b) Vending carts or other type of motor vehicles are permitted to sell their products on the public streets, sidewalks or in the public rights-of-way of the city between the hours of noon and 9:00 p.m. only if they limit their inventory to the following categories: categories limited to non-alcoholic pre-packaged beverages and pre-packaged food, as defined in Section 15-19-29 of this Code. All items must be pre-packaged for sale. None of these vehicles may operate on the rights-of-way, streets, or sidewalks adjacent to any properties where "no solicitation" or similar signs are posted.

(c) A license from the Georgia Department of Agriculture must be prominently displayed for view on each vehicle and available for inspection upon request by a city code enforcement officer. Each vehicle shall contain a copy of the current valid business occupation tax certificate issued for the business (not for the vehicle itself) by the city, another jurisdiction in Georgia, or another state, and such business occupation tax certificate must also be prominently displayed for view on the vehicle and available for inspection upon request by a city code enforcement officer.

(d) All vehicles operating under this section shall comply with all applicable provisions of the Code and federal and state law, rules and regulations. Each vehicle must exhibit exterior signage showing it as a slow-moving vehicle. The placement, size and wording of such signage shall be determined by the code enforcement officer. No vehicle shall be allowed to remain stationary on any public street, sidewalk or right-of-way for longer than thirty (30) minutes at a time. After the expiration of that time, the vehicle must move to a different location. Vehicles must be operated in a way that allows for unobstructed pedestrian and vehicular access to public streets, sidewalks and rights-of-way. No vehicle shall be operated within fifteen (15) feet of any fire hydrant, driveway, bus stop, subway entrance or exit, crosswalk, or intersection.

Sec. 16-25. - Shoplifting.

(a) *Unlawful act.* It shall be unlawful for any person to commit the offense of theft by shoplifting within the corporate limits of the city when the property which is the subject of the theft is \$500.00 or less in value.

(b) *Defined.* A person commits the offense of theft by shoplifting when alone or in concert with another person, with the intent of appropriating merchandise to such person's own use without paying for the same or to deprive the owner of possession thereof or of the value thereof, in whole or in part, does any of the following:

- (1) Conceals or takes possession of the goods or merchandise of any store or retail establishment;
- (2) Alters the price tag or other price marking on goods or merchandise of any store or retail establishment;
- (3) Transfers the goods or merchandise of any store or retail establishment from one container to another;
- (4) Interchanges the label or price tag from one item of merchandise with a label or price tag for another item of merchandise; or
- (5) Wrongfully causes the amount paid to be less than the merchant's stated price for the merchandise.

Sec. 16-26. – Public defecation or urination.

It shall be unlawful for any person to defecate or urinate on or adjacent to any street or sidewalk, or in the halls, elevators, stairways, or any other area designated for public passage within any public or commercial buildings, or on any property open to public view.

Sec. 16-27. - Urban camping prohibited.

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

Camp means residing in or using a public street, sidewalk, or park for private living accommodations, such as erecting tents or other temporary structures or objects providing shelter; sleeping in a single place for any substantial prolonged period of time; regularly cooking or preparing meals; or other similar activities.

Public park means all municipal parks, public playgrounds, public plazas, attractions, and monuments.

Public street means all public streets and highways, public sidewalks, public benches, public parking lots, and medians.

Storing personal property means leaving one's personal effects such as, but not limited to, clothing, bedrolls, cookware, sleeping bags, luggage, knapsacks, or backpacks, unattended for any substantial prolonged length of time. This term shall not include parking a bicycle or other mode of transportation.

(b) Public parks. It shall be unlawful to camp or to store personal property in any park owned by the city.

(c) Public streets. It shall be unlawful to camp, to sleep, to store personal property, to sit or to lie down on any public street.

(d) Other public property; blocking ingress and egress. It shall be unlawful to camp, to sleep, to store personal property, to sit or to lie down on any public property so as to interfere with ingress or egress from buildings.

(e) Warning. No person may be arrested for violating this section until he or she has received an oral or written warning to cease the unlawful conduct. If the violator fails to comply with the warning issued, he or she is subject to arrest for urban camping.

(f) Exceptions. This section shall not be construed to prohibit the following behavior:

(1) Persons sitting or lying down as a result of a medical emergency;

(2) Persons in wheelchairs sitting on sidewalks;

(3) Persons sitting down while attending parades;

(4) Persons sitting down while patronizing sidewalk cafes;

(5) Persons lying down or napping while attending performances, festivals, concerts, fireworks, or other special events;

(6) Persons sitting on chairs or benches supplied by a public agency or abutting private property owner;

(7) Persons sitting on seats in bus zones occupied by people waiting for the bus;

(8) Persons sitting or lying down while waiting in an orderly line outside a box office to purchase tickets to any sporting event, concert, performance, or other special event;

(9) Persons sitting or lying down while waiting in an orderly line awaiting entry to any building, including shelters, or awaiting social services, such as provision of meals; or

- (10) Children sleeping while being carried by an accompanying person or while sitting or lying in a stroller or baby carriage.

Sec. 16-28. - Residential picketing prohibited.

(a) It shall be unlawful for any person to engage in picketing upon, before, or about the private residence or home of any individual.

(b) Picketing shall include, but not be limited to, the following types of activity:

- (1) Staging a public or private protest of any kind.
- (2) Obstructing passage to or from a residence.
- (3) Promoting a strike or a boycott at a residence.
- (4) To intimidate or otherwise harass the resident.

(c) It is the purpose of this section to protect and preserve the home, inasmuch as the public health and welfare and the good order of the city require that citizens of the city enjoy a feeling of peace, well-being, and privacy in their homes at all times.

Sec. 16-29. - Loitering and prowling.

(a) It shall be unlawful for a person to be in a place at a time or in a manner not usual for law-abiding individuals under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether alarm is warranted is the fact that the person takes flight upon the appearance of a law enforcement officer, refuses to identify himself, or manifestly endeavors to conceal himself or any object. Unless flight by the person or other circumstances make it impracticable, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to dispel any alarm or immediate concern which would otherwise be warranted by requesting the person to identify himself and explain his presence and conduct. No person shall be convicted of an offense under this section if the law enforcement officer failed to comply with the foregoing procedure or if it appears at trial that the explanation given by the person was true and would have dispelled the alarm or immediate concern.

(b) It shall be unlawful for a person aged 17 years or younger to be in a place at a time or in a manner not usual for law-abiding individuals under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether alarm is warranted is the fact that the person takes flight upon the appearance of a law enforcement officer, refuses to identify himself, is present at such a place during school hours, or manifestly endeavors to conceal himself or any object. Unless flight by the person or other circumstances make it impracticable, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to dispel any alarm or immediate concern which would otherwise be warranted by

requesting the person to identify himself and explain his presence and conduct. No person shall be convicted of an offense under this section if the law enforcement officer failed to comply with the foregoing procedure or if it appears at trial that the explanation given by the person was true and would have dispelled the alarm or immediate concern.

(c) It shall be unlawful for any parent guardian or other persona having the custody or control of any minor to permit, allow or encourage such minor to violate subsection (a) of this section.

(d) It shall be unlawful for the proprietor, manager or other person having charge or control of any public or other place to permit, allow or encourage any minor to violate subsection (a) of this section in such place.

Sec. 16-29.1. – Loitering for purpose of procuring others to engage in sexual acts for hire.

It shall be unlawful for any person to loiter in public for the purpose of soliciting or procuring others to engage in any sexual acts for hire.

Sec. 16-29.2. – Loitering for purposes of engaging in drug-related activity.

(a) *Legislative findings and intent.*

(1) The governing authority of the city finds that the increase throughout the city of loitering in public places for the purposes of unlawful drug-related activity, or in effect, "open air" drug dealing, has become extremely disturbing and disruptive to residents and businesses. This activity has contributed not only to the loss of access to and enjoyment of public places, but also to an enhanced sense of fear and intimidation and disorder.

(2) Loitering for purposes of unlawful drug-related activity usually includes a dominate presence of those persons engaging in such activity by approaching pedestrians, encouraging the presence of vehicle and pedestrian traffic for the purpose of unlawful drug-related activity in and out of residential areas, to or from motor vehicles or in parking lots. Such presence carries with it an implicit threat to visitors and residents to avoid the use of these public places. The avoidance of such places by law-abiding citizens leads to an increased opportunity for the unlawful criminal activity and furthers the decay of the neighborhood.

(3) The city has a strong interest in ensuring that citizens feel safe in their neighborhoods, in safeguarding the economic vitality of its business districts, and in preserving public places for their intended purposes.

(4) This section is not intended to limit any person from exercising their right to assemble or engage in any other constitutionally protected activity. This section applies to all persons with the requisite intent to induce another to engage in unlawful drug-related activity.

(b) It shall be unlawful for any person to loiter, as defined in this Chapter, in or near any thoroughfare, place open to the public, or any public or private place in order to induce, entice, solicit or procure another to engage in unlawful drug-related activity.

(1) "Unlawful drug-related activity" means conduct which constitutes an offense defined in O.C.G.A. Tit. 16, Ch. 13, as amended; conduct which constitutes complicity to commit

such an offense by, for example, acting as a lookout; or conduct which constitutes conspiracy to commit such an offense.

(2) "Public place" means an area open to the public or exposed to public view and includes streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, automobiles, whether moving or not, and buildings open to the general public, including those which serve food or drink, or provide entertainment, and the doorways and entrances to buildings or dwellings and the grounds enclosing them.

(c) A police officer who observes a person loitering under circumstances that provide the officer with a reasonable basis to believe unlawful drug-related activity is occurring or has occurred may detain the individual for the purpose of investigating whether the person is in violation of this section.

(d) A police officer may not detain an individual under this Code section unless both of the following elements are satisfied:

(1) The person engages in one (1) or more of the following behaviors:

a. The person passes or receives from a passer-by, bystander or person in a motor vehicle money, objects having characteristics consistent with controlled substances, and/or an envelope, bag or other container that could reasonably contain such objects or money;

b. The person conceals or attempts to conceal an object having characteristics consistent with controlled substances and/or an envelope, bag, clear plastic baggie or other container that could reasonably contain such objects;

c. The person flees or obscures himself upon seeing law enforcement officers;

d. The person communicates the fact that law enforcement officers are in the vicinity to another person in a manner that suggests that the communication is a warning; or

e. The officer observes the person in possession of any instrument or object that is designed or marketed as useful primarily for one (1) or more of the following purposes:

1. To inject, ingest, inhale or otherwise introduce marijuana or a controlled substance into the human body;

2. To enhance the effect of marijuana or a controlled substance on the human body;

3. To test the strength, effectiveness, or purity of marijuana or a controlled substance;

4. To process or prepare marijuana or a controlled substance for introduction into the human body;

5. To conceal any quantity of marijuana or a controlled substance; or

6. To contain or hold marijuana or a controlled substance while it is being introduced into the human body.

(2) One (1) of the following factors applies:

- a. The officer is aware that, within the preceding three (3) years, the person has been convicted of an offense defined in O.C.G.A. Tit. 16, Ch. 13, or of complicity to commit such an offense, or of conspiracy to commit such an offense with in the preceding three (3) years;
- b. The officer has knowledge of a specific reliable tip concerning unlawful drug-related activity at a specific location, and the person who is found loitering is doing so at a time, in a place or in a manner that is otherwise consistent with the details provided in the tip;
- c. The person is loitering in an area that has been designated a notorious drug-related activity area as defined in subsection (g), below;
- d. The person is in an area where he is prohibited by court order from being, and the officer is aware of the court order;
- e. The officer knows that the person has been previously convicted of loitering with the intention of engaging in unlawful drug-related activity under this section; or
- f. Any vehicle the person has approached or communicated through is registered to an individual who has been convicted of an unlawful drug-related activity in the previous three (3) years, and the officer is aware of that fact.

(e) No arrest may be made for a violation of this section unless the arresting officer first affords the person an opportunity to explain the person's presence and conduct, unless flight by the person or other circumstances make it impracticable to afford such an opportunity, and no one shall be convicted of violating this section if it appears at trial that the explanation given at the scene was true and disclosed a lawful purpose.

(f) If a police officer who detains a person pursuant to this Code section develops probable cause to believe that the person is in violation of this Code section, the officer may order the person to immediately leave the location and to remain at least five hundred (500) feet away from the location for at least five (5) hours. In the event that person refuses to comply with such an order, the police officer may arrest the person and charge him with a violation of this section.

(g) The City may, by written directive, clearly and publicly designate areas of the City that are frequently associated with excessive incidents of drug-related offenses, including offenses involving controlled substances, as defined in O.C.G.A. Tit. 16, Ch. 13, or marijuana, subject to any requirements of state law.

Sec. 16-30. - Preventing or disrupting lawful meetings, gatherings or processions.

