

STATE OF GEORGIA
COUNTY OF DEKALB
CITY OF STONECREST

ORDINANCE 2017- 06-05

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

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

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

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

WHEREAS, the Mayor and City Council find it desirable and in the interest of the health, safety, and welfare of the citizens of the City to adopt the City's alcohol ordinance in light of the evolving Georgia Alcoholic Beverage Code and the formation of the City;

WHEREAS, the Mayor and City Council, in order to promote the health, safety, and general welfare of the citizens of the city, desire to establish reasonable and uniform regulations to prevent the negative secondary effects of adult entertainment establishments such as: (i) establishments having performances that are distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas where there is physical contact between patrons and employees of the establishment; (ii) establishments that distribute materials and novelty items and other objects which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas or devoted to the sale or consisting of said printed material or novelty items which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas; and, (iii) establishments that present material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein;

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

WHEREAS, the Mayor and City Council find that nudity, semi-nudity, conduct by bikini clad persons, and/or sexual conduct coupled with alcohol in public places begets undesirable

behavior, and that sexual, lewd, lascivious, and salacious conduct among patrons and employees within alcohol beverage establishments results in violation of law and dangers to public health, safety, and welfare, see *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007);

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 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 4.5.5 and Ordinance 2017-_____;

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 for in the Charter and protect the public health, safety and welfare of the citizens of the City.

SECTION 1:

NOW, THEREFORE, BE IT RESOLVED,

BE IT ORDAINED by the Mayor and Council of the City of Stonecrest, Georgia, and it is hereby ordained by authority of same, Chapter 4 — Alcoholic Beverages is hereby adopted as follows:

Chapter 4 - ALCOHOLIC BEVERAGES

ARTICLE 1. - GENERAL

Sec. 4.1.1. - Purposes.

The purposes of this chapter shall include, but not be limited to, the following:

- (a) Compliance with and effectuation of state law;
- (b) Promotion and effectuation of the city's land use and zoning policies/plans;
- (c) Prevention of the unlawful sale and use of alcohol;
- (d) Protection of schools, homes, churches, parks and other entities; and (e) Protection of the public health, safety and welfare.

Sec. 4.1.2. - Definitions.

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

Alcohol means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

Alcoholic beverage means and includes all alcohol, distilled spirits, beer, malt beverage, wine, or fortified wine.

Alcoholic beverage caterer means a person or entity possessing a valid off-premises alcoholic beverage catering license from the city or another local political subdivision.

Beer or malt beverage means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops or any other similar product, or any combination of such products in water, containing not more than six (6) percent alcohol by volume, and including ale, porter, brown, stout, lager beer, small beer and strong beer. The term "beer" or "malt beverage" does not include sake, known as Japanese rice wine.

Bottle club means any restaurant, music hall, theater or other establishment providing food or entertainment in the normal course of business, and in which the owners or their agents knowingly allow patrons to bring in and consume the patrons' own alcoholic beverages.

Craft beer market means a retail package store for malt beverages to be consumed off-premises, where the primary means of delivery of the package is in growlers, as defined by this Code.

Day means a period from 12:00 a.m. through 11 :59 p.m.

Distilled spirits or spirituous liquor means any alcoholic beverage obtained by distillation or containing more than twenty-one (21) percent alcohol by volume including, but not limited to, all fortified wines.

Employee means any person who regularly performs any service on the alcoholic beverage licensed premises on a full-time, part-time, or contract basis, regardless of whether the person is denominated an owner, partner, member, employee, independent contractor, 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.

Family means and includes any person related to the person indicated within the first degree of consanguinity or affinity, as determined according to civil law.

Fixed salary means the amount of compensation paid any member, officer, agent or employee of a bona fide private club as may be fixed by its members at a prior annual meeting or by the city council out of the general revenue of the club and shall not include a commission on any profits from the sale of alcoholic beverages. For the purpose of this definition, tips or gratuities that are added to the bills under club regulation shall not be considered as profits from the sale of alcoholic beverages.

Full service kitchen means a kitchen consisting of a commercial sink and refrigerator and either a commercial stove, grill or microwave oven approved by the City manager or his designee.

Licensee means the individual to whom a license is issued or, in the case of partnership or corporation, all partners, officers and directors of the partnership or corporation.

Liter means metric measurement currently used by the United States.

Manufacturer means any maker, producer or bottler of an alcoholic beverage. "Manufacturer" also means:

- (a) In the case of distilled spirits, any person engaged in distilling, rectifying, or blending any distilled spirits; provided, however, that a vintner that blends wine with distilled spirits to produce a fortified wine shall not be considered a manufacturer of distilled spirits.
- (b) In the case of malt beverages, any brewer. (c)
In the case of wine, any vintner.

Package means a bottle, can, keg, barrel or other original consumer container.

Private club means any nonprofit association organized under the laws of this state that meets all of the following criteria:

- (a) Has been in existence at least one (1) year prior to the filing of its application for a license to be issued pursuant to this chapter.
- (b) Has at least seventy-five (75) regular dues-paying members.
- (c) Owns, hires or leases a building space within a building for the reasonable use of its members with all of the following:
 - (i) Full service kitchen and dining room space and equipment.
 - (ii) A sufficient number of employees for cooking, preparing and serving meals for its members and guests.

- (d) Has no member, officer, agent or employee directly or indirectly receiving, in the form of salary or other compensation, any profits from the sale of alcoholic beverages beyond a fixed salary.

Restaurant means any business whose primary function or operation is the preparation of food and/or drink for consumption on-premises, and whose gross profits are derived at 60 percent from the sale of food.

Retailer, retail dealer, retail licensee or retail outlet means any person or other legal entity selling alcoholic beverages, either in unbroken packages or for consumption on the premises, at retail only to consumers and not for resale.

Wine means any alcoholic beverage containing not more than twenty-one (21) percent alcohol by volume made from fruits, berries or grapes, either by natural fermentation or by natural fermentation with brandy added. "Wine" includes, but is not limited to, all sparkling wines, champagnes, combinations of such beverages, vermouths, special natural wines, rectified wines and like products. "Wine" does not include cooking wine mixed with salt or other ingredients so as to render it unfit for human consumption as a beverage. A liquid shall first be deemed to be a wine at that point in the manufacturing process when it conforms to the definition of wine contained in this section.

ARTICLE 11- LICENSING

Sec. 4.2.1. — License required.

- (a) Except as specifically authorized in this chapter, no person, entity and/or business shall engage in the manufacture, sale or distribution of alcoholic beverages in the city without first having obtained a license as provided under this article.
- (b) The city license shall not be valid without current state license(s).
- (c) A retail establishment shall not have alcoholic beverages on the sales floor or in cooler unless the establishment has a current city alcoholic beverage license.

Sec. 4.2.2. - Sale in incorporated area of city; scope of license.

- (a) Alcoholic beverages may be sold in the incorporated area of the city under a license granted by the city council upon the terms and conditions provided in this chapter.
- (b) The businesses of manufacturing, distributing, selling, handling and otherwise dealing in or processing alcoholic beverages are privileges and not rights pursuant to O.C.G.A. 3-3-1 , and such privileges shall not be exercised within the city limits without full compliance with all applicable licensing, regulatory, and revenue requirements of local, state and federal rules, regulations, and laws, including this chapter.
- (c) All licenses hereunder shall have printed on the front these words: "This license is a mere privilege subject to be revoked and annulled, and is subject to any future ordinances which may be enacted."

Sec. 4.2.3. - Separate license for each location.

A separate application for an alcoholic beverage license must be made for each location and a separate license must be issued.

Sec. 4.2.4. - Consumption sales only.

Persons holding a license to sell distilled spirits for consumption on the premises shall not be permitted to sell liquor by the package or bottle, except as provided in Sec. 4.4.28.

Sec. 4.2.5. - Temporary permits.

Any nonprofit civic organization may be issued temporary alcoholic beverage permits for events. Such permits shall have the effect of a license issued pursuant to the provisions of this article and shall authorize sale by the drink of such alcoholic beverages as are specified in the permit. The nonprofit civic organization must make application and pay a fee in the amount established by action of the city council, a copy of which is on file with the clerk of the city. Such civic organizations shall comply with all the general ordinances and the licensing and regulations for a consumption-on-the-premises establishment, apart from having a full-service kitchen.

Sec. 4.2.6. - Off-premises alcoholic beverage catering license.

- (a) Any person or entity that possesses a valid license from the city to sell or otherwise dispense malt beverages or wine by the glass may apply for an off-premises alcoholic beverage catering license to sell or otherwise dispense malt beverages or wine by the glass at an authorized catering function, using the form prescribed by the City Manager or his designee.
- (b) Any person or entity that possesses a valid license from the city to sell or otherwise dispense malt beverages, wine, or distilled spirits by the glass may apply for an off-premises alcoholic beverage catering license to sell or otherwise dispense malt beverages, wine, or distilled spirits, using the form prescribed by the City Manager or his designee.
- (c) The annual licensing fee for an off-premises alcoholic beverage catering license shall be set by the city council, provided that the total of the licensing fee shall not exceed \$5,000.00 for any one licensed location.

Sec. 4.2.7. - Off-premises alcoholic beverage catering event permit.

- (a) The City Manager or his designee shall be responsible for issuing off-premises alcohol catering event permits and shall develop rules and regulations governing all off-premises alcoholic beverage catering events.
- (b) Resident alcoholic beverage caterers. In order to sell or otherwise distribute distilled spirits, malt beverages, or wine at an authorized catering function within the corporate limits of the city, an alcoholic beverage caterer licensed by the city must apply for an event permit on the form prescribed by the City Manager or his designee. The application must include:

- (i) The name of the caterer;
 - (ii) The date, address and time of the event; and
 - (iii) The licensed alcoholic beverage caterer's license number.
- (c) Non-resident alcoholic beverage caterers. In order to sell or otherwise distribute distilled spirits, malt beverages, or wine at an authorized catering function within the corporate limits of the city, an alcoholic beverage caterer licensed by another local political subdivision must apply for an event permit on the form prescribed by the City Manager or his designee. The application must include:
- (i) The name of the caterer;
 - (ii) The date, address and time of the event;
 - (iii) The alcoholic beverage caterer's license from another jurisdiction; and
 - (iv) An event permit fee in the amount established by action of the city council.
- (d) An alcoholic beverage caterer must maintain the original event permit in the vehicle transporting the alcoholic beverages to the event at all times.
- (e) Excise taxes are imposed upon the sale of alcoholic beverages by an alcoholic beverage caterer licensed by the city as provided in Article IV.
- (f) Excise taxes are imposed upon the total of quantity of individual alcoholic beverage drinks brought into the corporate limits of the city by an alcoholic beverage caterer licensed by another local political subdivision in the amount provided in section 4.4.2 and shall be paid within 30 days of the conclusion of the event.
- (g) Sunday sales. An alcoholic beverage caterer wishing to cater an event on Sunday must possess a valid Sunday sales license and comply with the requirements of state law with respect to the service of alcoholic beverages on Sunday.
- (h) It is unlawful for a licensed alcoholic beverage caterer to employ any person under 21 years of age who, in the course of such employment, would dispense, serve, sell or handle alcoholic beverages.
- (i) The alcohol beverage caterer shall comply with all the general ordinances and the licensing and regulations for a consumption-on-the-premises establishment during the permitted event, with the exception of the full-service kitchen requirement and the employee alcoholic beverage permit and non-alcoholic beverage permit requirement.

