

CITY OF STONE MOUNTAIN
COUNTY OF DEKALB
STATE OF GEORGIA

THE COUNCIL OF THE CITY OF STONE MOUNTAIN HEREBY ORDAINS

AN ORDINANCE TO AMEND CHAPTER 2, ARTICLE II OF THE CODE OF ORDINANCES OF THE CITY OF STONE MOUNTAIN; TO CREATE SECTION 2-32; TO PROVIDE FOR PROCEDURES FOR REMOVAL OF AN ELECTED OFFICER OF THE CITY; TO PROVIDE FOR A HEARING, APPOINTMENT OF A HEARING PANEL, RULES OF EVIDENCE, HEARING PROCEDURES; TO REQUIRE WRITTEN DECISION; TO PROVIDE FOR AN APPEAL; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

1. **Chapter 2 Article II. – MAYOR AND CITY COUNCIL** of the Code of Ordinances of the City of Stone Mountain shall be amended by creating new section 2-135, to be entitled Procedures for Removal of Officer, and to provide as follows:

2-135. Procedures for Removal of Officer: The following procedures shall be followed for the removal of an officer as specified in Section 5.16 of the Charter:

- (a) Impartial Hearing Panel
 - (1) The Panel shall be made up of three (3) members.
 - (2) One member shall be the Chief Judge of the City's Municipal Court. If for some reason the Chief Judge is unable to serve, the Chief Judge shall appoint an individual who meets the qualifications as set forth in this Section. The Chief Judge or his/her appointee shall be paid the same rate as the current rate for the Chief Judge for Municipal Court appearances.
 - (3) The remaining two members shall be appointed by a majority vote of Council.
 - (4) In addition to the Chief Judge or his/her appointee, at least one member shall be a competent attorney at law in good standing with the Georgia Bar with at least seven (7) years' experience in the practice of law. Said member shall be paid the same hourly rate as that received by the City Attorney. This attorney shall not have represented the Mayor nor any individual Council Member in his/her personal business at any time. This attorney shall not be a current resident of the City of Stone Mountain. For purposes of this section, a resident of the City of Stone Mountain means either owning or renting real property in the City, where such property is

the primary place of abode of said person; said person currently lives at such property on a regular, continuous basis; and said person has no present intention of leaving said abode.

- (5) In addition to the Chief Judge or his/her appointee, the third member shall be a resident of DeKalb County, Georgia but not of the City of Stone Mountain. For purposes of this section, a resident of DeKalb County, Georgia means either owning or renting real property in DeKalb County, where such property is the primary place of abode of said person; said person currently lives at such property on a regular, continuous basis; and said person has no present intention of leaving said abode. A resident of the City of Stone Mountain means either owning or renting real property in the City, where such property is the primary place of abode of said person; said person currently lives at such property on a regular, continuous basis; and said person has no present intention of leaving said abode. Said member shall be paid the same rate as the current rate for a DeKalb County Grand Juror.
 - (6) The person who is subject of the removal proceedings shall not serve on the panel.
 - (7) Neither the Mayor nor a current member of City Council may be a member of the panel.
 - (8) No member of the panel may be related by blood or marriage to the Mayor, any current member of City Council, nor the Chief Judge.
 - (9) Except for the Chief Judge, no member of the panel may be a current employee, contractor, or appointee of the City, the Mayor, or the City Council.
 - (10) Each member shall be impartial and shall have no conflict of interest with respect to the person subject of the removal proceedings.
 - (11) Each member shall be at least 21 years of age.
 - (12) Upon nomination to serve as a member of the panel, the nominee member must agree to serve and shall swear or affirm that s/he meets the applicable qualifications as set forth herein.
- (b) Commencement of Proceedings
- (1) In order for removal proceedings to begin, there must be a majority vote of Council calling for the commencement of removal proceedings, identifying the person who is subject to removal, and stating at least one reason why such removal is being sought. Such reason(s) for the removal must be one or more of the causes provided in Title 45 of the Georgia

Code or such other applicable laws. Such person subject of the removal proceedings shall be provided written notice specifying the reason(s) removal is being sought, and the City Clerk shall provide same within five (5) days of the commencement vote. The reason(s) why such removal is being sought is/are the only ground(s) upon which such person may be removed upon majority vote of the impartial hearing panel after the public hearing as set forth herein.

- (2) Recognizing that the City Attorney has a conflict of interest in seeking removal of an elected or appointed official, City Council shall retain outside counsel to represent the City in the removal proceedings. Within ten (10) days of the commencement vote, the City Attorney shall submit in writing to the City Clerk the names of at least two possible candidates who have agreed that s/he would serve in the position of outside counsel representation in the removal proceedings. Said attorney shall be paid the same hourly rate as that received by the City Attorney. This attorney shall not have represented the Mayor nor any individual Council Member in his/her personal business at any time.
- (3) Within ten (10) days of the commencement vote, the Chief Judge shall affirm that s/he will serve on the impartial hearing panel or shall name his/her appointee.
- (4) Within ten (10) days of the commencement vote, the Mayor and each Council Member who desires to nominate a remaining member of the hearing panel shall submit in writing one name to the City Clerk. Therefore, there can be no more than seven (7) nominations for the two remaining panel members. This provision applies regardless of whether the Mayor or Council Member is subject of the removal proceedings.
- (5) The City Clerk shall place the names of the proposed outside counsel as the first agenda item to be voted on at the next regularly-scheduled meeting of City Council. The City Clerk shall place the names of the nominated panel members as the second agenda item to be voted on at the next regularly-scheduled meeting of City Council. The City Clerk shall provide each panel nominee's written agreement to serve and oath of qualifications in the agenda packet. Neither of these votes may be tabled or postponed to a future meeting.
- (6) In the event a majority of Council cannot agree on a proposed outside counsel to represent the City in the removal proceedings, the Chief Judge shall appoint said outside counsel.