It shall be unlawful for a person to knowingly prevent or disrupt a lawful meeting or gathering of the city council or any board, committee or instrumentality thereof or of the state to substantially obstruct or interfere with the meeting or gathering by physical action or verbal utterance. The term "lawful meeting or gathering" shall mean any such time and place where a quorum is present.

406

407 Sec. 16-31. - Unauthorized persons entering vacant buildings.

408 It shall be unlawful for any person to enter or to remain in a vacant or unoccupied building or
409 on any portion of vacant land upon which such vacant building is located unless with permission
410 of an authorized agent of said property; provided, such building or vacant property is prominently
411 marked by a posted notice which is easily seen from a distance of at least fifty (50) feet that informs
412 the public such property is vacant or unoccupied and unauthorized persons are prohibited from
413 entering.

414

415 Sec. 16-32. - Discharge of weapons.

416 It shall be unlawful for any person to fire a gun, rifle, pistol, revolver, cannon, air rifle, firearm
417 of any type or shoot a slingshot or bow and arrow within the city, except in defense of a person or
418 property. This section shall not apply to any law enforcement officer while in the discharge of
419 official duties.

420

421 Sec. 16-33. - Reckless operation of motor vehicle upon parking facility or walkway.

422 No person shall operate a motor vehicle upon any parking facility, public or private, vehicle-
423 access or pedestrian walkway of any parking facility by sudden starting, stopping or turning so as
424 to endanger the person or property of another.

425

426 Sec. 16-34. - Creating hazardous or offensive condition.

427 No person shall create a hazardous or physically offensive condition by an act which serves
428 no legitimate purpose.

429

430 Sec. 16-35. - Halting or impeding flow of traffic.

431 No person shall congregate with another or others in or on any public right-of-way or place
432 so as to halt or impede the flow of vehicle or pedestrian traffic after having been directed to clear
433 such public right-of-way or place by a police officer or any other authorized law enforcement
434 officer.

435 Sec. 16-36. – Civil Trespass.

436 No person shall knowingly and without authority enter upon the land or premises of another
437 person after receiving, prior to such entry, notice from the owner, rightful occupant, or authorized
438 representative of the owner or rightful occupant that such entry is forbidden. Posted “no
439 solicitation” signs shall be deemed adequate notice.

440 Secs. 16-37 - 16-50. – Reserved.

441

DIVISION 2. – DRUG AND ALCOHOL-RELATED OFFENSES

Sec. 16-51. - Public possession or consumption.

(a) Alcohol consumption near package stores. It shall be unlawful for any person to open or to consume all or any part of any type of alcoholic beverage within 100 feet of any retail store where alcoholic beverages are sold in package form or within the boundary lines of the property on which such retail store is located, whichever constitutes the greater distance, unless otherwise permitted by Chapter 4.

(b) Drinking in public.

(1) It shall be unlawful for any person to drink any vinous, malt or other alcoholic beverage while on any streets, sidewalks, alleyways, parking areas or other open areas operated and controlled by the city. This subsection does not apply to parks.

(2) Subsection (1) shall not apply to gatherings or activities for which a valid event permit has been issued by the city, subject to any conditions attached to the issuance of the permit.

Sec. 16-52. - Public intoxication.

It shall be unlawful for any person to be disorderly while under the influence of illicit drugs, alcohol, concentrated vapors, or inhalants on the streets, sidewalks or other public places within the corporate limits of the city. Any person who acts in a reckless manner so as to create an unreasonable risk to himself, to others or to property in the vicinity while under the influence of alcohol or drugs is in violation of this section. The condition of intoxication or incapacitation must be outwardly manifested by boisterousness, public indecency as defined by this Chapter, indecent acts, vulgar, profane, or loud and unbecoming language, unconsciousness, disorientation or the inability to care for his or her own needs or recognize obvious dangers.

Sec. 16-53. - Furnishing, purchasing, or possession of alcoholic beverages by person less than 21 years of age.

(a) Except as otherwise authorized by law:

(1) No person directly or through another person shall furnish, cause to be furnished, or permit any person in such person's employ to furnish any alcoholic beverage to any person less than 21 years of age;

(2) No person less than 21 years of age shall purchase, drink or knowingly possess any alcoholic beverages;

(3) No person less than 21 years of age shall misrepresent such person's age in any manner whatever for the purpose of obtaining illegally any alcoholic beverage;

(4) No person shall knowingly or intentionally act as an agent to purchase or acquire any alcoholic beverage for or on behalf of a person less than 21 years of age;

- 479 (5) No person less than 21 years of age shall misrepresent such person's identity or use any
480 false identification for the purpose of purchasing or obtaining any alcoholic beverages;
481 or
- 482 (6) No person shall keep or maintain a place where persons less than 21 years of age are
483 allowed and permitted to come and purchase, drink or possess any alcoholic beverage.
- 484 (b) The prohibitions contained in subsections (a)(1), (a)(2) and (a)(4) of this section shall not
485 apply with respect to:
- 486 (1) The sale, purchase or possession of alcohol beverages for consumption for medical
487 purposes pursuant to a prescription of a physician duly authorized to practice medicine
488 in this state;
- 489 (2) The sale, purchase or possession of alcohol beverages for consumption at a religious
490 ceremony;
- 491 (3) The possession of alcoholic beverages for consumption by a person under 21 years of
492 age when the parent or guardian of the person less than 21 years of age gives the alcoholic
493 beverage to the person and when possession is in the home of the parent or guardian and
494 such parent or guardian is present;
- 495 (4) The sale of alcoholic beverages by a person when such person has been furnished with
496 proper identification showing that the person to whom the alcoholic beverage is sold is
497 21 years of age or older. For purposes of this subsection, the term "proper identification"
498 means any document issued by a governmental agency containing a description of the
499 person, such person's photograph, or both, and giving such person's date of birth and
500 includes, without being limited to, a passport, military identification card, driver's
501 license, or an identification card authorized under O.C.G.A. §§ 40-5-100 through 40-5-
502 104. The term "proper identification" shall not include a birth certificate.
- 503 (c) If such conduct is not otherwise prohibited pursuant to O.C.G.A. § 3-3-24, nothing
504 contained in this section shall be construed to prohibit any person less than 21 years of age from:
- 505 (1) Dispensing, serving, selling or handling alcoholic beverages as a part of employment in
506 any licensed establishments;
- 507 (2) Being employed in any establishment in which alcoholic beverages are distilled or
508 manufactured; or
- 509 (3) Taking orders for and having possession of alcoholic beverages as a part of employment
510 in a licensed establishment.
- 511 (d) Testimony by any person under 21 years of age, when given in an administrative or judicial
512 proceeding against another person for violation of any provision of this section, shall not be used
513 as an admission in any administrative or judicial proceedings brought against such testifying
514 person less than 21 years of age.
- 515 (e) Any person convicted of violating any prohibition contained in subsection (a) of this
516 section shall be punished by a fine not to exceed \$1,000.00 or imprisonment for not more than 180
517 days, or both; except that any person convicted of violating subsection (a)(2) of this section shall

be punished by not more than 30 days imprisonment or a fine of not more than \$300.00 or both. Any defendant charged under this section shall be entitled upon request to have the case against such defendant transferred to the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred. Any person charged with a second or subsequent offense under this section shall be punished as for a misdemeanor of a high and aggravated nature in the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred.

(f) Whenever any person who has not been previously convicted of any offense under this section or under any other law of the United States or any other state relating to alcoholic beverages pleads guilty to or is found guilty of a violation of subsection (a)(2) or (a)(3) of this section, the court, without entering a judgment of guilt and with the consent of such person, may defer further proceedings and place such person on probation upon such reasonable terms and conditions as the court may require.

(1) The terms of probation shall preferably be such as to require the person to undergo a comprehensive rehabilitation program, including, if necessary, medical treatment, not to exceed three years, designed to acquaint such person with the ill effects of alcohol abuse and to provide such person with knowledge of the gains and benefits which can be achieved by being a good member of society.

(2) Upon violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed accordingly.

(3) Upon fulfillment of the terms and conditions of probation, the court shall discharge such person and dismiss the proceedings against such person. Discharge and dismissal under this subsection shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this subsection or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Discharge and dismissal under this subsection may occur only once with respect to any person.

(g) Unless the officer has reasonable cause to believe such person is intoxicated, an officer may arrest, by issuance of a citation, a person accused of violating only subsection (a)(2) of this section. The citation shall enumerate the specific charges against the person and either the date upon which the person is to appear and answer the charges or a notation that the person will be later notified of the date upon which the person is to appear and answer the charges. If the person charged shall fail to appear as required, the judge, having jurisdiction of the offense may issue a warrant or other order directing the apprehension of such person and commanding that such person be brought before the court to answer the charges contained within the citation and the charge of such person's failure to appear as required. Nothing in this subsection shall be construed to invalidate an otherwise valid arrest by citation of a person who is intoxicated.

Sec. 16-54. - Marijuana possession.

(a) It shall be unlawful for any person to possess or have under his control within the city one ounce or less of marijuana.

(b) For purposes of this section, the term "marijuana" means all parts of the plant of the genus cannabis, whether growing or not, the seeds thereof, the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin, and shall not include the mature stalks of such plant, fiber produced from such stalks, oil, or cake, or the completely sterilized samples of seeds of the plant which are incapable of germination.

(c) Exceptions. The appropriate use of legally prescribed marijuana is not prohibited. "Legally prescribed" shall mean that the individual has a prescription or other written approval from a physician for the use of a drug in the course of medical treatment. It must include the patient's name, the name of the substance, quantity/amount to be taken, and the period of authorization.

(d) Any person charged with a violation of this section shall be entitled, upon request, to have the case against him transferred to the State Court of DeKalb County, to be prosecuted and tried as a misdemeanor in that court.

Secs. 16-55 – 16-70. – Reserved.

DIVISION 3. – OFFENSES INVOLVING SCHOOLS

Sec. 16-71. - Unauthorized persons entering school buildings.

No person shall enter or remain in any public, private or parochial school building between the hours of 7:30 a.m. and 6:00 p.m. on days that school is in session (or until 10:00 p.m. at those schools which have extended sessions), who is not a regularly enrolled student, teacher or employee at that school, unless the person shall have first and immediately proceeded to the administrative offices and identified himself to the principal or the principal's agent and receives permission to remain on the premises.

Sec. 16-72. - Unauthorized persons not to remain in school buildings or on school grounds after being requested to leave.

It shall be unlawful for any person to enter and remain in any public, private, or parochial school or on the surrounding school grounds after being directed to leave by the principal of the school or by someone with lawful authority.

Sec. 16-73. - Creating a disturbance.

(a) It shall be unlawful for any person to create a disturbance in any public, private or parochial school or on the surrounding school grounds lawfully used for school activities while such recreational areas are in use or other activities are in progress thereon.

(b) A disturbance, for purposes of this section, shall be defined as any act which may be reasonably expected to interfere with the activities within the school or school activities on the school grounds or fields while such activities are in progress thereon.

594

595 Sec. 16-74. - Operation of motorized vehicles on school property.

596 The operation of motorized vehicles of any nature in or on any yard, campus, playing field or
597 open area of any public school, college or institution in the city, except on those areas designated
598 by school authorities for use of motorized vehicles, is prohibited.

599

600 Secs. 16-75 – 16-80. – Reserved.

601

602 **Section 2:**

603 1. It is hereby declared to be the intention of the Mayor and City Council that all sections,
604 paragraphs, sentences, clauses and phrases of this Ordinance are and were, upon their
605 enactment, believed by the Mayor and City Council to be fully valid, enforceable and
606 constitutional.

607
608 2. It is hereby declared to be the intention of the Mayor and City Council that, to the greatest
609 extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this
610 Ordinance is severable from every other section, paragraph, sentence, clause or phrase of
611 this Ordinance. It is hereby further declared to be the intention of the Mayor and City
612 Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause
613 or phrase of this Ordinance is mutually dependent upon any other section, paragraph,
614 sentence, clause or phrase of this Ordinance.

615
616 3. In the event that any phrase, clause, sentence, paragraph or section of this Ordinance shall,
617 for any reason whatsoever, be declared invalid, unconstitutional or otherwise
618 unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is
619 the express intent of the Mayor and City Council that such invalidity, unconstitutionality,
620 or unenforceability shall, to the greatest extent allowed by law, not render invalid,
621 unconstitutional or otherwise unenforceable any of the remaining phrases, clauses,
622 sentences, paragraphs or sections of the Ordinance and that, to the greatest extent allowed
623 by law, all remaining phrases, clauses, sentences, paragraphs and sections of the Ordinance
624 shall remain valid, constitutional, enforceable, and of full force and effect.

625
626 4. All ordinances or resolutions and parts of ordinances or resolutions in conflict herewith are
627 hereby expressly repealed.

628

629 5. The within ordinance shall become effective upon its adoption.

630

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

7.

SO ORDAINED AND EFFECTIVE this the ____ day of _____, 2018.