Sec. 4.2.8. - Persons eligible for licensing.

- (a) No license for the sale of alcoholic beverages shall be granted to any person or entity, where the majority of stock or partnership interests are controlled by individuals who are not citizens of the United States or aliens lawfully admitted for permanent residence. If an entity is owned by other entities, then this requirement shall apply to the majority stockholders of the other entities to ensure that a license is not granted to an ineligible person or entity.
- (b) No license for the sale of alcoholic beverages shall be granted to any person that has not attained the age of eighteen (18) years.

- (c) No license for the sale of alcoholic beverages shall be granted to any person or entity for alcoholic beverage sales at a "sexually oriented business" as defined in section 4.5.5(b) and Chapter 15, as adopted by the City of Stonecrest.
- (d) Licenses for corporations shall be issued in the name of the corporation and applied for by and in the name of the majority stockholder, officer and/or employee primarily responsible for the operation of the licensed premises. Licenses for partnerships shall be issued in the name of the partnership and shall be applied for by and in the name of the partner and/or employee primarily responsible for the operation of the licensed premises.
 - (i) Where the majority stockholder is not an individual, the license shall be issued to jointly to the corporation and local manager of the business.
 - (ii) In the case of a partnership, the license shall be issued to the partners with the highest ownership percentage. In the case of a sole proprietorship, the sole proprietor shall be the applicant and the licensee.
- (e) No license for the sale of alcoholic beverages shall be granted to any person who has been convicted under any federal, state or local law of any felony within the last ten (10) years, has been on felony probation or parole within the last five (5) years, or released from prison on felony charges within the last five (5) years prior to filing an application. The term conviction includes any adjudication of guilt or a plea of guilty or nolo contendere. This subsection shall apply to any corporation or partnership where any stockholder with ownership of ten percent or more, all corporate officers, and all partners fails to meet these requirements.
- (f) No license for the sale of alcoholic beverages 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 filing an application. The term "conviction" includes any adjudication of guilt or a plea of guilty or nolo contendere. The term "moral turpitude" shall include any violation that involves gambling, drugs, or a driving while intoxicated conviction in less than five (5) years from a prior driving while intoxicated conviction, and sale of alcohol with the exception of any violations of section 4.5.7. This subsection shall apply to any corporation or partnership where any stockholder with ownership of ten percent or more, all corporate officers, and all partners fails to meet these requirements.
- (g) It is unlawful for any city employee of a department regulating alcoholic beverages, or the employee's spouse or minor children, to have any whole, partial or beneficial interest in any license to sell alcoholic beverages in the city.
- (h) No license for the sale of alcoholic beverages shall be granted to any person who has had any license issued in any jurisdiction revoked within two (2) years prior to the filing of the application.

Sec. 4.2.9. — Application for alcoholic beverage license.

- (a) All persons or entities desiring to sell alcoholic beverages shall make application on the form prescribed by the City Manager or his designee.
- (b) The application shall include:
 - (i) The Applicant's full name, birth date, residential addresses for the past five years, name and location of their employers for the last five years, spouse's name, both the applicant and their spouse's criminal history showing all arrests, convictions, guilty pleas and dispositions for

alleged violations of any local, state and/or federal law for the last five years prior to the application, and, where applicable, the name of the partnership or corporation for whom they are applying, and any trade business and/or organizational name under which the licensed premises may operate;

- (ii) The proposed business to be carried on;
 - (iii) If a partnership, the names and addresses of the partners;
 - (iv) If a corporation, the names and addresses of the officers; (v) The name and address of the agent for service of process;
 - (vi) The name and address of the manager;
 - (vii) The names and addresses of all stockholders holding ten (10) or more percent or of any class of corporate stock, or any other entity having a financial interest in each entity which is to own or operate the establishment; and
 - (viii) If the manager changes, the applicant must furnish the City Manager or his designee with the name and address of the new manager and other information as is requested within ten (10) days of such change.
- (c) All applications for a package liquor license, both original and renewals, must be accompanied by a full and complete statement relative to any and all interest in retail liquor stores. This shall include names and addresses of all persons possessing a legal ownership in the subject establishment, together with any interest that each person or that any family member of each person has in any other retail liquor store located in the city or any other place; the ownership of the land and building where such retail business is operated; the amount of rental paid for the land and building, the manner in which such rental is determined, and to whom and at what intervals the rental is paid; the names and addresses, by affidavit from the owner, lessor or sub lessor of the land and building, of all persons having any whole, partial, beneficial or other legal interest in and to the land and building on and in which the retail liquor store is located; and any other information called for by the City Manager or his designee to ensure compliance with the provisions of this division. Any change in relationship herein declared must be filed when made with the City Manager or his designee and failure to so file within a period of ten (10) days after this change is made shall be grounds for the city to cancel the license.
- (d) All applications shall be sworn to by the applicant before a notary public or other officer authorized to administer oaths.
- (e) Upon receipt of the application, it shall be forwarded to the City Manager, or his designee, for a background investigation of the applicant, and all other persons identified in the application as required by subsection (b) of this section. The investigation may include a check of any criminal history anywhere in the United States, a check of any other jurisdiction identified by the applicant where he has previously held an alcohol license of any kind, and any other factor deemed relevant by the City Manager, or his designee. As a prerequisite to the issuance of any such initial permit or license, the applicant shall furnish a complete set of fingerprints to be forwarded to the Georgia Bureau of Investigation, which shall search the files of the Georgia Crime Information Center for any instance of criminal activity during the two years immediately preceding the date of the application. The Georgia Bureau of Investigation shall also submit the fingerprints to the Federal Bureau of Investigation under the rules established by the United States Department of Justice for processing and identification of records.

- (f) In all instances in which an application is denied or dismissed with prejudice under the provisions of this section, the applicant may not reapply for a license for at least one (1) year from the final date of such denial.
- (g) An alcoholic beverage license shall be granted unless an applicant fails to meet the qualifications for an alcoholic beverage license under this chapter. The City Manager or his designee shall provide written notice to any applicant whose application is denied under the provisions of this chapter within thirty (30) days of filing a properly completed application or within fifteen days (15) of obtaining the criminal background check or records identified in subsection (e), whichever is later. An application for an alcoholic beverage license is complete when it contains the information required by this chapter and is accompanied by the license fee in the amount established by action of the city council. Such written notification shall set forth in reasonable detail the reasons for such denial and shall advise the applicant of the right to appeal to the alcohol beverage review board under the provisions of this division within fifteen (15) days from date of notice. If a license is not issued or denied within the time frame specified herein, the license shall be automatically approved.

Sec. 4.2.10. - Issuance of license and employee permits; employee permit fees.

- (a) All employees of any licensed establishment must hold an employee permit. The conditions and procedures governing the issuance of alcohol permits for employees are set forth in this section.
- (b) An employee permit shall be issued unless the applicant fails to meet the qualifications for an employee permit under this chapter. Any employee permit identified in this chapter will be issued or the issuance of an employee permit will be denied within thirty (30) days after submission of a properly completed application or within fifteen (15) days of the records in subsection (d), whichever is later. An application for an employee permit is complete when it contains the information required by this chapter and is accompanied by the permit fee in the amount established by action of the city council. A permit shall be valid for twelve (12) months from the date of issuance. If a permit is not issued or denied within the time frame specified herein, the permit shall be automatically approved.
- (c) No person requiring a permit may be employed by or work in an establishment as defined in this chapter until such person has filed an application, paid the fee for and obtained a work permit from the City Manager or his designee. No person shall be issued a permit who has been convicted in this city, county, state, or in any federal court within five (5) years immediately prior to the application for employment for soliciting for prostitution, keeping a disorderly place, illegally dealing in narcotics, sex offenses or any charge relating to the manufacture or sale of intoxicating liquors or any felony or misdemeanor of moral turpitude.
- (d) An application for a permit shall include the applicant's legal name, all of the applicant's aliases and/or any other name by which the applicant has ever been known, mailing address, 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), and a list of all prior criminal convictions. The City Manager or his designee shall make a complete search relative to any police record of the applicant. As a prerequisite to the issuance of any such initial permit or license, the employee shall furnish a complete set of fingerprints to be forwarded to the Georgia Bureau of Investigation, which shall search the files of the Georgia Crime Information Center for any instance

of criminal activity during the two years immediately preceding the date of the application. The Georgia Bureau of Investigation shall also submit the fingerprints to the Federal Bureau of Investigation under the rules established by the United States Department of Justice for processing and identification of records.

- (e) Any permit for employment issued hereunder shall expire twelve (12) months from the date of issuance unless earlier revoked or suspended. The City Manager or his designee may prescribe reasonable fees for certifying the eligibility for employment.
- (f) An employee holding a permit issued pursuant to this chapter shall at all times during his working hours have the permits available for inspection at the premises.
- (g) An employee shall provide his employer with a legible copy of his permit which copy shall be maintained by the employer as part of its business records.

Sec. 4.2.11. - Expiration; renewal.

- (a) All licenses granted under this Article shall expire on December 31 of each year. A licensee who desires to renew the license shall file application, with the requisite fee heretofore provided, with the City Manager or his designee on the form provided for renewal of the license for the ensuing year. All applications for renewal will be reviewed by the City Manager or his designee. Licensees do not have a right to automatic renewal and must be in compliance with all rules and regulations for the granting of licenses. Applications for renewal must be filed before November 30 of each year; otherwise penalties and interest will be assessed. No renewal license shall be granted after December 31, but such application shall be treated as an initial application and the applicant shall be required to comply with all rules and regulations for the granting of licenses as if no previous license had been held.
- (b) All licenses granted under this division shall be for the full calendar year or for the number of months remaining in the calendar year. License fees shall be prorated based on the number of months remaining in the calendar year; partial months shall be counted as a full month. License fees are not refundable.
- (c) Any person renewing any license issued under this chapter who pays the required fee or any portion thereof after the date set by law for such payment shall pay, in addition to the annual fee, a late payment penalty in addition to an assessment of interest at the rate often (10) percent of the amount annual fee for the failure to renew; and an additional penalty of twenty-five (25) percent of the amount due shall be assessed for any fraud or intent to evade.
- (d) Failure to fully complete the renewal application, as required by the City Manager or his designee will delay the renewal. The failure to furnish complete information within thirty (30) days after being requested shall result in automatic denial of the renewal.

Sec. 4.2.12. - Transferability.

- (a) No license for the sale of alcoholic beverages shall be transferable, except as otherwise provided in this section.

- (b) In case of the death of the licensee, the establishment shall be allowed to continue to sell alcoholic beverages for a period of thirty (30) days from the date of death, or until expiration of the license, or until approval of a new license, whichever occurs first, provided however that the City Manager or his designee must be notified of the licensee's death within ten (10) days of the death or the license shall automatically terminate on the eleventh day following the death of the licensee.
- (c) If a license is surrendered, or a licensee severs the association with the licensed establishment, the establishment may continue to sell alcoholic beverages for a period of thirty (30) days from the date of surrender, or from the date determined to be the date of severance, provided however that the City Manager or his designee must be notified of the change within ten (10) days of the severance or the license shall automatically terminate on the eleventh day following the date of the severance. Upon issuance of a new license, the authorization to sell under the previous license shall be revoked by operation of law. No additional license fees shall be required during the period for which the original license was issued.
- (d) Nothing in this section shall prohibit one (1) or more of the partners in the partnership holding a license to withdraw from the partnership in favor of one (1) or more of the partners who were partners at the time of the issuance of the license. This section shall not prohibit transfer of stock between persons who held stock in the corporate owner at the time of issuance of the license; nor shall it prohibit transfers of stock which do not result in any person increasing stock holdings to a total of ten (10) or more percent of any class of corporate stock, or any other entity having a financial interest in the entity.
- (e) Should a transfer of location be approved, with no change of ownership of the business, the license fee paid for the old location shall be applied to the new location.
- (f) Except as provided in this section, any change in the ownership of any entity owning a licensed establishment shall cancel and revoke any license issued under this division automatically, without the necessity of a hearing.
Violation of this section shall result in revocation of the license being used and a fine of one thousand dollars (\$1,000.00) each on the new ownership and the old ownership. No license will be issued to the old or the new owner in the city for one (1) year from the date of the violation.

Sec. 4.2.13. - Display.

The city alcoholic beverage license shall at all times be kept plainly exposed to view at the place of business of the licensee. The finance director or designee shall ensure that all licenses for on-premises consumption of alcoholic beverages show:

- (i) Any special land use permit conditions imposed by the city council for the establishment;
- (ii) The allowed hours of operation for the location; and
- (iii) Written notice to the licensee that the license with the hours of operation must be posted in a public and conspicuous place within the licensee's establishment.

Sec. 4.2.14. - Suspension or revocation.

The City Manager or his designee is entitled, in its sole discretion, to either suspend or revoke any license upon a finding by the City Manager or his designee, of any violation by the licensee, of any other person required under this division to meet the qualifications required for the issuance of the license, or by

any majority stockholder, general or managing partner, or employee, agent, or servant of the licensee or the business in which such license is utilized, of any of the following:

- (a) Any federal or state law, rule or regulation relative to the manufacture, sale, distribution or possession of alcoholic beverages;
- (b) Any provision, condition, requirement, or limitation contained in this division; (c) Any other ordinance of the city;
- (d) Any ordinance, rule, regulation or law of any governmental entity otherwise regulating the business in which such license is utilized;
- (e) Any criminal law which is classified as a felony;
- (f) Any criminal law involving moral turpitude;
- (g) Any documented negative impact to adjacent property owners for which the owner or tenant has failed to remedy through good faith efforts;
- (h) Failure to maintain parking lot of property in such a manner as to prevent littering, loitering, acts of disorderly conduct, excessive demand for public safety resources, and ongoing disturbance of adjacent property owners;
- (i) If the licensee furnishes fraudulent or untruthful information in the original, renewal or transfer application for a license or omits information required in the original, renewal or transfer application for a license;
- (j) Failure of the licensee or any other person required under this division to meet the qualifications required for the issuance of the license, to meet, as of the time of the notice of hearing relative thereto, the requirements established in this division for the initial issuance of such license;
- (k) Failure of the licensee or any employee or agent of the business in which the license is utilized to promptly report to the City Manager or his designee: (i) Any violation of this division; (ii) Any other violation of law; (iii) Any other violation of any other city ordinance; or (iv) Any breach of the peace, disturbance or altercation which occurs within or upon the premises of the business in which such license is utilized;
- (l) Repeated failure of the licensee or the employees, agent and servants of the business in which the license is utilized to promptly control and prevent within or upon the premises of such business any of the following activities or conduct:
 - (i) Fighting;
 - (ii) Disorderly conduct;
 - (iii) Utilization of controlled substances;
 - (iv) Gambling;
 - (v) Indecent conduct;
 - (vi) Excessive noise; or
- (m) Failure of the licensee or any other person required under this division to meet the qualifications required for the issuance of the license to promptly pay and satisfy all taxes and other financial obligations due the city which are not the subject of appeal or litigation; or
- (n) Failure to allow unrestricted access to the City Manager or his designee for inspections.

Sec. 4.2.15. - Inspection of premises.

The community development department, and/or the City Manager or his designee may inspect establishments licensed under the alcoholic beverage ordinances of the city during the establishment's hours of operation. Such inspections shall be made for the purpose of verifying compliance with the requirements of this chapter and state law.

Sec. 4.2.16. - Agent for service of process.

All establishments licensed under this chapter 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 chapter to be served upon the licensee or owner may be served. This person must be a resident of the county. The licensee shall file the name of such agent, along with the written consent of such agent, with the city in such form as the city prescribes.

Sec. 4.2.17. - Collection of delinquent sums.

If any person fails to pay the sum due under this chapter, the City Manager or his designee shall issue an execution against the person so delinquent and such person's property for the amount of the delinquent fee or tax.

Sec. 4.2.18. - Audits.

If the City Manager or his designee deems it necessary to conduct an audit of the records and books of a licensee under the provisions of this article, it shall so notify the licensee of the date, time and place of the audit.

ARTICLE 111- ALCOHOL REVIEW BOARD

Sec. 4.3.1. — Alcoholic Review Board establishment; composition

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

Sec. 4.3.2. - Alcoholic beverage appeals.

The alcoholic beverage appeals shall be heard by the ARB who shall have the following duties:

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

- (b) To hear appeals from the decisions of the City Manager or his designee revoking or suspending any license pertaining to the sale of alcoholic beverages in the city;
- (c) To hear appeals from the decisions of the City Manager or his designee denying the issuance of permits pertaining to employment in a licensed establishment;
- (d) To hear appeals from the decisions of the City Manager or his designee revoking or suspending an employee permit to an employee of a licensed establishment.

Sec. 4.3.3. - Hearings.

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

Sec. 4.3.4. - 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 IV. - TAXATION OF RETAIL SALES

Sec. 4.4.1. - 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:

Agent means that person designated by a licensee in the application for a permit to sell alcoholic beverages by the drink in the city.

Alcoholic beverage means any beverage containing alcohol obtained by distillation including rum, whiskey, gin and other spirituous liquors by whatever name called; but not including malt beverages, fermented wines or fortified wines.

Drink means any alcoholic beverage served for consumption on the premises which may or may not be diluted by any other liquid.

Licensee means any person who holds a license or permit from the city to sell alcoholic beverages by the drink.

Monthly period means the calendar month of the year.

Person means an individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, nonprofit corporation or cooperative nonprofit membership, estate, trust, business trust, receiver, trustee, syndicate or any other group or combination acting as a unit, the plural as well as the singular number, excepting the United States of America, the state and any political subdivision of either thereof upon which the city is without power to impose the tax herein provided.

Purchase price means the consideration received for the sale of alcoholic beverages by the drink valued in money, whether received in cash or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also the amount for which credit is allowed by the licensee to the purchaser, without any deduction therefrom whatsoever.

Purchaser means any person who orders and gives present or future consideration for any alcoholic beverage by the drink.

Tax means the tax imposed by this division.

Sec. 4.4.2. - Imposed; rate.

There is imposed and levied upon every sale of an alcoholic beverage purchased by the drink in the city a tax as follows:

- (1) Distilled spirits purchased by the drink in the amount of three (3) percent of the purchase price of such beverage.
- (2) Malt beverages sold in or from a barrel or bulk container are taxed at a rate of six dollars (\$6.00) on each container sold not containing more than fifteen and a half (15 h) gallons and a proportionate tax at the same rate on all fractional parts of fifteen and a half (15 h) gallons.
- (3) Malt beverages sold in bottles, cans, or other containers, except barrel or bulk containers, are taxed at rate of five (5) cents per twelve (12) ounces and a proportionate tax at the same rate on all fractional parts of twelve (12) ounces.

Sec. 4.4.3. - Purchaser's receipt; credit or deferred payment.

Every licensee for the sale of alcoholic beverages by the drink operating a place of business in the city shall maintain detailed sales records indicating each transaction by beverage and food served, its price and total. Where the charges for food and drink are satisfied by credit or deferred payment, the payment of the tax to the licensee may be deferred in a like manner; however, the licensee shall be liable therefor at the time and to the extent that such credits are incurred.

Sec. 4.4.4. - Liability for tax; authority to collect.

Every licensee or the licensee's agent shall collect the tax herein imposed from purchasers of alcoholic beverages by the drink sold within the licensee's licensed premises. Such licensee or agent shall furnish such information as may be requested by the City Manager or his designee to facilitate the collection of the tax.

Sec. 4.4.5. - Determinations, returns and payments.

- (a) Due date of taxes. All taxes collected by any licensee or agent under this division shall be due and payable to the City Manager or his designee monthly on or before the twentieth day of every month next succeeding each respective monthly period.
- (b) Return; limit of filing; persons required to file; execution. On or before the twentieth day of the month following each monthly period, a return for the preceding monthly period shall be filed with the City Manager or his designee in such form as the City Manager or his designee may prescribe by every licensee or agent liable for the payment of tax.
- (c) Contents of return. All returns shall show the gross receipts from the sale of alcoholic beverages by the drink, amount of tax collected or authorized due for the related period, and such other information as may be required by the City Manager or his designee.
- (d) Delivery of return and readmittance. The person required to file the return shall deliver the return, together with the remittance of the net amount of tax due to the City Manager or his designee.
- (e) Collection fee allowed operators. Operators collecting the tax shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting and paying the amount due, if such amount is not delinquent at the time of payment. The rate of the deduction shall be the same rate authorized for deductions from state tax under O.C.G.A. § 48-8-1 et seq.

Sec. 4.4.6. - Deficiency determinations.

- (a) Computation of tax. If the City Manager or his designee is not satisfied with the return or returns of the tax or the amount of the tax to be paid to the City Manager or his designee by any person, it may compute and determine the amount required to be paid upon the basis of any information within its possession or that may come into its possession. One (1) or more than one (1) deficiency determination may be made of the amount due for one (1) or more than one (1) monthly period.

- (b) Interest on deficiency. The amount of the determination, exclusive of penalties, shall bear interest at the rate specified by section 4.4.8. Interest shall be assessed for each month or fraction thereof from the close of the monthly period in which the amount or any portion thereof should have been returned until the date of payment.
- (c) Offsetting of overpayments. In making a determination, the City Manager or his designee may offset overpayments, for another period, against penalties, and against the interest on underpayments. The interest on overpayments shall be computed in the manner set forth in section 4.4.7, subsection (c).
- (d) Penalty for negligence or disregard of rules and regulations. If any part of the deficiency for which a deficiency determination has been made is due to negligence or disregard of rules and regulations, the penalty amount specified in section 4.4.8 shall be added to the amount of the deficiency.
- (e) Penalty for fraud or intent to evade. If any part of the deficiency for which a deficiency determination is made is due to fraud or an intent to evade any provision of this division or other authorized rules and regulations, a penalty of twenty-five (25) percent of the deficiency shall be added thereto.
- (f) Notice of determination. The City Manager or his designee shall give to the licensee written notice of the determination. The notice may be served personally or by mail; if by mail, such service shall be pursuant to O.C.G.A. 9-11-4 and shall be addressed to the licensee at the licensee's address as it appears in the records of the city. In case of service by mail of any notice required by this division, the service is complete at the time of deposit in the United States Post Office.
- (g) Time within which notice of deficiency determination to be mailed. Except in the case of fraud, intent to evade this division or authorized rules or regulations, or failure to make a return, every notice of a deficiency determination shall be mailed within three (3) years after the twentieth day of every month following the monthly period for which the amount is proposed to be determined, or within three (3) years after the return is filed, whichever period expires last.

