

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) 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 cart are preferred, however projecting wheels must have fenders;
- (h) Hitches attached to the cart must be removable and detached when in operation; and
- (i) If used, propane tanks must be enclosed.

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 of 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 between the hours of 9:00 p.m. and 9:00 a.m. daily. On days in which schools are actually in session, no motor vehicle shall be operated within 600 feet of any public school in the city one hour before or one hour after published school hours.

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

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

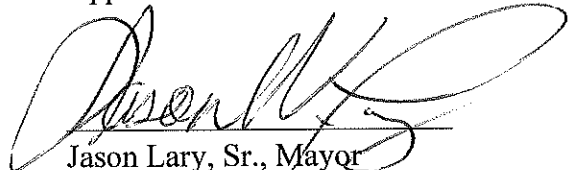
Secs. 15.19-30—15.19-50. - Reserved.

Section 6:

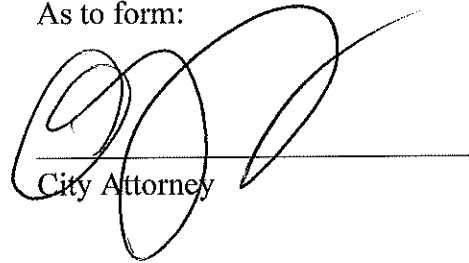
1. It is hereby declared to be the intention of the Mayor and City Council that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are and were, upon their enactment, believed by the Mayor and City Council to be fully valid, enforceable and constitutional.
2. It is hereby declared 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 3 day of Oct, 2018.

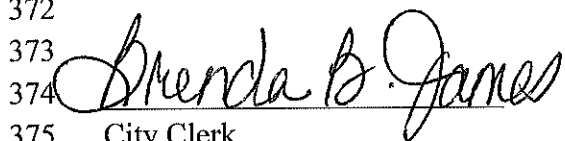
Approved:


Jason Lary, Sr., Mayor

As to form:


City Attorney

Attest:


City Clerk