Approved:

Jason Lary, Sr., Mayor

As to form:

City Attorney

Attest:

Brenda James, City Clerk



CITY COUNCIL AGENDA ITEM

SUBJECT: Ordinance Adopting Chapter 11 (Emergency Management and Services) in the City Code

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

Date Submitted: 09/26/2018

Council Meeting: 10/03/2018

SUBMITTED BY: City Attorney

PURPOSE: This item is the first reading on the ordinance adopting Chapter 11 Emergency Management and Services

HISTORY:

FACTS AND ISSUES:

OPTIONS:

RECOMMENDED ACTION: First Read Only

**AN ORDINANCE OF THE CITY OF STONECREST, GEORGIA ADOPTING
CHAPTER 11 (EMERGENCY MANAGEMENT AND SERVICES) OF THE CITY
CODE.**

WHEREAS, the City of Stonecrest, Georgia Mayor and City Council are authorized by the City Charter to provide for the general health, safety and welfare of the citizens of the City; and

WHEREAS the Mayor and City Council find it to benefit the welfare of the citizens to provide a system of emergency management to safeguard and population of the City in the event of a natural or manmade disaster; and

WHEREAS, this Ordinance shall be adopted as part of the City of Stonecrest City Code, as Chapter 11 (Emergency Management and Services).

THEREFORE, the Mayor and City Council of the City of Stonecrest, Georgia hereby ordain as follows:

Section 1: The Mayor and City Council of the City of Stonecrest, Georgia, hereby adopt an Ordinance designated as “Chapter 11. Emergency Management and Services” to read and be codified as follows:

CHAPTER 11. EMERGENCY MANAGEMENT AND SERVICES.

ARTICLE I. - IN GENERAL

Sec. 11-1. Definitions.

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

Emergency Management means the preparation for the carrying out of all emergency functions other than functions for which military forces are primarily responsible to prevent, minimize, and repair injury and damage resulting from emergencies, energy emergencies, disasters, or the imminent threat thereof, of manmade or natural origin caused by enemy attack, sabotage, acts of domestic or international terrorism, civil disturbance, fire, flood, earthquake, wind storm, wave action, oil spill or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, drought, infestation, explosion, riot or other hostile action, radiological action, or other

causes. These functions include, without limitation, firefighting services; police services; emergency medical services; rescue; engineering; warning service; communication; defense from radiological, chemical, biological and other special weapons to include weapons of mass destruction; evacuation of persons from stricken areas, emergency welfare services; consequence management functions to include victim services; emergency transportation; plant protection; temporary restoration of public utility services; and other functions related to civilian protection, together with all other activities necessary or incidental to the preparation for and carrying out of the foregoing functions.

Sec. 11-2. Emergency Management Director.

The Mayor shall nominate, for approval by the Georgia Director of Emergency Management and the Governor, a city Emergency Management Director. The Director will work with the County to develop an Emergency Management Plan or assist and participate in the County's existing Emergency Management Plan. The appointed director shall meet the qualifications detailed by O.C.G.A. §38-3-27.

Sec. 11-3. Emergency Powers.

In the event of manmade or natural disaster, actual enemy attack upon the United States or any other emergency which may affect the lives and property of the citizens of the City, the Mayor, or in his absence a legally appointed successor, may exercise for such period as such state of emergency exists or continues, the following emergency powers:

- (1) To enforce all rules, laws, and regulations relating to emergency management and to assume direct operational control over all emergency management resources;
- (2) To establish, when necessary, local restrictions pertaining to curfew and the sale of liquor, gasoline and weapons;

- (3) To perform and exercise such other functions and duties, and take such emergency actions as may be authorized by law to promote an secure the safety, protection and well-being of the inhabitants of the City, including those powers provided by O.C.G.A. §33-8-27.

Sec. 11-4. Volunteers.

All persons, other than officers and employees of the City, performing emergency functions pursuant to this Chapter, shall serve without compensation. While engaged in such emergency functions, duly assigned volunteers shall have the same immunities as City officers and employees.

Sec. 11-5. Prohibited pricing practices during state of emergency.

(a) It shall be an unlawful, unfair, and deceptive trade practice for any person, firm, or corporation doing business in any area of the City in which a state of emergency, as such term is defined in this Chapter has been declared, for as long as such state of emergency exists, to sell or offer for sale at retail any goods or services necessary to preserve, protect, or sustain the life, health or safety of persons or their property at a price higher than the price at which such goods were sold or offered for sale immediately prior to the declaration of a state of emergency, provided, however, that such price may be increased only in an amount which accurately reflects an increase in cost of the goods or services to the person selling the goods or services or an increase in the cost of transporting the goods or services into the area.

(b) Notwithstanding the provisions of subsection (a) of this section, a retailer may increase the price of goods or services during a state of emergency if the price charged for those goods or services is no greater than the cost to the retailer of those goods or services, plus the retailer's average markup percentage applied during the ten days prior to the declaration of a state of emergency.

- (c) Upon conviction in municipal court, a person found violating this Chapter shall be punished in accordance with Chapter 1 of this Code.

Section 2:

1. It is hereby declared to be the intention of the Mayor and City Council that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are and were, upon their enactment, believed by the Mayor and City Council to be fully valid, enforceable and constitutional.
2. It is hereby declared to be the intention of the Mayor and City Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Mayor and City Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.
3. In the event that any phrase, clause, sentence, paragraph or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Mayor and City Council that such invalidity, unconstitutionality, or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinance and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.
4. All ordinances or resolutions and parts of ordinances or resolutions in conflict herewith are hereby expressly repealed.
5. The within ordinance shall become effective upon its adoption.
6. The provisions of this Ordinance shall become and be made part of The Code of the City of Stonecrest, Georgia, and the sections of this Ordinance may be renumbered to accomplish such intention.

SO ORDAINED AND EFFECTIVE this the ____ day of _____, 2018.

STATE OF GEORGIA
DEKALB COUNTY
CITY OF STONECREST

ORDINANCE 2018-_____

Approved:

Jason Lary, Sr., Mayor

As to form:

Thompson Kurrie, Jr., City Attorney

Attest:

Brenda James, City Clerk



CITY COUNCIL AGENDA ITEM

SUBJECT: Ordinance Adopting Chapter 9 (Parks and Recreation) of the City Code

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

Date Submitted: 09/26/2018

Council Meeting: 10/03/2018

SUBMITTED BY: City Attorney

PURPOSE: This item is the first reading on the ordinance adopting Chapter 9 Parks and Recreation

HISTORY:

FACTS AND ISSUES:

OPTIONS:

RECOMMENDED ACTION: First Read Only

**AN ORDINANCE OF THE CITY OF STONECREST, GEORGIA ADOPTING
CHAPTER 19 (PARKS AND RECREATION) OF THE CITY CODE.**

WHEREAS, the City of Stonecrest, Georgia Mayor and City Council are authorized by the City Charter to provide for the general health, safety and welfare of the citizens of the City and to acquire and hold properties to effectuate same; and

WHEREAS the Mayor and City Council find it to benefit the welfare of the citizens to provide recreational facilities for use by the general public and provide for regulation of same; and

WHEREAS, this Ordinance shall be adopted as part of the City of Stonecrest City Code, as Chapter 19 (Parks and Recreation).

THEREFORE, the Mayor and City Council of the City of Stonecrest, Georgia hereby ordain as follows:

Section 1: The Mayor and City Council of the City of Stonecrest, Georgia, hereby adopt an Ordinance designated as “Chapter 19. Parks and Recreation” to read and be codified as follows:

CHAPTER 19. PARKS AND RECREATION.

ARTICLE I. - IN GENERAL

Sec. 19-1. Definitions.

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

Alcoholic beverage means intoxicating beverage, malt beverage, wine or any other beverage containing any alcohol whatsoever.

Building means any structure attached to the ground which has a roof and which is designed for the shelter, housing or enclosure of persons, animals or property of any kind.

33 *Hobby rocket* means a small rocket constructed of paper, wood, plastic and other
34 lightweight material that is able to be launched by anybody, to generally low
35 altitudes and recovered by a variety of means.

36 *Litter* means garbage, refuse, paper, rubbish, debris, trash and all other waste
37 material whether natural or artificial.

38 *Recreation facilities* means all recreation areas in parks, including land,
39 buildings, lakes, swimming pools, sports fields, cemeteries, and all other
40 property and buildings owned, leased, or managed by the City, the City Parks
41 and Recreation Department, the designated agents or departments of the City or
42 the City Parks and Recreation Department, and including all recreation areas
43 and parks in the City owned by the United States government.

44 *Vehicle* means any motor-driven equipment, such as an automobile, truck,
45 motorcycle, bicycle, sled, go-cart, scooter, skateboard, ATV, child's toy vehicle,
46 or Segway.

47 *Weapon* means firearm, rifle, pistol, revolver, paintball gun, or any weapon
48 designed or intended to propel a shot, bullet, or other missile of any kind, or any
49 device capable of discharging a projectile by air, spirit, gas or explosive, or any
50 explosive substance or harmful solid, liquid and gaseous substance, or any
51 spear, arrow, bow and arrow, slingshot, crossbow, spear or spear gun, or any
52 dirk, Bowie knife, switchblade knife, ballistic knife, or any other knife, straight-
53 edged razor, spring stick, metal knuckles, blackjack, any bat unless otherwise
54 used in a sporting event, club or other bludgeon-type weapon, or any flailing
55 instrument or any disk which is designed to be thrown or propelled and which

may be known as a throwing star or oriental dart, or any weapon of like kind,
and any stun gun, taser or similar device.

Sec. 19-2. Enforcement of Chapter.

This chapter shall be enforced by any authorized law or code enforcement officer of the City. Where there has been a violation of any provisions of this Chapter, the law or code enforcement officer in his discretion may issue a citation, warning and/or order the person to leave the park or recreation area.

Sec. 19-3. Penalties for Violation of Chapter.

Any person violating any provision of this Chapter shall be penalized pursuant to Chapter 1 of this Code.

Sec. 19-4. Parks and Recreation Director; Powers and Duties.

The Director of Parks and Recreation or employees under the direction of the Director shall:

- (1) Establish, conduct, and maintain a recreation system for the City in such a way as to employ the leisure of the people in a wholesome and constructive manner;
- (2) Provide for, conduct, and supervise public playgrounds, indoor recreation centers, and other recreational facilities owned or controlled by the City;
- (3) Recommend the setting aside, leasing or acquisition of lands or buildings within the City limits for use as parks, playgrounds, recreation centers or for other recreational purposes, and to provide for the maintenance and improvement of these areas;
- (4) Cooperate with the local school board in the establishment, conduct and maintenance of a recreation system;

(5) Otherwise assist in the operation and enforcement of this Chapter.

Sec. 19-5. Through 19-25. Reserved.

ARTICLE II. PARKS AND RECREATIONAL FACILITY RULES

Sec. 19-26. Hours of Operation.

(a) It shall be unlawful for any person or vehicle to enter or be within a recreation facility outside of the posted hours of operation unless approved by permit, by the Director or unless such person is participating in authorized and scheduled programs, classes, special events or meetings.

(b) Parks and Recreation facilities are open at 7:00 a.m., and shall close at sunset, except that parks containing lighting for night use shall close at 11:00 p.m. or as otherwise posted and authorized by the Director. Only those areas of park and recreation facilities which are illuminated and in use at night shall be interpreted as being open after sunset. All other portions of the facilities if not illuminated are considered to be closed. Applicable closing signs shall be conspicuously posted at all park and recreation facilities and any deviation from these times must be approved by the Director.

Sec. 19-27. Using Parks for Golf Practice, Putting Greens, Driving Ranges.

No person shall use any park or other area owned or operated by the City for recreation purposes as a field for golf practice, putting green or driving range, except those areas specifically designated as golf clubs.

Sec. 19-28. Motor Vehicles Restricted.

- (a) No person shall operate a motorized vehicle of any kind or nature in or on any city park, bicycle path, or other area owned or operated by the City for recreational purposes except upon roadways designated and maintained for vehicular traffic at the speed limit as posted by the Director of designee, and except upon walkways when permitted and approved by the Director. This section does not prohibit persons with disabilities from using a wheelchair as an auxiliary aid in or on any City park, bicycle path, or other area owned or operated by the City for recreational purposes.
- (b) Law enforcement and City officials whose duties require them to drive maintenance vehicles and equipment shall be exempt from the limitations set forth in this Section.

Sec. 19-29. Reservation of Park Facilities; Violations

- (a) *Fees.* The use of a City park area or picnic shelter may be reserved for a reasonable period of time for the purpose of group activities through application to the City and upon payment of a reservation fee in accordance with the schedule established by action of the City Council, a copy of which is on file in the office of the City Clerk.
- (b) *Application.* All persons desiring to reserve a park area or picnic shelter shall make application to the Parks and Recreation Department, on a form prescribed by the City.
- (c) *Fund-raisers at picnic shelters.* Any person/group wishing to hold a fund-raiser at a City picnic shelter must follow procedures for reserving picnic shelters and provide verification of current registration with the secretary of state.
- (d) *Refusal or revocation permit.* The Parks and Recreation Department reserves the right to refuse or revoke permits. Such a determination shall be based on health, safety and welfare of the public and protection of City property.