Sec. 4.4.7. - Determination if no return made.

- (a) Estimate of gross receipts. If any licensee fails to make a return, the City Manager or his designee shall make an estimate of the amount of the gross receipts of the licensee or, as the case may be, of the amount of the total sales in the city which are subject to the tax. The estimate shall be made for the period or periods in respect to which the licensee failed to make the return and shall be based upon any information which is in or may come into the possession of the City Manager or his designee. Upon the basis of this estimate, the City Manager or his designee shall compute and determine the amount required to be paid the city, adding to the sum thus determined a penalty equal to ten (10) percent thereof. One (1) or more determinations may be made for one (1) or for more than one (1) period.
- (b) Manner of computation; offsets; interest. In making a determination, the City Manager or his designee may offset overpayments for a period or penalties against penalties and/or interest on underpayments. The interest on underpayments shall be computed in the manner set forth in subsection (c) of this section.
- (c) Interest on amount found due. The amount of the determination, exclusive of penalties, shall bear interest at the rate specified in section 4.4.8. Interest shall be assessed for each month, or fraction

thereof from the close of the monthly period in which the amount or any portion thereof should have been returned until the date of payment.

- (d) Penalty for fraud or intent to evade. If the failure to file a return is due to fraud or an intent to evade this division or rules and regulations, penalties shall be assessed in accordance with section 4.4.8.
- (e) Notice; manner of service. Promptly after making a determination, the City Manager or his designee shall give to the person written notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

Sec. 4.4.8. - Penalties and interest for failure to pay tax.

Any licensee who fails to pay the tax to the city, or fails to pay any amount of such tax required to be collected and paid to the city, within the time required, shall pay a penalty often (10) percent of the tax, or amount of the tax, in addition to the tax or amount of the tax, plus interest on the unpaid tax or any portion thereof as set forth in section 4.4.7, subsection (c). An additional penalty of twenty-five (25) percent of the amount due shall be assessed for any fraud or intent to evade.

Sec. 4.4.9. - Collection of tax; security deposit; refunds.

- (a) The City Manager or his designee, whenever deemed necessary to ensure compliance with this article, may require any person subject hereto to deposit such security as the department may determine. The amount of the security shall be fixed by the department, shall be the greater of twice the person's estimated average liability for the period for which the return was filed, determined in such a manner as the department deems proper, or ten thousand dollars (\$10,000.00). The amount of the security may be increased by the department subject to the limitations herein provided. The department may sell the security at public auction, with the approval of the city council, if it becomes necessary to do so in order to recover any tax or any amount required to be collected, interest or penalty due. Notice of the sale may be served upon the person who deposited the security personally or by mail; if by mail, service shall be made in the manner prescribed for service of a notice of a deficiency determination, and shall be addressed to the person at the person's address as it appears in the records of the department. Upon any sale, any surplus above the amounts due shall be returned to the person who deposited the security.
- (b) If any person is delinquent in the payment of the amount required to be paid, or if a determination has been made against the person which remains unpaid, the City Manager or his designee may, not later than three (3) years after the payment became delinquent, give notice thereof by registered mail to all persons in the city having in their possession or under their control any credits or other personal property belonging to the delinquent, or owing any debts to the delinquent. After receiving the notice, the persons so notified shall neither transfer nor make any other disposition of the credits, other personal property or debts in their possession or under their control at the time they receive the notice until the City Manager or his designee consents to a transfer or disposition or until twenty (20) days elapse after the receipt of the notice. All persons so notified shall within five (5) days after receipt of

the notice advise the City Manager or his designee of all these credits, other personal property, or debts in their possession, under their control or owing by them.

- (c) At any time within three (3) years after any tax or any amount of tax required to be collected becomes due and payable and at any time within three (3) years after the delinquency of any tax or any amount of tax required to be collected, the City Manager or his designee may bring an action in the courts of this state, or any other state, or of the United States in the name of the city to collect the amount delinquent together with penalties and interest, court fees, filing fees, attorney's fees and other legal fees incident thereto.
- (d) If any operator liable for any amount under this division sells out the business or quits the business, the successors or assigns shall withhold sufficient of the purchase price to cover the tax liability until the former owner produces a receipt from the City Manager or his designee showing that same has been paid or a certificate stating that no amount is due.
- (e) If the purchaser of a business fails to withhold the purchase price as required, the purchaser becomes personally liable for the payment of the amount required to be withheld to the extent of the purchase price, valued in money. Within thirty (30) days after receiving a written request from the purchaser for a certificate, the City Manager or his designee shall either issue the certificate or mail notice to the purchaser at the purchaser's address as it appears on the records of the City Manager or his designee of the amount that must be paid as a condition of issuing the certificate. The time within which the obligation of a successor may be enforced shall start to run at the time the operator sells out the business or at the time that the determination against the operator becomes final, whichever event occurs later.
- (f) Whenever the amount of any tax, penalty or interest has been paid more than once, or has been erroneously or illegally collected or received by the city under this division, it may be offset as provided in section 4.4.6, subsection (c), or it may be refunded, provided a verified claim in writing therefor, stating the specific ground upon which the claim is founded, is filed with the City Manager or his designee within three (3) years from the date of payment. The claim may be audited and shall be made on forms provided by the City Manager or his designee. If the claim is approved by the City Manager or his designee and the city council, the excess amount collected or paid may be refunded or may be credited on any amounts then due and payable from the person from whom it was collected or by whom paid, and the balance may be refunded to this person, or such person's administrators or executors.

Sec. 4.4.10. - Administration.

- (a) The City Manager or his designee shall administer and enforce the provisions of this Article.
- (b) The City Manager or his designee may make and publish reasonable rules and regulations not inconsistent with this Article or other laws of the city, county and the state, or the constitution of this state or the United States for the administration and enforcement of the provisions of this division and the collection of taxes hereunder.
- (c) Every licensee for the sale of alcoholic beverages by the drink in this city to a person shall keep such records, receipts, invoices and other pertinent papers in such form as the City Manager or his designee may require.
- (d) The City Manager or his designee may examine the books, papers, records, financial reports, equipment and other facilities of any licensee liable for the tax, in order to verify the accuracy of any

return made, or if no return is made by the licensee, to ascertain and determine the amount required to be paid.

- (e) In administration of the provisions of this division, the City Manager or his designee may require the filing of reports by any person or class of persons having possession or custody of information relating to sales of alcoholic beverages which are subject to the tax. The reports shall be filed with the City Manager or his designee when required by the department and shall set forth the price charged for each sale, the date of each sale and such other information as the department may require.
- (f) The City Manager or his designee shall not make known in any manner the business affairs, operations or information obtained by an audit of books, papers, records, financial reports, equipment and other facilities of any licensee or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person not having such administrative duty under this division, except in the case of judicial proceedings or other proceedings necessary to collect the tax levied and assessed. Successors, receivers, trustees, executors, administrators, and assignees, if directly interested, may be given information as to the items included in the measure and amount of unpaid tax or amounts of tax required to be collected, interest and penalties.

Sec. 4.4.11. - Revocation or suspension of license.

The failure to timely pay the tax imposed by this division for three (3) consecutive months or four (4) times in a twelve-month period shall render the dealer or person liable therefor subject to suspension of the alcoholic beverage license for ten (10) consecutive days beginning on a Friday. The failure to timely pay the tax imposed by this section six (6) times within a twelve-month period shall render the dealer or person liable therefor subject to revocation of the alcoholic beverage license.

ARTICLE V. - OPERATIONAL RULES FOR RETAILERS

DIVISION 1. - GENERALLY

Sec. 4.5.1. - Posting of regulations.

- (a) All licensees under this article shall post in a prominent location on licensed premises, in a manner whereby it may be easily viewed by patrons, an approved sign setting forth or summarizing the laws of the city and the state in regard to the sale of alcoholic beverages to underage or intoxicated persons.
- (b) Each such sign shall be of a size and configuration approved by the City Manager or his designee, and shall include either the language of the applicable sections, or summaries approved by the City Manager or his designee.
- (c) The City Manager or his designee may design and have printed approved signs, which shall be made available to licensees at a price to be established by the City Manager or his designee.

Sec. 4.5.2. - Location restrictions.

- (a) No person knowingly and intentionally may sell or offer to sell at retail, except as allowed under subsection (b):
 - (1) Any wine or malt beverages within one hundred (100) yards of any school, school grounds, educational facility, college campus.
 - (2) Any distilled spirits in or within two hundred (200) yards of any residence or church or within two hundred (200) yards of any school, school grounds, educational facility, college campus.
 - (3) Any distilled spirits, wine or malt beverages within two hundred (200) yards of an alcoholic treatment center owned and operated by this city, this state, or any county or municipal government therein.
- (b) No person knowingly and intentionally may sell or offer to sell for consumption on the premises, except as allowed under subsection (g):
 - (1) Any wine or malt beverages within one hundred (100) yards of any school, school grounds, educational facility or college campus;
 - (2) Any distilled spirits in or within two hundred (200) yards of any church or within two hundred (200) yards of any school building, school grounds, educational facility or college campus;
 - (3) Any distilled spirits, wine or malt beverages within two hundred (200) yards of an alcoholic treatment center owned and operated by this city, this state, or any county or municipal government therein.
- (c) The school building, school grounds, college campus, educational facility or educational building referred to in this section applies only to state, county, city, parochial school, day care, kindergarten or buildings and to such buildings at such other schools in which are taught subjects commonly taught in the common schools and colleges of this state; provided this shall not apply to private universities and colleges
- (d) For the purpose of this section, distance shall be measured by the most direct route of travel on the ground. Every license application shall include a scale drawing of the location of the proposed premises, showing the distance of the uses described in this section and a certificate of a registered land surveyor or professional engineer that the location complies with these distance requirements.
- (e) No license in effect as of April 30, 1998, shall be revoked before its date of expiration or renewal or transfer denied by reason of the method of measurement set out in this section, if the license was granted in reliance on another method of measurement. No application for a license shall be denied by reason of the method of measurement set out in this section if a prior license for the same location was in effect on April 30, 1998. No application for a license or renewal shall be denied by reason of the method of measurement set out in this section, if such application is pending on April 30, 1998.
- (f) Where an existing licensed location is interfered with by government action under the power of eminent domain, and not by a voluntary act of the licensee, the licensed use may relocate elsewhere on the property, and the new building site will be treated as an existing non-conforming use eligible for license renewal for purposes of the distance requirements of this section.

Sec. 4.5.3. - Age restriction for employees in licensed establishments.

- (a) No person under the age of eighteen (18) years shall be employed in or about the premises of any establishment licensed to sell alcoholic beverages at retail, nor shall any person under the age of eighteen (18) years sell, take orders for, or deliver alcoholic beverages.
- (b) Subsection (a) of this section shall not be construed to apply to establishments licensed for retail sale of beer and/or wine by the package, where such sales constitute less than fifty (50) percent of the gross revenue of the establishment; provided, however, it shall be unlawful for any person under the age of eighteen (18) years who is employed by such an establishment to sell or take orders for alcoholic beverages. Nothing in this subsection shall be construed to discriminate against or impede the employment of any person under eighteen (18) years of age.

