

STATE OF GEORGIA

CITY OF STONECREST

ORDINANCE NO. 2022-_____

AN ORDINANCE TO AMEND CHAPTER 16 (MISCELLANEOUS PROVISIONS AND OFFENSES), ARTICLE 3 (OFFENSES AGAINST PUBLIC PEACE, ORDER AND SAFETY), DIVISIONS 1 (GENERALLY) AND 2 (DRUG AND ALCOHOL-RELATED OFFENSES) OF THE CITY OF STONECREST CODE OF ORDINANCES TO PROVIDE A PENALTY OF POSSESSION OF ONE OUNCE OR LESS OF MARIJUANA; TO ENCOURAGE LAW ENFORCEMENT OFFICERS TO ISSUE CITATIONS FOR SUCH OFFENSE IN LIEU OF EFFECTUATING ARREST; TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN ADOPTION DATE; TO PROVIDE AN EFFECTIVE DATE; AND TO PROVIDE FOR OTHER LAWFUL PURPOSES.

WHEREAS, the City of Stonecrest, Georgia (the “City”) is a municipal corporation created under the laws of the State of Georgia; and

WHEREAS, the duly elected governing authority of the City is the Mayor and Council thereof; and

WHEREAS, the Mayor and City Council find that enforcement of the State law offense prohibiting possession of one ounce or less of marijuana has been inequitable and has fallen disproportionately on certain subsets of the population; and

WHEREAS, arrest and/or conviction for the State law offense of possession of one ounce or less of marijuana presents employment obstacles which marginalize portions of the population; and

22 **WHEREAS**, O.C.G.A. § 36-32-6 grants municipal courts concurrent jurisdiction to try to
23 dispose of cases wherein a person is charged with possession of one ounce or less of marijuana
24 when such conduct occurs inside a municipality; and

25 **WHEREAS**, in 2018 the City adopted a Marijuana Possession Ordinance that was codified
26 under Chapter 16 (Miscellaneous Provisions and Offenses), Article 3 (Offenses Against Public
27 Peace, Order and Safety), Division 2 (Drug and Alcohol-Related Offenses), Section 16.54 of the
28 City of Stonecrest Code of Ordinances (the “Code”); and

29 **WHEREAS**, the Marijuana Possession Ordinance does not include specific punishment
30 prescribed for violation of the Code 16.54 which prohibits the possession of one ounce or less of
31 marijuana; and

32 **WHEREAS**, after due consideration, the duly elected governing authority desires to
33 amend the Marijuana Possession Ordinance to facilitate equity in the administration of criminal
34 justice; and

35 **WHEREAS**, the City Council finds that it is necessary to amend the Marijuana Possession
36 Ordinance for the interest of maintaining the public safety and general welfare of citizens of the
37 City and its visitors.

38 **NOW THEREFORE, BE IT AND IT IS HEREBY ORDAINED BY THE MAYOR**
39 **AND COUNCIL OF THE CITY OF STONECREST, GEORGIA and by the authority**
40 **thereof:**

41 **Section 1.** The Code of Ordinances, City of Stonecrest, Georgia is hereby amended by
42 revising Chapter 16 (Miscellaneous Provisions and Offenses), Article 3 (Offenses Against Public
43 Peace, Order and Safety), Division 1 (Generally) by revising the following section to be read and
44 codified as follows with added text in **bold** and deleted text in red ~~striketrough~~ font:

45 **“Sec. 16-29.2. Loitering for the purposes of engaging in drug-related activity.**

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

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

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

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

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

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

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

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

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

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

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

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

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

70 (2) One of the following factors applies:

71 a. The officer is aware that, within the preceding three years, the person has been convicted
72 of an offense defined in O.C.G.A. § Tit. 16, Ch. 13, or of complicity to commit such an offense, or of
73 conspiracy to commit such an offense with in the preceding three years;

74 b. The officer has knowledge of a specific reliable tip concerning unlawful drug-related
75 activity at a specific location, and the person who is found loitering is doing so at a time, in a place
76 or in a manner that is otherwise consistent with the details provided in the tip;

77 c. The person is loitering in an area that has been designated a notorious drug-related
78 activity area, as defined in subsection (g) of this section;

79 d. The person is in an area where he is prohibited **from being** by court order ~~from being~~, and
80 the officer is aware of the court order;

81 e. The officer knows that the person has been previously convicted of loitering with the
82 intention of engaging in unlawful drug-related activity under this section; or

83 f. Any vehicle the person has approached or communicated through is registered to an
84 individual who has been convicted of an unlawful drug-related activity in the previous three years
85 and the officer is aware of that fact.

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

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

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

Section 2. The Code of Ordinances, City of Stonecrest, Georgia is hereby amended by revising Chapter 16 (Miscellaneous Provisions and Offenses), Article 3 (Offenses Against Public Peace, Order and Safety), Division 2 (Drug and Alcohol-Related Offenses) by revising the following section to be read and codified as follows with added text in **bold** and deleted text in red ~~striketrough~~ font:

“Sec. 16-54. Marijuana possession.

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

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

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

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

Any person found guilty of violating this section shall be punished by a fine not exceeding \$100.00.

(e) **No person convicted of violating this section shall be punished by imprisonment for any period of time.**

126 (f) Any person charged with a violation of this section shall be entitled, upon request, to have
127 the case against him transferred to the State Court of DeKalb County, to be prosecuted and tried as
128 a misdemeanor in that court. “
129

130 **Section 3.** The preamble of this Ordinance shall be considered to be and is hereby
131 incorporated by reference as if fully set out herein.

132 **Section 4.** (a) It is hereby declared to be the intention of the Mayor and Council that
133 all sections, paragraphs, sentences, clauses, and phrases of this Ordinance are or were, upon their
134 enactment, believed by the Mayor and Council to be fully valid, enforceable, and constitutional.

135 (b) It is hereby declared to be the intention of the Mayor and Council that, to the
136 greatest extent allowed by law, each and every section, paragraph, sentence, clause, or phrase of
137 this Ordinance is severable from every other section, paragraph, sentence, clause, or phrase of this
138 Ordinance. It is hereby further declared to be the intention of the Mayor and Council that, to the
139 greatest extent allowed by law, no section, paragraph, sentence, clause, or phrase of this Ordinance
140 is mutually dependent upon any other section, paragraph, sentence, clause, or phrase of this
141 Ordinance.

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

151 **Section 5.** The City Clerk, with the concurrence of the City Attorney, is authorized to
152 correct any scrivener's errors found in this Ordinance, including its exhibits, as enacted.

153 **Section 6.** All ordinances and parts of ordinances in conflict herewith are hereby expressly
154 repealed to the extent of the conflict only.

155 **Section 7.** The effective date of this Ordinance shall be the date of its adoption by the
156 Mayor and Council unless otherwise stated herein.

157 **Section 8.** The Ordinance shall be codified in a manner consistent with the laws of the
158 State of Georgia and the City of Stonecrest.

159 **Section 9.** It is the intention of the governing body, and it is hereby ordained that the
160 provisions of this Ordinance shall become and be made part of the Code of Ordinances, City of
161 Stonecrest, Georgia and the sections of this Ordinance may be renumbered to accomplish such
162 intention.

SO ORDAINED this ____ day of _____, 2022.

CITY OF STONECREST, GEORGIA

Jazzmin Cobble, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney