
Chapter 10 AMUSEMENTS AND ENTERTAINMENTS¹

ARTICLE I. IN GENERAL

Secs. 10-1—10-30. Reserved.

ARTICLE II. ADULT ENTERTAINMENT ESTABLISHMENTS²

Sec. 10-31. Findings; public purpose.

(a) *Purpose.* It is the purpose of this article to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the city. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this article to condone or legitimize the distribution of obscene material.

~~Based on the experiences of other municipalities and local governments, and on the experiences of the city, which experiences we believe are relevant to the problem faced by the city, we take note of the conditions and occurrences generally associated with adult entertainment establishments, whether or not alcoholic beverages are served, result in an increase in criminal behavior and create undesirable community conditions. An increase in instances of disorderly conduct, public drunkenness, prostitution, drug trafficking and loitering of individuals with criminal histories has been the experience of other municipalities and local governments which permit adult entertainment establishments, regardless of the serving of alcoholic beverages.~~

(b) ~~—~~*Findings and rationale.* Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the mayor and city council, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4*, L.L.C., 124 S.Ct. 2219 (June 7, 2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *Pap's A.M. v. City of Erie*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *Maxim Cabaret, Inc. v. City of Sandy Springs*, 816 S.E.2d 31 (Ga.

¹Cross reference(s)—Businesses, ch. 22.

²Editor's note(s)—Ord. No. 883, adopted December 22, 2003, amended and renumbered sections 10-31 through 10-61 (now 10-31 through 10-44) of article II. In order to accommodate the newly numbered sections, the remainder of article II was renumbered at the editor's discretion.

Cross reference(s)—Zoning, app. A.

State law reference(s)—Restriction of adult bookstores and movie houses, O.C.G.A. § 36-60-3.

[2018](#)); [Oasis Goodtime Emporium I, Inc. v. City of Doraville, 773 S.E.2d 728 \(2015\)](#); [Trop, Inc. v. City of Brookhaven, 296 Ga. 85 \(2015\)](#); [Walleye, LLC v. City of Forest Park, 322 Ga.App. 562 \(2013\)](#); [WBY, Inc. v. City of Chamblee, No. 21-12776 \(11th Cir. Sept. 23, 2025\)](#); [Wacko's Too v. City of Jacksonville, 134 F.4th 1178 \(11th Cir. 2025\)](#); [Club Madonna, Inc. v. City of Miami Beach, 42 F.4th 1231 \(11th Cir. 2022\)](#); [Cheshire Bridge Holdings v. City of Atlanta, 15 F.4th 1362 \(11th Cir. 2021\)](#); [Curves, LLC v. Spalding County, GA, 685 F.3d 1284 \(11th Cir. 2012\)](#); [Jacksonville Property Rights Association, Inc. v. City of Jacksonville, FL, 635 F.3d 1266 \(11th Cir. 2011\)](#); [Peek-A-Boo Lounge of Bradenton, Inc. v. Manatee County, FL, 630 F.3d 1346 \(11th Cir. 2011\)](#); [Flanigan's Enterprises, Inc. of Georgia v. Fulton County, GA, 596 F.3d 1265 \(11th Cir. 2010\)](#); [Artistic Entertainment, Inc. v. City of Warner Robins, GA, 331 F.3d 1196 \(11th Cir. 2003\)](#); [Artistic Entertainment, Inc. v. City of Warner Robins, GA, 223 F.3d 1306 \(11th Cir. 2000\)](#); [Gary v. City of Warner Robins, 311 F.3d 1334 \(11th Cir. 2002\)](#); [Ward v. County of Orange, 217 F.3d 1350 \(11th Cir. 2000\)](#); [Boss Capital, Inc. v. City of Casselberry, 187 F.3d 1251 \(11th Cir. 1999\)](#); [David Vincent, Inc. v. Broward County, 200 F.3d 1325 \(11th Cir. 2000\)](#); [Sammy's of Mobile, Ltd. v. City of Mobile, 140 F.3d 993 \(11th Cir. 1998\)](#); [Lady J. Lingerie, Inc. v. City of Jacksonville, 176 F.3d 1358 \(11th Cir. 1999\)](#); [This That And The Other Gift and Tobacco, Inc. v. Cobb County, 285 F.3d 1319 \(11th Cir. 2002\)](#); [DLS, Inc. v. City of Chattanooga, 107 F.3d 403 \(6th Cir. 1997\)](#); [Grand Faloon Tavern, Inc. v. Wicker, 670 F.2d 943 \(11th Cir. 1982\)](#); [International Food & Beverage Systems v. Ft. Lauderdale, 794 F.2d 1520 \(11th Cir. 1986\)](#); [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 \(7th Cir. 2003\)](#); [Fairfax MK, Inc. v. City of Clarkston, 274 Ga. 520 \(2001\)](#); [Morrison v. State, 272 Ga. 129 \(2000\)](#); [Sewell v. Georgia, 233 S.E.2d 187 \(Ga. 1977\), dismissed for want of a substantial federal question, 435 U.S. 982 \(1978\) \(sexual devices\)](#); [Flippen Alliance for Community Empowerment, Inc. v. Brannan, 601 S.E.2d 106 \(Ga. App. 2004\)](#); [Oasis Goodtime Emporium I, Inc. v. DeKalb County, 272 Ga. 887 \(2000\)](#); [Chamblee Visuals, LLC v. City of Chamblee, 270 Ga. 33 \(1998\)](#); [World Famous Dudley's Food & Spirits, Inc. v. City of College Park, 265 Ga. 618 \(1995\)](#); and [Airport Bookstore, Inc. v. Jackson, 242 Ga. 214 \(1978\)](#); and based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, [Austin, Texas - 1983](#); [Indianapolis, Indiana - 1984](#); [Garden Grove, California - 1991](#); [Houston, Texas - 1983, 1997](#); [Phoenix, Arizona - 1979, 1995, 1998](#); [Chattanooga, Tennessee - 1999-2003](#); [Minneapolis, Minnesota - 1980](#); [Los Angeles, California - 1977](#); [Whittier, California - 1978](#); [Spokane, Washington - 2001](#); [St. Cloud, Minnesota - 1994](#); [Littleton, Colorado - 2004](#); [Oklahoma City, Oklahoma - 1986](#); [Dallas, Texas - 1997](#); [Greensboro, North Carolina - 2003](#); [Amarillo, Texas - 1977](#); [New York, New York Times Square - 1994](#); and the [Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, \(June 6, 1989, State of Minnesota\)](#), the mayor and city council find:

(1) Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, human trafficking, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on property values, urban blight, litter, and sexual assault and exploitation. Alcohol consumption impairs judgment and lowers inhibitions, thereby increasing the risk of adverse secondary effects.