- (e) It shall be unlawful for any person to engage in any activity in City recreation facilities which requires a reservation fee, permit and/or a ticket without first paying said fee and obtaining a permit or ticket.

Sec. 19-30. Alcoholic Beverages.

- (a) *Prohibited; exception.* No person shall serve, consume or transport in open containers any alcoholic beverage within a City park or recreation facility, except at a group function for which a permit has been issued by the Parks and Recreation Department, or as may be otherwise provided by this Code.
- (b) *Application for permit.* All persons desiring to obtain a permit to serve or consume alcoholic beverages on City park property shall make application to the City Manager or designee on a form prescribed by the Parks and Recreation Department, and shall pay a permit fee in the amount established by action of the City Council, a copy of which is on file in the office of the City Clerk.
- (c) *Locations where permitted.* Permits may be issued by the Parks and Recreation Department Director for the consumption of alcoholic beverages at specified City parks and locations within said parks as approved by Mayor and City Council.
- (d) *Refusal and revocation of permits.* The Parks and Recreation Department Director, or designee, shall have the right to refuse and revoke permits for failure to comply with any provisions of this Chapter or applicable provisions in other parts of this Code.

Sec. 19-31. Special Prohibitions.

- (a) *Paint.* It shall be unlawful for any unauthorized person to possess paint, in any form, in or on any park or other area owned or operated by the City for recreation purposes.

(b) *Glass containers.* No person shall possess a glass container in or on any park or other area owned or operated by the City for recreation purposes.

(c) *Bicycles on athletic fields.* No person shall ride or walk a bicycle or other non-motorized vehicle in or on any athletic field owned or operated by the City for recreational purposes. This section does not prohibit persons with disabilities from using a wheelchair as defined in section 19-28 as an auxiliary aid on such fields.

(d) *Bicycles on park trails and paths.*

(1) No person shall ride, carry, push or otherwise manually transport a one-, two- or three-wheeled cycle on or through any trails owned or operated by the City and designed solely for pedestrian use.

(2) This subsection (d) does not prohibit the use of such cycles on trails or paths specifically designated for bicycling or multi-uses that include cycling. No person shall operate a one-, two- or three-wheeled cycle or a trailer attached to a cycle on trails specifically designated for bicycling or multi-uses that include cycling, if the width of the trailer or cycle exceeds 36 inches as measured from the outer rim of the back tires.

(3) This section does not prohibit persons with disabilities from using a wheelchair as defined in section 19-28 as an auxiliary aid on city-owned or city-operated trails and paths.

(e) *Killing Wildlife.* It shall be unlawful for any person to hunt, trap, shoot, maim or kill any animal or wildlife, or attempt to do any of the above to any animal or wildlife within any of the City recreation facilities without the written permission of the Director, unless threatened with bodily injury or death.

(f) *Polluting Water.* It shall be unlawful for any person to pollute or disturb any spring, branch, pond, fountain, or other water owned by or leased to the City within a recreation facility.

(g) *Posting Signs.* It shall be unlawful for any person to affix any bill, sign or notice on any tree, building or fixture, or handouts to any other person in any of the recreation facilities unless authorized by the Director or designee. It shall be unlawful for any person to place any paper, books, refuse, or trash of any kind in any of the public parks, except in containers provided for such.

(h) *Skateboards.* It shall be unlawful for any person to operate a skateboard on any street, lane, way, road and/or any parking lot in any recreation facility in the City, with the exception of pedestrian sidewalks, unless otherwise designated by signage posted by the Director or designee or published rules.

(i) *Urban Camping.* It shall be unlawful to reside or to store personal property in any recreation facility owned by the City. Furthermore, it shall be unlawful to use any public place, including City recreation facilities, for living accommodations purposes or camping, except in areas specifically designated for such use or specifically authorized by permit.

Sec. 19-32. Littering.

It shall be unlawful for any person to throw, dump, or deposit litter on the grounds, streets, sidewalks, ponds, lakes, swimming pools or other body of water in any City park or recreation facility, except within public receptacles and in such a manner that the litter will be prevented from being carried or deposited by the elements upon any part of the recreation facility.. Where public receptacles are not provided, all such litter shall be carried away from the recreation facility by the person responsible for its presence and shall be properly disposed of elsewhere.

Sec. 19-33. Closing Ballfields.

The Parks and Recreation Department may close to the public particular ballfields for maintenance purposes. Such ballfields shall be posted, and it shall be unlawful for any person to enter a closed field.

Sec. 19-34. Noises.

It shall be unlawful for any person to whistle, hiss or holler at another person in a boisterous, unbecoming or erring manner or make any loud noises that would disturb a reasonable person of ordinary sensibilities, engage in any noise dispute or conversation that would disturb a reasonable person of ordinary sensibilities, or display, play or operate any sound amplification device including radios, television sets, public address systems, musical instruments, CD players and the like in such a way which either annoys, disturbs, injures or endangers the comfort, repose, peace or safety of a reasonable person of ordinary sensibility in a recreation facility. Amplified sound devices used during a special event or rental event are allowed pursuant to a written permit by the Director or the Director's designee.

Sec. 19-35. Weapons; Pyrotechnics.

(a) Weapons include, but are not limited to, firearms; knives; air guns; paintball guns; archery equipment; explosives; slingshots; fishing spears; any device designed to launch a projectile by physical strength, compressed gas/compressed air or a fuel source; and other devices designed for the purpose of offense or defense.

(b) It shall be unlawful for any person other than law enforcement officers to shoot, use, discharge, or employ any weapon or similar device in any park or other area owned or operated by the City for recreational purposes.

(c) It shall be unlawful for any person other than law enforcement officers to discharge any firearm in any park or other area owned or operated by the City for recreational purposes.

(d) The Director of the Parks Department or designee may issue a permit for a time-limited use of weapons other than firearms, and the permit shall set forth specific conditions for use and handling of such weapons.

(e) It shall be unlawful for any person to possess, display, use, set off or attempt to ignite any firecracker, fireworks, smoke bombs, rockets, black powder guns or other pyrotechnics, unless approved by written permit by the Director or the Director's agent.

Sec. 19-36. Fires.

(a) It shall be unlawful for any person to build or maintain a fire in any park or other area owned or operated by the City for recreational purposes except in designated areas clearly marked by signs or defined by the existence of city-approved fire rings.

(b) Permanently mounted grills may be used and personal grills may be used in designated authorized areas.

(c) Camp fires may be allowed with written authorization from the Director of the Parks and Recreation Department or his designee for organized groups allowed in any park or other area owned or operated by the City for recreational purposes after closing time. The written authorization must be on site with the event organizer or designee and available for inspection at the time of the camp fire.

Sec. 19-37. Swimming.

(a) It shall be unlawful for any person to swim, bathe or wade in any body of water in a recreation facility unless designated for such use and then only in accordance with the rules, regulations and restrictions promulgated and posted at the recreation area.

(b) Entering and using any body of water located in any park or other area owned or operated by the City for recreational purposes for bathing or excretory functions is unlawful.

Sec. 19-38. Watercraft.

- (a) Lakes and streams located in City parks or other areas owned or operated by the City for recreational purposes may be used for boating.
- (b) Boats, canoes, rubber rafts or other floating watercraft may not be used in any park or other area owned or operated by the City for recreational purposes if such equipment is powered by more than 12-volt electric motors.
- (c) It shall be unlawful for any person to operate a watercraft with a petroleum-based, fuel-burning engine in any park or other area owned or operated by the City for recreational purposes.
- (d) All watercraft must be carried by hand to the water's edge for launching. Watercraft shall not be permitted to be towed by vehicle to the edge of any body of water in any park or other area owned or operated by the City for recreational purposes.
- (e) This section shall not apply to official use of watercraft by law enforcement, fire and rescue personnel, or by city crews for maintenance and inspection.

Sec. 19-39. Damage or Removal of Park Property or Vegetation.

- (a) It shall be unlawful for any person to dig up, cut, damage or remove any tree, tree limb, shrubbery, flowers, rock, mulch or other vegetation/natural fixture located in any park or other area owned or operated by the City for recreational purposes.
- (b) It shall be unlawful for any person to deface, graffiti, harm or damage any recreation facility buildings, wildlife, property, equipment or signs.
- (c) This section shall not apply to personnel employed or engaged by the City to maintain city parks and recreational areas or an authorized group of volunteers involved in a City-approved project for the enhancement of

a park or other area owned or operated by the City for recreational purposes.

Sec. 19-40. Artifact or Treasure Hunting.

- (a) It shall be unlawful for any person to search any park or other area owned or operated by the City for recreational purposes for historic artifacts or for the purpose of locating lost or abandoned personal property of another, unless such person specifically is authorized by the owner of that personal property to make such search on the owner's behalf.
- (b) It shall be unlawful for any person to remove any historic artifacts or lost or abandoned personal property of another from any park or other area owned or operated by the City for recreational purposes unless such person specifically is authorized by the owner of that personal property to recover such personal property on the owner's behalf.
- (c) It shall be unlawful for any person to dig in or otherwise disturb the ground in a park or other area owned by the City for recreational purposes, except under the circumstances permitted in section 19-40(c).
- (d) This section does not prohibit a person from visually searching for and reclaiming his own lost property in any park or other area owned or operated by the City for recreational purposes, either by himself or by someone specifically authorized by the owner of the lost personal property to act on his behalf.
- (e) The prohibitions of this section shall not apply to law enforcement personnel engaged in the lawful execution of their duties or to persons employed or engaged by the City when performing their duties in any park or other area owned or operated by the City for recreational purposes.

Sec. 19-41. Commercial Activity.

Unless approved by prior written permit issued by the Director of the Parks and Recreation Department or designee, it shall be unlawful for any person, firm, partnership, cooperative, nonprofit membership corporation, joint venture, association, company, corporation, agency, syndicate, estate, trust, business trust, receiver, fiduciary, or other group, organization or combination acting as a unit in any City park to:

- (1) Sell or offer for sale any merchandise;
- (2) Operate or attempt to operate a concession; or
- (3) Engage in any commercial or charitable activity in a City park.

The written permit must be on site with the event organizer or designee and available for inspection at the time the activity regulated in this section is occurring.

Sec. 19-42. Native Wildlife.

- (a) It shall be unlawful to remove or disturb any living or dead native creatures in City parks, including mammals, birds, fish, amphibians, and reptiles, or the parts or progeny thereof, such as nests, eggs, or antlers.
- (b) Fishing activities in City park lakes or streams shall be allowed from the shore of a body of water or from watercraft, if the location is designated by a City sign as allowing fishing at that particular location.

Sec. 19-43. Personal Conduct.

It shall be unlawful for any person to engage in any violent, abusive, loud, boisterous, vulgar, wanton, obscene or otherwise disorderly conduct that would disturb a reasonable person of ordinary sensibilities, or engage in any activity that could cause injury to other persons while on or in connection with a recreation facility. No person shall upon or in connection with a recreation facility by act or speech willfully or unreasonably hinder, interrupt or interfere with any duly permitted activity or unreasonably or willfully intrude on any

areas or into the structures designated for the use of a certain person or persons to the exclusion of others by written permit of the Director.

Sec. 19-44. Smoking Prohibited.

It shall be unlawful to smoke in any recreational facility, whether indoors or outdoors. For the purposes of this section, smoking shall include cigarettes and other legal and illegal substances, any controlled substances, and smoking in any manner, including any pipes and materials, including e-cigarettes, whether organic or inorganic, utilized for lighting and inhaling thereof.

Sec. 19-45. Parking Restricted.

(a) It shall be unlawful to park any motorized or electric vehicle in a recreation facility except in those areas designated by the appropriate signs as vehicle parking areas or in marked parking spaces. It shall be unlawful to leave a vehicle standing or parked in a recreation facility during hours when the recreation facility is closed, unless otherwise permitted to do so by the Director or designee. In such instances, the vehicle may be towed from the recreation facility at the owner's expense.

(b) It shall be unlawful for any person to park in a recreation area or facility if the owner of the vehicle is not utilizing the recreation facility unless authorized by the Director or designee. It shall be unlawful for persons to congregate within a parking area of a recreation facility so as to disrupt traffic or other persons, or so as to create a safety hazard.

Sec. 19-46. Animals Restricted.

(a) It shall be the duty of every animal owner or custodian whose animal is in a recreation facility to have physical control of the animal by leash or lead line at all times unless in designated dog park areas where off leash is permitted or approved, by permit, by the Director or designee. It shall be unlawful for any person with an animal, other than service dogs, as

necessary, to access areas of a recreation facility which are restricted to animals. It shall be the duty of every animal owner or custodian of any animal whose animal is in a recreation facility to immediately and properly dispose of waste deposited by the animal.

