



**AN ORDINANCE TO ADOPT CHAPTER 15 – LICENSES, PERMITS AND  
MISCELLANEOUS BUSINESS REGULATIONS, OF THE CITY OF STONECREST,  
GEORGIA CODE OF ORDINANCES**

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

**WHEREAS**, the Mayor and City Council find it desirable to regulate certain business in the interest of the health, safety, and welfare of the citizens of the City and the formation of the City;

**WHEREAS**, sexually oriented businesses require special supervision from the public safety agencies of the City in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the City; and

**WHEREAS**, the City Council finds that sexually oriented businesses, as a category of establishments, are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

**WHEREAS**, there is convincing documented evidence that sexually oriented businesses, as a category of establishments, have deleterious secondary effects and are often associated with crime and adverse effects on surrounding properties; and

**WHEREAS**, the City Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizens; protect the citizens from crime; preserve the quality of life; preserve the character of surrounding neighborhoods and deter the

spread of urban blight; and

**WHEREAS**, there is documented evidence of sexually oriented businesses, including adult bookstores and adult video stores, manipulating their inventory and/or business practices to avoid regulation while retaining their essentially "adult" nature, *see, e.g., City of New York v. Hommes*, 724 N.E.2d 368 (N.Y. 1999); *Taylor v. State*, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002) (noting that "the non-adult video selections appeared old and several of its display cases were covered with cobwebs"); *ZJ Gifts D-4, L.L.C. v. City of Littleton*, Civil Action No. 99- N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001) (finding "plaintiff's argument that it is not an adult entertainment establishment frivolous at best"); *People ex rel. Deters v. The Lion's Den, Inc.*, Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005) (noting that "the accuracy and credibility" of the evidence on inventory in a Lion's Den was suspect, and that testimony was "less than candid" and "suggested an intention to obscure the actual amount of sexually explicit material sold"); and

**WHEREAS**, there is convincing documented evidence that certain physical contact between performers and patrons of alcoholic beverage establishments leads to unlawful sexual activities, including masturbation, lewdness, illicit sexual activity, and other behaviors which the City seeks to prevent; and

**WHEREAS**, the City intends to regulate such businesses as sexually oriented businesses through a narrowly tailored ordinance designed to serve the substantial government interest in preventing the negative secondary effects of sexually oriented businesses; and

**WHEREAS**, the City's regulations shall be narrowly construed to accomplish this end; and

**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 not the intent nor the effect of this ordinance to suppress any speech activities protected by the U.S. Constitution or the Georgia Constitution, but to enact an ordinance to further the substantial governmental interests of the City, to wit, the controlling of secondary effects associated with physical contact in alcoholic beverage establishments;

**WHEREAS**, the secondary effects associated with conduct of business by adult entertainment establishments been presented in hearings and in reports made available to the Mayor and City Council, and on findings, interpretations, and narrowing constructions incorporated in numerous cases, including, but not limited to the studies and cases listed in Section 15.12.1. and Ordinance 2017-06-04;

**WHEREAS,** the Mayor and City Council hereby find that regulating, prohibiting and/or defining certain conduct, 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 of the City.

### **SECTION 1:**

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Council of the City of Stonecrest, Georgia, Chapter 15 – *Licenses, Permits, and Miscellaneous Business Regulations* is hereby adopted as follows:

## **Chapter 15 - LICENSES, PERMITS AND MISCELLANEOUS BUSINESS REGULATIONS**

### **ARTICLE I. - IN GENERAL**

#### **Sec. 15.1.1. - Security information—Required.**

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

#### **Sec. 15.1.2. - Same—Furnished with license application.**

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

#### **Sec. 15.1.3. - Emergency decal.**

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

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

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

#### **Secs. 15.1.5 — 15.1.25. - Reserved.**

## ARTICLE II. - BUSINESS OCCUPATION TAXES

### Sec. 15.2.1. – Payment of occupational tax.

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

### Sec. 15.2.2. - Definitions of terms used in this Article.

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

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

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

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

*City* means the incorporated areas within the municipal boundaries of the city.

*Director* means the director of finance or his or her designee.

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

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

*Gross receipts.*

- (1) The term "gross receipts" means total revenue of the business or practitioner for the period, including without being limited to the following:
  - a. Total income without deduction for the cost of goods sold or expenses incurred;
  - b. Gain from trading in stocks, bonds, capital assets, or instruments of indebtedness;
  - c. Proceeds from commissions on the sale of property, goods, or services;
  - d. Proceeds from fees charged for services rendered;
  - e. Proceeds from rent, interest, royalty, or dividend income; and

- f. From all other income whatsoever arising from or growing out of the conduct of the business, trade, profession or occupation without any deduction whatsoever; except that
- (2) The term "gross receipts" shall not include the following:
- a. Sales, use, or excise taxes;
  - b. Sales returns, allowances, and discounts;
  - c. Interorganizational sales or transfers between or among the units of a parent-subsidary controlled group of corporations as defined by 26 USC 1563(a)(1), between or among the units of a brother-sister controlled group of corporations as defined by 26 USC 1563(a)(2), or between or among wholly owned partnerships or other wholly owned entities;
  - d. Payments made to a subcontractor or independent agent;
  - e. Governmental and foundation grants, charitable contributions or the interest income derived from such funds, received by a nonprofit organization which employs salaried practitioners otherwise covered by this Article, if such funds constitute 80 percent or more of the organization's receipts; and
  - f. Proceeds from sales to customers outside the geographical boundaries of the state.

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

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

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

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

*Practitioner of profession or occupation* is one who by state law requires state licensure regulating such profession or occupation. This definition shall not include a practitioner who is an employee of a business, if the business pays an occupation tax.

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

### **Sec. 15.2.3. - Registration of name of business; payment of taxes required**

- (a) No person shall be engaged in, pursue or carry on any business within the city, in any manner without having registered the name of the business with the City Manager or his designee and either paid the taxes as provided by this Article or produced evidence of occupational tax payment to another jurisdiction in this state or proof of payment of a local business occupation tax in another state which purports to tax the business' or practitioner's sales or services in this state. The city shall not require an occupation tax on those receipts that were taxed by occupation tax in other states.

- (b) At the time of business registration, such person shall also identify to the City Manager or his designee the line or lines of business that the business conducts. Classification of businesses for occupation tax purposes shall be based on the dominant line of business conducted.
- (c) Each separate business trade name shall be subject to the provisions of this Article and shall fully comply with all city code requirements before engaging in, pursuing or carrying on any business within the city.
- (d) Failure or refusal to provide information requested by the city for the purpose of classification, assessment or levying of occupation taxes, regulatory fees or administrative costs or regarding the site of a location or office and taxes or fees paid to other local governments shall be punished as a misdemeanor and shall be subject to the provisions of this Code.

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

- (a) All occupation taxes levied by this Article are levied on the amount of business transacted during the current calendar year and the number of employees to be employed in the business conducted. However, for convenience of both the city and the taxpayer those businesses subject to the occupational tax shall on or before February 1 file with the City Manager or his designee a return showing all gross receipts of that business during the preceding calendar year ending on December 31. This return showing preceding calendar year gross receipts shall be used as an estimate of gross receipts for making payments on the occupation tax for the current calendar year. The number of employees reported for the current year's business operations may be based upon the number of employees employed in the business conducted during the previous year. Applicants or owners engaged in the business shall be reported as employees of the business. Should a business not continue or terminate during the year, such business shall notify the City Manager or his designee's business occupation tax section and file a final return reporting the actual number of employees and those gross receipts not previously reported.
- (b) Where a business subject to the occupation tax for the calendar year has been conducted for only a part of the preceding year, the amount of gross receipts for such part shall be set forth in said return. Said return shall also show a figure putting the receipts for such part of a year on an annual basis with the part-year receipts bearing the same ratio to the whole-year gross receipts as the part year bears to the whole year. Said figure shall be used as the estimate of the gross receipts of the business for the current calendar year in establishing the business tax liability.
- (c) If a business is to begin on or after January 1 of the occupation tax year, the tax on such business shall be due and payable on the date of the commencement of the business and shall be based upon estimated gross receipts of the business from the date of commencement until the end of the calendar year. The business shall also file the required registration form and shall pay the administrative fee required by this Article. Notwithstanding the foregoing, if a lawyer begins business after January 1 of the occupation tax year, the tax and administrative fee on such business shall be due and payable on December 31 of the year in which the business begins. Any lawyer failing to pay the occupation tax and administrative fee within one hundred twenty (120) days after December 31 shall be considered delinquent and shall be subject to and shall pay a ten (10) percent penalty of the amount of tax or fee due and interest of one-and-a-half (1.5) percent per month. Such penalty shall be assessed in full on May 1 of the year following the tax year in addition to interest on delinquent occupational taxes and administrative fees. In addition, a list of all delinquent lawyers may be sent to the State Bar of Georgia. Certain general penalties applicable to most businesses for continuing violations of this Code shall not apply to violations of this chapter by lawyers. Specifically, failing to comply with the Article will not result in the city closing the business or penalizing the continued practice of law by fining, imprisoning or criminalizing noncompliance.

- (d) The city shall not require the payment of more than one (1) occupational tax for each location that a business or practitioner shall have nor shall the city require a business to pay an occupational tax for more than one hundred (100) percent of the business' gross receipts.
- (e) Real estate brokers shall pay an occupational tax for each principal office and each separate branch office located in the city based upon gross receipts derived from transactions with respect to property located within the city. Payment of the occupation tax shall permit the broker, the broker's affiliated associates and salespersons to engage in all of the brokerage activities described in O.C.G.A. § 43-40-1 without further licensing or taxing other than the state licenses issued pursuant state law.
- (f) For out of state businesses with no location in the state, occupation taxes include the gross receipts of business as defined in section 15.2.8.
- (g) For purposes of this section, prima facie evidence of gross receipts generated during any period shall be a copy of the business' federal income tax return or an affidavit of the business' accounting firm.

**Sec. 15.2.5. - Administrative and regulatory fees.**

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

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

Where a person conducts business at more than one (1) fixed location or has multiple business tradenames, each location or place and each tradename shall be considered to be separate for the purpose of the occupation tax and the gross receipts of each will be returned on a form furnished by the City Manager or his designee in accordance with the provisions of this Article.

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

- (a) On or before February 1 of each subsequent year businesses liable for occupation taxes levied under this Article for the year shall file with the City Manager or his designee's business occupation tax section, on a form furnished by the City Manager or his designee, a signed return setting forth the actual amount of the gross receipts of such business during the preceding calendar year ending December 31.
- (b) Occupational taxes on businesses continuing from the preceding year shall be due and payable on January 1 of each subsequent year. Occupational taxes due from businesses continuing operation in the current year from the preceding year shall be considered delinquent if not paid by April 15 of each year. Any business failing to pay the occupational taxes and administrative fees within one hundred twenty (120) days after January 1 shall be subject to and shall pay a ten (10) percent penalty of the amount of tax or fee due and interest of one-and-a-half (1.5) percent per month. Such penalty shall be assessed in full on May 1 of the tax year in addition to interest on delinquent occupation taxes, regulatory fees and administrative fees.
- (c) If any person or business whose duty it is to obtain a registration in the city begins to transact or offers to transact any kind of business after said registration or occupation tax becomes delinquent, such offender shall be assessed interest according to the rate as provided by state law and penalties under the city Code.
- (d) On any new business begun in the city and not subject to payment of occupational taxes to the city, failure to register the name of the business and the line or lines of business that the business conducts will be subject to the possible penalties or other violations of this Code. Registration under this section

is required for ensuring that business conducted complies with city codes or ordinances governing health, safety, and other purposes.