(2) Sexually oriented businesses should be separated from certain land uses to minimize the impact of their secondary effects upon such uses and the surrounding area, and should be separated from other sexually oriented businesses to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.

(3) Each of the foregoing negative secondary effects constitutes a harm which the city has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the city's rationale for this article, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the city's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the city. The city finds that the

cases and documentation relied on in this article are reasonably believed to be relevant to said secondary effects.

The mayor and council, as well as city staff and the city attorney, have read and studied the American Planning Association guide entitled *Everything You Always Wanted to Know about Regulating Sex Businesses*, authored by Eric Damien Kelly and Connie B. Cooper, published in December 2000. Additionally, the mayor and council received an oral report from the chief of police at its meeting on November 24, 2008, wherein he outlined that during his nearly 40 years in military and civilian law enforcement he has personally observed the negative secondary effects of adult entertainment businesses on the community to include increased crime rates, depreciation in property values, and deterioration of community character and quality of life in or near adult entertainment businesses. The guide reviewed by the mayor and council in reaching the findings contained herein is being attached to the minutes of the meeting approving the ordinance from which this article is derived, and is officially made a part of the record. The mayor and council also recognize that courts have made findings in these issues, and rely on the collective wisdom and common sense of each member of this governing authority. We further rely upon the evidentiary foundation set forth in the court decisions reported in the above noted guide and in such cases as *Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), 106 S. Ct. 925, to the effect that negative secondary effects are caused by the presence of even one adult entertainment establishment in a given neighborhood.

- (c) An increase in instances of disorderly conduct, public drunkenness, public indecency, public solicitation, violent crime, prostitution, exploitation of young women, drug use, drug trafficking and loitering of individuals with criminal histories has been the experience of other municipalities and local governments that permit adult entertainment establishments, particularly where there are two or more such businesses in close proximity, and particularly in such businesses that serve alcohol. The mayor and council have a substantial interest in guarding against these undesirable secondary effects, to protect the public health, safety and welfare and to preserve and protect the quality of life in the city. The mayor and council also wish to guard against public indecency, which is a crime per O.C.G.A. § 16-6-8, and to guard against certain sexual contact provided for money, which is a crime per O.C.G.A. § 16-6-16.
- (d) The mayor and council also find that the increase in criminal behavior which accompanies adult entertainment establishments causes undesirable community conditions, particularly where there are two or more such businesses in close proximity, and particularly in such businesses that serve alcohol. Conditions experienced in other municipalities and local governments are: depression of property values in neighborhoods surrounding the adult entertainment establishment, neighborhood blight, an increased burden on and expenditure for law enforcement, and an increase in the criminal case load in the judicial system due to a greater number of arrests because of the above mentioned crime problems. The mayor and council note a substantial governmental interest in regulating this and any atmosphere conducive to violence, sexual harassment, public intoxication, prostitution, spread of sexually transmitted diseases and other negative effects. The mayor and council wish to protect against neighborhood blight and downgrade of surrounding neighborhoods due to the problems and undesirable behavior associated with adult entertainment establishments.
- (e) The mayor and council find that the above stated undesirable secondary effects will harm the city unless these regulations are imposed to limit such adverse affects. These regulations are to minimize the adverse effects in order to preserve quality of life and to protect the public health, safety, welfare and morals and to maintain the integrity of this community, especially in residential areas, and areas which have a church, school, daycare center, governmental building, library, civil center, public park or playground. These regulations are to promote these legitimate public and governmental interests in a way that will not infringe upon the constitutional right of freedom of expression. The mayor and council are not attempting to preclude adult entertainment; rather, we seek to regulate adult entertainment establishments to protect the public from the above described, negative secondary effects. The mayor and council have narrowly tailored these regulations to combat the negative secondary effects and protect the public health, safety and welfare, while allowing reasonable avenues of protected first amendment communication. The mayor and council

have found no less restrictive alternative to these regulations that would adequately protect the public health, safety and welfare. The restrictions posed by these regulations are no greater than is essential to the furtherance of the government interest stated above.

(f) ~~Therefore, the purpose of this article is to regulate adult entertainment establishments to prevent increases in criminal activity and undesirable community conditions. It is recognized that such regulation cannot approach prohibition, or a protected form of expression would vanish. Therefore, this article represents an attempt to balance the competing interests of reduced criminal activity and neighborhood protection versus the rights of adult entertainment establishments and patrons.~~

(Ord. No. 883, § 10-31, 12-22-2008)

Charter reference(s)—Business licenses, permits and fees, § 5-104.

Sec. 10-32. Definitions.