- (b) It shall be the duty of every animal owner or custodian of any animal whose animal is in a recreation facility to have in their possession proof of current registration and a current rabies vaccination for their animal.

Sec. 19-47. Engine Powered Models, Toys and Hobby Rockets Restricted.

- (a) It shall be unlawful for any person to start, fly or use any fuel powered engine, jet-type or electric powered model aircraft, boat or rocket or like powered toy or model, except at those areas designated by the Director for such use and then only in accordance with such rules, regulations and restrictions promulgated by the Director or designee.
- (b) It shall be unlawful for any person to launch hobby rockets from a recreation facility unless done so at locations specifically designated for said purpose by the Director or otherwise approved by written permit by the Director or designee.

Sec. 19-48. Signage Regulated.

It shall be unlawful for any person to post signage in recreation facilities unless it is in conjunction with a permitted rental or permitted special event, or as otherwise approved by the Director. Temporary signage will be limited to the numbers established in the City of Stonecrest Administrative Guidelines for Special Event Signage and Advertising or as otherwise approved by the City council.

Sec. 19-49. Violation of Facility Regulations.

It shall be unlawful for any person to violate any rules or regulations relating to the use of the recreation facility as established by the Director or by the City Council.

Section 2:

1. It is hereby declared to be the intention of the Mayor and City Council that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are and were, upon their enactment, believed by the Mayor and City Council to be fully valid, enforceable and constitutional.
2. It is hereby declared to be the intention of the Mayor and City Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Mayor and City Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.
3. In the event that any phrase, clause, sentence, paragraph or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Mayor and City Council that such invalidity, unconstitutionality, or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinance and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.
4. All ordinances or resolutions and parts of ordinances or resolutions in conflict herewith are hereby expressly repealed.
5. The within ordinance shall become effective upon its adoption.
6. The provisions of this Ordinance shall become and be made part of The Code of the City of Stonecrest, Georgia, and the sections of this Ordinance may be renumbered to accomplish such intention.

SO ORDAINED AND EFFECTIVE this the ____ day of _____, 2018.

Approved:

STATE OF GEORGIA
DEKALB COUNTY
CITY OF STONECREST

ORDINANCE 2018-_____

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Brenda James, City Clerk

Jason Lary, Sr., Mayor

As to form:

Thompson Kurrie, Jr., City Attorney



CITY COUNCIL AGENDA ITEM

SUBJECT: Intergovernmental Agreement for Police Services between DeKalb County and City of Stonecrest

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

Date Submitted: 09/28/2018

Council Meeting: 10/03/2018

SUBMITTED BY: City Manager

PURPOSE: This is the Intergovernmental Agreement between DeKalb County and the City of Stonecrest for Police Services.

HISTORY:

FACTS AND ISSUES:

OPTIONS:

RECOMMENDED ACTION: Recommendation of Council

**INTERGOVERNMENTAL AGREEMENT
FOR THE PROVISION OF POLICE SERVICES**

**Between
DEKALB COUNTY, GEORGIA and
THE CITY OF STONECREST, GEORGIA**

THIS INTERGOVERNMENTAL AGREEMENT is entered into by and between DeKalb County, Georgia ("County") and the City of Stonecrest, Georgia ("City").

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

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

WHEREAS, the County and City desire to enter into an Intergovernmental Agreement for the County to provide Police Services within the boundaries 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
PURPOSE AND INTENT**

The purpose of this Agreement is to sustain public safety and protect life and property within the City through enforcement of local, state and federal laws through the use of County Police Services.

**ARTICLE 2
DEFINITIONS**

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

2.1 ***Chief of Police*** means the DeKalb County police chief or designee.

2.2 ***City Police Chief*** means the top police official in the City of Stonecrest who is not a DeKalb County employee.

2.3 ***Police Services*** all basic and non-basic services as directed and determined by the County for the purposes of enforcing the applicable laws, preventing and deterring crime, arresting criminal offenders, maintaining public order, and providing service to the community. Such services include, but are not limited to: (1) conducting criminal investigations of incidents of crime in order to arrest responsible persons for prosecution; (2) directing and enforcing laws,

(3) responding to emergency and non-emergency calls for service, (4) conducting field interviews, (5) arresting criminal offenders, (6) directing and controlling traffic, and (7) issuing citations, and appearing in court (collectively, "Police Services"). These Police Services constitute the comprehensive police services provided by the County each day of the year, on a continual 24-hour per day basis within the jurisdictional boundaries of the City. At a minimum, the County shall provide such services consistent with the level of service provided in the unincorporated areas of the County. The County reserves the right to charge for non-basic services (such as responses to act of God, exigent circumstances that require a larger than typical police presence, unusual service, and/or deployment of specialized police equipment ("Exigent Circumstance")). To the extent that an Exigent Circumstance occurs, the County will communicate with the City Manager, or their designee, regarding the non-basic police services being provided (i.e. police bomb squad).

ARTICLE 3 TERM OF AGREEMENT

The term of this Agreement is an annual contract renewable for a total of ten (10) calendar years, commencing at 0000 hours on January 1, 2019 and concluding at 2400 hours on December 31, 2029. This Agreement shall automatically renew for an additional ten (10) years without further action by the City or the County unless previously terminated in accordance with the termination provisions of this Agreement. At the conclusion of this term, the City will be solely responsible for providing all Police Services within its boundaries unless extended by mutual Agreement approved by both governing bodies. The City may request in writing a maximum twenty-four (24) month transition period subject to the terms herein. The parties agree that, upon termination, the County's obligation to provide Police Services (pursuant to this Agreement, O.C.G.A. 36-31-8 and SB 208) shall terminate.

ARTICLE 4 COMPENSATION AND CONSIDERATION

4.1 As part of this Agreement, the City agrees to remain within the DeKalb special service tax district for Police Services and nothing in this Agreement shall preclude the County's right to continue to collect the DeKalb special service tax district taxes from the residents of the City for all Police Services originating within the City of Stonecrest and under this Agreement. The County reserves the right to charge the City the actual cost of any specific non-basic services performed due to Exigent Circumstances or at the request of the City. The County will communicate with the City Manager, or their designee, regarding the cost of the non-basic police services being provided. The County and City shall retain the right to jointly or individually seek joint jurisdictional, state or federal funding to the extent permitted by law.

4.2 The City agrees that the County remains entitled to impose, collect and retain all the false alarm fees. The City may set the amount of false alarm fees by requesting the same in writing, subject to County approval. Nothing in this Agreement shall preclude the County's right to continue to collect such fees for false alarm calls originating from within the City of Stonecrest.

4.3 The parties acknowledge that precinct boundaries shall be determined by the County and input from the City Manager shall be included when practicable. Should the County locate a precinct within the boundaries of the City, such precinct shall be named the Stonecrest Precinct. A map of the precinct boundaries shall be provided to the City within six (6) months after the date of this Agreement and on an annual basis thereafter. Any future significant change to the precinct boundaries shall include input from the City Manager. However, the parties acknowledge that precinct boundaries shall be determined by the County, at the sole discretion of the County, and input from the City Manager shall be included when practicable under the circumstances.

ARTICLE 5 CHIEF OF POLICE

The DeKalb County Chief of Police will direct and manage the daily police operations in the City and supervise the delivery of Police Services contracted for in this Agreement. While the Chief of Police shall retain control and direction of the Police Services hereunder, the City may request meetings or provide input regarding police operations for the County's consideration.

ARTICLE 6 SERVICES

6.1 The division of labor and workforce within the Police Department will remain the sole discretion of the County and shall be based on, but is not limited to, call volumes, incident reports, pending cases, crime statistics, crime trends, land area, and population or any other factors, as determined by the County. During the term of this Agreement, the level of Police Services provided by the County to the City shall be consistent with those provided in all other portions of unincorporated DeKalb County; however, such level of Police Services shall not fall below the 2018 level of Police Services provided in unincorporated DeKalb County. By December 31st of each year this Agreement is in effect, the County shall provide an annual report to the City reflecting the number of police officers assigned to the City and their respective assignments or positions during the course of that year. The County and the City intend to enter into separate mutual aid agreements which shall govern the parties in case of emergencies requiring assistance from neighboring law enforcement departments.

6.2 Response times in the City shall remain consistent with those response times in all other parts of unincorporated DeKalb County. County-wide response time reports will be provided by the Chief of Police if requested by the City Manager.

6.3 Assignment of the County precinct commander to the City will be at the discretion of the County with input from the Stonecrest City Manager. The parties acknowledge that input from the City Manager for the assignment of the County precinct commander to the City shall be included whenever practicable under the circumstances.

6.4 The parties acknowledge that, in the event that the City of Stonecrest appoints a City Police Chief, such official is not in the chain of command of any DeKalb County Police Department Employee and does not have the authority to direct the activities of any employee of

the DeKalb County Police Department. The City Manager and/or the City Police Chief will contact and communicate with the DeKalb County Chief of Police to resolve any concerns regarding the scope of work contemplated under this Agreement.

6.5 The parties acknowledge and agree that, once sworn in, one (1) on-duty sworn police officer assigned to the City shall attend all scheduled Stonecrest city council meetings. Additionally, a sworn police officer assigned to the City shall attend such other Stonecrest meetings (other than scheduled Stonecrest city council meetings) as requested by the City. The City shall compensate such sworn police officer(s) for attendance at such other Stonecrest meetings at their standard hourly rate with the County.

ARTICLE 7 EQUIPMENT

The County agrees to provide DeKalb County police personnel assigned to work within the City with all necessary equipment and motor vehicles in connection with this Agreement in order to perform the agreed upon Police Services, in accordance with DeKalb County Police policies and procedures. The County agrees to add a County approved, removable Stonecrest precinct identifier on applicable police vehicles assigned primarily in the City of Stonecrest. However, the parties acknowledge that the use of any such identifier shall be determined by the County, at the sole discretion of the County, when practicable under the circumstances. The County agrees to maintain said equipment and vehicles and to provide replacements as necessary during the term of the Agreement. All DeKalb County Police Officers assigned hereunder shall wear the uniform and insignia as issued and ordered by the DeKalb County Police Department.

ARTICLE 8 AUTHORITY TO ENFORCE THE LAW IN STONECREST

8.1 Sworn police officers assigned to the City shall take an oath administered by an official authorized by the City of Stonecrest to administer oaths, as prescribed by O.C.G.A. §§ 45-3-1 and 45-3-10.1 prior to enforcing the ordinances of the City of Stonecrest.

8.2 Every sworn police officer of the County assigned to the City shall still be deemed to be a sworn officer of the County while performing the services, duties and responsibilities hereunder and is vested with the police powers of the County that are necessary to provide the Police Services within the scope of this Agreement.

8.3 Sworn police officers shall be and hereby are vested with the additional power to enforce the applicable ordinances of the City or the County, to make arrests or issue citations incident to the enforcement of the applicable County and City ordinances, and to perform other tasks as are reasonable and necessary in the exercise of their powers. This vesting of additional powers to enforce the applicable ordinances of the City and the County is made for the sole and limited purpose of giving official and lawful status to the performance of law enforcement services provided by sworn officers within the City of Stonecrest.

8.4 Sworn police officers shall enforce applicable City and County ordinances and violations of City traffic ordinances and shall appear in the Municipal Court of the City of

Stonecrest or the DeKalb State Court, where applicable and as necessary to prosecute cases made therein. The City further agrees to provide, at its own expense, training, citation books or electronic methods containing the Municipal Court information to the uniform patrol officers working within the City. County police officers must continue to comply with all County policies governing off-duty employment.

ARTICLE 9 EMPLOYMENT STATUS

9.1 All sworn officers, as well as any other County personnel assigned 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.

9.2 All sworn officers as well as any other sworn personnel assigned under this Agreement are and will continue to be part of the DeKalb County police department command structure. Officers, police department staff and personnel are under the supervision of the Chief of Police.

ARTICLE 10 RECORDKEEPING AND REPORTING

10.1 The County Police Department Records Section is the central repository for all departmental records and makes available public records as defined by the Georgia Open Records Act, O.C.G.A. § 50-18-70, *et seq.* During the term of this Agreement, the County will continue to maintain Initial Incident Reports, Supplemental Reports and other reports relating to police department activity in the City, consistent with the County's records retention policies.

10.2 During the term of this Agreement, the County will continue to compile, maintain and submit all law enforcement data for the City, including NIBRS and UCR statistics, to state and federal authorities in the form and manner required of police agencies in Georgia. The City shall be responsible for the creation of any necessary User Agreements with the Georgia Crime Information Center ("GCIC") and the establishment of a unique *ORI* in order for the County to comply with this paragraph. In addition, the City shall be responsible for any costs incurred with the County's software vendor if software modifications are necessary in order to comply with this paragraph. Otherwise, the DeKalb County Police Department will continue to report the required crime statistics to the State and Federal governments as a part of unincorporated DeKalb County for the duration of this Agreement.