- (e) Notwithstanding the foregoing, occupation taxes and administrative fees for lawyers shall be due and payable on December 31 of the year in which the tax is incurred. Any lawyer failing to pay the occupation tax and administrative fees within one hundred twenty (120) days after December 31 shall be considered delinquent and shall be subject to and shall pay a ten (10) percent penalty of the amount of tax or fee due and interest of one-and-a-half (1.5) percent per month. Such penalty shall be assessed in full on May 1 of the year following the tax year in addition to interest on delinquent occupational taxes and administrative fees. In addition, a list of all delinquent lawyers may be sent to the Georgia Bar. Certain general penalties applicable to most businesses for continuing violations of this Code shall not apply to violations of this chapter by lawyers. Specifically, failing to comply with the Article will not result in the city closing the business or penalizing the continued practice of law by fining, imprisoning or criminalizing noncompliance.
- (f) In addition to the remedies set forth in this section, the City Manager or his designee may issue an execution for failure to pay taxes against the person so delinquent and against such person's property for the amount of the occupational tax required to be paid for the purpose of carrying on any of the businesses enumerated in this Article.

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

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

- (a) Has one (1) or more employees or agents who exert substantial efforts within the jurisdiction of the city, for the purpose of soliciting business or serving customers or clients; or
- (b) Owns personal or real property which generates income and which is located within the city.

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

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

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

**Sec. 15.2.10. - Purpose and scope of tax.**

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



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

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

**Sec. 15.2.12. - Change of location.**

Any person moving from one (1) location to another shall notify the City Manager or his designee of this move and the new address in writing on a form provided by the City Manager or his designee prior to the day of the moving. A new receipt for the occupational tax will be issued for the new location if the new location conforms to the zoning regulations of the city.

**Sec. 15.2.13. - Transferability.**

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

**Sec. 15.2.14. - Evidence of qualification required if applicable.**

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

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

- (a) The City Manager or his designee shall have the right to inspect the books or records of any business for which returns have been made and upon demand of the City Manager or his designee such books or records shall be submitted for inspection by a representative or agent of the city within thirty (30) days. Independent auditors or bookkeepers employed by the city shall be classified as agents for the purposes of this Article. Failure of submission of such books and records within thirty (30) days shall be grounds for revocation of the occupation tax registration currently existing in the city. If it is determined that a deficiency exists as a result of under reporting, additional payment of occupation taxes required to be paid under this Article shall be assessed the interest of one-and-a-half (1.5) percent per month. Notwithstanding the foregoing, no attorney shall be required to disclose any information that would violate the attorney/client privilege.
- (b) Information provided by a business or practitioner of an occupation or profession for the purpose of determining the amount of occupation tax for the business or practitioner is confidential and exempt from disclosure under O.C.G.A. §§ 50-18-70 through 50-18-77.
- (c) Information provided to the city by a business or practitioner of an occupation or profession for the purpose of determining the amount of occupation tax for the business or practitioner may be disclosed to the governing authority of another local government for occupation tax purposes or pursuant to court order or for the purpose of collection of occupation tax or prosecution for failure or refusal to pay occupation tax.

- (d) Nothing herein shall be construed to prohibit the publication by the city of statistics, so classified as to prevent the identification of particular reports or returns and items thereof.

**Sec. 15.2.16. - Business classifications for determining tax levy.**

- (a) For the purpose of this Article, every person engaged in business requiring the payment of occupational taxes is classified in accordance to the major line of business as defined in the North American Industry Classification System (NAICS), Office of Management and Budget; and profitability classes are assigned in accordance with Statistics of Income, Business Income Tax Returns, United States Treasury Department, Internal Revenue Service. The City Manager or his designee shall review assignment of businesses to profitability classes on an annual basis and shall administratively reassign businesses as necessary to the then most accurate profitability class.
- (b) Classifications by business profitability have been established by the City Council and are incorporated herein by reference and adopted for use in the application of this Article. All separate businesses engaged in more than one (1) business activity shall be classified on the basis of their dominant business activity at each location where business is done; except, that a person whose dominant business activity is legally exempt as defined by this Article shall be classified according to such person's principal subsidiary business, if any, which is subject to the levy and assessment of occupation taxes.
- (c) The occupation tax shall be determined by applying the business' gross receipts and number of employees to the business' profitability classification and rates established for each business type.
- (d) A copy of business classifications shall be maintained in the office of the city clerk and shall be available for inspection by all interested persons.

**Sec. 15.2.17. - Casual and isolated transactions.**

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

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

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

**Sec. 15.2.19. - Exclusions from Article; special classifications.**

- (a) Wholesale dealers in liquor, wine, beer, and malt beverages are not required to pay the business occupation taxes provided for in this Article.
- (b) Registration and occupational tax payment is required from any satellite subscription television system. "Satellite subscription television system" means services provided to subscribers for sale where the provider of the services utilizes a master antenna type system or earth dish system designed to receive and distribute satellite television signals; particularly, a system to provide service to one (1) or more multiple unit dwellings under common ownership wherein any wiring necessary to operate the system does not cross adjacent non owned property lines and does not cross city right-of-way in the city. The provisions of this subsection shall not apply to any person that is subject to the city's franchise fee for the holders of a cable or video service provider state franchise.
- (c) Registration and occupational tax payment is required from any broadcast subscription television system. "Broadcast subscription television system" means services provided to subscribers for sale where the provider of the services transmits premium programming from one (1) or multiple sources by transmitting or retransmitting programs to the public.
- (d) Any vendor or exhibitor who is a member of a group or collection of vendors or exhibitors that has come together at one (1) location for the purpose of selling arts, crafts, antiques, or other goods for a period not to exceed ten (10) consecutive days may be registered individually, or the group or collection may be registered as a "special event." Any applicant for a special event shall be considered as the promoter of the special event and shall be responsible for registration of the special event and paying the occupational taxes. Any special event group or collection of vendors or exhibitors shall comply with the same laws and regulations as required of other registered businesses, where applicable.
- (e) As part of the city's economic development incentives and only to the extent as described in O.C.G.A. § 48-13-10, the City Council may by ordinance or resolution provide for an exemption or reduction in occupation tax or a credit against occupation tax owed to one or more types of businesses or practitioners of occupations or professions as part of a plan for economic development or attracting, encouraging, or maintaining selected types of businesses or practitioners of selected occupations or professions. Such exemptions or reductions in occupation tax shall not be arbitrary or capricious. Exemptions under this subsection shall not exceed ten percent of the business' total annual gross receipts.

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

- (a) *Grounds for denial, revocation, or suspension of business occupation tax certificate.* A business occupation tax certificate issued pursuant to any provision of this Article shall be denied, revoked or suspended and considered void, upon one (1) or more of the following grounds:
  - (1) The original application or renewal thereof contains false or misleading information, or the applicant omitted material facts in the application;
  - (2) The premises covered by the certificate are found to be in violation of any codes or ordinances of the city;
  - (3) The applicant for, or holder of, the certificate is engaged in the business or occupation under a false or assumed name, or is impersonating another practitioner of a like or different name;
  - (4) The applicant for, or holder of, the certificate is engaging in false, misleading, or deceptive advertising or practices;
  - (5) The holder of the certificate is operating under a business or trade name not listed on the current application on file with the city;

- (6) The holder of the certificate fails to maintain the initial requirements for obtaining the certificate;
  - (7) The applicant for, or holder of, a certificate is classified as, or becomes classified as, a habitual violator under O.C.G.A. § 40-5-1 et seq., or is found to be operating the business under the influence of alcohol or of illegal drugs or substances;
  - (8) The applicant for, or holder of, the certificate has been convicted of or has pled guilty or *nolo contendere* to any sexual offense, the offense of false swearing, the offense of operating an adult entertainment establishment in violation of the distance requirements of O.C.G.A. § 36-60-1 et seq., or to any offense involving illegal sale of narcotics or possession or receipt of stolen property, for a period of five years prior to the filing of the application. If after having been granted a certificate, the applicant is convicted, pleads guilty or enters a plea of *nolo contendere* to any of the above offenses, said certificate shall be subject to suspension and/or revocation;
  - (9) The applicant for, or holder of, the certificate fails to pay occupation taxes and administrative fees when due;
  - (10) The establishment has been declared a public or private nuisance or has created a threat or nuisance to public health, safety or welfare; or
  - (11) Any other violation of this Article.
- (b) *False or misleading information.* No business occupation tax certificate shall be issued or renewed pursuant to any provisions of this Article to any applicant, business or legally or organizationally related entity if within the twelve (12) months immediately preceding the filing of any application under this Article the same applicant, business or legally or organizationally related entity has been denied a certificate or had a certificate revoked for any location based in whole or in part upon having furnished false or misleading information in any application or having omitted material facts in any application.
  - (c) *Notice of denial, revocation or suspension of certificate.* Upon denial of an application seeking issuance or renewal of a business occupation tax certificate, or revocation or suspension of a business occupation tax certificate, written notification shall be provided of such decision to the applicant or holder of the certificate within five (5) calendar days. The written notification shall state the grounds for the denial, revocation or suspension, and shall be served via hand delivery to the applicant or holder at the business location and sending a copy of such notice via registered mail, return receipt requested, to the address listed by the applicant or holder on the application for a certificate.

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

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

**Sec. 15.2.22. - Promulgation of rules, regulations.**

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

**Sec. 15.2.23. - Requirement for public hearings.**

The city shall conduct at least one (1) public hearing before adopting any ordinance or resolution regarding the occupation tax, and in any year when revenue from occupational taxes is greater than revenue from occupational taxes for the preceding year in order to determine how to use the additional revenue.

**Secs. 15.2.24—15.2.50. - Reserved.**

**SECTION 2:**

It is hereby declared to be the intention of the Mayor and City Council that DeKalb County Chapter 15, Article III shall remain in effect, pursuant to Section 6.03(e) of the Charter of the City of Stonecrest, until such time as Chapter 15, Article III – Astrologers is either approved and adopted or repealed by the Mayor and City Council.

**SECTION 3:**

Chapter 15 – *Licenses, Permits, and Miscellaneous Business Regulations* hereby continues as follows:

**ARTICLE IV. - GOING-OUT-OF-BUSINESS SALES**

**DIVISION 1. - GENERALLY**

**Sec. 15.4.1. - Definitions.**

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

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

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

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

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

**Sec. 15.4.2. - Persons exempt from Article.**

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

- (1) Persons acting pursuant to an order or process of a court of competent jurisdiction.
- (2) Persons acting in accordance with their powers and duties as public officials.

- (3) Duly licensed auctioneers, selling at auction.
- (4) Any publisher or newspaper, magazine or other publication that publishes in good faith any advertisement, without knowledge of its false, deceptive or misleading character or without knowledge that there has not been compliance with the provisions of this Article.

**Sec. 15.4.3. - Duties of licensee.**

A licensee under this Article shall:

- (1) *Adhere to inventory.* Make no additions during the period of the licensed sale to the stock of goods set forth in the inventory attached to the application for license.
- (2) *Advertise properly.* Refrain from employing any untrue, deceptive or misleading advertising.
- (3) *Adhere to advertising.* Conduct the licensed sale in strict conformity with any advertising or holding out incident thereto.
- (4) *Keep duplicate inventory.* Keep available at the place of sale a duplicate copy of the inventory submitted with the application, and present this duplicate to inspecting officials upon request.
- (5) *Segregate noninventoried goods.* Keep any other goods separate and apart from the goods listed in the filed inventory as being objects of sale, and make this distinction clear to the public by placing tags on all inventoried goods in and about the place of sale apprising the public of the status of all these goods.

**Sec. 15.4.4. - Interval between sales.**

Any person who has held a sale as regulated under this Article at the location stated in the application within one (1) year last past from the date of the application shall not be granted a license.

**Sec. 15.4.5. - Location of sale restricted.**

Where a person applying for a license required by the provisions of this Article operates more than one (1) place of business, the license issued shall apply only to the one (1) store or branch specified in the application. No other store or branch shall advertise or represent that it is cooperating with this sale or in any way participating in the licensed sale, nor shall the store or branch conducting the licensed sale advertise or represent that any other store or branch is cooperating with it or participating in any way in the licensed sale.