~~Except as specifically defined herein, all words used in this article shall be as defined in the most recent edition of the Webster's New Collegiate Dictionary. Words not defined herein or in the above book shall be construed to have the meaning given by common and ordinary use, and shall be interpreted within the context of the sentence and section in which they occur. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~*Adult bookstore or adult video store* means any commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following items: 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," in which more than ten square feet of floor space is used for the display or offer for sale of any book or publication, film, or other medium which depicts sexually explicit nudity or sexual conduct by its emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.~~

~~*Adult cabaret* means a nightclub, juice bar, restaurant, bottle club, or similar commercial establishment which regularly features persons who appear semi-nude.~~

~~*Adult entertainer* means any person employed by an adult entertainment establishment who exposes his or her "specified anatomical areas," as defined herein. For purposes of this section, adult entertainers include employees as well as independent contractors.~~

~~*Adult entertainment* means entertainment that is characterized by an emphasis on the depiction, display or the featuring of "specified anatomical areas."~~

~~*Adult entertainment establishment* means and includes the following types of business:~~

- ~~(1) Any commercial establishment that employs or uses any person live, in any capacity in the sale or service of beverages or food while such person is unclothed or in such attire, costume or clothing, so as to expose any portion of his or her "specified anatomical areas," as defined herein;~~
- ~~(2) Any commercial establishment which provides live entertainment where any person appears unclothed or in such attire, costume or clothing as to expose any portion of his or her "specified anatomical areas" as defined herein or where such performances are distinguished or characterized by an emphasis on "specified sexual activities," as defined herein;~~

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- (3) Any commercial establishment which holds, promotes, sponsors or allows any contest, promotion, special night, event or any other activity where live patrons of the establishment are encouraged or allowed to engage in any of the conduct described in subsections (1) and (2) of this definition;
 - (4) Any commercial establishment having a substantial or significant portion of its stock in trade, books, magazines or other periodicals, videotapes or movies or other reproductions, whether for sale or rent, which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities as defined herein or specified anatomical areas as defined herein or having a segment or section comprising more than ten square feet of its total floor space devoted to the sale or display of such material or which derives more than five percent of its net sales from the sale or rental of such material;
 - (5) Any commercial establishment utilizing an enclosed building with a capacity of fifty or more persons used for cinematographic or videographic presentation of material distinguished by or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined herein, for observation by patrons therein;
 - (6) Any adult motion picture theater, adult motion picture arcade, adult mini-motion picture theater, adult bookstore, adult video store, adult hotel, or adult motel, as defined herein;
 - (7) The definition of "adult entertainment establishment" shall not include traditional or live theater (mainstream theater) which means a theater, concert hall, museum, educational institution or similar establishment which regularly features live performances which are not distinguished or characterized by an emphasis on the depiction, display, or description or the featuring of specified anatomical areas or specified sexual activities in that the depiction, display, description or featuring is incidental to the primary purpose of any performance.

Adult hotel or motel means a hotel, or motel, or similar commercial establishment which; wherein material is presented which is distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

- (1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, other photographic reproductions, or live performances which are characterized by the display of "specified sexual activities" or "specified anatomical areas"; and which advertises the availability of such material by means of a sign visible from the public right-of-way, or by means of any on- or off-premises advertising, including, but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television;
- (2) Offers a sleeping room for rent for a period of time that is less than ten hours; or
- (3) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten hours.

Adult mini-motion picture theater means an enclosed building with a capacity for less than 50 persons used for presenting material distinguished or characterized by an emphasis on matter depicting or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

Adult motion picture arcade means any place to which the public is permitted to be invited wherein paper currency, coin- or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time and where the images so displayed are distinguished or characterized by an emphasis on depicting or described specified sexual activities or specified anatomical areas.

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, means an enclosed building with a capacity of 50 or more persons, used for presenting 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.

Adult video store means any establishment having a substantial or significant portion of its stock in trade, video tapes or movies or other reproductions, whether for sale or rent, which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, or an establishment with a segment or section, comprising five percent of its total floor space, devoted to the sale or display of such material or which derives more than five percent of its net sales from videos which are characterized or distinguished or relating to specified sexual activities or specified anatomical areas.

Children's day care facility means a facility licensed by the state, whether situated within the city or not, that provides care, training, education, custody, treatment or supervision for more than 12 children under 14 years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than 24 hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers, means a structure or portion of a structure wherein is provided care and supervision of children away from their place of residence for less than 24 hours per day on a regular basis for compensation. For the purpose of this article, the term "children's day care facility" shall include, but not be limited to, the terms "nursery school," "early learning center," "prekindergarten," "private kindergarten," "play school," or "preschool."

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

City means Calhoun, Georgia.

City Administrator ~~Manager~~ means the city administrator ~~manager~~ for the City of Calhoun.

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

Establish or establishment means and includes any of the following:

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

Influential interest means any of the following:

- (1) The actual power to operate the sexually oriented business or control the operation, management or policies of the sexually oriented business or legal entity which operates the sexually oriented business; or
- (2) Holding an office (e.g., president, vice-president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the sexually oriented business.

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

Minor means any person who has not attained the age of 18 years.

Nudity or a state of nudity means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage 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.

Operate or cause to operate means to cause to function or to put or keep in a state of doing business. The term "operator" means any person on the premises of a sexually oriented business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

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

Operator means the manager or other person principally in charge of an adult entertainment establishment.

Owner means any individual or entity holding more than a 30% interest in a sexually oriented business adult entertainment establishment.

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 business license pursuant to section 10-33, means the defined, closed or partitioned establishment, whether room, shop or building, wherein adult entertainment is performed.

Principal purpose means that the commercial establishment:

- (1) Has a substantial portion of its displayed merchandise which consists of said items;
- (2) Has a substantial portion of the wholesale value of its displayed merchandise which consists of said items;
- (3) Has a substantial portion of the retail value of its displayed merchandise which consists of said items;
- (4) Derives a substantial portion of its revenues from the sale or rental for any form of consideration of said items;
- (5) Maintains a substantial section of its interior business space for the sale or rental of said items; or
- (6) Regularly features said items, and prohibits access by minors, because of age, to the premises or the portion of the premises occupied by said items, and regularly advertises itself as providing "adult," "xxx," "triple-x," "x-rated," "sex," "sexual," "pornography," "porn," or "erotic" material on signage visible from a public right-of-way.

Regularly means and refers to the consistent and repeated doing of the act so described.

Semi-nude or state of 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 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 modeling class operated:

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- (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 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 advertising that 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 designed or marketed as useful primarily for the stimulation of human genital organs. This definition shall include devices commonly known as dildos, vibrators, penis pumps, 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. Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing medical or healthcare products or services, nor shall this definition be construed to include commercial establishments which do not restrict access to any portion of their premises by reason of age.