10.3 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 11 CITY-COUNTY RELATIONS

11.1 The County Chief of Police or the County precinct commander assigned to the City will notify and communicate with the City Manager and the City Police Chief in the event of a significant criminal occurrence, Exigent Circumstance, or emergency situation within the City, as determined by the County Chief of Police or County precinct commander assigned to the City. In the event the City determines additional City officials should be included, the City Manager may designate additional City officials to participate in the discussion related to the definition of such events. Notices of such designated individuals shall be sent by the City in writing to the County Police Chief and the County Executive Assistant/COO.

11.2 The County shall be the sole provider of services that require sworn law enforcement personnel within the City during the term of this Agreement.

ARTICLE 12 TRANSITION

12.1 The County and City agree that twenty-four (24) months prior to the end of this Agreement, the City shall notify the County, the County Executive Assistant, the County Attorney, and the Chief of Police in writing of the City's intent to take over Police Services within the City of Stonecrest, and the City Manager and the Executive Assistant will meet and confer to effect a smooth transition.

12.2 The parties acknowledge that the City Manager and City Chief of Police are not in the chain of command of any DeKalb County Police Department Employee and do not have authority to direct the activities of any employee of the DeKalb County Police Department.

ARTICLE 13 TERMINATION AND REMEDIES

13.1 Unless mutual termination is otherwise reached, the City may terminate this Agreement with or without cause by giving twenty-four (24) months prior written notice to the County. If the City intends to terminate this Agreement for cause prior to the expiration of the term of this Agreement, the City must notify the County in writing, said notice must specify the basis for the termination, provide at least thirty (30) days to cure, and must provide an opportunity to cure by reviewing an action plan acceptable to the City and the County.

13.2 Unless mutual termination is otherwise reached, the County may terminate this Agreement by giving the City twenty-four (24) months written notice of termination prior to the termination and withdrawal of Police Services.

13.3 Should this Agreement be terminated during the course of a calendar year, the County agrees to contribute ad valorem and any special service tax district tax revenue received for Police Services within the City during the bifurcated year to the City upon the County's receipt of such amounts from the Tax Commissioner. Such amount shall be decreased by a

percentage representing the number of days during that year services were provided by the County. The contributions will occur fifteen (15) days after the first tax payment installment, fifteen (15) days after the second tax payment installment, with a final payments on January 15th of the following tax year in order to reconcile any remaining tax revenue from the bifurcated year.

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

ARTICLE 14 NOTICES

All required notices shall be given by certified first class U.S. Mail, return receipt requested. The parties agree to give each other non binding duplicate facsimile notice. Future changes in address shall be effective upon written notice being given by the City to the County Executive Assistant or by the County to the City Manager via certified first class U.S. mail, return receipt requested. Notices shall be addressed to the parties at the following addresses:

If to the County: Executive Assistant
 1300 Commerce Drive, 6th Floor
 Decatur, Georgia 30030
 (404) 687-3585 (facsimile)

With a copy to: County Attorney
 1300 Commerce Drive, 5th Floor
 Decatur, Georgia 30030
 (404) 687-3585 (facsimile)

If to the City: City Manager
 City of Stonecrest
 3120 Stonecrest Blvd.
 Stonecrest, Georgia 30038
 (470) 299-4214 (facsimile)

With a copy to: City Attorney
 City of Stonecrest
 3120 Stonecrest Blvd.
 Stonecrest, Georgia 30038
 (470) 299-4214 (facsimile)

With a copy to: Thompson Kurrie, Jr.
 City Attorney
 3475 Lenox Road, NE, Suite 400
 Atlanta, Georgia 30326
 (770) 698-9729 (facsimile)

ARTICLE 15
EXTENSION OF AGREEMENT

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

ARTICLE 16
NON-ASSIGNABILITY

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

ARTICLE 17
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 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. No representation oral or written not incorporated in this Agreement shall be binding upon the City or the County. All parties must sign any subsequent changes in the Agreement.

ARTICLE 18
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 be 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 19
BINDING EFFECT

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

ARTICLE 20 INDEMNITY

20.1 It is the intent of the parties to be covered under the auspices of any applicable immunity granted by law. Only to the extent permitted by law, shall the City defend, indemnify and hold harmless the County and its officers, employees, or agents from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, or agents may incur as a result of any claim, demand, suit, or cause of action or proceeding of any kind or nature arising out of, relating to, or resulting from the negligent performance of this Agreement by the City, its employees, officers and agents. The County shall promptly notify the City of each claim, cooperate with the City in the defense and resolution of each claim and not settle or otherwise dispose of the claim without the City's participation.

20.2 It is the intent of the parties to be covered under the auspices of any applicable immunity granted by law. Only to the extent permitted by law, shall the County defend, indemnify and hold harmless the City and its officers, employees, or agents from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the City or its officers, employees, or agents may incur as a result of any claim, demand, suit, or cause of action or proceeding of any kind or nature arising out of, relating to, or resulting from the negligent performance of this Agreement by the County, its employees, officers, and agents. The City shall promptly notify the County of each claim, cooperate with the County in the defense and resolution of each claim and not settle or otherwise dispose of the claim without the County participation.

20.3 The indemnification provisions of this Agreement shall survive termination of this Agreement for any claims that may be filed after the termination date of the Agreement provided the claims are based upon actions that occurred during the term of this Agreement.

ARTICLE 21 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

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

This _____ day of _____, 2018.

DEKALB COUNTY, GEORGIA

ATTEST:

MICHAEL L. THURMOND

Chief Executive Officer
DeKalb County, Georgia

BARBARA SANDERS NORWOOD

Clerk of the Chief Executive Officer
and Board of Commissioners of
DeKalb County, Georgia

APPROVED AS TO SUBSTANCE:

APPROVED AS TO FORM:

JAMES CONROY

Chief, DeKalb County Police

MARIAN C. ADEIMY

Assistant County Attorney

CITY OF STONECREST, GEORGIA

JASON LARY, SR.
Mayor

BRENDA JAMES
Municipal Clerk

APPROVED AS TO SUBSTANCE:

APPROVED AS TO FORM:

MICHAEL HARRIS

City Manager

THOMPSON KURRIE, JR.

City Attorney



CITY COUNCIL AGENDA ITEM

SUBJECT: Intergovernmental Agreement for Fire Rescue Services between DeKalb County and City of Stonecrest

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

Date Submitted: 09/28/2018

Council Meeting: 10/03/2018

SUBMITTED BY: City Manager

PURPOSE: This is the Intergovernmental Agreement between DeKalb County and the City of Stonecrest for Fire Rescue Services.

HISTORY:

FACTS AND ISSUES:

OPTIONS:

RECOMMENDED ACTION: Recommendation of Council

September 27, 2018

**INTERGOVERNMENTAL AGREEMENT
FOR THE PROVISION OF FIRE RESCUE SERVICES
BETWEEN
DEKALB COUNTY, GEORGIA and
THE CITY OF STONECREST, GEORGIA**

THIS INTERGOVERNMENTAL AGREEMENT, is entered into by and between DeKalb County, Georgia ("County") and the City of Stonecrest, Georgia ("City").

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

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

WHEREAS, the County and City desire to enter into an Intergovernmental Agreement for the County to provide fire rescue services within the boundaries 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
PURPOSE AND INTENT**

The purpose of this Agreement is to provide fire rescue services within the City.

**ARTICLE 2
DEFINITIONS**

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

2.1 **"Fire Chief"** means the director of the DeKalb County Fire and Rescue department or designee.

2.2 **"Fire Code"** means (1) those applicable provisions of state law related to fire rescue services, including the state fire safety rules, the International Fire Code and (2) those applicable provisions of the Code of DeKalb County, Georgia related to fire rescue services including but not limited to Chapter 12 of the Code of DeKalb County, Georgia and (3) those applicable provisions of the Ordinances of the City of Stonecrest, Georgia that may be enacted during the term of this Agreement related to fire rescue services.

2.2 **"Fire prevention tax district"** means the area of land in DeKalb County, Georgia that has been designated as the fire prevention tax district in which the County imposes

and collects from the taxpayers in the district a separate fire tax for the purpose of defraying the cost of the County fire rescue services provided to the taxpayers in the district.

2.3 **"Fire Rescue Services"** means fire suppression, community risk reduction, fire protection, disaster mitigation, rescue, hazardous material response and emergency medical service transports service provided by County Fire and Rescue Department personnel.

ARTICLE 3 TERM OF AGREEMENT

The term of the Agreement is for the current calendar year, commencing at 0000 hours on January 1, 2019. This Agreement shall automatically renew without further action by the City or County on January 1st of each succeeding year for a total of fifty (50) years concluding at 2400 hours on December 31, 2069 unless previously terminated in accordance with the termination provisions of this Agreement. At the conclusion of this term, the City will be solely responsible for providing all Fire Rescue Services within its boundaries unless extended by mutual agreement by both governing bodies.

ARTICLE 4 COMPENSATION AND CONSIDERATION

4.1 For the Fire Rescue Services to be rendered during the term of this Agreement, the City agrees that the County shall remain entitled to impose and collect the special service tax district and fire prevention district tax annually in the same manner and at the same rate that such tax is imposed and collected within the portion of the DeKalb fire prevention tax district that is located in unincorporated portions of DeKalb County. The City agrees to remain within the DeKalb fire prevention tax district, and nothing in this Agreement shall preclude the County's right to continue to collect DeKalb fire prevention district taxes from the residents of the City for all Fire Rescue Services originating within the City of Stonecrest.

4.2 The City agrees that the County remains entitled to impose, collect and retain all ambulance transport fees. Ambulance transport fees charged shall be equal to those imposed upon residents of unincorporated DeKalb County, whether in effect at the time of this Agreement or approved by the DeKalb County Governing Authority at some future date. Nothing in this Agreement shall preclude the County's right to continue to collect such fees for ambulance transport calls originating from within the City of Stonecrest.

ARTICLE 5 FIRE CHIEF

The Fire Chief will direct and manage the daily fire rescue operations in the City and supervise the delivery of Fire Rescue Services contracted for in this Agreement.

ARTICLE 6 SERVICES

6.1 During the term of this Agreement, the County shall provide the same Fire Rescue Services to the City as are provided in unincorporated area of DeKalb County. Such Fire Rescue Services shall equal or exceed the Fire Rescue Services provided by the County in 2018 within the area that comprises the City. The County shall provide Fire Rescue Services on a continual 24-hour per day basis. The County and the City intend to enter into mutual aid agreements, which shall govern the parties in case of emergencies requiring assistance from neighboring fire departments.

6.2 Response times in the City shall remain consistent with those response times in unincorporated DeKalb County. County-wide response reports will be provided by the Fire Chief if requested by the City Manager.

6.3 All emergency incidents within the City shall operate under the National Response Plan (NRP) utilizing the National Incident Management System (NIMS). During the term of this Agreement, the City agrees that it will not adopt any ordinance that in any way amends, repeals or replaces the applicable fire rescue provisions of the Code of DeKalb County, Georgia, including but not limited to Chapter 12 of the Code of DeKalb County, Georgia and any amendments thereto without the written consent of the Fire Chief. Such consent shall not be unreasonably withheld.

ARTICLE 7 EQUIPMENT

The County agrees to provide DeKalb County Fire and Rescue personnel assigned to work within the City with all necessary equipment and motor vehicles in connection with this Agreement in order to perform the agreed upon Fire Rescue Services, in accordance with DeKalb County Fire and Rescue Department policies and procedures. The County agrees to maintain said equipment and vehicles and to provide replacements as necessary during the term of the Agreement. All DeKalb County Fire and Rescue officers assigned hereunder shall wear the uniform and insignia as issued and ordered by the DeKalb County Fire and Rescue Department.

ARTICLE 8 AUTHORITY TO ENFORCE THE LAW IN STONECREST

8.1 The Fire Chief shall designate the fire rescue officers to be sworn in and take an oath administered by an official authorized by the City of Stonecrest to administer oaths, as prescribed by O.C.G.A. §§ 45-3-1 and 45-3-10.1 prior to undertaking fire rescue duties pursuant to this Agreement to enforce the Fire Code.

8.2 Every fire and rescue officer of the County assigned to the City shall still be deemed to be a sworn officer of the County while performing the services, duties and responsibilities hereunder and is vested with all other powers of the County that are necessary to provide the Fire Rescue Services within the scope of this Agreement.

8.3 The Fire Chief shall be and hereby is vested with the additional power to enforce the Fire Code, to make arrests or issue citations incident to the enforcement of the Fire Code, and to perform other tasks as are reasonable and necessary in the exercise of their powers. This vesting of additional powers to enforce the Fire Code is made for the sole and limited purpose of giving official and lawful status to the performance of Fire Rescue Services provided by fire and rescue officers within the City of Stonecrest.

8.4 Fire and Rescue officers shall enforce the Fire Code and shall appear in the Municipal Court of the City of Stonecrest as necessary to prosecute cases made therein. The City further agrees to provide, at its own expense, citation books containing the printed Municipal Court information to the fire rescue officers working within the City.

