

1 STATE OF GEORGIA  
2 COUNTY OF DEKALB  
3 CITY OF STONECREST  
4

ORDINANCE 2017- 08-01

5 **AN ORDINANCE TO ADOPT ARTICLE 2 – ELECTRICAL FRANCHISES, IN**  
6 **CHAPTER 8 – FRANCHISES, OF THE CITY OF STONECREST, GEORGIA**  
7 **CODE OF ORDINANCES**  
8

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

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

19 **WHEREAS**, the Mayor and City Council find it desirable and in the interest of the  
20 health, safety, and welfare of the citizens of the City to adopt an ordinance regulating use of the  
21 City’s right-of-way by certain electrical service providers.  
22

23 **SECTION 1:**

24 **BE IT ORDAINED** by the Mayor and Council of the City of Stonecrest, Georgia, and it  
25 is hereby ordained by authority of same, Division I – *Snapping Shoals Electric Membership*  
26 *Corporation* of Article II – *Electrical Franchises* in Chapter 8 – *Franchises* is hereby adopted as  
27 follows:  
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29 **“ARTICLE II. – ELECTRICAL FRANCHISES**

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30 **DIVISION I. – SNAPPING SHOALS ELECTRIC MEMBERSHIP CORPORATION**  
31 **FRANCHISE**

32 **Sec. 8-2-1 - Grant of franchise.**

33 The authority, right, permission and consent are hereby granted to Snapping Shoals Electric  
34 Membership Corporation (hereinafter sometimes referred to as "Snapping Shoals EMC"), its  
35 successors, lessees and assigns (the "Company"), subject to the terms and conditions set  
36 forth hereinafter for a period of thirty-five (35) years, to occupy and use the streets, alleys  
37 and public places of the City within the present and future limits of the City as from time to  
38 time the Company may deem proper or necessary for the overhead or underground

39 construction, maintenance, operation and extension of poles, towers, lines, wires, cables,  
40 conduits, insulators, transformers, appliances, equipment, connections and other apparatus  
41 (collectively, the "Facilities") for any business or purpose, including transmitting,  
42 conveying, conducting, using, supplying and distributing electricity for light, heat, power  
43 and other purposes for which electric current may be or become useful or practicable for  
44 public or private use, and to re-enter upon such streets, alleys and public places from time to  
45 time as the Company may deem proper or necessary to perform these functions, and to cut  
46 and trim trees and shrubbery when and where necessary, in the judgment of the Company, to  
47 ensure safe and efficient service.

48 8-2-2 - Payment of franchise fees required.

49 (a) Beginning September 1, 2017, the use by Snapping Shoals EMC of the streets,  
50 alleys, public places and other property of the City for the operation of the  
51 Facilities, and the grant of the requisite street franchise rights, is expressly  
52 conditioned upon payment of franchise fees pursuant to this chapter, and  
53 continued use and occupancy of such City property for said purpose without  
54 payment of such franchise fees is unlawful, and the City shall be entitled to  
55 enforce compliance with this chapter by appropriate proceeding at law or in  
56 equity.

57 (b) If not paid by the due date, unpaid franchise fees shall accrue interest at the  
58 maximum rate authorized by state law.

59 8-2-3 - Terms and conditions.

60 The rights, permission and consents herein contained are made for the following  
61 considerations and upon the following terms and conditions:

62 (a) Starting October 30, 2017, the Company shall pay to the City a sum of money equal  
63 to four percent (4%) of the gross sales of electric energy to all of the Company's  
64 customers served within the corporate limits of the City during the previous month.  
65 Payments collected by the Company for eligible sales made in 2017, 2018, 2019, and  
66 2020 shall be remitted to the City within thirty (30) calendar days of the last calendar  
67 day of the preceding month. Payments collected by Company for sales made after  
68 December 31, 2020, shall be remitted annually on March 1 (starting in 2022) for the  
69 collections by Company for sales made in the prior calendar year.

70 (b) All payments shall be accompanied by a report prepared by the Company showing  
71 the volume of gross sales for all service classifications (residential, commercial,  
72 industrial, etc.) for the preceding month.

73 (c) Upon request by the City, which request shall not be made more often than once  
74 every three years, Company shall cause an independent audit to be performed of its  
75 franchise fee payments for any period previously un-audited. Such audit shall be at  
76 Company's expense. A request by the City under this provision shall not prevent the  
77 City from undertaking its own audits, at times deemed appropriate by the City, of

78 Company's performance under this article and its franchise for any period previously  
79 un-audited.

80 (d) The amount, if any, of any tax, fee, charge or imposition of any kind required,  
81 demanded or exacted by the City on any account, other than ad valorem taxes on  
82 property and license taxes on the sale of home appliances, shall operate to reduce to  
83 the extent of such tax, fee, charge or imposition the amount due from the percentage  
84 of gross sales as provided in subsection (a) of this section.