Sexual encounter center means a business or commercial enterprise that, as one of its principal business purposes, purports to offer for any form of consideration physical contact in the form of wrestling or tumbling between persons of the opposite sex when one or more of the persons is semi-nude.

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

Sexually oriented entertainment means any showing of, or depiction of, or engaging in "specified sexual activities" or "specified anatomical areas."

Specified anatomical areas means and includes the following:

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

Specified criminal activity means:

- (1) Any of the following specified crimes for which less than five years elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:
 - a. A sexual offense as enumerated in O.C.G.A. §§ 16-6-1 (rape), 16-6-4 (child molestation), 16-6-22.1 (sexual battery), 16-6-22.2 (aggravated sexual battery), or 16-6-8 (public indecency);
 - b. A prostitution-related offense as enumerated in O.C.G.A. §§ 16-6-9 (prostitution), 16-6-10 (keeping a place of prostitution), 16-6-11 (pimping), or 16-6-12 (pandering);
 - c. An obscenity offense as enumerated in O.C.G.A. § 16-12-80 (distributing obscene material), provided that, consistent with the decision in *This That And The Other Gift And Tobacco, Inc. v. Cobb County*, 285 F.3d 1319 (11th Cir. 2002), a conviction for advertising certain obscene materials shall not be considered a specified criminal activity;
 - d. A controlled substance offense as enumerated in O.C.G.A. §§ 16-13-30, 16-13-30.1, 16-13-30.2, 16-13-30.3, 16-13-30.4, 16-13-30.5, 16-13-31 or 16-13-31.1;

e. A racketeering offense as enumerated in O.C.G.A. § 16-14-4;

(2) Any attempt, solicitation, or conspiracy to commit one of the foregoing offenses;

(3) Any state municipal ordinance violation based upon any of the crimes set forth in subsections (1) through (1)e of this definition, inclusive; or

(4) Any offense in another jurisdiction that, had the predicate acts been committed in the state, would have constituted any of the foregoing offenses.

Specified sexual activities means and includes any of the following:

- (1) Actual or simulated sexual intercourse, oral copulation, and intercourse, oral anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship and any of the following sexually oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zoerasty;
- (2) Use of human or animal ejaculation, sodomy, oral copulation, coitus or masturbation;
- (3) Fondling or other erotic touching of nude human genitals, pubic region, buttocks or female breast;
- (4) Masochism, erotic or sexually oriented torture, beating or the infliction of pain; or
- (5) Erotic or lewd touching, fondling or other sexual contact with an animal by a human being.

Substantial means at least 35 percent of the items so modified.

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

(1) The sale, lease, or sublease of the business;

(2) The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or

(3) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

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

(Ord. No. 883, § 10-32, 12-22-2008)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 10-33. License required.

- (a) ~~It shall be unlawful for any person, association, partnership, or corporation to operate, engage in, conduct, or carry on, in or upon any premises within the city limits an adult entertainment establishment, a sexually oriented business in the city as defined in this article without first procuring an annual license to do so, except as provided in section 10-41(b) when the city administrator fails to approve or deny an application for an adult entertainment license within 30 days as required by this article.~~
- (b) It shall be unlawful for any person to be an "employee" as defined in this article, of a sexually oriented business in the city without a valid sexually oriented business employee license.
- (c) The issuance of such an annual license shall not be deemed to authorize, condone or make legal any activity thereunder if the same is deemed illegal or unlawful under the laws of the state or the United States.

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- (d~~e~~) No annual license for a ~~sexually oriented business n adult entertainment establishment~~ shall be issued by the city if the premises to be used also holds a license to sell alcoholic beverages or malt beverages and wine for consumption on the premises. Any premises licensed as a ~~sexually oriented business n adult entertainment establishment~~ shall not be eligible to apply at any time for a license to sell alcoholic beverages or malt beverages and wine for consumption on the premises.
- (e~~d~~) There shall be an annual regulatory fee for each ~~adult entertainment establishment~~ sexually oriented business licensed within the city in the amount of \$1,500.00. The annual regulatory fee must be paid to the city administrator of the city within ten days after the city administrator approves the initial application for a ~~sexually oriented business n adult entertainment establishment~~ license or a renewal thereof. In any event, no ~~adult entertainment establishment~~ sexually oriented business license or renewal thereof shall be issued until the most recent annual regulatory fee has been paid.
- (f~~e~~) All licenses granted hereunder shall expire on December 31 of each year. Licensees who desire to renew their license shall file an application with the city administrator on the form provided for renewal of the license for the ensuing year. Applications for renewal must be filed before November 30 of each year. Any renewal application received after November 30 shall be assessed, in addition to said annual regulatory fee, a late charge of 20 percent.
- (g~~f~~) If a license renewal application is received after January 1, 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. If a license application is received after January 1, investigative and administrative costs as hereinafter set forth in this article will be assessed.
- (h~~e~~) All licenses granted hereunder shall be for the calendar year and the full annual regulatory fee must be paid for a license renewal application filed prior to July 1 of the license year. One-half of a full annual regulatory fee shall be paid for a license renewal application filed after July 1 of the license year.
- (i~~h~~) Any person renewing any license issued hereunder who shall pay the annual regulatory fee, or any portion thereof, after January 1, shall, in addition to said annual regulatory fee and late charges, pay simple interest on the delinquent balance at the annual rate then charged by the Internal Revenue Service of the United States on unpaid federal income taxes.
- (j) A licensee shall not transfer his license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application.

(Ord. No. 883, § 10-33, 12-22-2008)

Sec. 10-34. On-premises operator required.

A ~~sexually oriented business n adult entertainment establishment~~ shall have a designated person to serve as an on-premises operator. The operator shall be principally in charge of the establishment and shall be located on the premises during all operating hours.