**Sec. 15.4.6. - Bankrupt or fire sales.**

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

**Sec. 15.4.7. - Advertising restrictions.**

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

**Secs. 15.4.8—15.4.20. - Reserved.**

**DIVISION 2. - LICENSE**

**Sec. 15.4.21. - Required.**

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

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

**Sec. 15.4.22. - Application.**

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

- (a) The true name and address of the owner of the goods to be the object of the sale.
- (b) The true name and address of the person from whom the applicant purchased the goods to be sold and the price therefor, and if not purchased, the manner of this acquisition.
- (c) A description of the place where the sale is to be held.
- (d) The nature of the occupancy, whether by lease or sublease and the effective date of the termination of such occupancy.
- (e) The dates of the period of time in which the sale is to be conducted.
- (f) A full and complete statement of the facts in regard to the sale, including the reason for the urgent and expeditious disposal of goods thereby and the manner in which it will be conducted.
- (g) The means to be employed in advertising the sale together with the proposed content of any advertisement.
- (h) A complete and detailed inventory of the goods to be sold at this sale as disclosed by the applicant's records. This inventory shall be attached to and become part of the required application.

**Sec. 15.4.23. - Established business required; exception.**

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

**Sec. 15.4.24. - Inventory restrictions.**

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

**Sec. 15.4.25. - Conditions of issuance.**

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

- (a) *Licensing period.* The license shall authorize the sale described in the application for a period of not more than thirty (30) consecutive days, Sundays and legal holidays excluded, following the issuance thereof.
- (b) *Renewal procedure.* The City Manager or his designee shall renew a license for one (1) period of time only, this period to be in addition to the thirty (30) days permitted in the original license and not to exceed thirty (30) consecutive days, Sundays and holidays excluded, when it finds that all of the following exists:
  - (1) Facts justifying the license renewal.
  - (2) The licensee has filed an application for renewal.
  - (3) The licensee has submitted with the application for renewal a revised inventory showing the items listed on the original inventory remaining unsold and not listing any goods not included in the original application and inventory. For the purpose of this subparagraph, any application for a license under the provisions of this division covering any goods previously inventoried as required hereunder shall be deemed to be an application for renewal, whether presented by the original applicant, or by any other person.
- (c) *Nature of sale.* The license shall authorize only the type of sale described in the application at the location named therein.
- (d) *Salable goods.* The license shall authorize only the sale of goods described in the inventory attached to the application.
- (e) *Surrender of general licenses.* Upon being issued a license hereunder for a going-out-of-business sale, the licensee shall surrender to the City Manager or his designee all other business licenses the licensee may hold at the time applicable to the location and goods covered by the application for a license under this division.
- (f) *Nontransferability.* Any license provided for shall not be assigned or transferable.

**Sec. 15.4.26. - Fees.**

- (a) Any applicant for a license under this division shall submit to the City Manager or his designee with the application the required license fee.



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

**Secs. 15.4.27—15.4.50. - Reserved.**

## **ARTICLE V. - PAWNSHOPS**

### **Sec. 15.5.1. - Definitions.**

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

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

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

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

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

### **Sec. 15.5.2.- Penalties; suspension or revocation of license.**

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

### **Sec. 15.5.3. - Responsibility for enforcement.**

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

### **Sec. 15.5.4. - Annual permit.**

- (a) All persons, before beginning the business of operating a pawnshop or becoming an employee of a pawnshop or similar place where money is advanced on goods or other effects or merchandise of any kind is taken in pawn, shall first file an application with the City Manager or his designee and obtain an annual permit to conduct or be employed in the business. No permit shall be issued until a fee in the amount established by action of the City Council, a copy of which is on file in the office of the clerk, is paid to the City Manager or his designee.
- (b) The requirements of this section are in addition to the requirements of Article II of this Chapter.

- (c) The application for the permit required shall state the street and number at which it is proposed to operate the business. The application shall contain the full name, address, phone number, date of birth and social security number of all persons, including pawnbrokers, owning any interest in the proposed business, plus any additional information, including fingerprints, deemed necessary by the City Manager.
- (d) No business license shall be issued to a person until the permit required by this section has been granted by the City Manager or his designee.

#### **Sec. 15.5.5. - Employees.**

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

#### **Sec. 15.5.6. - Character of persons connected with business.**

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

#### **Sec. 15.5.7. - Records.**

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

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

These entries shall be made as soon after the transaction as is possible, in no event more than one (1) hour thereafter. The pawnbroker shall photograph the person pawning the merchandise along with a pawnbroker's ticket showing a transaction number. The pawnbroker shall obtain the right index fingerprint provided it has not been amputated; if so, the next adjoining finger shall be acceptable.

#### **Sec. 15.5.8. - Daily reports; fingerprinting, photographing of persons pawning Articles.**

- (a) Every pawnbroker shall make a daily report in writing to the City Manager or his designee in such form as may be prescribed by the City Manager or his designee of all property pledged, traded or bought by such pawnbroker during the twenty-four (24) hours ending at 9:00 p.m. on the date of the report. These reports shall be typewritten. In addition to any other information required by the City Manager or his designee, the reports shall show:

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

**Sec. 15.5.9. - Hours of operation.**

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

**Sec. 15.5.10. - Waiting period prior to disposal of Articles.**

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

**Sec. 15.5.11. - Dealing with minors.**

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

**Secs. 15.5.12. - 15.5.50. - Reserved.**

## **ARTICLE VI. - PRECIOUS METAL DEALERS**

### **DIVISION 1. - GENERALLY**

**Sec. 15.6.1. - Definitions.**

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

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

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

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

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

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

#### **Sec. 15.6.2. - Purpose; applicability of state law.**

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

#### **Sec. 15.6.3. - Exemptions.**

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

#### **Sec. 15.6.4. - Violations.**

- (a) It is unlawful for any dealer or employee to violate any of the provisions of this Article, whether or not such dealer or employee is the holder of a current, valid permit issued according to the terms of this Article. It shall be a violation of this Article for any person to:
  - (1) Make any false statement in an application for any permit provided for in this Article.
  - (2) Make any false entry in any record or form required by the terms of this Article.
  - (3) Violate any criminal law of this state while acting in the course of business as a dealer or employee of a dealer.
- (b) Willful violation of any of the provisions of this Article shall be grounds for revocation of the dealer's business license.

#### **Sec. 15.6.5. - Responsibility for enforcement.**

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

**Sec. 15.6.6. - Records of transactions.**

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

**Sec. 15.6.7. - Daily reports.**

- (a) Every dealer shall record, on cards or forms furnished or approved by the police department the details of each purchase of precious metals or gems or goods made from precious metals or gems. These records shall be entered in legible English at the time of each purchase of such items, and each card or form shall bear the number of the corresponding entry made in the book required by section 15.6.6 of this Article. Each record shall include such information as may be reasonably required by the police department and shall include, as a minimum, the following:
  - (1) An accurate description of all Articles received in the transaction with the particular seller. This description shall include to the extent possible the maker of each Article, any identifying mark, number or initials, any pattern or shape, and a statement of the kind of materials of which it is composed.
  - (2) The date and time of the transaction.
  - (3) The name and address of the dealer.
  - (4) The name of the person making the purchase.
  - (5) The full name, date of birth and address, race and gender of the seller, as well as a general description of the seller.
  - (6) The number of the seller's valid state driver's license or state-issued I.D. card, or other similar identification which bears a photograph of the seller.
  - (7) Signature of seller.

- (8) Such other information as may be required by any state law regulating dealers of precious metals and gems.
- (b) Each card or form required by this section shall be delivered or mailed to the police department within twenty-four (24) hours after the date on which the transaction occurred, and shall be handled in the following manner:
  - (1) All such forms or cards shall be maintained in a locked container under the direct supervision of the police department and shall be available for inspection only for law enforcement purposes.
  - (2) The police department may allow any person to inspect the records for the purpose of locating stolen property, providing such person demonstrates theft of precious metals or gems by presenting an incident report or other similar document.

**Sec. 15.6.8. - Photographs of Articles and sellers; photocopies of documents.**

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

**Sec. 15.6.9. - Hours of operation.**

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

**Sec. 15.6.10. - Waiting period prior to disposing of Articles.**

Any dealer who in the course of business acquires precious metals or gems or goods made from precious metals or gems shall hold these items for at least seven (7) calendar days before disposing of them by sale, transfer, shipment, grinding, melting, crushing or otherwise altering the appearance of the items. This section does not prevent any dealer from storing such items off the business premises, or from placing such items in the hands of any bank or security company for safekeeping, provided that no such item shall be removed from the city during the above-described holding period.

**Sec. 15.6.11. - Inspection of items held by dealer.**

All items held by any dealer in accordance with the terms of section 15.6.10 shall be produced for inspection upon the demand of any authorized law enforcement officer or, if the items are stored off the premises, within one (1) business day thereof, during normal business hours. If the provisions of this section are in conflict with the provisions of section 15.6.10, the provisions of this section shall control.

**Secs. 15.6.12—15.6.25. - Reserved.**

**DIVISION 2. - PERMIT**

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

- (a) No business license shall be issued to conduct the business of purchasing precious metals or gems until the annual permit required by this section has been issued by the police department.

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

**Sec. 15.6.27. - Application.**

- (a) The application for the annual dealer's permit required by this division shall include such fingerprints, photographs and information as may be reasonably required by the police department, but shall in any case include the following:
  - (1) The name, age and business address of the person applying for the permit.
  - (2) The telephone number of the applicant.
  - (3) The name, age and business address of all other persons having an ownership interest or actually employed in the business other than publicly held corporations.
  - (4) The address of the premises upon which the business is conducted and the zoning and planning classification of the premises.
  - (5) The applicant shall be required to notify the police department within seven (7) calendar days of any change of address of the applicant or business or any change of ownership in the business.
- (b) The applicant shall attach to this application a completed and signed employee or owner application as described in section 15.6.29 for each person named in the dealer's application. Each such application shall be signed by the owner, managing partner, corporate president or chief executive officer of the business, and there shall be a description of the capacity in which the signator is acting.

**Sec. 15.6.28. - Denial.**

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

- (1) The applicant has no permanent place of business other than a van, mobile home, trailer or similar nonpermanent structure.
- (2) No owner, corporate officer, majority stockholder, partner or managing director of the business entity applying for the license has been a legal resident of the state for a minimum of ninety (90) days preceding the date of application.
- (3) Any person required to be listed in the application for a dealer's permit has been convicted of or has entered a plea of guilty to a misdemeanor involving moral turpitude or any felony under the laws of this state or of the jurisdiction in which the verdict or plea was entered. This paragraph does not apply to any person who has been convicted of or has entered a plea of guilty to a misdemeanor involving moral turpitude or any felony after ten (10) years have expired from the date of the plea, conviction or completion of sentence, whichever is later.
- (4) The person is not eligible to register as a dealer in precious metals or gems by the terms of any law of this state requiring such registration.

**Sec. 15.6.29. - Employee or owner application.**

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

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

**Sec. 15.6.30. - Fingerprints.**

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

**Sec. 15.6.31 - Issuance; fee.**

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

**Sec. 15.6.32. - Expiration and renewal.**

Each permit required by this division shall indicate thereon an expiration date which is at least one (1) year from the date of issue and must be posted in a conspicuous place on the premises. Any permit holder may reapply for a permit at any time following the sixtieth day preceding the date of expiration. It shall be unlawful for any dealer to apply for a renewal unless all of the dealer's employees are holders of current, valid employee permits. No permits shall be renewed unless the dealer is the holder of a current, valid business license.