Sec. 4.5.4. - Advertising.

- (a) Each licensee for the retail sale of liquors hereunder, except consumption-on-the-premises establishments, shall have printed on a front window or entrance of the licensed premises the name of the licensed establishment together with the inscription "City of Stonecrest Retail License No. _____" in uniform letters not less than four (4) nor more than eight (8) inches in height.
- (b) Each retail licensee, except consumption-on-the-premises establishments, shall have conspicuously displayed within the interior of the licensed premises not less than four (4) copies of a printed price list of the liquors offered for sale or the licensee may have the price placed on the bottles or on the front of the shelf where liquors are exhibited for sale.

Sec. 4.5.5. - Prohibited types of entertainment, attire and conduct.

- (a) Purpose. It is the purpose of this section to regulate establishments licensed to sell, serve, or dispense alcoholic beverages 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 various forms of nudity and physical contact in such establishments between patrons and employees of the establishment. The provisions of this section have neither the purpose nor effect of imposing a restriction on the content or reasonable access to any communicative materials or performances, including sexually oriented materials or performances. Neither is it the purpose nor effect of this section to condone or legitimize the distribution or presentation of obscene material or conduct.
- (b) Definitions.

The following words, terms, and phrases, when used in this section and section 4.2.8(c), 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 35 percent of the establishment's displayed merchandise consists of the items;
2. At least 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 35 percent of the establishment's revenues derive from the sale or rental, for any form of consideration, of the items;
4. The establishment maintains at least 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 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.

Feature means to give special prominence to.

Floor space referenced in Adult bookstore or adult video store means the floor area inside an establishment that is visible or accessible to patrons for any reason, excluding restrooms.

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.

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,

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 section.

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.

(c) 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 (1 Ith Cir. 2007); *Jacksonville Property Rights Ass'n, Inc. v. City of Jacksonville*, 635 F.3d 1266 (1 Ith 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 (1 Ith Cir. 2001); *Williams v. A.G. of Alabama*, 378 F.3d 1232 (1 Ith Cir. 2004); *Williams v. Morgan*, 478 F.3d 1316 (1 Ith Cir. 2007); *Gary v. City of Warner Robins*, 311 F.3d 1334 (1 Ith Cir. 2002); *Ward v. County of Orange*, 217 F.3d 1350 (1 Cir. 2002); *Boss Capital, Inc. v. City of Casselberry*, 187 F3d 1251 (1 Ith 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 (1 Ith Cir. 1998); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (1 Ith 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 Faloon Tavern, Inc. v. Wicker*, 670 F.2d 943 (1 Ith Cir. 1982); *International Food &*

Beverage Systems v. Ft. Lauderdale, 794 F.2d 1520 (1 Ith Cir. 1986); 5634 E. Hillsborough Ave., Inc. v. Hillsborough County, 2007 WL 2936211 (M.D. Fla. Oct. 4, 2007), *affd*, 2008 WL 4276370 (1 Ith 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 1, 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); Garn_moh 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 - 201112; 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) Nudity, partial nudity, conduct by bikini-clad persons, and/or sexual conduct coupled with alcohol in public places begets negative secondary effects, including sexual, lewd, lascivious, and salacious conduct among patrons and employees resulting in violation of laws and in dangers to the health, safety and welfare of the public;
- (2) Physical contact between employees of alcoholic beverage establishments, including "bed" dances, "couch" dances, and "lap" dances as they are commonly called, are associated with and can lead to illicit sexual activities, including masturbation, lewdness, and prostitution, as well as other negative effects, including sexual assault;
- (3) The city finds that the foregoing conduct, even when the employees are technically not nude or semi-nude as defined in other portions of Stonecrest city regulations, is substantially similar to and presents similar concerns as conduct by nude and semi-nude performers in sexually oriented businesses;
- (4) Each of the negative effects targeted by this section constitutes a harm which the city has a substantial government interest in preventing and/or abating. This substantial government interest in preventing such negative effects, which is the city's rationale for this section, exists independent of any comparative analysis between the regulated establishments and other, non-regulated establishments. The city finds that the cases and secondary effects documentation relied on in this section are reasonably believed to be relevant to the city's interest in preventing illicit sexual behavior.

The city adopts and incorporates herein its stated findings and legislative record related to adverse secondary effects, including the judicial opinions and reports related to such secondary effects.

(d) On-premises conduct. No licensee, as defined in this chapter, shall knowingly violate the following regulations or knowingly or recklessly allow an employee or any other person to violate the following regulations:

- (1) No person shall knowingly engage in masturbation, sexual intercourse, fellatio, cunnilingus, sodomy, bestiality, or flagellation on the licensed premises.
- (2) No employee shall knowingly touch, engage in physical contact with, caress, or fondle the breast, buttocks, lap, pubic region, or genitals of a patron, whether directly or through clothing or other covering, on the licensed premises.
- (3) No patron shall knowingly touch, engage in physical contact with, caress, or fondle the breast, buttocks, lap, pubic region, or genitals of an employee, whether directly or through clothing or other covering, on the licensed premises.
- (4) No employee shall knowingly expose his genitals, pubic hair, buttocks, natal cleft, perineum, anus, vulva, or the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point (except that the exposure of the cleavage of the female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel is not prohibited) to a patron on the licensed premises. This subsection does not apply to conduct in theaters, concert halls, art centers, museums, or similar establishments that are primarily devoted to the arts or theatrical performances, when the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value. The exception in the previous sentence shall not be construed to apply to any sexually oriented business as defined in this Code.

Sec. 4.5.6. - Sales on days of national or state elections.

Licensees may open their establishments for the sale of alcoholic beverages on any election day, except within two hundred and fifty (250) yards of any polling place.

Sec. 4.5.7. - Failure to require and properly check identification.

- (a) It is unlawful not to require and properly check identification to ensure an underage person is not sold, served or possesses alcoholic beverages while in a licensed establishment. In this section "identification" means any document issued by a governmental agency containing a description of the person, such person's photograph, and giving such person's date of birth and includes, without being limited to, a passport, military ID card, driver's license or state department of public safety ID card.
- (b) Licensee must have written policies and procedures and train, instruct and supervise employees to insure compliance with this section.
- (c) Except as otherwise authorized by law, and in accordance with state law:
 - (i) No person knowingly, directly or through another person, shall furnish, cause to be furnished, or perm_it any person in such person's employ to furnish any alcoholic beverage to any person under 21 years of age;

- (ii) No person under 21 years of age shall purchase, attempt to purchase, or knowingly possess any alcoholic beverage;
- (iii) No person under 21 years of age shall misrepresent such person's age in any manner whatever for the purpose of obtaining illegally any alcoholic beverage;
- (iv) No person knowingly or intentionally shall act as an agent to purchase or acquire any alcoholic beverage for or on behalf of a person under 21 years of age; and
- (v) No person under 21 years of age shall misrepresent his identity or use any false identification for the purpose of purchasing or obtaining any alcoholic beverage.
- (d) The prohibitions contained in subsections (c)(i), (ii), and (iv) of this section shall not apply with respect to the sale, purchase, or possession of alcoholic beverages for consumption:
 - (i) For medical purposes pursuant to a prescription of a physician duly authorized to practice medicine in this state; or (ii) At a religious ceremony.
- (e) The prohibitions contained in subsections (c)(i), (ii), and (iv) of this section shall not apply when the person under the age of 21 is given the alcoholic beverage by his parent or guardian for consumption in the home and in the presence of the parent or guardian.
- (f) The prohibition contained in subsection (c)(i) of this section shall not apply with respect to sale of alcoholic beverages by a person when such person has been furnished with proper identification showing that the person to whom the alcoholic beverage is sold is 21 years of age or older. For purposes of this subsection, the term "proper identification" means any document issued by a governmental agency containing a description of the person, such person's photograph, or both, and giving such person's date of birth and includes, without being limited to, a passport, military identification card, driver's license, or an identification card authorized under O.C.G.A. 40-5-100 through 40-5-104. "Proper identification" shall not include a birth certificate and shall not include any traffic citation and complaint form.
- (g) Nothing in this section shall be construed so as to conflict with O.C.G.A. 3-3-23 or any other provision of state law. Any violations of this section shall be grounds for revocation of the license by the issuing body.

Sec. 4.5.8. - Retailer to purchase from licensed wholesaler only.

No retailer shall purchase alcoholic beverages from any person other than a wholesaler licensed under this chapter. No wholesaler shall sell any alcoholic beverage to anyone other than a retailer licensed under this chapter.

Sec. 4.5.9. - Happy hour promotions.

- (a) No licensee under this chapter or employee or agent of a licensee shall, in connection with the sale or other disposition of alcoholic beverages for consumption on the premises, engage in selling, offering to sell, or delivering to any person or persons any alcoholic beverage at a price less than one-half the price customarily charged for such alcoholic beverage, provided nothing contained herein shall be

construed to prohibit reducing the price of a drink or drinks by up to one-half the price customarily charged.

- (b) In this section, the term "customarily charged" means the price regularly charged for such alcoholic beverage during the same calendar week.

Sec. 4.5.10. - Locations where sales by the drink permitted; entrance to establishment.

No distilled spirits may be sold by the drink for consumption on the premises where sold except in eating establishments regularly serving prepared food, with a full-service kitchen prepared to serve food every hour they are open. When located in hotels, motels and high-rise office and apartment buildings, every entrance to the establishment shall be from a public lobby, hallway, mall or other publicly used interior portion of the primary use structure.

Sec. 4.5.11. - Certain organizations exempt from food establishment requirements.

Veterans' organizations, fraternal organizations and other nonprofit organizations currently having tax-exempt status under either the United States Internal Revenue Code or O.C.G.A. 48-71 -1 et seq. shall not be required to operate a food establishment serving prepared food. However, any such organization selling or dispensing alcoholic beverages shall be subject to all ordinance regulations dealing with general licensing and consumption-on-the-premises establishments.

DIVISION 2. - ESTABLISHMENTS LICENSED FOR ON-PREMISES CONSUMPTION OF DISTILLED SPIRITS

Sec. 4.5.12. - Hours of sale and operation.

- (a) Distilled spirits shall be sold and delivered to the customer for consumption on the premises during the following hours:
 - (i) Monday through Friday hours are from 9:00 a.m. until 3:55 a.m. of the following day.
 - (ii) Saturday hours are from 9:00 a.m. until 2:55 a.m. on Sunday.
 - (iii) Sunday hours are from 12:30 p.m. until 2:55 a.m. on Monday as permitted by section 4.5.15.
- (b) Sales and deliveries during all other hours are prohibited. All licensed establishments must close their premises to the public and clear their premises of patrons by 3:30 a.m. and shall not reopen their premises to the public until 9:00 a.m. or thereafter.

Sec. 4.5.13. — Sales and deliveries during all other hours are prohibited.

There shall be no consumption on the premises after prohibited hours have been in effect for one-half (h) hour. All licensed establishments must close their premises to the public and clear their premises of patrons within one (1) hour after the time set by this chapter for discontinuance of the sale of

alcoholic beverages on the premises and shall not reopen their premises to the public until 9:00 a.m. or thereafter.

Sec. 4.5.14. - Employees.