(Ord. No. 883, § 10-34, 12-22-2008)

Sec. 10-35. Application process and qualifications.

- (a) *Process.*

(Supp. No. 15)

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- (1) Any person, ~~association, partnership or corporation~~ desiring to obtain a license to operate, ~~engage in, conduct, or carry on~~ any ~~adult entertainment establishment~~ sexually oriented business in the corporate limits of the city shall make application to the city administrator. Such application shall be made on forms furnished by the city, shall be made in the name of the ~~adult entertainment establishment~~ sexually oriented business by an applicant who is a natural person and an agent of the ~~adult entertainment establishment~~ sexually oriented business and shall include the name of the operator as defined herein and of the owner as defined herein. If the ~~adult entertainment establishment~~ sexually oriented business is a corporation, then the agent for purposes of making application for a license hereunder shall be an officer of the corporation. If the ~~adult entertainment establishment~~ sexually oriented business is a partnership, the agent for such purposes shall be a general partner.
 - (2) At the time of submitting such application, a nonrefundable fee payable in cash or by certified check in the amount of \$300.00 shall be paid to the city administrator to defray, in part, the cost of investigation and report required by this ordinance. The city administrator shall issue a receipt showing that such application fee has been paid.
 - (3) The application for license does not authorize the operation of, engaging in, conduct or carrying on of any ~~adult entertainment establishment~~ sexually oriented business.
- (b) *Contents* Each application for a ~~sexually oriented business or adult entertainment establishment~~ sexually oriented business license shall contain the following information:
- (1) The full true name and any other names used by the applicant, the operator and owner;
 - (2) The present address and telephone number of the applicant, the operator and owner;
 - (3) The previous addresses of the applicant, the operator and the owner, if any, for a period of five years immediately prior to the date of the application and the date of residence at each;
 - (4) Acceptable written proof that the applicant, the operator and the owner are at least 18 years of age;
 - (5) ~~If the application is for a sexually oriented business license, the operator's~~ If the application is for a sexually oriented business employee license, the applicant's height, weight, color of eyes and hair and date and place of birth;
 - (6) ~~If the application is for a sexually oriented business license, two~~ If the application is for a sexually oriented business employee license, two photographs of the ~~operator~~ applicant at least two inches by two inches taken within the last six months;
 - (7) The business, occupation or employment history of the applicant, the operator and owner for the five years immediately preceding the date of application;
 - (8) ~~If the application is for a sexually oriented business license, the~~ If the application is for a sexually oriented business license, the business license history of the ~~adult entertainment establishment~~ sexually oriented business seeking a license and whether such establishment, in previous operations in this or any other location under license, has had such license or permit for a ~~sexually oriented or adult entertainment~~ sexually oriented business or similar type of business revoked or suspended, the reason therefor, and the business activity or occupation subsequent to such action of revocation or suspension;
 - (9) ~~If the application is for a sexually oriented business license, if the application~~ If the application is for a sexually oriented business license, if the application and is made on behalf of a corporation, the name of the corporation, exactly as shown in its articles of incorporation or charter, together with the place and date of incorporation. If the application is on behalf of a limited partnership or an LLC, a copy of the certificate of limited partnership or LLC filed with the Georgia Secretary of State shall be provided. If one or more of the partners is a corporation, the provisions of this subsection pertaining to corporations shall apply;
 - (10) ~~If the application is for a sexually oriented business license, the~~ If the application is for a sexually oriented business license, the names and addresses of the owner and lessor of the real property upon which the ~~adult entertainment establishment~~ sexually oriented

business is to be operated, engaged in, conducted or carried on and a copy of the lease or rental agreement;

- (11) With respect to the applicant, the operator and the owner, whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this article, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable all convictions (excluding misdemeanor traffic violations unrelated to driving under the influence of drugs or alcohol) within the past five years, including a complete description of the crime or violation, the date of the crime or violation, date of conviction (including plea of guilty or nolo contendere), jurisdiction and any disposition, including any fine or sentence imposed and whether the terms of disposition have been fully completed. Each person required to disclose convictions hereunder shall also provide a signed and notarized consent, on forms prescribed by the Georgia Crime Information Center, authorizing the release of his criminal records to the city police department;
- (12) A complete set of fingerprints of the applicant and the operator;
- (13) If the person or business entity on whose behalf application for a license is being made is doing business under a trade name, a copy of the trade name as properly recorded. If the application is made on behalf of a corporation, a copy of its authority to do business in the state, including articles of incorporation, trade name affidavit, if any, and last annual report, if any;
- (14) At least three character references for the applicant, the operator and owner from individuals who are in no way related to the applicant or any operator or owner and who are not or will not benefit financially in any way from the application if the license is granted. The city shall prepare forms consistent with the provisions of this subsection for the applicant, the operator and owner who shall submit all character references on such forms;
- (15) If the application is for a sexually oriented business license, the location, legal description, mailing address and phone number, and the name and business address of the statutory agent or other agent authorized to receive service of process of the sexually oriented business; The address of the premises where the adult entertainment establishment will be operated, engaged in, conducted, or carried on;
- (16) A plat by a registered engineer or a registered land surveyor, licensed by the state, showing the location of the proposed premises where the ~~adult entertainment establishment~~ sexually oriented business will be operated, engaged in, conducted or carried on in relation to the neighborhood, the surrounding zoning, its proximity to any residential area, church, school, public park or children's daycare facility, establishment selling alcoholic beverages or malt beverages and wine or other ~~adult entertainment establishments~~ sexually oriented business;
- (17) A statement of whether any sexually oriented business in which an applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):
 - a. Been declared by a court of law to be a nuisance; or
 - b. Been subject to a court order of closure or padlocking.
- (18) Each application for a sexually oriented business ~~adult entertainment establishment~~ license shall be verified and acknowledged under oath to be true and correct by:
 - a. If application is made on behalf of an individual, the individual;
 - b. If application is made on behalf of a partnership, by a general partner;
 - c. If application is made on behalf of a corporation, by the president of the corporation;