ARTICLE 9 EMPLOYMENT STATUS

All County Fire and Rescue Department personnel operating in the City, as well as any other County personnel operating 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 County Fire and Rescue Department personnel operating in the City as well as any other sworn personnel assigned under this Agreement are and will continue to be part of the DeKalb County Fire and Rescue Department command structure. Fire and rescue personnel are under the supervision of the DeKalb County Fire Chief.

ARTICLE 10 FIRE INSPECTION AND PREVENTION

10.1 Until the City has notified the County that the City will provide fire marshal services, the County shall also provide fire inspection and prevention services which include, but are not limited to, the following:

- a. Review of all interior finished, new structures, additions and renovation of all commercial buildings and multi-family buildings, whether existing or to be constructed in the City;
- b. Reviewing plans for both new construction and renovations of existing structures;
- c. Final inspections for all commercial and multi-family buildings;
- d. Inspections for business licenses or change of occupancy;
- e. Inspections required for setting occupancy loads;
- f. Enforcement of fire lane and handicap parking regulations; and
- g. Enforcement of the Fire Code.

10.2 The County shall be entitled to collect the plan review, permit and inspection fees in connection with commercial and multi-family buildings constructed or renovated in the City if such structures or plans are reviewed or inspected by the Fire and Rescue Department. Fees charged shall be equal to those imposed upon residents of unincorporated DeKalb County for similar permits, inspections and plan reviews, whether in effect at the time of this Agreement or as approved by the DeKalb County Governing Authority at some future date.

10.3 Construction plans and accompanying documents for all buildings subject to the provisions of this Agreement shall be submitted to the Fire Chief. Interior finish work and minor building additions may make use of the Fire and Rescue department "walk through" process.

10.4 Until the City has notified the County that the City will be providing "fire marshal services", following completion of final inspection of commercial and multi-family buildings by the Fire Chief:

- a. The City shall not issue any Certificate of Occupancy without the express written approval of the Fire Chief.
- b. The City shall issue the Certificate of Occupancy when the City is satisfied that the project has complied with all City requirements.
- c. The City shall be responsible for notifying utilities companies in connection with the issuance of Certificates of Occupancy.
- d. The issuance of the Certificate of Occupancy by the City shall in no way obligate the City to make any plan review or inspections of the building, and it is specifically agreed that the City shall have the right to rely upon the plan review and inspections performed by the Fire Chief.

10.5 Retaining walls, tents, signs, greenhouses, satellite dishes, Christmas tree lots, emission inspections stations, and similar projects or structures shall not be subject to the provisions of this Agreement, and the City shall continue to issue permits and/or approvals for such projects.

10.6 Both the City personnel and the County Fire and Rescue officers are authorized to issue citations for violations of the Fire Code.

10.7 The City shall be responsible for inspections of all erosion control and site work on all projects within the City.

10.8 The City shall be responsible for enforcement of building code requirements and shall issue all citations necessary to prosecute any building code violations in the Municipal Court of Stonecrest.

ARTICLE 11 RECORDKEEPING AND REPORTING

The County Fire and Rescue Department is the central repository for all departmental records and makes available public records as defined by the Georgia Open Records Act, O.C.G.A. 50-18-70, *et seq.* During the term of this Agreement, the County will continue to maintain all reports relating to Fire and Rescue Department activity within the City. 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 12
CITY — COUNTY RELATIONS

The DeKalb County Fire Chief will notify the City Manager in the event of a significant fire rescue emergency situation within the City. The DeKalb County Fire Chief and City Manager shall designate what they consider "significant" by a written memorandum. The County shall be the sole provider of services within the City that require sworn fire rescue personnel during the term of this Agreement.

ARTICLE 13
TRANSITION

The County and City agree that twenty-four (24) months prior to the end date of this Agreement, the City Manager and Executive Assistant will meet and confer to effect a smooth transition.

ARTICLE 14
TERMINATION AND REMEDIES

14.1 The City may terminate this Agreement with or without cause by giving twenty-four (24) months prior written notice to the County. If the City intends to terminate this Agreement for cause, the City must notify the County in writing, specifying the cause, extent and effective date of the termination. The County shall have thirty three (33) days after the date of the written notice from the City to cure the stated cause for termination.

14.2 The County may terminate this Agreement for cause by giving twenty-four (24) months prior written notice to the City. If the County intends to terminate this Agreement for cause, the County must notify the City in writing, specifying the cause, extent and effective date of termination, and the City shall have thirty three (33) days after the date of the written notice from the County to cure the stated cause for termination.

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

ARTICLE 15
NOTICES

All required notices shall be given by certified first class U.S. Mail, return receipt requested. The parties agree to give each other non-binding duplicate facsimile notice. Future changes in address shall be effective upon written notice being given by the City to the County Executive Assistant or by the County to the City Manager via certified first class U.S. mail, return receipt requested. Notices shall be addressed to the parties at the following addresses:

If to the County:	Executive Assistant
	1300 Commerce Drive
	Maloof Building, 6 th Floor
	Decatur, Georgia 30030
	(404) 687-3585 (facsimile)

September 27, 2018

With a copy to: County Attorney
1300 Commerce Drive, 5th Floor
Decatur, Georgia 30030
(404) 371-3024 (facsimile)

If to the City: City Manager
City of Stonecrest
3120 Stonecrest Blvd.
Stonecrest, GA 30038
(470) 299-4214 (facsimile)

With a copy to: City Attorney
City of Stonecrest
3120 Stonecrest Blvd.
Stonecrest, GA 30038
(470) 299-4214 (facsimile)

With a copy to: Thompson Kurrie, Jr.
City Attorney
3475 Lenox Road, NE
Suite 400
Atlanta, Georgia 30326
(770) 698-9729 (facsimile)

ARTICLE 16 EXTENSION OF AGREEMENT

This Agreement may be extended 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 17 NON-ASSIGNABILITY

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

ARTICLE 18 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 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. No representation oral or written not incorporated in this Agreement shall be binding upon the City or the County. All parties must sign any subsequent changes in the Agreement.

ARTICLE 19
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 be 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 20
BINDING EFFECT

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

ARTICLE 21
INDEMNITY

21.1 It is the intent of the parties to be covered under the auspices of any applicable immunity granted by law. Only to the extent permitted by law, shall the City defend, indemnify and hold harmless the County and its officers, employees, or agents from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, or agents may incur as a result of any claim, demand, suit, or cause of action or proceeding of any kind or nature arising out of, relating to, or resulting from the negligent performance of this Agreement by the City, its employees, officers and agents. The County shall promptly notify the City of each claim, cooperate with the City in the defense and resolution of each claim and not settle or otherwise dispose of the claim without the City's participation.

21.2 It is the intent of the parties to be covered under the auspices of any applicable immunity granted by law. Only to the extent permitted by law, shall the County defend, indemnify and hold harmless the City and its officers, employees, or agents from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the City or its officers, employees, or agents may incur as a result of any claim, demand, suit, or cause of action or proceeding of any kind or nature arising out of, relating to, or resulting from the negligent performance of this Agreement by the County, its employees, officers, and agents. The City shall promptly notify the County of each claim, cooperate with the County in the defense and resolution of each claim and not settle or otherwise dispose of the claim without the County participation.

September 27, 2018

21.3 The indemnification provisions of this Agreement shall survive the termination of this Agreement and for any claims that may be filed after the termination date of this Agreement, provided the claims are based upon actions that occurred during the term of this Agreement.

ARTICLE 22
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 27, 2018

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

This _____ day of _____, 2018.

DEKALB COUNTY, GEORGIA

MICHAEL J. THURMOND

Chief Executive Officer

ATTEST:

BARBARA H. SANDERS, CCC

Clerk to the Board of Commissioners
and Chief Executive Officer

APPROVED AS TO SUBSTANCE:

APPROVED AS TO FORM:

DARNELL D. FULLUM

Chief, Fire and Rescue

MARIAN C. ADEIMY

Assistant County Attorney

CITY OF STONECREST, GEORGIA

JASON LARY, SR.

Mayor

APPROVED AS TO SUBSTANCE:

APPROVED AS TO FORM:

MICHAEL HARRIS

City Manager

THOMPSON KURRIE, JR.

City Attorney



CITY COUNCIL AGENDA ITEM

SUBJECT: Intergovernmental Agreement for 911 Dispatch Services between DeKalb County and City of Stonecrest

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

Date Submitted: 09/28/2018

Council Meeting: 10/03/2018

SUBMITTED BY: City Manager

PURPOSE: This is the Intergovernmental Agreement between DeKalb County and the City of Stonecrest for 911 Dispatch for Police, Fire, Emergency Medical, Animal Services and Enforcement Calls.

HISTORY:

FACTS AND ISSUES:

OPTIONS:

RECOMMENDED ACTION: Recommendation of Council

INTERGOVERNMENTAL AGREEMENT
Between
DEKALB COUNTY, GEORGIA and
THE CITY OF STONECREST, GEORGIA
FOR 911 DISPATCH OF POLICE, FIRE, EMERGENCY MEDICAL, AND
ANIMAL SERVICES and ENFORCEMENT CALLS
WITHIN THE CITY LIMITS of
STONECREST, GEORGIA

THIS INTERGOVERNMENTAL AGREEMENT is entered into by and between DeKalb County, Georgia ("County") and the City of Stonecrest, Georgia ("City") on ____ day of _____, 2018.

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

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

WHEREAS, the City intends to utilize the County's 911 Emergency Communication Department for 911 Emergency Communications Services (hereinafter, collectively referred to as "DeKalb 911" and/or "911 services");

WHEREAS, the County shall provide services for the intake of 911 calls from City residents for police services, fire services, emergency medical services, and animal services (hereinafter, "Police/Fire/EMS/AS&E Services") to and through DeKalb 911 for dispatch and handling;

WHEREAS, the City and County acknowledge that the County incurs costs and expenses when providing 911 services;

WHEREAS, the City and the County desire to enter into this Intergovernmental Agreement to describe the 911 services and the parties' responsibilities, duties and payments so that 911 calls hereunder are transferred in an orderly, secure, efficient and timely manner to the County for dispatch and handling; 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.

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

ARTICLE 1 PURPOSE AND INTENT

The purpose of this Agreement is to describe the technical upgrades, interfaces, equipment, responsibilities, duties, and costs so that 911 calls for Police/Fire/EMS/AS&E Services are transferred in an orderly, secure, efficient and timely manner to the DeKalb 911 for dispatch and handling.

ARTICLE 2 DEFINITIONS

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

2.1 **911 Services** means the receipt of incoming calls for service through the enhanced 9-1-1 telephone system for emergency and non emergency requests for medical, police, fire and other public safety services, and initiation of the appropriate response action by the City or the County. The service also includes the coordination of requests for support and auxiliary services from field units and refers crimes and incidents not requiring an on-scene investigation by a field unit to the appropriate police precinct, agency or department. This is considered the vital and necessary communications link between residents of the City, the County Police, the County Fire Department, the County's Emergency Medical Service department or provider, and the Animal Services and Enforcement Division. These services are also considered the vital and necessary communications link between citizens of the County and the City through consolidated, Enhanced 911 call reception and radio dispatching of requests for services. The Countywide 800 MHz trunked radio system (hereinafter "County 800 MHz Radio System") is the primary method of dispatching calls for service to the City and the County field units and the County emergency medical services provider dispatched through 911.

2.2 **City's Emergency Communications Provider** means the Emergency Communications Department or contractor designated or retained by the City to receive and dispatch 911 calls from City residents to DeKalb 911 for dispatch and handling by the County's Police, Fire Department, Emergency Medical Services department or provider and the Animal Services and Enforcement Division.

2.3 **DeKalb 911** means the County Emergency Communications Department that accepts and dispatches 911 calls for the unincorporated areas of the County and some of the municipalities located in the County.

2.4 **Police/Fire/EMS/AS&E Service(s)** means the service(s) provided to City residents as a result of a resident's 911 call, by the County's Police Department, Fire Department, Emergency Medical Services department or provider and the Animal Services and Enforcement Division.

2.5 **Call** means a 911 call originating within the City's boundaries that requires the dispatch and response of police, fire suppression apparatus, emergency medical service

providers, animal services and enforcement units, or some other non-emergency response such as water and sewer trucks, sanitation, etc.

ARTICLE 3 TERM OF AGREEMENT

The term of this Agreement shall begin on the date of execution and concludes at 2400 hours on December 31, 2018. This Agreement shall automatically renew without further action by the City or the County on the first of each succeeding year for an additional one (1) year term for a total lifetime of fifty (50) calendar years, unless previously terminated in accordance with the termination provisions of this Agreement.