The following provisions apply to all establishments holding a license for consumption of beer, wine distilled spirits on the premises:

- (1) An employee shall meet the same character requirements as set forth in the general ordinances for the licensee, except for the residency requirements.
- (2) No person shall be employed by an establishment holding a license under this chapter until such person has been fingerprinted or cleared by the City Manager or his designee and a permit issued indicating that such person is eligible for employment. The permit issued to a person under this section shall be either of the following:
 - a. Alcoholic beverage permit, which shall be issued only to a person who must be eighteen (18) years of age or older and who sells, serves or dispenses alcoholic beverages.
 - b. Nonalcoholic beverage permit, which shall be issued to a person whose employment includes but is not limited to host, hostess, doorperson and bouncer.
- (3) No permit shall be issued until such time as a signed application has been filed with the City Manager or his designee and a search of the criminal record of the applicant completed. The application shall include the applicant's name, all of the applicant's aliases and/or any other name by which the applicant has ever been known, address, telephone number, the applicant's social security number, the date of birth with written proof thereof, and prior arrest record of applicant, though the fact of an arrest record shall be used for investigative purposes only and shall give rise to no presumption or inference of guilt, Due to the inclusion of arrest information, these applications shall be regarded as confidential and shall not be produced for public inspection without a court order.
- (4) The City Manager or his designee shall have a complete and exhaustive search made relative to any police record of the person fingerprinted or cleared. If there is no record of a violation of this division, the City Manager or his designee shall issue a permit to the employee, stating that the person fingerprinted or cleared is eligible for employment. If it is found that the person fingerprinted is not eligible for employment, the City Manager or his designee shall not issue a permit to the employee.
- (5) All permits issued through administrative error or through an error in completion of a background investigation can be terminated by the City Manager or his designee.
- (6) This section does not apply to employees whose duties are limited solely to those of a busperson, cook or dishwasher.
- (7) No licensee under this chapter shall allow any employee required to hold a permit to work on the licensed premises unless the licensee has on file, on the premises, the current, valid permit of each such employee.
- (8) If any permit holder leaves the employ of a licensed establishment, the licensee shall immediately surrender the permit to the City Manager or his designee.
- (9) All permits issued hereunder remain the property of the city, and shall be produced for inspection upon the demand of the City Manager or his designee.

- (10) It shall be the responsibility of each licensee to provide all new employees at the time of their employment, and all employees annually, with an orientation and training on the this chapter. Failure of the employee to participate shall not be a defense for an employer whose worker or agent violates any provisions of this ordinance; and provided that a licensee shall keep a record of such orientation and training, which shall be subject to inspection.

Sec. 4.5.15. - Sunday sales.

- (a) Licensed establishments deriving a minimum of sixty (60) percent of their total annual gross food and beverage sales from the sale of prepared meals or food, or licensed establishments deriving at least sixty (60) percent of their total annual income from the rental of rooms for overnight lodging, are authorized to apply for a Sunday sales permit to sell and serve alcoholic beverages, malt beverages and wine by the drink from 12:30 p.m. on Sunday until 2:55 a.m. of the following Monday
- (b) Applicants for a Sunday sales permit shall complete a form and affidavit furnished by the City Manager or his designee. The City Manager or his designee may, at anytime, require that the licensee obtain an audit prepared by a certified public accountant, at the licensee's expense, to ensure compliance. If an audit reveals that incorrect, incomplete or misleading information was submitted on and/or with the Sunday sales form and/or affidavit, then, the permit shall be automatically revoked by the City Manager or his designee. No later than March 31st of the license year, licensee shall submit a report on monthly sales by category for the prior calendar year.
- (c) All annual permit renewals shall be filed with the City Manager or his designee not later than November 30 of the year preceding the license year for which the permit is to be issued. All renewals are subject to audit prior to being renewed to ensure compliance with this chapter.
- (d) Sunday sales permits may be granted for the full calendar year or for the number of months remaining in the calendar year. The permit fee shall be prorated based on the number of months remaining in the calendar year; partial months shall be counted as a full month. Fees are not refundable and permits shall not be transferable.
- (e) Establishments which qualify for a Sunday sales license are authorized to apply for a temporary Sunday sales permit if they desire to open for special events or holidays. The temporary permit shall be valid for one (1) calendar month and partial months shall be counted as a full month. Licensees must apply thirty (30) days in advance of the issuance date.

Sec. 4.5.16. - Open area and patio sales.

No consumption and/or sale of distilled spirits shall be allowed in open areas and patios unless first permitted and approved by the City Manager or his designee. The department shall prepare such appropriate regulations as to ensure the safe and orderly operation of these establishments, including but not limited to regulations pertaining to maximum capacity, ingress and egress.

DIVISION 3. - ESTABLISHMENTS LICENSED FOR ON-PREMISES CONSUMPTION OF BEER AND WINE

Sec. 4.5.17. - Types of retail establishments.

- (a) No beer or wine shall be sold at retail except in establishments licensed to sell beer and/or wine in the original package, as applicable, which are located in zoning districts in which these establishments are permitted as a conforming use or when such establishment currently exists in the zoning district as a nonconform_{ing} use as defined in chapter 27.
- (b) In cases where a hotel or motel is allowed to sell liquor by the package for purposes of room service, beer and wine sales by the package shall also be permitted for purposes of room service to guests of the hotel or motel.

Sec. 4.5.18. - Hours of sale and operation.

Beer and/or wine shall be sold and delivered to the customer for consumption on the premises only during the following hours:

- (a) Monday through Friday hours are from 9:00 a.m. until 3:55 a.m. of the following day.
- (b) Saturday hours are from 9:00 a.m. until 2:55 a.m. on Sunday.
- (c) Sunday hours are from 12:30 p.m. until 2:55 a.m. on Monday as permitted by section 4.5.21.

Sales and deliveries during all other hours are prohibited. All licensed establishments must close their premises to the public and clear their premises of patrons by 3:30 a.m. and shall not reopen their premises to the public until 9:00 a.m. or thereafter.

Sec. 4.5.19 — Sales and deliveries during all other hours are prohibited.

There shall be no consumption on the premises after prohibited hours have been in effect for one-half hour. All licensed establishments must close their premises to the public and clear their premises of patrons within one hour after the time set by this chapter for discontinuance of the sale of alcoholic beverages on the premises and shall not reopen their premises to the public until 9:00 a.m. or thereafter.

Sec. 4.5.20. - Employees.

The following provisions apply to all establishments holding a license for consumption of beer and/or wine on the premises:

- (1) An employee shall meet the same character requirements as set forth in the general ordinances for the licensee, except for the residency requirements.
- (2) No person shall be employed by an establishment holding a license hereunder until such person has been fingerprinted or cleared by the City Manager or his designee and a permit issued indicating that such person is eligible for this employment. The permit issued to a person under this section shall be either of the following:
 - a. Alcoholic beverage permit, which shall be issued only to a person who must be eighteen (18) years of age or older and who sells, serves or dispenses alcoholic beverages.
 - b. Nonalcoholic beverage permit, which shall be issued to a person whose employment includes but is not limited to host, hostess, doorman and bouncer.
- (3) No permit shall be issued until such time as a signed application has been filed with the City Manager or his designee and a search of the criminal record of the applicant completed. The application shall include, but shall not be limited to, the name, date of birth and prior arrest record of the applicant, though the fact of an arrest record shall be used for investigative purposes only,

and shall give rise to no presumption or inference of guilt. Due to the inclusion of arrest information, these applications shall be regarded as confidential and shall not be produced for public inspection without a court order.

- (4) The City Manager or his designee shall have a complete and exhaustive search made relative to any police record of the person fingerprinted or cleared. If there is no record of a violation of this division, the department shall issue a permit to the employee, stating that the person is eligible for employment. If it is found that the person fingerprinted or cleared is not eligible for employment, the department shall not issue a permit to the employee.
- (5) All permits issued through administrative error or through an error in completion of a background investigation may be terminated by the City Manager or his designee or the City Manager or his designee.
- (6) This section does not apply to employees whose duties are limited solely to those of a busperson, cook or dishwasher.
- (7) No licensee shall allow any employee required to hold a permit to work on the licensed premises unless the licensee has on file, on the premises, the current, valid permit of each such employee.
- (8) If any permit holder leaves the employ of a licensed establishment, the licensee shall immediately surrender the permit to the City Manager or his designee.
- (9) All permits issued hereunder remain the property of the city and shall be produced for inspection upon the demand of the City Manager or his designee.

Sec. 4.521. - Sunday sales.

- (a) Licensed establishments deriving a minimum of sixty (60) percent of their total annual gross food and beverage sales from prepared meals or food, or licensed establishments deriving at least sixty (60) percent of their total annual gross income from the rental of rooms for overnight lodging, are authorized to apply for a Sunday sales permit to sell and serve alcoholic beverages by the drink from 12:30 p.m. on Sunday until 2:55 a.m. of the following Monday.
- (b) Applicants for a Sunday sales permit shall complete a form and affidavit furnished by the City Manager or his designee. The City Manager or his designee may, at anytime, require that the licensee obtain an audit prepared by a certified public accountant, at the licensee's expense, to ensure compliance. If an audit reveals that incorrect, incomplete or misleading information was submitted on and/or with the Sunday sales form and/or affidavit, then, the permit shall be automatically revoked by the City Manager or his designee. No later than March 31 st of the license year, licensee shall submit a report on monthly sales by category for the prior calendar year.
- (c) All annual permit renewals shall be filed with the City Manager or his designee not later than November 30 of the year preceding the license year for which the permit is to be issued. All renewals are subject to audit prior to being renewed to ensure compliance with this chapter.
- (d) Sunday sales permits may be granted for the full calendar year or for the number of months remaining in the calendar year. The permit fee shall be prorated based on the number of months remaining in the calendar year; partial months shall be counted as a full month. Fees are not refundable and permits shall not be transferable.
- (e) Establishments which qualify for a Sunday sales license are authorized to apply for a temporary Sunday sales permit if they desire to open for special events or holidays. The temporary permit

shall be valid for one (1) calendar month and partial months shall be counted as a full month. Licensees must apply thirty (30) days in advance of the issuance date.

Sec. 4.5.22. - Open area and patio sales.

No consumption and/or sale of beer and wine shall be allowed in open areas and patios unless first permitted and approved by the City Manager or his designee. The department shall prepare such appropriate regulations as to ensure the safe and orderly operation of these establishments, including, but not limited to, regulations pertaining to maximum capacity, ingress and egress.

DIVISION 4. - PRIVATE CLUBS

Sec. 4.5.23. - Generally.

Private clubs may sell and dispense alcoholic beverages upon compliance with all applicable ordinances and regulations of the city governing the sale of such beverages and upon payment of such license fees and taxes as may be required by the existing ordinances, rules and regulations of the city.

Sec. 4.5.24. - Hours of sale and operation.

Alcoholic beverages shall be sold and delivered to patrons for consumption on the premises only during the following hours:

- (a) Monday through Friday hours are from 9:00 a.m. until 3:55 a.m. of the following day.
- (b) Saturday hours are from 9:00 a.m. until 2:55 a.m. on Sunday.
- (c) Sunday hours are from 12:30 p.m. until 2:55 a.m. on Monday as permitted by section 4.5.26.