85 (e) The Company shall fully protect, indemnify and save harmless the City from all  
86 damages to person or property caused by the construction, maintenance, operation or  
87 extension of poles, wires or other apparatus, or conditions of streets, alleys or public  
88 places resulting therefrom, for which the said City would otherwise be liable.

89 (f) The Company shall, in constructing, maintaining, operating and extending its poles,  
90 wires and other apparatus, submit and be subject to all reasonable exercises of the  
91 police power by the City. Nothing contained herein, however, shall require the  
92 Company to surrender or limit its property rights created hereby without due process  
93 of law, including adequate compensation, for any other purpose at the instance of the  
94 City or for any purpose at the instance of any other entity, private or governmental.

95 (g) The grant of the rights, permission and consents by the City to the Company  
96 contained in this chapter are specifically conditioned upon the payment of all sums  
97 due the City in accordance with the rate, conditions and payment dates set forth in  
98 subsection (a) of this section, and failure by the Company to timely pay the franchise  
99 fees required by said subsection (a) shall constitute a forfeiture of all rights granted  
100 by this chapter. The Company's continued use and occupancy of the streets, alleys  
101 and public places of the City for the aforesaid purposes shall evidence the Company's  
102 acceptance of the franchise granted hereby and shall render the Company liable for  
103 payment of all fees required by subsection (a) of this section. In the event of  
104 forfeiture for failure to comply with such requirements, the Company shall  
105 nevertheless remain liable for all sums accrued until such time as the streets are  
106 vacated due to such forfeiture.

107 (h) For purposes of this Section, the term "Distribution Facilities" means poles, lines,  
108 wires, cables, conductors, insulators, transformers, appliances, equipment,  
109 connections, and other apparatus installed by or on behalf of the Company (whether  
110 before or after the adoption of this ordinance) in the streets, alleys, or public places  
111 of the City for the purpose of distributing electricity within the present and future  
112 corporate limits of the City. Distribution Facilities do not include any of the  
113 following: (i) electric transmission lines with a design operating voltage of 46  
114 kilovolts or greater (hereinafter referred to as "Transmission Lines"); (ii) poles,  
115 towers, frames, or other supporting structures for Transmission Lines (hereinafter  
116 referred to as "Transmission Structures"); (iii) Transmission Lines and related wires,  
117 cables, conductors, insulators, or other apparatus attached to Transmission  
118 Structures; (iv) lines, wires, cables, or conductors installed in concrete-encased  
119 ductwork; or (v) network underground facilities.

- 120 (i) In the event that the City or any other entity acting on behalf of the City requests or  
121 demands that the Company relocate any Distribution Facilities from their then-  
122 current locations within the streets, alleys, and public places of the City in  
123 connection with a public project or improvement, then the Company shall relocate, at  
124 its expense, the Distribution Facilities affected by such project or improvement. The  
125 Company's obligations under this Section 8-2-3(i) shall not affect the amounts paid  
126 or to be paid to the City under the provisions of paragraph (a) of this Section 8-2-3.  
127 Notwithstanding the foregoing provisions of this Section 8-2-3(i), the Company shall  
128 not be obligated to relocate, at its expense, any of the following: (i) Distribution  
129 Facilities that are located on private property (which shall include those located on  
130 easements acquired by the Company from persons or entities other than the City) at  
131 the time relocation is requested or demanded; (ii) Distribution Facilities that are  
132 relocated in connection with sidewalk improvements (unless such sidewalk  
133 improvements are related to or associated with road widenings, the creation of new  
134 turn lanes, or the addition of acceleration/deceleration lanes); (iii) Distribution  
135 facilities that are relocated in connection with streetscape projects or other projects  
136 undertaken primarily for aesthetic purposes; (iv) Distribution Facilities that are  
137 converted from an overhead configuration or installation to an underground  
138 configuration or installation; or (v) Distribution Facilities that do not obstruct or  
139 interfere with plans for road widening, the creation of new turn lanes, or acceleration  
140 and deceleration lanes.
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- 142 (j) The City and the Company recognize that both parties benefit from economic  
143 development within the City. Accordingly, when it is necessary to relocate any of the  
144 Company's Facilities (whether Distribution Facilities, Transmission Lines,  
145 Transmission Structures, or other facilities) within the City, the City and the  
146 Company shall work cooperatively to minimize costs, delays, and inconvenience to  
147 both parties while ensuring compliance with applicable laws and regulations. In  
148 addition, the City and the Company shall communicate in a timely fashion to  
149 coordinate City projects in an effort to minimize relocation of the Company's  
150 Facilities. Such communication may include, but is not limited to, (i) both parties'  
151 participation in the Georgia Utilities Coordinating Council, Inc. (or any successor  
152 organization) or a local utilities coordinating council (or any successor organization)  
153 and (ii) both parties' use of the National Joint Utility Notification System (or any  
154 successor to such system mutually acceptable to both parties).
- 155 (k) With regard to each project undertaken by or on behalf of the City for which the  
156 Company is not obligated, in accordance with Section 8-2-3(i), to pay the cost of  
157 relocation, the City shall pay the Company in advance for the Company's estimated  
158 cost to relocate any of the Company's Facilities (whether Distribution Facilities,