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- d. If application is made on behalf of any other organization or association, by the chief administrative official.
- (c) *Appearance by applicant.* The applicant shall personally appear before the city administrator and produce proof that a nonrefundable application fee, in an amount established by resolution of the mayor and council, has been paid and shall present the application containing the aforementioned and described information.
- (d) *Investigation; standards for granting license.*

~~(1) The city shall have 30 days from the date of actual receipt of the application for a sexually oriented business license application to either issue a license to the applicant or issue to a letter of intent to deny the application. investigate the facts provided in the application and the background of the applicant, the operator and owner. The city administrator shall stamp the date of actual receipt of each application on the first page thereof and notify the applicant of the actual receipt of the application within five business days of actual receipt of such application. The city administrator shall approve or deny any application for an adult entertainment establishment license within 30 days of actual receipt of such application. The application for an adult entertainment establishment license shall be granted license shall issue unless if the city administrator finds:~~

- ~~(1.)~~ The required \$300.00 investigative fee has not been paid;
- ~~(2.)~~ The applicant has failed to provide information as required by this section or ~~not~~ made a material misrepresentation in the application;
- ~~(3.)~~ ~~Neither the~~The applicant ~~nor~~ any of the operators or owner has been convicted or pled guilty or entered a plea or nolo contendere to a specified criminal activity, as defined in this article~~any crime involving keeping a place of prostitution, pandering, pimping, public indecency, prostitution, sodomy, solicitation of sodomy, masturbation for hire; sexual battery, rape, child molestation, enticing a child for indecent purposes, or any offense included in the definition of a "criminal offense against a victim who is a minor" as defined in O.C.G.A. § 42-1-12 within a period of five years. For purposes of this article, a conviction or plea of guilty or nolo contendere shall be ignored as to any offense for which the applicant was allowed to avail himself of the Georgia First Offender Act unless the applicant is later adjudicated guilty of having violated the terms of his first offender treatment;~~
- ~~(4.)~~ ~~Neither the~~The applicant ~~nor~~ any ~~of the~~ operator or owner has had a sexually oriented business ~~adult entertainment establishment~~ license or other similar license or permit revoked for cause by the city or any other county or municipality located in or out of this state or been declared a nuisance prior to the date of application within the preceding five years;
- ~~(5.)~~ The building, structure, equipment and location of the premises of the ~~adult entertainment establishment~~sexually oriented business as proposed by the applicant would not comply with all applicable laws, including, but not limited to, health, zoning, distance, and fire and safety requirements and standards;
- ~~(6.)~~ The applicant is at least~~less than~~ 18 years of age;
- ~~(7.)~~ On the date the business for which a license is required herein commences and thereafter, there will not be an operator as defined herein on the premises at all times during which the business is open;
- ~~(8.)~~ The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this article or is not in compliance with locational requirements of this article or the locational requirements of any other part of this Code~~The proposed premises will be located at least the minimum distances set forth in this article from any residential use, church, school, public park or children's daycare facility or establishment licensed to sell alcoholic beverages or malt beverages and wine for consumption on the premises, or another adult entertainment establishment; and or~~

(9.) The grant of such license will ~~not~~ cause a violation of and ~~will not~~ be in conflict with this article or any other law, ordinance or regulation of the city, the county, the state or the United States.

The city administrator shall deny the application for a ~~sexually oriented business~~ ~~adult entertainment establishment~~ license if the application fails to meet any requirement contained in the city's ordinance regulating ~~adult entertainment establishments~~ sexually oriented businesses.

(2) Upon the filing of a completed application for a sexually oriented business employee license, the city administrator ~~manager~~ shall immediately issue a temporary license to the applicant, which temporary license shall expire upon the final decision of the city to deny or grant an annual license. The city shall have 15 days from the date of actual receipt of the application for a sexually oriented business employee license application to either issue a license to the applicant or issue to a letter of intent to deny the application. The license shall issue unless the city administrator finds:

1. The required \$300.00 investigative fee has not been paid;
2. The applicant has failed to provide information as required by this section or made a material misrepresentation in the application;
3. The applicant or any of the operators or owner has been convicted or pled guilty or entered a plea or nolo contendere to a specified criminal activity, as defined in this article;
4. The applicant has had a sexually oriented business license or other similar license or permit revoked for cause by the city or any other county or municipality located in or out of this state or been declared a nuisance prior to the date of application within the preceding five years; or
5. The applicant is less than 18 years of age.

(e) Issuance of license. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee, the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time. A sexually oriented business employee shall keep the employee's license on his person or on the premises where the licensee is then working or performing.

(Ord. No. 883, § 10-35, 12-22-2008)

Sec. 10-36. Regulation of ~~adult entertainment establishments~~ sexually oriented businesses.

~~(a) Location. No adult entertainment establishment shall be located:~~

- ~~(1) Within 1,200 feet of any parcel of land which is used for residential uses or purposes ("residential area");~~
- ~~(2) Within 1,200 feet of any parcel of land on which a church, school, college campus, public park or children's daycare facility is located;~~
- ~~(3) Within 600 feet of any parcel of land upon which any establishment authorized to sell alcoholic beverages or malt beverages and wine for consumption on the premises is located;~~
- ~~(4) In any zoning district other than a C-2;~~
- ~~(5) Within 1,200 feet of any parcel of land upon which another adult entertainment establishment regulated or defined hereunder is located.~~

~~For purposes of this section, distance shall be by airline measurement from property line, using the closest points on the property lines of the parcels of land involved. The term "parcel of land" means any quantity of land capable of being described by location and boundary, designated and used or to be used as a unit.~~

(a) *Interior dimensions.* With the exception of restrooms, all interior rooms of the sexually oriented business to which patrons are allowed access shall be a minimum of 1,000 square feet. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manned operator's station of every area of the premises, excluding restrooms, to which any patron is permitted access for any purpose. The view required in this subsection must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this subsection remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises. The application for a license for a sexually oriented business shall contain a diagram showing that the public rooms of the building meet this requirement.