Sales and deliveries during all other hours are prohibited. All licensed establishments must close their premises and clear their premises of patrons within one (1) hour after the time set by this chapter for discontinuance of the sale of alcoholic beverages on the premises and shall not reopen their premises to the public until 9:00 a.m. or thereafter.

Sec. 4.5.25. - Employees.

The following provisions apply to all private clubs holding a license for consumption of alcoholic beverages on the premises:

- (1) An employee shall meet the same character requirements as set forth in the general ordinances for the licensee, except for the residency requirements.
- (2) No person shall be employed by an establishment holding a license hereunder until such person has been fingerprinted or cleared by the City Manager or his designee and a permit issued indicating that such person is eligible for employment. The permit issued to a person under this section shall be either of the following:
 - a. Alcoholic beverage permit, which shall be issued only to a person who must be eighteen (18) years of age or older and who sells, serves or dispenses alcoholic beverages.

- b. Nonalcoholic beverage permit, which shall be issued to a person whose employment includes but is not limited to host, hostess, doorperson and bouncer.
- (3) No permit shall be issued until such time as a signed application has been filed with the City Manager or his designee and a search of the criminal record of the applicant completed. The application shall include, but shall not be limited to, the name, date of birth and prior arrest record of the applicant, though the fact of an arrest record shall be used for investigative purposes only, and shall give rise to no presumption or inference of guilt. Due to the inclusion of arrest information, these applications shall be regarded as confidential and shall not be produced for public inspection without a court order.
- (4) The City Manager or his designee shall have a complete and exhaustive search made relative to any police record of the person fingerprinted or cleared. If there is no record of a violation of this division, the City Manager or his designee shall issue a permit to the employee, stating that the person is eligible for employment. If it is found that the person fingerprinted or cleared is not eligible for employment, the City Manager or his designee shall not issue a permit to the employee.
- (5) All permits issued through administrative error or through an error in completion of a background investigation can be terminated by the City Manager or his designee.
- (6) This section does not apply to employees whose duties are limited solely to those of a busperson, cook or dishwasher.
- (7) No licensee shall allow any employee required to hold a permit to work or train on the licensed premises unless the licensee has on file, on the premises, the current, valid permit of each such employee.
- (8) If any permit holder leaves the employ of a licensed establishment, the licensee shall immediately surrender the permit to the City Manager or his designee.
- (9) All permits issued hereunder remain the property of the city, and shall be produced for inspection upon the demand of the City Manager or his designee.

Sec. 4.5.26. - Sunday sales.

- (a) Licensed establishments deriving a minimum of sixty (60) percent of their total annual gross food and beverage sales from prepared meals or food, or licensed establishments deriving at least sixty (60) percent of their total annual income from the rental of rooms for overnight lodging, are authorized to apply for a Sunday sales permit to sell and serve alcoholic beverages, malt beverages and wine by the drink from 12:30 p.m. on Sunday until 2:55 a.m. of the following Monday. (No later than March 31 of the license year, licensee shall submit a report on monthly sales by category for the prior calendar year.
- (b) Applicants for a Sunday sales permit shall complete a form and affidavit furnished by the City Manager or his designee. An audit may be required at any time to ensure compliance. If an audit reveals that incorrect, incomplete or misleading information was submitted on and/or with the Sunday sales form and/or affidavit, then, the permit shall be automatically revoked by the City Manager or his designee.
- (c) All annual permit renewals shall be filed with the City Manager or his designee not later than November 30 of the year preceding the license year for which the permit is to be issued. All renewals are subject to audit prior to being renewed to ensure compliance with this chapter.

- (d) Sunday sales permits may be granted for the full calendar year or for the number of months remaining in the calendar year. The permit fee shall be prorated based on the number of months remaining in the calendar year; partial months shall be counted as a full month. Fees are not refundable and permits shall not be transferable.
- (e) Establishments which qualify for a Sunday sales license are authorized to apply for a temporary Sunday sales permit if they desire to open for special events or holidays. The temporary permit shall be valid for one (1) calendar month and partial months shall be counted as a full month. Licensees must apply thirty (30) days in advance of the issuance date.

Sec. 4.5.27. - Open area and patio sales.

No consumption and/or sale of distilled spirits or beer or wine shall be allowed in open areas and patios of private clubs unless first permitted and approved by the City Manager or his designee. The department shall prepare such appropriate regulations as to ensure the safe and orderly operation of these establishments, including, but not limited to, regulations pertaining to maximum capacity, ingress and egress.

DIVISION 5. - DISTILLED SPIRIT PACKAGE STORES Sec.

4.5.28. - Types of establishments where retail sale permitted.

- (a) No distilled spirits by the package shall be sold at retail except in the following:
 - (1) Retail establishments devoted exclusively to the retail sale of alcoholic beverages by the package.
 - (2) Retail establishments in which space has been set aside devoted exclusively to the retail sales of distilled spirits by the package, with ingress and egress provided directly to and only to the exterior of the building in which the facility is located and not to any other enclosed part of the building in which the facility is located, except as provided in subsection 3 of this section.
 - (3) In hotels, motels and high-rise office buildings where every public entrance to this use shall be from a lobby, hallway, or other interior portion of the primary use structure.
 - (4) In hotels and motels with a restaurant holding a consumption-on-the-premises license, as part of room service for guests of the hotel or motel.
- (b) Nothing in this section shall prohibit the retail sale within these establishments of liquid commodities and mixes normally used in the preparation and serving of distilled spirits.

Sec. 4.5.29. - Coin-operated or amusement machines.

No retail dealer in liquors shall permit on the premises any slot machine of any kind or character or any coin-operated machine or any machine operated for amusement purposes. However, cigarette vending machines may be permitted.

Sec. 4.5.30. - Hours of sale.

Retailers shall not engage in the sale of spirituous liquors except between the hours of 8:00 a.m. and 12:00 p.m. on Monday through Saturday. The hours within which this business may be carried on shall be

determined by the standard time in force at the time of the sale thereof. Retailers shall not engage in the sale of spirituous liquors except between the hours of 12:30 p.m. and 11 p.m. on Sunday.

Sec. 4.5.31. - Employees.

The following provisions apply to all establishments holding a license for package liquor:

- (1) An employee shall meet the same character requirements as set forth in the general ordinances for the licensee, except for the residency requirements.
- (2) No person shall be employed by an establishment holding a license hereunder until this person has been fingerprinted or cleared by the City Manager or his designee and has been issued a permit by the City Manager or his designee indicating that the person is eligible for employment. The permit issued to a person under this section shall be an alcoholic beverage permit, which shall be issued only to a person who must be eighteen (18) years of age or older and who sells alcoholic beverages.
- (3) No permit shall be issued until such time as a signed application has been filed with the City Manager or his designee and a search of the criminal record of the applicant completed. The application shall include, but shall not be limited to, the name, date of birth, and prior arrest record of the applicant, though the fact of an arrest record shall be used for investigative purposes only, and shall give rise to no presumption or inference of guilt. Due to the inclusion of arrest information, these applications shall be regarded as confidential and shall not be produced for public inspection without a court order.
- (4) The City Manager or his designee shall have a complete and exhaustive search made relative to any police record of the person fingerprinted or cleared. If there is no record of a violation of this division, the City Manager or his designee shall issue a permit to the employee, stating that the person is eligible for employment. If it is found that the person fingerprinted or cleared is not eligible for employment, the City Manager or his designee shall not issue a permit to the employee.
- (5) All permits issued through administrative error or through an error in completion of a background investigation can be terminated by the City Manager or his designee.
- (6) No licensee shall allow any employee required to hold a permit to work or train on the licensed premises unless the licensee has on file, on the premises, the current, valid permit of each such employee.
- (7) If any permit holder leaves the employ of a licensed establishment, the licensee shall immediately surrender the permit to the City Manager or his designee.
- (8) All permits issued hereunder remain the property of the city, and shall be produced for inspection upon the demand of the City Manager or his designee.

Sec. 4.5.32. - Location of retail liquor package stores.

No new retail establishment selling distilled spirits by the package shall be located within one thousand (1,000) yards of an existing retail establishment selling distilled spirits by the package. This prohibition shall not apply to a hotel or a motel with a restaurant holding a consumption on the premises license which sells package liquor to its guests as part of room service.

DIVISION 6 - BEER AND WINE PACKAGE STORES

Sec. 4.5.33. - Types of retail establishments.

- (a) Except as provided in section 4.5.35 no beer and/or wine shall be sold at retail except in establishments maintaining eighty (80) percent of the floor space and storage area in a manner which is devoted principally to the retail sale of other products and located in zoning districts in which these establishments are permitted as a conforming use or in districts where an existing establishment exists as a nonconforming use or in a facility duly licensed by the city to sell liquor by the package.
- (b) In cases where, under section 4.5.28 (a)(4), a hotel or motel is allowed to sell liquor by the package for purposes of room service, beer and wine sales by the package shall also be permitted for purposes of room service to guests of the hotel or motel.

Sec. 4.5.34. - Hours of sale; Sunday sales.

Retail package licensees shall not engage in the sale of beer and/or wine except between the hours of 8:00 a.m. and 12:00 midnight, Monday through Saturday. The hours within which business may be carried on shall be determined by the standard time in force at the time of the sale thereof. Retail package licensees shall not engage in the sale of beer and/or wine except between the hours of 12:30 p.m. and 11 p.m. on Sunday.

Sec. 4.5.35. - Use of tags or labels to indicate prices.

Retailers shall indicate plainly, by tags or labels on the bottles or containers or on the shelf immediately below where the containers are placed, the prices of all beer and wine exposed or offered for sale.

Sec. 4.5.36. - Ancillary wine tasting license.

- (a) The holder of a package wine license, with or without a package malt beverage license, but in no event with a package distilled spirits license, with licensed premises having a minimum of 200 square feet of floor space dedicated to the display of wine offered for sale, shall be eligible for an ancillary wine tasting license to provide samples of wine offered for sale to customers under the conditions set forth in this section.
- (b) Wine sampling shall be on limited occasions when a customer requests a sample of a wine offered for sale within the premises, or in conjunction with wine education classes and sampling designed to promote wine appreciation and education.
- (c) Wine tasting for customers shall only be conducted at a wine counter area constituting no more than ten percent of the entire floor area of the premises.
- (d) Wine sampling for customers shall be limited to no more than one time per day per customer for a period not to exceed two consecutive hours. Samples shall not exceed two ounces, and no customer shall consume more than eight ounces in any two-hour period.
- (e) Wine bottles shall be opened only by the licensee or an employee, and samples shall only be poured by the licensee and/or an employee.
- (f) No open containers of wine shall be removed from the licensed premises.
- (g) Not more than three times per week for a period of not to exceed two consecutive hours, the holder of an ancillary wine tasting license may conduct educational classes and sampling for classes. All conditions of sampling set forth in this section shall apply to such classes, except for the limitation on floor areas where the classes can be conducted.

- (h) Holders of an ancillary wine tasting permit shall not charge for samples or tastings, but may accept donations for a charitable organization of their choice.
- (i) Wine sampling and tasting is only permitted within the enclosed portion of the premises.
- (j) The annual fee for an ancillary wine tasting license shall be set and may be revised by resolution of the city council.

Sec. 4.5.37. - Ancillary malt beverage tasting license.