**Sec. 15.6.33. - Revocation and surrender of permits.**

- (a) Any dealer or employee permit issued in accordance with provisions of this division shall be revoked by operation-of-law upon the occurrence of any of the following:



- (1) The conviction of the dealer or employee for violating any state law or city ordinance pertaining to making false statements for the purpose of obtaining registration or authorization to become a dealer or employee of a dealer.
  - (2) The conviction of the dealer or employee for violation of a provision of this Article after the dealer or employee has been previously convicted of a violation of this Article within the preceding three (3) years.
- (b) Upon revocation, the permit holder shall surrender the permit to the police department within one (1) business day of the conviction resulting in revocation, and failure to do so shall constitute a separate violation for each day the permit is withheld.

**Sec. 15.6.34 - Appeals.**

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

**Secs. 15.6.35—15.6.50. - Reserved.**

**DIVISION 3. – TEMPORARY POWERS**

**Sec. 15.6.51. – Powers vested in City Manager**

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

**SECTION 4:**

It is hereby declared to be the intention of the Mayor and City Council that DeKalb County Chapter 15, Article VII shall remain in effect, pursuant to Section 6.03(e) of the Charter of the City of Stonecrest, until such time as Chapter 15, Article III – Peddlers, Door-to-Door Sales, and similar occupations is either approved and adopted or repealed by the Mayor and City Council.

**SECTION 5:**

Chapter 15 – *Licenses, Permits, and Miscellaneous Business Regulations* hereby continues as follows:

**ARTICLE VIII. - MASSAGE THERAPY LICENSING**

**Sec. 15.8.1. - Definitions.**

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

*Director* means the director of finance or his designee.

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

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

*Massage establishment* means any business established for profit which employs or contracts with one or more massage therapists, or operates or maintains for profit one or more massage apparatus, and which, for good or valuable consideration, offers to the public facilities and personnel for the administration of massages. The term "massage establishment" shall not include hospitals or other professional health care establishments separately licensed as such by the state.

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

#### **Sec. 15.8.2. - Licenses required.**

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

#### **Sec. 15.8.3. - Scope of regulations.**

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

#### **Sec. 15.8.4. - Application process.**

- (a) *Application Requirements.* Any person desiring to obtain a massage establishment license or massage therapist license shall make application to the City Manager or his designee. All applications shall be sworn to by the applicant as true, correct and complete before a notary public or other officer

authorized to administer oaths. All applications shall be in writing and shall set forth the following information:

- (1) The full legal name of the applicant, including all aliases, nicknames, pseudonyms or trade names currently or heretofore used by the applicant;
- (2) The current and all previous business and residence addresses of the applicant within the three (3) years immediately preceding the date of application;
- (3) Sworn affidavits of at least three (3) bona fide residents of the city that the applicant is personally known to them and they believe the person to be of good moral character;
- (4) Written proof that the applicant is over the age of eighteen (18) years;
- (5) The applicant's height, weight and color of eyes and hair;
- (6) Two (2) current photographs of the applicant at least two (2) inches by two (2) inches in size;
- (7) The business, occupation or employment of the applicant for three (3) years immediately preceding the date of application;
- (8) Any massage or similar business license history of the applicant, including whether such person, in any previous operation in any jurisdiction, has had such a license revoked or suspended, the reason therefor, and any business activity or occupation subsequent to the action of suspension or revocation;
- (9) All convictions, pleas of guilty, or pleas of nolo contendere for violations of any law and the grounds therefor;
- (10) The applicant shall be fingerprinted by the City Manager or his designee and such fingerprint card and record shall be attached as an exhibit to the application. Payment of all fees charged by the City Manager or his designee in connection with this requirement shall be the responsibility of the applicant;
- (11) Applicants for a massage therapist license shall provide a certificate dated within thirty (30) days of application from a physician licensed in the state, certifying that the applicant is in sound mental and physical health, and free of all contagious or communicable diseases;
- (12) Applicants for a massage therapist license must furnish a certified copy of a diploma or certificate of graduation (demonstrating compliance with section 15.8.5(a) (2)), along with a certified statement from the National Certification Board of Therapeutic Massage and Body Work evidencing passage by the applicant thereof of the exam for massage therapists administered by said Board. Applicants for a massage establishment license must furnish an affidavit demonstrating compliance with section 15.8.5(b)(2) and 15.8.5(b)(3);
- (13) If the applicant is a corporation or partnership, such corporation or partnership shall submit the foregoing information and exhibits with regard to each employee, independent contractor agent and partner, general or limited, associated with the operation of the licensed establishment;
- (14) If the applicant is a corporation, such corporation shall, in addition to the foregoing information, submit a complete list of the stockholders of said corporation, including names, current addresses and current occupations, and provide the name and address for its registered agent in the county;
- (15) If the applicant is an individual, the applicant must reside in the state and must submit written, reliable proof thereof. Additionally, if the applicant does not reside in the county, the applicant must provide the name and address for an agent who resides in the county authorized to receive legal process and notices under this Article on behalf of the applicant.

- (b) *Fees.* All license applications shall be accompanied by a fee as elsewhere established by the City Council to defray the costs associated with issuance of said licenses. All fees associated with the background check required by section 15.8.4(a)(10) shall be the responsibility of the applicant and shall be in addition to the application fee.

**Sec. 15.8.5. - Minimum standards.**

- (a) *Massage therapist.* No applicant shall be issued a license as a "massage therapist" unless both of the following standards are first met:
- (1) The applicant must be of good moral character. No applicant shall be found to have met this requirement if said applicant has been convicted, pled guilty, or entered a plea of nolo contendere to any felony, or to any misdemeanor involving moral turpitude, within a period of five (5) years prior to the filing of the application; and
  - (2) The applicant must be the holder of a diploma or certificate earned by the applicant from a state certified school, representative of the fact that the applicant attended a course of massage therapy education and study of not less than five hundred (500) classroom hours consisting of a curriculum of anatomy and physiology, basic massage theory, technique and clinical practice, approach to massage, allied modalities and disease awareness, and other such subjects and have passed the National Certification Board of Therapeutic Massage and Body Work exam for massage therapists.
- (b) *Massage establishment.* No applicant shall be issued a license for a "massage establishment" unless all of the following standards are first met:
- (1) The applicant, including the partner applying on behalf of a partnership and an agent applying on behalf of a corporation, must be of good moral character. No applicant shall be found to have met this requirement if said applicant has been convicted, pled guilty, or entered a plea of nolo contendere to any felony, or to any misdemeanor involving moral turpitude, within a period of four (4) years prior to the filing of the application;
  - (2) A corporate applicant must be chartered under the laws of Georgia or authorized by the Secretary of State to do business in the state. The applicant shall be the owner or legal agent of the establishment. The corporate applicant must identify an agent for service of process in the county;
  - (3) The owner/applicant, or corporate agent must be a resident of the state;
  - (4) A readable sign shall be posted at the main entrance identifying the establishment as a massage establishment, provided also that all such signs shall comply with the sign requirements of the Code of Ordinances;
  - (5) Minimum lighting shall be provided in accordance with the Uniform Building Code, and, additionally, at least one (1) artificial light of not less than forty (40) watts shall be provided in each enclosed room or booth;
  - (6) Ordinary beds or mattresses shall not be permitted in any licensed massage establishment;
  - (7) Minimum ventilation shall be provided in accordance with the Standard Mechanical Code and the Georgia Energy Code; and
  - (8) The establishment, prior to the issuance of any license hereunder, must be in compliance with all applicable building and life safety codes, and the building to be occupied must have a valid, current certificate of occupancy.

**Sec. 15.8.6. - Issuance of license.**

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

Otherwise, the director shall approve the application and the license shall be issued upon the payment of any applicable city business or occupation tax. All licenses issued pursuant to this Article shall be valid for a period of one (1) year. If an application for a license is denied under this Article, the applicant shall not be authorized to reapply for said denied license for a period of one (1) year from the date of denial.

- (c) *Appeals of denials of applications.*
- (1) In the event the director denies a license or apprentice permit application, such denial shall be in written form, addressed to the applicant at the application address, and shall state the grounds upon which the denial is based. Within 15 days of the date of issuance of such notice, the applicant shall be entitled to appeal to the certificate review hearing officer pursuant to the procedure set forth in Article XVI of this Chapter.

**Sec. 15.8.7. - Transfers and sales prohibited.**

All licenses issued pursuant to this Article are nontransferable.

**Sec. 15.8.8. - Change of location.**

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

**Sec. 15.8.9. - Renewals.**

All valid licenses may be renewed for additional one (1) year periods provided a renewal application meeting all of the requirements for an initial license application is submitted prior to expiration of the existing license and approved by the director according to the same standards for initial licenses. The fee for the annual renewal shall be as elsewhere established by the City Council.

**Sec. 15.8.10. - Further requirements.**

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

- (a) All massage therapists and all other persons on the premises, with the exception of the customers, shall be completely clothed at all times when administering a massage. For the purposes of this provision, "completely clothed" shall mean having on the upper portion of the body appropriate undergarments and either blouse or shirt which shall cover all the upper body save the arms and neck and shall mean having on the lower body appropriate undergarments plus either pants or

skirt, and said pants or skirt must cover from the waist down to a point at least two (2) inches above the knee. All clothes worn in compliance with this subsection shall be entirely non-transparent.

- (b) Massage of the human genitals or anus within massage establishments is expressly prohibited.
- (c) The storing, serving, sale or consumption of alcoholic beverages within massage establishments is expressly prohibited.
- (d) Every person to whom a license shall have been granted shall display said license in a conspicuous place on the premises that is clearly visible to the visiting public.
- (e) The City Manager or his designee, shall have the right to inspect any licensed massage premises and its records at any time, with or without notice, during business hours to insure compliance with this Article.
- (f) It shall be unlawful for any person under the age of eighteen (18) to patronize any massage establishment unless at the time of such patronage such person carries with him/her a written order directing the treatment to be given by a regularly licensed physician, or unless such person provides a written consent to massage therapy treatment signed by the underage patron's parent or guardian. It shall be the duty of the operator of such massage establishment to determine the age of each person patronizing such massage establishment and a violation of this section shall be grounds for revocation of the license of such massage establishment and/or massage therapist administering massage to an underage patron.
- (g) It shall be the duty of all persons holding a license for a massage establishment under this Article to file with the City Manager or his designee the names of all employees and independent contractors other than those holding massage therapist licenses, their home addresses, home telephone numbers and places of employment. Changes in the list of said employees and independent contractors with the names of new employees and independent contractors must be filed with said city department within ten (10) days from the date of any such change.
- (h) It shall be the duty of any person granted a license under this Article to maintain correct and accurate records of the names and addresses of the persons receiving treatment at such establishment; and the name of the person at the establishment administering the treatment. The records shall be subject to inspection at any time by the city through the City Manager or his designee.
- (i) It shall be the duty of the licensee establishment to actively supervise and monitor the conduct of any and all employees, independent contractors, customers and all other persons on the premises in order to assure compliance with the provisions of this chapter.

#### **Sec. 15.8.11. - Revocation of license.**

- (a) No license issued hereunder shall be revoked except for due cause as herein defined without the opportunity for a hearing as hereinafter set forth before the certificate review hearing officer. Notice of such hearing shall be given in writing and served at least ten (10) days prior to the date of the hearing thereon. In the event the license holder cannot be found, and the service of notice cannot be otherwise made in the manner herein provided, a copy of such notice shall be mailed registered postage fully prepaid, addressed to the license holder or the registered agent thereof at his, her, or its place of business or residence at least ten (10) days prior to the date of such hearing. The notice shall state the grounds for revocation of such license and shall designate the time and place where such hearing will be held.
- (b) "Due cause" for revocation of such license shall be as provided in section 15.8.12 of this Article.