Employees.

(1) *Qualifications.* Employees of an adult entertainment establishment shall be not less than 18 years of age. No employee employed as an adult entertainer shall have been convicted of an offense described in section 10-35(d)(3) within the five years immediately preceding the proposed employment at or by an adult entertainment establishment. Any adult entertainer who is convicted of any such crimes while employed as an adult entertainer shall not thereafter work on any licensed premises for a period of five years from the date of such conviction, unless a longer time is ordered by a court of competent jurisdiction. The term "licensed premises" shall mean the premises where an adult entertainment establishment for which a license is obtained pursuant to this ordinance operates, conducts or carries on its business. The term "convicted" shall include an adjudication of guilt or a plea of guilty or nolo contendere or the forfeiture of a bond when charged with a crime in a court of competent jurisdiction.

(2) *Permit of employment.* Before any person may work as an adult entertainer, as defined in subsection (b)(1) of this section, on a licensed premises, he shall file a notice with the city police department of his or her intended employment on forms supplied by the city police department and shall receive a permit for such employment from the city police department. The prospective employee shall supply a signed and notarized consent, on forms prescribed by the Georgia Crime Information Center, authorizing the release of his or her criminal records to the city police department. The prospective employee shall also provide a list of all of his convictions of offenses described in section 10-35(d)(3) (including pleas of nolo contendere) within the past five years. The city police department shall approve or deny the permit within 15 days of the application. If the prospective employee is found to meet the requirements of this subsection (b), then, upon payment of the permit fee, the city police department shall issue a permit approving such employment within 48 hours. If such permit is not issued within 48 hours of such finding, the employee seeking the permit may commence work at the adult entertainment establishment which is the subject of the permit application without such a permit. Upon receipt of a permit, the employee may begin working on the licensed premises. If approval is denied, the city police department shall provide the prospective employee the reasons for the denial and the prospective employee may, within ten days of said denial, appeal to the mayor and council, which shall uphold or reverse the decision within 30 days of such appeal. The annual permit fee shall be \$25.00.

(3) *Suspension or revocation of permit.* Violation by an adult entertainer of the provisions of this article and/or conviction of an offense described in section 10-35(d)(3) shall subject the adult entertainer to suspension or revocation of the permit for employment. Whenever the city administrator finds that reasonable grounds exist to suspend or revoke a permit for employment issued hereunder, the city administrator shall schedule a hearing before the mayor and council to consider such action and shall notify the employee at least 20 days prior to the hearing of the time and place of the hearing and the proposed action and grounds therefor. The employee shall be entitled to present evidence and cross examine witnesses with or without legal counsel. The mayor and council shall make its decision within ten days of the hearing and shall notify the employee promptly in writing. In the event that a permit for

employment is suspended or revoked by the mayor and council, a \$50.00 appeal cost shall be assessed against the permit holder.

~~(4) Independent contractors. For the purpose of this article, independent contractors working as adult entertainers shall be considered as employees and shall be required to satisfy the provisions of this article relating to employees of adult entertainment establishments, regardless of the business relationship with the owner or licensee of any adult entertainment establishment.~~

~~(be) Hours of operation. A sexually oriented business n adult entertainment establishment may be open only between the hours of 8:00 a.m. and 2:00 a.m.10:00 p.m. Mondays through Saturdays, except Thanksgiving Day and Christmas Day.~~

~~(ce) Display of licenses. A sexually oriented business n adult entertainment establishment licensee shall conspicuously display the license required by this article.~~

~~(d) Display of signs. It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:~~

- ~~(1) That the occupancy of viewing rooms is limited to one person.~~
- ~~(2) That specified sexual activity on the premises is prohibited.~~
- ~~(3) That the making of openings between viewing rooms is prohibited.~~
- ~~(4) That violators will be required to leave the premises.~~

~~(e) Loitering and exterior lighting requirements.~~

~~(1) It shall be the duty of the operator of a sexually oriented business to:~~

- ~~1. Post conspicuous signs stating that no loitering is permitted on such property;~~
 - ~~2. Designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every 90 minutes or inspecting such property by use of video cameras and monitors; and~~
 - ~~3. Provide lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.~~
- ~~(2) No sexually oriented business shall erect a fence, wall, or other barrier that prevents any portion of the parking lot for the establishment from being visible from a public right-of-way.~~

~~(fe) Performance area. All dancing by adult entertainers at adult entertainment establishments sexually oriented businesses shall occur on a platform intended for that purpose which is raised at least 18 inches from the level of the floor.~~

~~(gf) Lighting. The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five footcandles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.~~

~~All areas of an adult entertainment establishment licensed hereunder shall be fully lighted at all times patrons are present. The term "full lighting" shall mean illumination equal to 3.5 footcandles per square foot.~~

~~(hg) Windows and doors. All adult entertainment sexually oriented businesses which are licensed and permitted by this article shall be carried on inside a closed building with all windows and doors covered so that the~~

activities carried on inside cannot be viewed from the immediate areas surrounding the outside of the building.

(i) It shall be the duty of the operator to enforce the regulations articulated in this section.

(Ord. No. 883, § 10-36, 12-22-2008)

Sec. 10-37. Conduct or activities prohibited.