ARTICLE 4 SERVICES

4.1 During the term of this Agreement, the County shall provide at least the same 911 Services for Police/Fire/EMS/AS&E Services to the City that are provided to unincorporated DeKalb County in 2018. At all times contemplated by this Agreement, the City and the County shall meet the 911 service requirements for the 911 Emergency Communications Services as specified by the Georgia Emergency Management Agency. The designated services to be performed by each party to this Agreement shall be provided on a continual 24-hour per day basis, seven days a week. Concerns with performance levels will be addressed as they occur. Timely notification of performance issues can be made verbally or via written communication. Results will be delivered in a timely manner, and if necessary, further discussions can be held with the appropriate staff from the affected entity.

4.2 During the term of this Agreement, the City hereby authorizes the County to collect 911 fees within the City of Stonecrest at the same rate and method as the County collects 911 fees from within unincorporated territory.

ARTICLE 5 CITY-COUNTY RELATIONS, EMPLOYEE STATUS, RECORDKEEPING

5.1 The County's Public Safety/911 Director shall notify the City at least 90 days before any change is made to any County's technology used in or by any system or equipment that will impact the transfer of 911 calls to the City.

5.2 All County employees providing services pursuant to this Agreement are and will continue to remain County employees. County employees shall not be entitled to any City employee benefits including, but not limited to social security, insurance, paid annual leave, sick leave, worker's compensation, free parking or retirement benefits. All City employees providing services pursuant to this Agreement are and will continue to remain City employees. City employees shall not be entitled to any County employee benefits including, but not limited to social security, insurance, paid annual leave, sick leave, worker's compensation, free parking or retirement benefits.

5.3 The parties agree that, at any time during this Agreement, the County has the right to contract with third party persons or entities (hereinafter collectively, the "Contractor") for any and all 911 call services and systems contemplated herein. If services required or associated with this Agreement are performed by a Contractor, the City and County agree that all services provided by the Contractor shall be by employees of Contractor and subject to supervision by the Contractor and not as officers or employees of the County or City. Personnel policies, tax responsibilities, social security and health insurance, employee benefits and other similar administrative procedures applicable to services rendered by the Contractor shall be those of the Contractor, not the County or the City.

5.4 The City and the County shall comply with the Georgia Open Records Act, O.C.G.A. § 50-18-70 *et seq.*

ARTICLE 6 TERMINATION AND REMEDIES

6.1 The City or County may terminate this Agreement with or without cause by giving one-hundred and eighty (180) days prior written notice to the other party.

6.2 If the City intends to terminate this Agreement for cause, the City must notify the County in writing, specifying the cause, extent and effective date of the termination. The County shall have thirty-three (33) days after the date of the written notice from the City to cure the stated cause for termination.

6.3 If the County intends to terminate this Agreement for cause, the County must notify the City in writing, specifying the cause, extent and effective date of termination. The City shall have thirty-three (33) days after the date of the written notice from the County to cure the stated cause for termination.

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

ARTICLE 7 NOTICES

All required notices shall be given by certified first class U.S. Mail, return receipt requested. The parties agree to give each other non-binding duplicate facsimile notice. Future changes in address shall be effective upon written notice being given by the City to the County Executive Assistant or by the County to the City Manager via certified first class U.S. mail, return receipt requested. Notices shall be addressed to the parties at the following addresses:

If to the County:	Executive Assistant 1300 Commerce Drive Maloof Building, 6 th Floor
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Decatur, Georgia 30030
(404) 687-3585 (facsimile)

With a copy to: County Attorney
1300 Commerce Drive, 5th Floor
Decatur, Georgia 30030
(404) 371-3024 (facsimile)

If to the City: City Manager
City of Stonecrest
3120 Stonecrest Blvd.
Stonecrest, GA 30038
(470) 299-4214 (facsimile)

With a copy to: City Attorney
City of Stonecrest
3120 Stonecrest Blvd.
Stonecrest, GA 30038
(470) 299-4214 (facsimile)

With a copy to: Thompson Kurrie, Jr.
City Attorney
3475 Lenox Road, NE
Suite 400
Atlanta, Georgia 30326
(770) 698-9729 (facsimile)

The parties agree to give each other non-binding facsimile notice and all notices sent to the addresses listed above shall be binding unless said address is changed in writing. Future changes in address shall be effective upon written notice being given by the City Manager to the County's Executive Assistant or by the County's Executive Assistant to the City Manager via certified first class U.S. mail, return receipt requested.

ARTICLE 8 EXTENSION OF AGREEMENT

This Agreement may be extended at any time during the term by mutual consent of both parties so long as such extension is approved by official action of the City Council and approved by official action of the County's Governing Authority.

ARTICLE 9 NON-ASSIGNABILITY

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

ARTICLE 10 ENTIRE AGREEMENT

This Agreement 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. No representation oral or written not incorporated in this Agreement shall be binding upon the City or the County. All parties must sign any subsequent changes in the Agreement.

ARTICLE 11 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 be 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 12 BINDING EFFECT

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

ARTICLE 13 INDEMNITY

13.1 It is the intent of the parties to be covered under the auspices of any applicable immunity granted by law. Only to the extent permitted by law, shall the City defend, indemnify and hold harmless the County and its elected officials, officers, employees, or agents (hereinafter collectively referred to as "County Employees") from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County Employees may incur as a result of any claim, demand, suit, or cause of action or proceeding of any kind or nature arising out of, relating to, or resulting from the performance of any action or service under this Agreement by the City, its elected officials, employees, officers and agents. The County shall

promptly notify the City of each claim, assert all statutory defenses, cooperate with the City in the defense and resolution of each claim and not settle or otherwise dispose of the claim without the City's participation. It is the intent of the parties to be covered under the auspices of any applicable immunity granted by law. Only to the extent permitted by law, shall the County defend, indemnify and hold harmless the City and its elected officials, officers, employees, or agents (hereinafter collectively referred to as "City Employees") from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the City or its elected officials, officers, employees, or agents may incur as a result of any claim, demand, suit, or cause of action or proceeding of any kind or nature arising out of, relating to, or resulting from the performance of any action or service under this Agreement by County Employees. The City shall promptly notify the County of each claim, assert all statutory defenses, cooperate with the County in the defense and resolution of each claim and not settle or otherwise dispose of the claim without the County participation.

13.2 The immunity and indemnification provisions of this Agreement shall survive termination of this Agreement for any claims that may be filed after the termination date of the Agreement provided the claims are based upon actions that occurred during the performance of this Agreement.

13.3 Nothing herein shall be construed as creating any individual or personal liability on the part of any County or City Employees, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the parties to this Agreement.

ARTICLE 14 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]

IN WITNESS WHEREOF, the County and the City have executed this Agreement through

September 21, 2018

their duly authorized officers.

This _____ day of _____, 2018.

DEKALB COUNTY, GEORGIA

MICHAEL J. THURMOND
Chief Executive Officer

ATTEST:

BARBARA H. SANDERS, CCC
Clerk to the Board of Commissioners
and Chief Executive Officer

APPROVED AS TO SUBSTANCE:

APPROVED AS TO FORM:

MARSHALL MOONEYHAM
Director, 911 Communications

MARIAN C. ADEIMY
Assistant County Attorney

CITY OF STONECREST, GEORGIA

_____(SEAL)
JASON LARY, SR.
Mayor

APPROVED AS TO SUBSTANCE:

APPROVED AS TO FORM:

MICHAEL HARRIS
City Manager

THOMPSON KURRIE, JR.
City Attorney



CITY COUNCIL AGENDA ITEM

SUBJECT: Stonecrest Budget Amendment No. 2018-001

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

Date Submitted: 9/17/18 **Work Session:** 9/17/18 **Council Meeting:** 10/3/18

SUBMITTED BY: City Manager, Michael Harris

PURPOSE: Stonecrest Budget Amendment No. 2018-002

HISTORY: The Council voted on and approved Budget Amendment # 2018-001 on March 21, 2018. This amendment was to address the changes made to the Municipal Services contract

FACTS AND ISSUES: The adopted 2018 budget was based on a limited amount of historical data from the previous 7 months of the City being in operation. Underestimated costs in the areas of advertising and court expenses, along with the expansion of our software needs due to additional users and additional equipment needed to be addressed. Due to sound financial practices, and across the board austerity measures, this proposed budget amendment is balanced from surplus in various departments, with no proposed transfers coming from the City's Fund Balance.

OPTIONS:

RECOMMENDED ACTION: Staff recommends approval of the proposed budget amendment.

**AN ORDINANCE TO APPROVE AN AMENDMENT TO THE BUDGET FOR THE
FISCAL YEAR 2018 FOR EACH FUND OF THE CITY OF PURSUANT TO SECTION
5.04 OF THE CITY CHARTER**

WHEREAS, The Mayor and City Council adopted the 2018 Budget on December 27, 2017, which incorporated all the various funds of the City, and approved an amendment to that Budget on March 21, 2018; and

WHEREAS, the estimated operating expenses were based largely upon limited historical data from the previous seven months during the City's start-up phase; and

WHEREAS, operating cost estimates were underestimated in some areas, and overestimated in others which allows for a balanced budget amendment without the need to transfer monies from the City's Fund Balance account; and

WHEREAS, the proposed budget amendment represents less than 1.3% of the total overall budget

THEREFORE, the Mayor and City Council of the City of Stonecrest, Georgia hereby ordain as follows:

Section 1: That the City of Stonecrest, Georgia hereby amends the Budget for Fiscal Year 2018, said budget being described as Amendment No. 2018-002, attached hereto and incorporated herein as Exhibit A.

Section 2. That any increase or decrease in appropriations or revenue of any fund or for any department; the establishment of new capital projects; or the establishment of new grant projects other than those exceptions provided for herein, shall require approval of the City Council; and

Section 3. That the City Manager and his/her designee may promulgate all necessary internal rules, regulations, and policies to ensure that this Budget Ordinance is followed.

Section 4: This Ordinance shall be effective immediately upon its adoption

1. It is hereby declared to be the intention of the Mayor and City Council that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are and were, upon their enactment, believed by the Mayor and City Council to be fully valid, enforceable and constitutional.
2. It is hereby declared to be the intention of the Mayor and City Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of same. It is hereby further declared to be the intention of the Mayor

and City Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of same.

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

4. All ordinances or resolutions and parts of ordinances or resolutions in conflict herewith are hereby expressly repealed.

5. The within ordinance shall become effective upon its adoption.

SO ORDAINED AND EFFECTIVE this the _____ day of _____, 2018.

Approved:

Jason Lary, Sr., Mayor

As to form:

City Attorney

Attest:

Brenda James, City Clerk

Budget Amendment: 2018-002
 Stonecrest General Operating Budget
 Date: October 3, 2018

Description	Line Item #	Addition (+)	Reduction (-)	Notes
City Council				
Education & Training	52370	\$9,000.00		Increase Training for Mayor and Council by \$1,500 each
Retirement	51240		\$4,000.00	
City Manager				
City Events	53175	\$300.00		
Education & Training	52370		\$500.00	
City Clerk				
Travel	52350	\$700.00		Under-Budgeted Clerk travel (GMA Conf.)
Operating Supplies	53100		\$1,000.00	
Finance Admin.				
Audit	52110		\$10,000.00	Actual Costs: External: \$30,000; Internal: \$25,000 no payment due to Tax. Comm. This year (no millage)
Professional Services	52120		\$12,000.00	
Communications				
Other Equip.	54250	\$700.00		Cost for Video equipment and external hard drive
Printing	52340		\$1,500.00	
IT/GIS				
Operating Supplies	53100	\$3,000.00		equipment for additional staff; Tech upgrades(GIS)
Other Equip.	54250		\$1,500.00	
Computer/Software	54240	\$3,000.00		

General Operations

Computer/Software	54240	\$15,000.00		Added 2nd copier; additional internet/fax/cable lines
Liability Insurance	52310		\$5,000.00	Surplus remaining after annual payment
Other Equipment	54250		\$2,500.00	
Professional Services	52120		\$7,000.00	

Parks

Repair/Maint.	52200		\$10,000.00	Will utilize SPLOST funds for Repair/Maint.
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Legal

Attorney Fees(other)	52130	\$15,000.00		Additional time on lawsuits
Professional Services	52120		\$5,000.00	Do not anticipate using Bond Attorney this year

Economic Development

Film Permitting	34120		\$2,000.00	
Marketing	52132		\$14,900.00	Opted to not do annual contract for monthly newsletter

Municipal Court

Solicitor	52140	\$11,000.00		Cost exceeded initial estimate
Security	52180	\$1,200.00		Increased number of bailiffs from two to three
Public Defender	52150		\$2,000.00	Have not used this year
Probation Services	52160		\$2,000.00	No cost to City; Collected \$3000 in revenue

Community Development

Computer/Software	54240	\$10,000.00		Added additional users for CitizenServe software
Advertising	52330	\$14,000.00		Underestimated cost to advertise for zoning cases
Operating Supplies	53100		\$1,000.00	
Printing	52340		\$1,000.00	

Total		\$82,900.00	\$82,900.00	
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