- (a) The holder of a package malt beverage license, with or without a package wine license, but in no event with a package distilled spirits license, with licensed premises having a minimum of 400 square feet of floor space dedicated to the display of malt beverages offered for sale or which is authorized pursuant to section 4.5.39 to sell growlers, shall be eligible for an ancillary malt beverage tasting license to provide samples of malt beverages offered for sale to customers under the conditions set forth in this section.
- (b) Malt beverage sampling shall be on limited occasions when a customer request a sample of a malt beverage offered for sale within the premises, or in conjunction with malt beverage education classes and sampling designed to promote malt beverage appreciation and education.
- (c) Malt beverage tasting for customers shall only be conducted at a counter area constituting no more than ten percent of the entire floor area of the premises.
- (d) Malt beverage sampling for customers shall be limited to no more than one time per day per customer for a period not to exceed two consecutive hours. Samples shall not exceed two ounces, and no customer shall consume more than eight ounces in any two-hour period.
- (e) Only the licensee or an employee shall open and handle unpackaged malt beverages, and samples shall only be poured by the licensee and/or an employee.
- (f) No open containers shall be removed from the licensed premises.
- (g) Not more than three times per week for a period not to exceed two consecutive hours, the holder of an ancillary malt beverage tasting license may conduct educational classes and sampling for class participants. All conditions of sampling set forth in this section shall apply to such classes, except for the limitation on floor areas where the classes can be conducted.
- (h) Holders of an ancillary malt beverage tasting license shall not charge for samples or tastings, but may accept donations for a charitable organization of their choice.
- (i) Malt beverage sampling and tasting is only permitted within the designated interior portion of the premises.
- (j) The annual fee for an ancillary malt beverage tasting license shall be set, and may be revised, by resolution of the city council.

Sec 4.5.38. — Bed and breakfast license.

- (a) A bed and breakfast desiring to sell alcohol on premises shall first obtain a bed and breakfast alcohol license. Such license shall be limited to the sale of beer and wine.
- (b) A bed and breakfast licensed under this article shall:
 - (i) Comply with all local, state and federal licensing and operational requirements, and shall have all licenses and permits required of bed and breakfasts by the same;

- (ii) Have a full-service kitchen at the licensed location approved by local health and fire departments;
- (iii) Restrict its sell of alcohol to overnight customers staying on the premises and its customers who are served food that is to be consumed on the premises while dining or attending a culinary class. More than one bottle of wine shall not be sold to any customer in a three-day period. A bed and breakfast shall not allow customers to take alcoholic beverages in any form away from the licensed premises, except that overnight customers may be permitted to remove one unsealed bottle of wine per patron for consumption off premises at the end of their overnight stay;
- (iv) Submit reports to the City Manager or his designee as required under this chapter.

Sec. 4.5.39. - On-premises consumption unlawful; growlers.

- (a) It shall be unlawful for any person to consume any alcoholic beverages on premises licensed for the sale of alcoholic beverages by the package. It shall be unlawful for any retail package licensee to open or break the package of any alcoholic beverages for a purchaser or to permit the consumption of alcoholic beverages on the licensed premises. This section shall not apply with respect to: (1) Tastings provided pursuant to an ancillary wine tasting license;
- (2) Tastings provided pursuant to an ancillary malt beverage tasting license; or
- (3) Sales pursuant to a license for consumption on the premises.
- (b) Notwithstanding the foregoing prohibition, package malt beverage licensees, who are not also licensed to sell distilled spirits by the package, may fill growlers with draft beer at the licensee's licensed location from kegs lawfully procured by the licensee, subject to the following requirements: (i) The filled growler must be securely sealed, on premises, with a tamper proof plastic cap;
- (ii) Either at least 90 percent of the licensee's total gross sales are from the packaged sale of malt beverages and/or wine or the licensee's premises have a minimum of 400 square feet of floor space dedicated to the display of malt beverages offered for sale; and
- (iii) The licensee complies with all state, federal and local packaging and labeling laws regarding alcoholic beverages.

Each filled growler must be removed from the premises in its securely sealed condition. Except as provided in subsection (a) of this section, consumption on the premises shall be prohibited.

Sec. 4.5.40. - Craft beer market.

- (a) No person shall be permitted to own or operate a craft beer market without obtaining from the finance director as provided in this chapter for both a retail package sales of malt beverages license and an ancillary tasting license.
- (b) Notwithstanding any other provision of this chapter or the Code of Ordinances for the city generally, a craft beer market shall be authorized to sell samples of draft beer and pints to patrons over the age of 21 years. Samples shall not exceed four ounces in volume, pints shall not exceed 16 ounces, and beers having an alcohol content in excess of six percent alcohol by volume shall not exceed ten ounces. One individual shall not be offered more than a total of 32 ounces within a 24-hour period.

- (c) A craft beer market or growler shop may, but is not required, to serve food, so long as the establishment complies with all other provisions of the city Code and such food service is properly permitted by the city.
- (d) A craft beer market or growler shop that offers for sale samples or pints shall be exempt from the definitions of restaurants and late night establishments in chapter 27.
- (e) Employees of a craft beer market that offers for sale samples or pints as defined in this section shall obtain and the licensee shall maintain on premises an employee license as required in section 4.5.20.

ARTICLE VI. - WHOLESALERS

Sec. 4.6.1. - Generally.

- (a) Any person desiring to sell, at wholesale, any alcoholic beverage in the city shall make application to the City Manager or his designee and obtain a license to do so, which application shall be in writing on the prescribed forms, and pay 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 of the city.
- (b) No person who has any direct financial interest in a license for the retail sale of distilled spirits shall be allowed to have any interest or ownership in any wholesale distilled spirit license.
- (c) No retailer shall purchase any alcoholic beverage from any person other than a wholesaler licensed under this article. No wholesaler shall sell any distilled spirits to any person other than a retailer licensed under this chapter.
- (d) No alcoholic beverage shall be delivered to any retail sales outlet in the city except by a duly licensed wholesaler. The name of the wholesale distributor shall be clearly marked on the delivery vehicle.

Sec. 4.6.2. - Excise tax imposed; bond required.

- (a) There is imposed an excise tax upon all alcoholic beverages purchased in the city by persons holding a retail package license and/or a consumption-on-the-premises license at a rate established by action of the city council, a copy of which is on file in the office of the clerk of the city.
- (b) The excise tax shall be collected by all wholesale dealers selling alcoholic beverages to persons holding retail licenses and shall be paid by the wholesale dealers to the City Manager or his designee by the tenth of each month, based upon the units of alcohol sold during the previous month. The wholesale dealer shall keep true and correct records of all sales and shipments. The monthly remittance shall be accompanied by a sworn statement showing, but not limited to, the type and volume sold to each retail licensee on a form or in a format as approved by the City Manager or his designee.
- (c) Each wholesale dealer, prior to commencement of business operation in the city, shall post a performance bond with the City Manager or his designee equal to one and one-half (1 h) times the estimated highest monthly payment made in a calendar year of the excise tax based on sales collected by the wholesale dealer from the retailers to secure the payments for the tax imposed herein. These bonds shall be secured by cash which shall bear no interest, or a surety bond executed by a surety company licensed to do business in this state and approved by the City Manager or his designee.

- (d) A wholesaler may be excused from posting the performance bond after demonstrating full and satisfactory compliance with the provisions required hereunder for a period of twelve (12) months subsequent to the commencement of business operations within the city. Continued exemption from the requirement of posting the performance bond shall be conditioned upon continued compliance with the terms of this article and the payment of all sums as required by the provisions of this section.
- (e) Any person who fails to pay any tax to the city or any amount of tax required to be collected and paid to the city under this article within the time required shall pay a late payment penalty, in addition to the tax or amount of tax, plus interest on the unpaid tax or any portion thereof as specified by section 4.4.8.

Sec. 4.6.3. - Audit.

The city shall have the right to audit each wholesale dealer licensed to do business in the city.

Sec. 4.604. - Hours of sale.

Wholesalers shall not engage in the sale of alcoholic beverages except between 6:00 a.m. and 1 1:00 p.m., Monday through Saturday.

ARTICLE VI]. - CONSUMPTION OF ALCOHOL NOT PURCHASED ON THE PREMISES

Sec. 4.7.1. — Brown bagging prohibited.

Except as provided in section 4.7.2, no owner, operator, or agent of any restaurant, music hall, theatre, or any other business licensee of the city shall knowingly allow patrons to bring in and consume any alcoholic beverage that is not purchased on the premises pursuant to a license under this chapter.

sec. 4.7.2. - Corkage.

- (a) At the sole discretion of the licensee, establishments having both a full service kitchen and a license for on-premises consumption of alcoholic beverages may allow patrons to carry or otherwise take wine onto the premises for consumption during the service of meals only subject to the following:
 - (1) Only one bottle per patron of legal drinking age at a table or booth shall be allowed;
 - (2) Before opening, the wine must be sealed in the original seal;
 - (3) The bottle must be commercially manufactured;
 - (4) The bottle may not exceed 1,000 ML in volume;
 - (5) The bottle must be given to the licensee or its designee either before or as the patron is seated;and

- (6) A partially consumed bottle of wine may be returned to the patron after the licensee or its designee re-corks the bottle in a manner to make the cork flush with the top of the bottle. The licensee shall place the re-corked bottle in a bag or other container that is secured in such a manner that is visibly apparent if the container has been subsequently opened or tampered with
- (b) A licensee who allows patrons to carry or otherwise take wine onto the premises for consumption in accordance with subsection (a) of this section may charge a fee to patrons for this service, at the licensee's discretion.

ARTICLE VIII. - TRANSITION PERIOD

Sec. 4.8.1- Existing License.

Any legal, validly issued existing license or perrn_it 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, including Article IV and Article V. At the expiration of 2017, any such licensee or pen:nit holder shall be required to comply with section 4.2.9 and section 4.2.10, or any other section 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.

Sec. 4.8.2.- Transition Departments.

During the period of transition and startup of the City of Stonecrest, and until the City notifies DeKalb County of its intention to take over alcohol permitting, any duties required by this Chapter shall be fulfilled by DeKalb County or any other designee of the City Manager.

SECTION 2.

1. It is hereby declared to be the intention of the Mayor and City Council that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are and were, upon their enactment, believed by the Mayor and City Council to be fully valid, enforceable and constitutional.
2. It is hereby declared to be the intention of the Mayor and City Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Mayor and City Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.

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

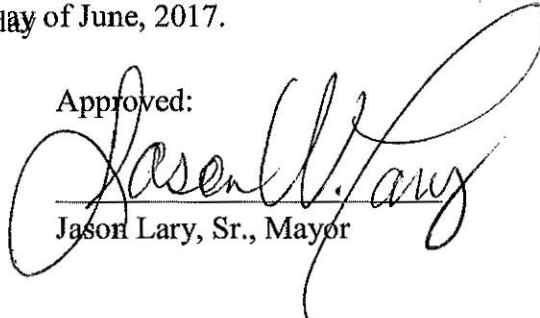
5. The within ordinance shall become effective upon its adoption.

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 th day of June, 2017.

App o ed:

Approved:

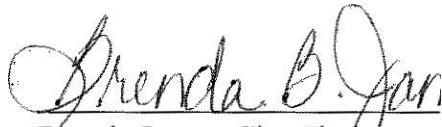


Jason Lary, Sr., Mayor



Thompson Kurrie, Jr., City Attorney

Attest:



Brenda James, City Clerk

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