- (c) In all hearings pursuant to this section, the following procedures shall prevail, and the proceeding shall be as informal as compatible with justice:
- (1) The charges and specifications against the licensee shall be read along with any response filed by the licensee.
  - (2) The certificate review hearing officer shall hear the evidence upon the charges and specifications as filed against the licensee and shall not consider any additional evidence beyond the scope of the charges, and may exclude evidence which is purely cumulative.
  - (3) The order of proof shall be as follows: The city representative shall present his evidence in support of the charges; the licensee shall then present his evidence. Evidence of each party may be supported by submission of pertinent documents. Each party shall be allowed to present pertinent rebuttal evidence.
  - (4) The licensee and city may be represented by counsel, and may present, examine and cross-examine witnesses. Additionally, the certificate review hearing officer may interrogate all parties and witnesses to obtain necessary information. Following the presentation of evidence, the hearing officer may have a reasonable time within which to issue its decision.
  - (5) The findings of the certificate review hearing officer will be final unless within thirty (30) days of the date of the decision, the applicant files a petition for writ of certiorari to the superior court of the county.

**Sec. 15.8.12. - Grounds for revocation.**

- (a) The license of a massage therapist may be revoked upon one (1) or more of the following grounds:
- (1) Failure of the holder to maintain initial requirements for obtaining the license;
  - (2) The holder is guilty of fraud in the practice of massage, or fraud or deceit in his being licensed in the practice of massage;
  - (3) The holder is engaged in the practice of massage under a false or assumed name, or is impersonating another therapist of a like or different name;
  - (4) The holder is addicted to the habitual use of intoxicating liquors, narcotics or stimulants to such an extent as to incapacitate such person to the extent that he/she is unable to perform his or her professional duties;
  - (5) The holder is guilty of fraudulent, false, misleading or deceptive advertising or practices any other licensed profession without legal authority therefor;
  - (6) The holder has violated any of the provisions of this chapter;
  - (7) The holder has violated any laws relating to sodomy, aggravated sodomy, solicitation of sodomy, public indecency, prostitution, pimping, pandering, pandering by compulsion, masturbation for hire, distribution of obscene materials, distribution of material depicting nudity, or sexual conduct as defined under Georgia law; or has been convicted, pled guilty, or entered a plea of nolo contendere to any felony, or to any misdemeanor involving moral turpitude;
  - (8) The original application, or renewal thereof, contains materially false information; or the applicant has deliberately sought to falsify information contained therein; or
  - (9) There has been the occurrence of a fact which would have barred the issuance of the original license.
- (b) The license of a massage establishment may be revoked upon one (1) or more of the following grounds:
- (1) Failure of the holder to maintain initial requirements for obtaining the license;

- (2) The holder allows or permits any person who is not a licensed massage therapist to administer a massage in said establishment;
  - (3) The premises in which the massage establishment is located are in violation of any federal, state, city, or county laws designated for the health, protection and safety of the occupants or general public;
  - (4) The premises are in violation of the city's building or life safety codes;
  - (5) The original application or renewal thereof, contains materially false information; or the applicant has deliberately sought to falsify information contained therein;
  - (6) The holder of the license, including any person with an ownership interest in the license, has been convicted, pled guilty, or entered a plea of nolo contendere to any felony, or to any misdemeanor involving moral turpitude, or has violated any laws relating to sodomy, aggravated sodomy, solicitation of sodomy, public indecency, prostitution, pimping, pandering, pandering by compulsion, masturbation for hire, distribution of obscene materials, distribution of material depicting nudity, or sexual conduct as defined under state law;
  - (7) Any of the license holder's employees, independent contractors or agents has been convicted, pled guilty, or entered a plea of nolo contendere to any felony, or to any misdemeanor involving moral turpitude, or has violated any laws relating to sodomy, aggravated sodomy, solicitation of sodomy, public indecency, prostitution, pimping, pandering, pandering by compulsion, masturbation for hire, distribution of obscene materials, distribution of material depicting nudity, or sexual conduct as defined under state law, in connection with the operation of the massage establishment or on or about the premises of the massage establishment;
  - (8) Failure of the holder to actively supervise and monitor the conduct of the employees, independent contractors, agents, customers, or others on the premises in order to protect the health, safety and welfare of the general public and the customers; or
  - (9) The holder, his employees, agents, or independent contractors associated with the establishment have allowed to occur or have engaged in a violation of any part of this chapter.
- (c) Any massage therapist or massage establishment who has his or her or its license or permit revoked shall be disqualified from reapplying for such a license or permit for a period of twelve (12) months immediately following the date of revocation.

**Sec. 15.8.12. - Violations; penalties.**

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

**Sec. 15.8.13. - Unlawful operation declared nuisance.**

- (a) Any massage establishment operated, conducted or maintained contrary to the provisions of this Article shall be and the same is declared to be unlawful and a public nuisance. The city may, in addition, or in lieu of all other remedies, commence an action or actions, proceeding or proceedings for abatement, removal or enjoinder thereof, in the manner provided by law.



- (b) No massage establishment shall operate at any location nor on any premises which does not comply with all zoning, building code, fire safety code, and other ordinances and laws of the city and the state.

## **ARTICLE IX. - ESCORT OR DATING SERVICES**

### **Sec. 15.9.1. - License.**

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

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

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

### **Sec. 15.9.3. - Permit required.**

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

### **Sec. 15.9.4. - Employees.**

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

**Secs. 15.9.5—15.9.25. - Reserved.**

## **ARTICLE X. - POOLROOMS**

### **DIVISION 1. - GENERALLY**

#### **Sec. 15.10.1. - Definitions.**

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

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

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

#### **Sec. 15.10.2. - Applicability.**

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

#### **Sec. 15.10.3. - Inspection of licensed establishments.**

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

#### **Sec. 15.10.4. - Gambling.**

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

#### **Sec. 15.10.5. - Manager.**

All poolrooms which have three (3) or more pool tables shall have a manager, or designated employee, on duty during operating hours, whose responsibility is the operation of the pool tables.

**Secs. 15.10.6—15.10.20. - Reserved.**

### **DIVISION 2. - LICENSE**

#### **Sec. 15.10.21. - Required.**

No person shall operate a poolroom without a business license issued by the City Manager or his designee.

#### **Sec. 15.10.22. - Application.**

- (a) All persons desiring to operate a poolroom shall make application for a business license on a form prescribed by the City Manager or his designee.
- (b) The application shall include, but shall not be limited to, the following:
  - (1) The name and address of the owner-applicant.
  - (2) The address of the licensed establishment.
  - (3) The number of pool tables to be operated at the licensed establishment.
  - (4) If the owner-applicant is a partnership, the names and residence addresses of the partners.

- (5) If the owner-applicant is a corporation, the names of the officers.
- (6) The name and address of the agent for service of process.
- (7) The name of the manager.
- (8) The name of all shareholders holding more than ten (10) percent of any class of corporate stock, or other entity having a financial interest in each entity which is to own or operate the licensed establishment.

If the manager changes, the owner-applicant must furnish the City Manager or his designee with the name and address of the new manager and other information as requested within ten (10) days of such change.

- (c) All applicants shall furnish data, information and records as required by the City Manager or his designee to ensure compliance with the provisions of this Article. Failure to furnish data shall automatically serve to dismiss the application with prejudice.
- (d) All applications shall be sworn to by the applicant before a notary public or other officer authorized to administer oaths.
- (e) In all instances in which an application is denied under the provisions of this division, the applicant may not reapply for a license for at least one (1) year from the final date of denial.

**Sec. 15.10.23. - Persons eligible.**

- (a) No poolroom license shall be granted to any illegal alien.
- (b) Where the owner-applicant is a partnership or corporation, the provisions of this section shall apply to all its partners, officers, managers and majority stockholders. In the case of a corporation, the license shall be issued jointly to the corporation and to the majority stockholder, if an individual. Where the majority stockholder is not an individual, the license shall be issued jointly to the corporation and its agent registered under the provisions of this section. In the case of a partnership, the license will be issued to one (1) of the partners.
- (c) No license shall be granted to any person who has been convicted under any federal, state or local law of any misdemeanor involving moral turpitude within ten (10) years prior to the filing of the application for such license.
- (d) No license shall be granted to any person convicted under any federal, state or local law of any felony within ten (10) years prior to the filing of the application for such license.
- (e) No license shall be granted to any person who has had any license issued under the police powers of the city or DeKalb County previously revoked or rejected within two (2) years prior to the filing of the application. The City Manager or his designee may decline to issue a license when any person having an interest in the operation of such place of business or control over such place of business does not meet the same character requirements as set forth for the licensee.
- (f) All licensed establishments must have and continuously maintain in the county a registered agent upon whom any process, notice or demand required or permitted by law or under this Article to be served upon the licensee or owner may be served. The licensee shall file the name of such agent, along with the written consent of such agent with the City Manager or his designee in such form as is prescribed.

**Sec. 15.10.24. - Expiration; renewal; transfer.**

- (a) All licenses granted under this division shall expire on December 31 of each year.
- (b) Licensees who desire to renew their licenses shall file application with all applicable fees with the City Manager or his designee on the form provided for renewal of the license for the following year. Applications for renewal must be filed before November 30 of each year or the applicant shall pay a

late payment penalty in addition to an assessment of interest as specified by Chapter 2 of this Code. No renewal licenses shall be granted after January 1, but such application shall be treated as an initial application and the applicant shall be required to comply with all requirements for the granting of licenses as if no previous license had been held.

- (c) All licenses granted hereunder shall be for the full calendar year. License fees shall not be prorated and are nonrefundable.
- (d) No license shall be transferred without prior approval of the City Manager or his designee.

**Sec. 15.10.25. - Fee.**

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

**Sec. 15.10.26. - Issuance.**

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

**Sec. 15.10.27. - Suspension or revocation.**

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

**Sec. 15.10.28. - Appeals.**

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

**Secs. 15.10.29—15.10.50. - Reserved.**

**SECTION 6:**

It is hereby declared to be the intention of the Mayor and City Council that DeKalb County Chapter 15, Article XI shall remain in effect, pursuant to Section 6.03(e) of the Charter of the City of Stonecrest, until such time as Chapter 15, Article XI – Vehicles for Hire is either approved and adopted or repealed by the Mayor and City Council.

**SECTION 7:**

Chapter 15 – *Licenses, Permits, and Miscellaneous Business Regulations* hereby continues as follows:

## ARTICLE XII. – SEXUALLY ORIENTED BUSINESSES.

### Sec. 15.12.1. - Findings; public purpose.

- (a) *Purpose.* It is the purpose of this Article to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the city. The provisions of this Article have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this Article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Article to condone or legitimize the distribution of obscene material.
- (b) *Findings and rationale.* Based on evidence of adverse secondary effects associated with certain conduct in alcoholic beverage establishments, which effects have been presented in hearings and in reports made available to the City Council, and on findings, interpretations, and narrowing constructions incorporated in numerous cases, including, but not limited to, *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's AM*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); *Sewell v. Georgia*, 435 U.S. 982 (1978); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *City of Dallas v. Stanglin*, 490 U.S. 19 (1989); and *Flanigan's Enters., Inc. v. Fulton County*, 596 F.3d 1265 (11th Cir. 2010); *Peek-a-Boo Lounge v. Manatee County*, 630 F.3d 1346 (11th Cir. 2011); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *Jacksonville Property Rights Ass'n, Inc. v. City of Jacksonville*, 635 F.3d 1266 (11th Cir. 2011); *Artistic Entertainment, Inc. v. City of Warner Robins*, 331 F.3d 1196 (11th Cir. 2003); *Artistic Entertainment, Inc. v. city of Warner Robins*, 223 F.3d 1306 (11th Cir. 2000); *Williams v. Pryor*, 240 F.3d 944 (11th Cir. 2001); *Williams v. A.G. of Alabama*, 378 F.3d 1232 (11th Cir. 2004); *Williams v. Morgan*, 478 F.3d 1316 (11th Cir. 2007); *Gary v. City of Warner Robins*, 311 F.3d 1334 (11th Cir. 2002); *Ward v. County of Orange*, 217 F.3d 1350 (11th Cir. 2002); *Boss Capital, Inc. v. City of Casselberry*, 187 F.3d 1251 (11th Cir. 1999); *David Vincent, Inc. v. Broward County*, 200 F.3d 1325 (11th Cir. 2000); *Sammy's of Mobile, Ltd. v. City of Mobile*, 140 F.3d 993 (11th Cir. 1998); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (11th Cir. 1999); *This That And The Other Gift and Tobacco, Inc. v. Cobb County*, 285 F.3d 1319 (11th Cir. 2002); *DLS, Inc. v. city of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Grand Faloön Tavern, Inc. v. Wicker*, 670 F.2d 943 (11th Cir. 1982); *International Food & Beverage Systems v. Ft. Lauderdale*, 794 F.2d 1520 (11th Cir. 1986); *5634 E. Hillsborough Ave., Inc. v. Hillsborough County*, 2007 WL 2936211 (M.D. Fla. Oct. 4, 2007), *aff'd*, 2008 WL 4276370 (11th Cir. Sept. 18, 2008) (*per curiam*); *Fairfax MK, Inc. v. City of Clarkston*, 274 Ga. 520 (2001); *Morrison v. State*, 272 Ga. 129 (2000); *Flippen Alliance for Community Empowerment, Inc. v. Brannan*, 601 S.E.2d 106 (Ga. Ct. App. 2004); *Oasis Goodtime Emporium I, Inc. v. DeKalb County*, 272 Ga. 887 (2000); *Chamblee Visuals, LLC v. City of Chamblee*, 270 Ga. 33 (1998); *World Famous Dudley's Food & Spirits, Inc. v. City of College Park*, 265 Ga. 618 (1995); *Airport Bookstore, Inc. v. Jackson*, 242 Ga. 214 (1978); *Imaginary Images, Inc. v. Evans*, 612 F.3d 736 (4th Cir. 2010); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); *Ocello v. Koster*, 354 S.W.3d 187 (Mo. 2011); *84 Video/Newsstand, Inc. v. Sartini*, 2011 WL 3904097 (6th Cir. Sept. 7, 2011); *Plaza Group Properties, LLC v. Spencer County plan commission*, 877 N.E.2d 877 (Ind. Ct. App. 2007); *East Brooks Books, Inc. v. Shelby County*, 588 F.3d 360 (6th Cir. 2009); *Entm't Prods., Inc. v. Shelby County*, 588 F.3d 372 (6th Cir. 2009); *Sensations, Inc. v. City of Grand Rapids*, 526 F.3d 291 (6th Cir. 2008); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *H&A Land Corp.*

v. City of Kennedale, 480 F.3d 336 (5th Cir. 2007); Hang On, Inc. v. City of Arlington, 65 F.3d 1248 (5th Cir. 1995); Fantasy Ranch, Inc. v. City of Arlington, 459 F.3d 546 (5th Cir. 2006); Illinois One News, Inc. v. City of Marshall, 477 F.3d 461 (7th Cir. 2007); G.M. Enterprises, Inc. v. Town of St. Joseph, 350 F.3d 631 (7th Cir. 2003); Richland Bookmart, Inc. v. Knox County, 555 F.3d 512 (6th Cir. 2009); Bigg Wolf Discount Video Movie Sales, Inc. v. Montgomery County, 256 F. Supp. 2d 385 (D. Md. 2003); Richland Bookmart, Inc. v. Nichols, 137 F.3d 435 (6th Cir. 1998); Spokane Arcade, Inc. v. City of Spokane, 75 F.3d 663 (9th Cir. 1996); DCR, Inc. v. Pierce County, 964 P.2d 380 (Wash. Ct. App. 1998); city of New York v. Hommes, 724 N.E.2d 368 (N.Y. 1999); Taylor v. State, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002); Fantasyland Video, Inc. v. County of San Diego, 505 F.3d 996 (9th Cir. 2007); Gammoh v. City of La Habra, 395 F.3d 1114 (9th Cir. 2005); Starship Enters. of Atlanta, Inc. v. Coweta County, No. 3:09-CV-123, R. 41 (N.D. Ga. Feb. 28, 2011); High Five Investments, LLC v. Floyd County, No. 4:06-CV-190, R. 128 (N.D. Ga. Mar. 14, 2008); 10950 Retail, LLC v. Fulton County, No. 1:06-CV-1923, R. 62 Order (N.D. Ga. Dec. 21, 2006); 10950 Retail, LLC v. Fulton County, No. 1:06-CV-1923, R. 84 Contempt Order (N.D. Ga. Jan. 4, 2007); Z.J. Gifts D-4, L.L.C. v. City of Littleton, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001); People ex rel. Deters v. The Lion's Den, Inc., Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005); Reliable Consultants, Inc. v. City of Kennedale, No. 4:05-CV-166-A, Findings of Fact and Conclusions of Law (N.D. Tex. May 26, 2005); Goldrush II v. City of Marietta, 267 Ga. 683 (1997); and based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, "Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD," Journal of Urban Health (2011); "Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime?" Crime & Delinquency (2012) (Louisville, KY); Metropolis, Illinois - 2011-12; Manatee County, Florida - 2007; Hillsborough County, Florida - 2006; Clarksville, Indiana - 2009; El Paso, Texas - 2008; Memphis, Tennessee - 2006; New Albany, Indiana - 2009; Louisville, Kentucky - 2004; Fulton County, GA - 2001; Chattanooga, Tennessee - 1999-2003; Jackson County, Missouri - 2008; Ft. Worth, Texas - 2004; Kennedale, Texas - 2005; Greensboro, North Carolina - 2003; Dallas, Texas - 1997; Houston, Texas - 1997, 1983; Phoenix, Arizona - 1995-98, 1979; Tucson, Arizona - 1990; Spokane, Washington - 2001; St. Cloud, Minnesota - 1994; Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Grove, California - 1991; Los Angeles, California - 1977; Whittier, California - 1978; Oklahoma city, Oklahoma - 1986; New York, New York Times Square - 1994; the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota); Dallas, Texas - 2007; "Rural Hotspots: The Case of Adult Businesses," 19 Criminal Justice Policy Review 153 (2008); "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; Law Enforcement and Private Investigator Affidavits (Pink Pony South, Forest Park, GA, and Adult Cabarets in Sandy Springs, GA), the City Council finds:

- 1) Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation. Alcohol consumption impairs judgment and lowers inhibitions, thereby increasing the risk of adverse secondary effects.
- (2) Each of the foregoing negative secondary effects constitutes a harm which the city has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the city's rationale for this Article, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses.

Additionally, the city's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the city. The city finds that the cases and documentation relied on in this Article are reasonably believed to be relevant to the secondary effects.

- (c) *Adoption of findings of secondary effects.* The city hereby adopts and incorporates herein its stated findings and legislative record related to the adverse secondary effects of sexually oriented businesses, including the judicial opinions and reports related to such secondary effects.

#### **Sec. 15.12.2. - Definitions.**

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

*Adult bookstore or adult video store* means a commercial establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videocassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas." A "principal business activity" exists where the commercial establishment meets any one or more of the following criteria:

- (1) At least thirty-five (35) percent of the establishment's displayed merchandise consists of the items;
- (2) At least thirty-five (35) percent of the retail value (defined as the price charged to customers) of the establishment's displayed merchandise consists of the items;
- (3) At least thirty-five (35) percent of the establishment's revenues derive from the sale or rental, for any form of consideration, of said items;
- (4) The establishment maintains at least thirty-five (35) percent of its floor space for the display, sale, or rental of the items (aisles and walkways used to access the items shall be included in "floor space" maintained for the display, sale, or rental of the items);
- (5) The establishment maintains at least five-hundred (500) square feet of its floor space for the display, sale, and/or rental of the items (aisles and walkways used to access the items shall be included in "floor space" maintained for the display, sale, or rental of the items);
- (6) The establishment regularly offers for sale or rental at least 2,000 of the items;
- (7) The establishment regularly features the items and regularly advertises itself or holds itself out, in any medium, by using "adult," "adults-only," "XXX," "sex," "erotic," or substantially similar language, as an establishment that caters to adult sexual interests; or
- (8) The establishment maintains an "adult arcade," which means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting "specified sexual activities" or "specified anatomical areas."

*Adult cabaret* means a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment that regularly features live conduct characterized by semi-nudity. No establishment shall avoid classification as an adult cabaret by offering or featuring nudity.

*Adult motion picture theater* means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis

upon the display of “specified sexual activities” or “specified anatomical areas” are regularly shown to more than five persons for any form of consideration.

*Characterized by* means describing the essential character or quality of an item. As applied in this Article, no business shall be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

*City* means Stonecrest, Georgia.

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

*Establish or establishment* means and includes any of the following:

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

*Feature* means to give special prominence to.

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

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

*Influential interest* means any of the following:

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

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

*Nudity* means the showing of the human male or female genitals, pubic area, vulva, or anus with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

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

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

*Premises* means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business,



the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a sexually oriented business license.

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

*Semi-nude* or *semi-nudity* means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

*Semi-nude model studio* means a place where persons regularly appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. This definition does not apply to any place where persons appearing in a state of semi-nudity did so in a class operated:

- (1) By a college, junior college, or university supported entirely or partly by taxation;
- (2) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
- (3) In a structure:
  - a. Which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; and
  - b. Where, in order to participate in a class a student must enroll at least three days in advance of the class.

*Sexual device* means any three dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

*Sexual device shop* means a commercial establishment that regularly features sexual devices. This definition shall not be construed to include any pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing medical or healthcare products or services, or any establishment that does not regularly advertise itself or hold itself out, in any medium, as an establishment that caters to adult sexual interests.

*Sexually oriented business* means an "adult bookstore" or "adult video store," an "adult cabaret," an "adult motion picture theater," a "semi-nude model studio," or a "sexual device shop."

*Sexually oriented business employee* means only such employees, agents, independent contractors, or other persons, whatever the employment relationship to the business, whose job function includes posing in a state of nudity, or semi-nudity, or exposing to view within the business the specified anatomical areas as defined by this Code.

*Specified anatomical areas* means and includes:

- (1) Less than completely and opaquely covered: human genitals, pubic region; buttock; and female breast below a point immediately above the top of the areola; and
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

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

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

*Specified sexual activity* means any of the following:

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

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

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

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

### **Sec. 15.12.3. - License required.**

- (a) *Business license.* It is unlawful for any person to operate a sexually oriented business in the city without a valid sexually oriented business license.
- (b) *Employee license.* It is unlawful for any person to be an "employee" of a sexually oriented business in the city without a valid sexually oriented business employee license, except that a person who is a licensee under a valid sexually oriented business license shall not be required to also obtain a sexually oriented business employee license.
- (c) *Application.* An applicant for a sexually oriented business license or a sexually oriented business employee license shall file in person at the office of the City Manager or his designee a completed application made on a form provided by the City Manager or his designee. A sexually oriented business may designate an individual with an influential interest in the business to file its application for a sexually oriented business license in person on behalf of the business. The application shall be signed as required by subsection (d) of this section and shall be notarized. An application shall be considered

complete when it contains, for each person required to sign the application, the information and/or items required in this subsection, accompanied by the appropriate licensing fee:

- (1) The applicant's full legal name and any other names used by the applicant in the preceding five years.
- (2) Current business address or another mailing address for the applicant.
- (3) Written proof of age, in the form of a driver's license, a picture identification document containing the applicant's date of birth issued by a governmental agency, or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.
- (4) If the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number of the sexually oriented business.
- (5) If the application is for a sexually oriented business license, the name and business address of the statutory agent or other agent authorized to receive service of process.
- (6) A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this Article, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.
- (7) A statement of whether any sexually oriented business in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
  - a. Been declared by a court of law to be a nuisance; or
  - b. Been subject to a court order of closure.
- (8) An application for a sexually oriented business license shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor area occupied by the business and a statement of floor area visible or accessible to patrons for any reason, excluding restrooms. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Applicants who are required to comply with the stage, booth, and/or room configuration requirements of this Article shall submit a diagram indicating that the setup and configuration of the premises meets the requirements of the applicable regulations. The City Manager may waive the requirements of this subsection for a renewal application if the applicant adopts a legal description and a sketch or diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

The information provided pursuant to this subsection (c) shall be supplemented in writing by certified mail, return receipt requested, to the City Manager or his designee within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

- (d) *Signature.* A person who seeks a sexually oriented business employee license under this section shall sign the application for a license. If a person who seeks a sexually oriented business license under this section is an individual, he shall sign the application for a license as applicant. If a person who seeks a sexually oriented business license is other than an individual, each person with an influential interest in the sexually oriented business or in a legal entity that controls the sexually oriented business shall sign the application for a license as applicant. Each applicant must be qualified under this Article and each applicant shall be considered a licensee if a license is granted.