(c) Hearing Procedures

- (1) The Chief Judge or his/her appointee shall serve as presiding officer of the hearing. The Chief Judge or his/her appointee may issue subpoenas as may be requested by either the City or the person subject of the removal proceedings. Each side shall request no more than three (3) subpoenas.
- (2) The hearing shall be open to the public. Notice of the hearing shall be the same as that required for a regularly-schedule City Council meeting.
- (3) A majority of the hearing panel shall set the date, time, and location of the hearing. Said hearing shall take place inside the City limits of the City of Stone Mountain.
- (4) The person subject of the removal proceedings may hire private counsel but is not required to be represented by counsel at the hearing.
- (5) At least three (3) business days prior to the hearing, the City and the person subject of the removal proceedings shall provide to the Chief Judge or his/her appointee, as well as to the opposing party, a list of any witnesses the party intends to call at the hearing. The parties are not required to call any identified witness on such list, but any additional, unlisted witnesses will not be heard at the hearing, unless in the discretion of the Chief Judge or his/her appointee mitigating factors exist as to why each additional witness was not timely identified prior to the hearing. Where practicable, a copy of each exhibit to be identified or tendered at the hearing shall be furnished to the Chief Judge or his/her appointee, as well as to the opposing party at least 3 days before the hearing unless otherwise directed by the hearing officer. The Chief Judge be responsible for transmitting the witness lists and exhibits to the other hearing panel members.
- (6) The burden of proving the ground(s) specified in the notice shall be on the City. The burden of proof shall be by the preponderance of the evidence [or clear and convincing evidence].
- (7) Each party shall have the right to give a brief opening statement, and then the parties shall be allowed to present their side of the matter, including submission of any documentary evidence and examination of any witnesses.
- (8) The Chief Judge or his/her appointee may apply the rules of evidence as applied in civil nonjury matters but shall, when necessary to ascertain facts not reasonably susceptible of proof under such rules, allow evidence not otherwise admissible thereunder if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs or if it consists of documents relied upon by the City in the normal course of its business.

- (9) The Chief Judge or his/her appointee shall give effect to statutory presumptions and the rules of privilege recognized by law.
 - (10) Whenever any oral testimony sought to be admitted is excluded by the Chief Judge or his/her appointee, the proponent of the testimony may make an offer of proof by means of a brief statement on the record describing the excluded testimony. Whenever any documentary or physical evidence or written testimony sought to be admitted is excluded, it shall remain a part of the record as an offer of proof.
 - (11) The parties shall be allowed full and thorough cross examination of any witnesses.
 - (12) As each witness is called, s/he will answer direct questions and then be subject to cross-examination from the other party. During the evidentiary presentation, the hearing panel members shall have the right to ask questions of the party currently presenting evidence, ask questions of the witnesses, and request clarification of certain points.
 - (13) After the City has presented any evidence in rebuttal or waived the right to do so, each party shall have the right to give a brief closing argument as directed by the Chief Judge or his/her appointee.
 - (14) The City shall provide for the transcription of the proceedings by a certified court reporter and shall bear costs of same.
 - (d) Within 15 days after the completion of the hearing, the hearing panel shall make a written decision with findings and conclusions. The decision shall carry with a majority vote of the hearing panel members. The Chief Judge or his/her appointee shall deliver a copy of said written decision to the person subject of removal and to the counsel representing the City. Said counsel for the City shall then distribute said written decision to the Mayor and each Council Member.
 - (e) Any appeal shall be as set forth in section 5.16 (b) of the City Charter and shall be pursued under the Superior and State Court Appellate Practice Act, § 5-3-1 *et seq.*
2. **Repealer.** All ordinances or parts of ordinances that conflict with this ordinance are hereby repealed.
3. **Severability.** If any paragraphs, subparagraphs, sentence, clause, phrase, or any portion of this Ordinance shall be declared invalid or unconstitutional by any Court of competent jurisdiction, or if the provisions of any part of this Ordinance as applied to any particular situation or set of circumstances shall be declared invalid or unconstitutional, such invalidity shall not be construed to affect the portions of this Ordinance not so held to be invalid, or the application of this Ordinance to other circumstances not so held to be invalid. It is hereby declared to be the intent of the City Council to provide separable and divisible parts, and it does hereby adopt any and all parts hereof as may not be held invalid for any reason.

4. This Ordinance shall become effective as provided by the Charter.

Dr. Beverly Jones, Mayor

Shavala Ames, City Clerk

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