159 Transmission Lines, Transmission Structures, or other facilities) in connection with  
160 such project.

161 (l) Notwithstanding anything herein to the contrary, the Company shall not be obligated  
162 to pay to the City the fee provided for herein, or any portion thereof, on the gross  
163 sales of electric energy to customers living within areas that, on the effective date of  
164 this franchise, are not both: (i) within the City limits on the effective date, and (ii)  
165 depicted as being within the City limits on the maps provided to Company and  
166 attached hereto as Exhibit A, which exhibit shall be available for inspection during  
167 business hours in the office of the city clerk.

168 (m) Notwithstanding anything herein to the contrary, the Company shall not be obligated  
169 to pay to the City the fee provided for herein, or any portion thereof, on the gross  
170 sales of electric energy to customers living within areas that, after the effective date  
171 of this franchise, are annexed to the corporate limits of the City before ninety (90)  
172 days after the Company receives written notice from the City that the City intends to  
173 annex (or has already annexed) the territory in which said customers are located. To  
174 be effective, any such notice must include an electronic map of the annexed areas in  
175 a format reasonably acceptable to Company.

176 **SECTION 2:**

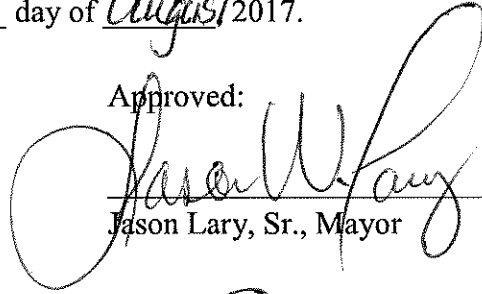
- 177 1. It is hereby declared to be the intention of the Mayor and City Council that all sections,  
178 paragraphs, sentences, clauses and phrases of this Ordinance are and were, upon their  
179 enactment, believed by the Mayor and City Council to be fully valid, enforceable and  
180 constitutional.
- 181 2. It is hereby declared to be the intention of the Mayor and City Council that, to the  
182 greatest extent allowed by law, each and every section, paragraph, sentence, clause or  
183 phrase of this Ordinance is severable from every other section, paragraph, sentence,  
184 clause or phrase of this Ordinance. It is hereby further declared to be the intention of the  
185 Mayor and City Council that, to the greatest extent allowed by law, no section, paragraph,  
186 sentence, clause or phrase of this Ordinance is mutually dependent upon any other  
187 section, paragraph, sentence, clause or phrase of this Ordinance.
- 188 3. In the event that any phrase, clause, sentence, paragraph or section of this Ordinance  
189 shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise  
190 unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is  
191 the express intent of the Mayor and City Council that such invalidity, unconstitutionality,  
192 or unenforceability shall, to the greatest extent allowed by law, not render invalid,  
193 unconstitutional or otherwise unenforceable any of the remaining phrases, clauses,  
194 sentences, paragraphs or sections of the Ordinance and that, to the greatest extent allowed  
195 by law, all remaining phrases, clauses, sentences, paragraphs and sections of the  
196 Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.
- 197 4. All ordinances or resolutions and parts of ordinances or resolutions in conflict herewith  
198 are hereby expressly repealed.
- 199 5. The within ordinance shall become effective upon its adoption.

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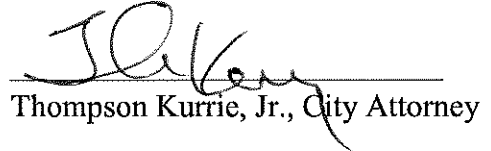
6. The provisions of this Ordinance shall become and be made part of the Code of the City of Stonecrest, Georgia, and the sections of this Ordinance may be renumbered to accomplish such intention.”

**SO ORDAINED AND EFFECTIVE** this the 7 day of August 2017.

Approved:

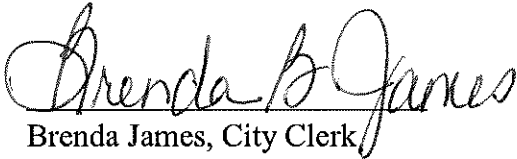


Jason Lary, Sr., Mayor



Thompson Kurrie, Jr., City Attorney

Attest:



Brenda James, City Clerk