(e) *Confidentiality.* The information provided by an applicant in connection with an application for a license under this Article shall be maintained by the office of the City Manager or his designee on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by governing law or court order. Any information protected by the right to privacy as recognized by state or federal law shall be redacted prior to such disclosure.

**Sec. 15.12.4. - Issuance of license.**

(a) *Business license.* Upon the filing of a completed application for a sexually oriented business license, the City Manager or his designee shall immediately issue a temporary license to the applicant if the completed application is from a preexisting sexually oriented business that is lawfully operating in the city and the completed application, on its face, indicates that the applicant is entitled to an annual sexually oriented business license. The temporary license shall expire upon the final decision of the city to deny or grant an annual license. Within thirty (30) days of the filing of a completed sexually oriented business license application, the City Manager or his designee shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The City Manager or his designee shall issue a license unless:

- (1) An applicant is less than 18 years of age.
- (2) An applicant has failed to provide information required by this Article for issuance of a license or has falsely answered a question or request for information on the application form.
- (3) The license application fee required by this Article has not been paid.
- (4) The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this Article.
- (5) The sexually oriented business, as defined herein, is not in compliance with the locational requirements of any other part of this Code. However, this ground for denial of a license to operate a sexually oriented business shall not prevent issuance or renewal of a license for a sexually oriented business that was in a location where a sexually oriented business was allowed under law prior to the effective date of this Article, provided that the sexually oriented business has not been discontinued for a continuous period of six (6) months; has not been enlarged; expanded, moved, or otherwise altered in any manner that increases the degree of nonconformity; and has not had its structure destroyed to an extent exceeding sixty (60) percent of the structure's fair market value at the time of destruction.
- (6) Any sexually oriented business in which an applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):
  - a. Been declared by a court of law to be a nuisance; or
  - b. Been subject to an order of closure.
- (7) An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this Article.

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

- (1) The applicant is less than 18 years of age.
- (2) The applicant has failed to provide information as required by this Article for issuance of a license or has falsely answered a question or request for information on the application form.
- (3) The license application fee required by this Article has not been paid.

- (4) Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
  - a. Been declared by a court of law to be a nuisance; or
  - b. Been subject to an order of closure.
- (5) The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this Article.
- (c) *License information.* The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensees, the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time that the business is occupied by patrons or is open to the public. A sexually oriented business employee shall keep the employee's license on his person or on the premises where the licensee is then working or performing.
- (d) *Location requirements.* A license granted under this section does not excuse compliance with, or authorize the violation of, any location or zoning requirements for sexually oriented businesses in effect in the city.

#### **Sec. 15.12.5. - Fees.**

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

#### **Sec. 15.12.6. - Inspection.**

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

#### **Sec. 15.12.7. - Expiration and renewal of license.**

- (a) Each license shall remain valid for a period of one (1) calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in this Article.
- (b) Application for renewal of an annual license should be made at least ninety (90) days before the expiration date of the current annual license, and when made less than ninety (90) days before the expiration date, the expiration of the current license will not be affected.

#### **Sec. 15.12.8. - Suspension.**

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

**Sec. 15.12.9. - Revocation.**

- (a) The City Manager shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if the licensee knowingly or recklessly violates this Article or has knowingly or recklessly allowed an employee or any other person to violate this Article and a suspension of the licensee's license has become effective within the previous twelve (12) month period.
- (b) The City Manager shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if:
  - (1) The licensee has knowingly given false information in the application for the sexually oriented business license or the sexually oriented business employee license;
  - (2) The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises of the sexually oriented business;
  - (3) The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises of the sexually oriented business;
  - (4) The licensee knowingly or recklessly operated the sexually oriented business during a period of time when the license was finally suspended or revoked;
  - (5) The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity or specified criminal activity to occur in or on the premises of the sexually oriented business;
  - (6) The licensee has knowingly or recklessly allowed a person under the age of twenty-one (21) years to consume alcohol on the premises of the sexually oriented business; or
  - (7) The licensee has knowingly or recklessly allowed a person under the age of eighteen (18) years to appear in a semi-nude condition or in a state of nudity on the premises of the sexually oriented business.
- (c) The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.
- (d) When, after the notice and hearing procedure described in this Article, the city revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for one (1) year from the date revocation becomes effective.

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

- (a) Notice of intent; response.
  - (1) When the City Manager or his designee issues a written notice of intent to deny, suspend, or revoke a license, the City Manager or his designee shall immediately send such notice, which shall include the specific grounds under this Article for such action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the City Manager or his designee for the respondent. The notice shall also set forth the following: The respondent shall have ten days after the delivery of the written notice to submit, at the office of the City Manager or his designee, a written request for a hearing. If the respondent does not request a hearing within the ten days, the City Manager's or designee's written notice shall become a final denial, suspension, or revocation, as the case may be, on the thirtieth 30th day after it is issued, and shall be subject to the provisions of subsection (b) of this section.

- (2) If the respondent does make a written request for a hearing within the ten (10) days, then the City Manager or his designee shall, within ten (10) days after the submission of the request, send a notice to the respondent indicating the date, time, and place of the hearing. The hearing shall be conducted not less than ten (10) days nor more than twenty (20) days after the date that the hearing notice is issued. The city shall provide for the hearing to be transcribed.
  - (3) At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his behalf, and cross examine any of the City Manager's or designee's witnesses. The city shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The hearing officer shall issue a final written decision, including specific reasons for the decision pursuant to this Article, to the respondent within five days after the hearing.
  - (4) If the decision is to deny, suspend, or revoke the license, the decision shall advise the respondent of the right to appeal such decision to the superior court of the county, and the decision shall not become effective until the thirtieth (30<sup>th</sup>) day after it is rendered. If the hearing officer's decision finds that no grounds exist for denial, suspension, or revocation of the license, the hearing officer shall, contemporaneously with the issuance of the decision, order the City Manager or his designee to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the City Manager or his designee shall contemporaneously therewith issue the license to the applicant.
- (b) If any court action challenging a licensing decision is initiated, the city shall prepare and transmit to the court a transcript of the hearing within thirty (30) days after receiving written notice of the filing of the court action. The city shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any sexually oriented business that is lawfully operating as a sexually oriented business, or any sexually oriented business employee that is lawfully employed as a sexually oriented business employee, on the date on which the completed business or employee application, as applicable, is filed with the City Manager: Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the city's enforcement of any denial, suspension, or revocation of a temporary license or annual license, the City Manager shall immediately issue the respondent a provisional license. The provisional license shall allow the respondent to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the city's enforcement.

**Sec. 15.12.11. - Transfer of license.**

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

**Sec. 15.12.12. - Hours of operation.**

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

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

- (a) A person who operates or causes to be operated a sexually oriented business which exhibits in a booth or viewing room on the premises, through any mechanical or electronic image-producing device, a

film, videocassette, digital video disc, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.

- (1) Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all operator's stations, booths or viewing rooms, overhead lighting fixtures, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain equipment for displaying films, videocassettes, digital video discs, or other video reproductions. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. The City Manager may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
- (2) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.
- (3) The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5) foot candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described in this subsection is maintained at all times that the premises is occupied by patrons or open for business.
- (4) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no specified sexual activity occurs in or on the licensed premises.
- (5) It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:
  - a. That the occupancy of viewing rooms less than 150 square feet is limited to one person.
  - b. That specified sexual activity on the premises is prohibited.
  - c. That the making of openings between viewing rooms is prohibited.
  - d. That violators will be required to leave the premises.
  - e. That violations of these regulations are unlawful.
- (6) It shall be the duty of the operator to enforce the regulations articulated in subsections (a)(5)(a) through (a)(5)(e) of this section.
- (7) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose, excluding restrooms, from at least one of the operator's stations. The view required in this subsection must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the



operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this subsection remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

- (8) It shall be the duty of the operator to ensure that no porous materials are used for any wall, floor, or seat in any booth or viewing room.
- (b) It is unlawful for a person having a duty under subsections (a)(1) through (a)(8) of this section to knowingly or recklessly fail to fulfill that duty.
- (c) No patron shall knowingly or recklessly enter or remain in a viewing room less than 150 square feet in area that is occupied by any other patron.
- (d) No patron shall knowingly or recklessly be or remain within one foot of any other patron while in a viewing room that is 150 square feet or larger in area.
- (e) No person shall knowingly or recklessly make any hole or opening between viewing rooms.

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

- (a) It shall be the duty of the operator of a sexually oriented business to ensure that at least two conspicuous signs stating that no loitering is permitted on the premises are posted on the premises; designate one or more employees to monitor the activities of persons on the premises by visually inspecting the premises at least once every ninety (90) minutes or inspecting the premises by use of video cameras and monitors; and provide lighting to the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. Said lighting shall be of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than one (1.0) foot candle as measured at the floor level. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.
- (b) It shall be the duty of the operator of a sexually oriented business to ensure that the interior premises shall be equipped with overhead lighting of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level and the illumination must be maintained at all times that any customer is present in or on the premises.
- (c) No sexually oriented business shall erect a fence, wall, or similar barrier that prevents any portion of the parking lots for the establishment from being visible from a public right-of-way.
- (d) It is unlawful for a person having a duty under this section to knowingly or recklessly fail to fulfill that duty.

**Sec. 15.12.15. - Penalties and enforcement.**

- (a) A person who violates any of the provisions of this Article shall be guilty of a violation and, upon conviction, shall be punishable by fines not to exceed one thousand dollars (\$1,000.00) per violation, or by imprisonment for a period not to exceed six (6) months, or by both such fine and imprisonment. Each day a violation is committed, or permitted to continue, shall constitute a separate offense and shall be fined as such.
- (b) Any premises, building, dwelling, or other structure in which a sexually oriented business is repeatedly operated or maintained in violation of this Article shall constitute a nuisance and shall be subject to civil abatement proceedings in a court of competent jurisdiction.
- (c) The city's legal counsel is authorized to institute civil proceedings necessary for the enforcement of this Article to enjoin, prosecute, restrain, or correct violations hereof. Such proceedings shall be

brought in the name of the city, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this Article, or any of the laws in force in the city or to exempt anyone violating this code or any part of the laws from any penalty which may be incurred.

**Sec. 15.12.16. – Applicability of article to existing businesses.**

- (a) *Licensing Requirements.* All preexisting sexually oriented businesses lawfully operating in the City in compliance with all state and local laws prior to the effective date of this Article, and all sexually oriented business employees working in the City prior to the effective date of this Article, are hereby granted a *De Facto* Temporary License to continue operation or employment for a period of one-hundred-twenty (120) days following the effective date of this Article. By the end of said one-hundred-twenty (120) days, all sexually oriented businesses and sexually oriented business employees must apply for a license under this Article.
- (b) *Interior Configuration Requirements.* Any preexisting sexually oriented business that is required to, but does not, have interior configurations or stages that meet at least the minimum requirements of section 15.12. 13 and subsection 15. 12.17(b) shall have one-hundred-twenty (120) days from the effective date of this Article to conform its premises to said requirements. During said one-hundred-twenty (120) days, any employee who appears within view of any patron in a semi-nude condition shall nevertheless remain, while semi-nude, at least six (6) feet from all patrons.

**Sec. 15.12.17. - Prohibited conduct.**

- (a) No patron, employee, or any other person shall knowingly or intentionally, in a sexually oriented business, appear in a state of nudity or engage in a specified sexual activity.
- (b) No person shall knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six (6) feet from all patrons and on a stage at least eighteen (18) inches from the floor in a room of at least six hundred (600) square feet.
- (c) No employee who appears semi-nude in a sexually oriented business shall knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business. No customer shall knowingly or intentionally touch such an employee or the clothing of such an employee on the premises of a sexually oriented business.
- (d) No person shall possess, use, or consume alcoholic beverages on the premises of a sexually oriented business after July 1, 2017.
- (e) No person shall knowingly or recklessly allow a person under the age of 18 years to be or remain on the premises of a sexually oriented business.
- (f) No operator of a sexually oriented business shall knowingly or recklessly allow a room in the sexually oriented business to be simultaneously occupied by any patron and any employee who is semi-nude or who appears semi-nude on the premises of the sexually oriented business, unless an operator of the sexually oriented business is present in the same room.
- (g) No operator or licensee of a sexually oriented business shall violate the regulations in this section or knowingly or recklessly allow an employee or any other person to violate the regulations in this section.
- (h) A sign in a form to be prescribed by the City Manager, and summarizing the provisions of subsections (a) through (e) of this section, shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry. No person shall cover, obstruct, or obscure the sign.

**Sec. 15.12.18. - Scienter required to prove violation or business licensee liability.**

This Article does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a reckless mental state is necessary to establish a violation of a provision of this Article. Notwithstanding anything to the contrary, for the purposes of this Article, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the sexually oriented business licensee for purposes of finding a violation of this Article, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

**Sec. 15.12.19. - Spacing requirements.**

- (a) It is unlawful to establish, operate, or cause to be operated a sexually oriented business in the city within five-hundred (500) feet of another sexually oriented business. Measurements for this subsection shall be made in a straight line without regard to intervening structures or objects, between the closest points on the property lines of the two sexually oriented businesses.
- (b) It is unlawful to establish, operate, or cause to be operated a sexually oriented business in the city within five-hundred (500) feet of a residential district, place of worship, park, or public library. Measurements for this subsection shall be made in a straight line without regard to intervening structures or objects, from the closest part of the structure containing the sexually oriented business to the closest point on the boundary line of the residential district or the closest point on the property line of the place of worship, park, or public library.

**SECTION 8:**

It is hereby declared to be the intention of the Mayor and City Council that DeKalb County Chapter 15, Articles XIII and XIV shall remain in effect, pursuant to Section 6.03(e) of the Charter of the City of Stonecrest, until such time as Chapter 15, Article XIII – Multifamily Rental Dwellings and Chapter 15, Article XIV – Film Production are either approved and adopted or repealed by the Mayor and City Council.

**SECTION 9:**

Chapter 15 – *Licenses, Permits, and Miscellaneous Business Regulations* hereby continues as follows:

**ARTICLE XV. - NONCONSENSUAL TOWING**

**Sec. 15.15.1. - Definitions.**

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

*Nonconsensual towing* means towing without the prior consent or authorization of the owner or operator of the motor vehicle being towed.

*Wrecker* means an automotive vehicle with hoisting apparatus and equipment for towing or hauling wrecked or disabled automobiles or other vehicles. The term "wrecker" includes any vehicle otherwise equipped and used for the purpose of towing or hauling wrecked or disabled automobiles or vehicles.

**Sec. 15.15.2. - License required; nontransferable.**

It is unlawful for any person to operate or cause to be operated, any wrecker or tow truck engaging in nonconsensual towing within the boundaries of the city without first having obtained a nonconsensual towing license from the city. The nonconsensual towing license shall not be transferable.

**Sec. 15.15.3. - Revocation of license.**

- (a) The City Manager or his designee shall revoke the nonconsensual towing license of any wrecker owner or operator when such person has been found in violation of any of the terms of this Article or upon any of the following grounds:
  - (1) If the registration was procured by fraudulent conduct or false statement of a material fact as to ownership, use, possession or operation.
  - (2) If the owner or licensee is found at the scene of an accident in violation of this Code.
  - (3) If the licensee impounds any vehicle, without the consent of its owner, to any impound lot located more than five miles outside of the limits of the city.
- (b) This revocation shall terminate all authority and permission granted by the registration to the wrecker owner. Any person whose registration has been revoked shall not be eligible to again apply for a license for a period of one year from the date of the issuance of the original license.
- (c) Any person whose license has been revoked may file an appeal therefrom in accordance with Article XVI of this Chapter.

**Sec. 15.15.4. - Fees charged for nonconsensual towing.**

Any wrecker service engaged in the business of providing nonconsensual towing service shall not charge the owner or operator of any towed motor vehicle more than the maximum rates published in the "Nonconsensual Towing Maximum Rate Tariff" prescribed by the state department of public safety. No storage fees shall be charged for the first 24-hour period from the time the motor vehicle is removed from the property. The fees stated in the maximum rate tariff shall be all inclusive; no additional fees may be charged for the use of dollies, trailers, lifts, slimjims or any other equipment or service. Only charges or rates for storage and removal that are approved by the state department of public safety and contained in the state department of public safety's maximum rate tariff for nonconsensual towing shall be billed or collected by the wrecker service for towing or storage services; and it is a violation of this rule for any wrecker service to bill or collect fees or charges which are not expressly permitted by such maximum rate tariff.

## **ARTICLE XVI. - APPEALS**

**Sec. 15.16.1 Administration; procedure for grievances and appeals.**

The City Manager or his designee shall administer and enforce the provisions of this Article. Should an aggrieved person or entity desire to appeal a decision under this Chapter, the following procedure shall apply:

- (a) A notice of appeal must be filed within fifteen (15) calendar days after receipt of the decision complained of. The notice of appeal shall be in the form of a letter, and shall clearly identify all objections or exceptions taken to the decision city manager or his designee. The notice of appeal shall

also contain an address for receipt of future notices and decisions of the certificate hearing officer. Should the aggrieved person or entity fail to file a notice of appeal within the time allowed, the right to appeal is lost.

- (b) Upon receipt of a timely and proper notice of appeal, appellant shall be notified, in writing, of the date, time and place where a hearing will be held. The hearing shall be held before the certificate hearing officer within forty-five (45) calendar days of the date the notice of appeal is filed, but not sooner than ten (10) calendar days after appellant receives notice of the hearing. City Manager or his designee shall transmit to the hearing officer all documents or materials constituting the record of the action or proceedings below.
- (c) If the City Manager or his designee deems it necessary that an audit of the financial books/records of appellant be conducted, the city shall notify appellant in writing of a reasonable date, time and place for the audit, which shall be conducted prior to the date of a hearing on the matter. City Manager or his designee may hire outside auditors for this purpose. The expense of hiring outside auditors shall be borne by the city if the position of the appellant is sustained by the audit. If not, the expense of the outside auditors shall be due and payable from appellant as part of the costs of appeal.

#### **Sec. 15.16.2. – Stay of proceedings while under appeal.**

An appeal under this Article shall stay all legal proceedings with regard to collection of the occupation tax from an appellant; however, such appeal shall not preclude the city from pursuing legal proceedings to enjoin any violation of this Article or of any other Article of this Code.

#### **Sec. 15.16.3. – Certificate Review Hearing Officer.**

A certificate review hearing officer shall be appointed by the mayor and approved by the City Council. The certificate review hearing officer shall have the following duties:

- (a) To hear appeals from decisions of the City Manager or his designee denying the issuance or renewal of any license pertaining to this chapter, except those licenses issued pursuant to Article XII of this Chapter;
- (b) To hear appeals from the decisions of the City Manager or his designee revoking or suspending any license pertaining to this chapter, except those licenses issued pursuant to Article XII of this Chapter;
- (c) To hear appeals from the decisions of the City Manager or his designee denying the issuance of permits pertaining to this chapter, except those permits issued pursuant to Article XII of this Chapter;
- (d) To hear appeals from the decisions of the City Manager or his designee revoking or suspending an employee permit to this chapter, except those permits issued pursuant to Article XII of this Chapter.

#### **Sec. 15.16.4. Hearings.**

In all hearings pursuant to this chapter, the following procedures shall prevail, and the proceeding shall be as informal as compatible with justice:

- (a) A certificate review hearing officer shall convene the hearing.
- (b) The proceeding before the certificate hearing officer shall be recorded, and all documents and other materials considered by the certificate hearing officer shall be preserved as the record of the proceedings. The record of the proceedings shall be preserved for not less than one hundred fifty (150) calendar days after the hearing.

- (c) Any alleged violations or misconduct levied against the appellant and scheduled for a hearing before the certificate hearing officer shall be read completely to appellant at the commencement of the hearing, unless waived by appellant.
- (d) The certificate hearing officer may receive evidence in support of the alleged violations or misconduct as filed against appellant. Decisions of the certificate review hearing officer are to be supported by the evidence accepted and admitted during the hearing.
- (e) The city shall bear the burden of proof. The standard of proof shall be by a preponderance of the evidence.
- (f) The order of proof shall be as follows: The city representative shall present the case-in-chief in support of the alleged violations or misconduct; the appellant may present a case-in-chief, if desired. Each party may be allowed to present one (1) case-in-rebuttal.
- (g) The appellant and city may be represented by counsel, may present evidence, and may examine and cross-examine witnesses. Additionally, the certificate review hearing officer is permitted to question witnesses. A party is permitted no more than fifteen (15) minutes to present that party's case-in-chief; a case-in-rebuttal is permitted no more than ten (10) minutes of presentation. Presentation of arguments and evidence may be in oral or written form, except that affidavits of individuals who are unavailable for cross-examination shall not be accepted, admitted, or considered by the certificate review hearing officer.
- (h) Following the presentation of evidence, the hearing officer shall issue a written decision within thirty (30) calendar days of the date of the hearing. A copy of the decision shall be mailed, via registered or certified mail, to the parties or the parties' representatives. For the appellant, the decision shall be mailed to the address provided on the notice of appeal. Should the certificate hearing officer fail to issue a timely decision, on the thirty-first day after the date of the hearing appellant may seek review as if a decision adverse to appellant had been rendered.
- (i) The findings of the certificate hearing officer shall be final unless a party files a petition for writ of certiorari to the superior court of the county within thirty (30) calendar days of the decision of the certificate hearing officer.

**Sec. 15.16.5. - Service of notices.**

For the purpose of this article, notice shall be deemed delivered when personally served or, when served by mail, within three (3) days after the date of deposit in the United States mail.

**ARTICLE XVII. – TRANSITION PERIOD**

**Sec. 15.17.1- Existing License.**

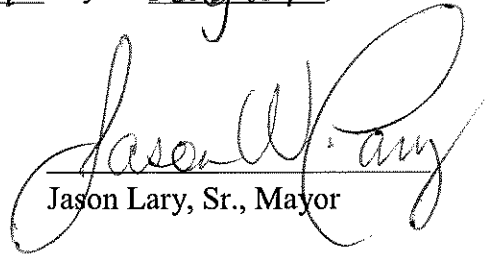
Any legal, validly issued existing license or permit issued by DeKalb County within the incorporated boundaries of the City of Stonecrest shall be valid within the City of Stonecrest for the calendar year of 2017. Any such licensee or permit holder shall be required to comply with the requirements of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

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

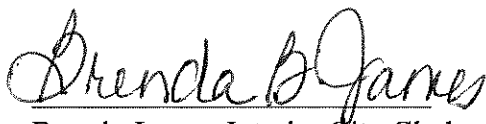
## **SECTION 10.**

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 RESOLVED AND EFFECTIVE this the 7 day of August, 2017.

  
Jason Lary, Sr., Mayor

Attest:

  
Brenda James, Interim City Clerk

Approved as to Form:

  
Thompson Kurrie, Jr.  
City Attorney