It is unlawful for a sexually oriented business to knowingly violate the following regulations or to knowingly allow an employee or any other person to violate the following regulations:

- (a) *Advertising without license.* ~~No person, partnership, corporation or other entity shall~~ It shall be a violation of this article to advertise or cause to be advertised a sexually oriented business ~~adult entertainment establishment~~ without a valid ~~adult entertainment establishment~~ sexually oriented business license issued pursuant to this article.
- (b) *Employment of minors or unpermitted persons.* It shall be a violation of this article for any person to admit a minor to a sexually oriented business or ~~No adult entertainment establishment licensee shall~~ employ or contract with a person under the age of 18 years or ~~an adult entertainer~~ a person who has not obtained a permit pursuant to this article.
- (c) *Sale, consumption of alcohol.* It shall be a violation of this article for any person to sell, use, or consume alcoholic beverages or on the premises of a sexually oriented business. No alcohol license shall be issued to a sexually oriented business. No adult entertainment establishment licensee shall serve, sell, distribute or suffer the consumption or possession of any alcoholic beverages, malt beverages or wine or controlled substance upon the premises of the licensee.
- (d) *Contact between patrons, employees.* It shall be a violation of this article for a person to knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six feet from any patron or customer and on a stage at least 18 inches from the floor in a room of at least 1,000 square feet. It shall be a violation of this article for any employee who regularly appears semi-nude in a sexually oriented business to knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business. No dancing or other performance by an adult entertainer at an adult entertainment establishment shall occur closer than four feet to any patron. No patron, customer or guest shall be permitted to touch, caress or fondle any specified anatomical area of or any part of the body or clothing of any adult entertainer. No patron shall directly pay or give any gratuity to any adult entertainer. No adult entertainer shall solicit any pay or gratuity from any patron.
- (e) *Engaging in specified sexual activities prohibited.* ~~No adult entertainer, other~~ It shall be a violation of this article for an employee, patron or other person at a sexually oriented business ~~adult entertainment establishment shall be allowed~~ to engage in any specified sexual activity as defined herein on the premises of any ~~adult entertainment establishment~~ sexually oriented business.
- (f) *Public indecency prohibited.* It shall be a violation of this article for a patron, employee, or any other person to knowingly or intentionally, in a sexually oriented business, appear in a state of nudity, regardless of whether such public nudity is expressive in nature. No adult entertainment, other employee, patron or other person at an adult entertainment establishment shall, while on the premises of an adult entertainment establishment, commit the offense of public indecency as defined in O.C.G.A. § 16-6-8.

A sign summarizing the provisions of subsections (a)–(f) of this section shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry.

(Ord. No. 883, § 10-37, 12-22-2008)

Sec. 10-38. Location of sexually oriented businesses.

- (a) Sexually oriented businesses shall not be required to obtain a conditional use permit or special use permit, but shall be permitted as of right in a zoning district or districts where sexually oriented businesses are permitted under the city's zoning chapter, subject to the location requirements of state law and the ordinance from which this article is derived.
- (b) It shall be unlawful to establish, operate, or cause to be operated a sexually oriented business in the city unless said sexually oriented business is at least:
- (1) Within 1,000 feet of any parcel of land which is used for residential uses or purposes ("residential area");
 - (2) Within 1,000 feet of any parcel of land on which a church, school, college campus, public park or children's daycare facility is located;
 - (3) Within 1,000 feet of any parcel of land upon which any establishment authorized to sell alcoholic beverages or malt beverages and wine for consumption on the premises is located;
 - (4) In any zoning district other than a C-2;
 - (5) Within 1,000 feet of any parcel of land upon which another sexually oriented business regulated or defined hereunder is located.
 - (6) One-half mile from the intersection of any two or more state highways.
- (c) For the purpose of this section, measurements shall be made in a straight line in all directions without regard to intervening structures or objects, from the closest part of any structure, including signs and roof overhangs, used in conjunction with the sexually oriented business to the closest point on a property boundary or right-of-way associated with any of the land uses identified in subsections (b)(1), (b)(2), (b)(3), or (b)(5) of this section. In regards to subsection (b)(6) of this section, the measurement shall run from the centermost point of the stated intersection.
- (d) Notwithstanding anything to the contrary in this Code, a nonconforming sexually oriented business that is in all respects legally existing and operating prior to the effective date of the ordinance from which this article is derived may continue to operate for two years following that date in order to make a reasonable recoupment of its investment in its current location. At the conclusion of said two years, the use will no longer be recognized as a lawful nonconforming use, provided that a nonconforming sexually oriented business may apply for one or more six-month extensions of the original two-year period upon a showing of financial hardship. An application for an initial extension based upon financial hardship ("hardship exception") shall be made at least 60 days before the conclusion of the aforementioned two-year period. If a hardship extension is granted, subsequent applications for hardship extensions shall be made at least 60 days before the conclusion of the nonconforming sexually oriented business's current extension period.
- (e) Procedure for seeking hardship extension. An application for a hardship extension shall be filed in writing with the city administrator ~~manager~~ and shall include evidence of purchase and improvement costs, income earned and lost, depreciation, and costs of relocation. Within ten days after receiving the application, the city administrator ~~manager~~ shall schedule a public hearing on the application before the board of zoning appeals, which public hearing shall be conducted within 30 days after the zoning department's receipt of the application. Notice of the time and place of such public hearing shall be published at least ten days before the hearing in a newspaper of general circulation published within the city, and shall contain the particular location for which the hardship extension is requested. The unified zoning board shall issue a written decision within ten days after the public hearing on the application for a hardship extension. The hardship extension shall be granted upon a showing that the nonconforming sexually oriented business is unable to

recoup its investments, made prior to the effective date of the ordinance from which this article is derived, in its current location unless the hardship extension is granted.

Sec. 10-398. Penalty for violation.

- (a) Any person who knowingly violating, disobeys, omits, neglects, or refuses to comply with any of the provisions of this article shall, upon conviction, be guilty of a misdemeanor, punishable by a fine not to exceed \$1,000.00 per violation or by imprisonment for a period not to exceed 60 days, or both. Each day of operation in violation of this article shall be deemed a separate offense.
- (b) Notwithstanding subsection (a) of this section, the violation of provisions of this article by any person may be enjoined by instituting appropriate proceedings for injunction in any court of competent jurisdiction.
- ~~(c)~~ This article does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this article. Notwithstanding anything to the contrary, for the purposes of this article, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the sexually oriented business licensee for purposes of finding a violation of this article, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

(Ord. No. 883, § 10-38, 12-22-2008)

Sec. 10-4039. Unlawful operation declared nuisance.

Any ~~adult entertainment establishment~~sexually oriented business operated, conducted or maintained contrary to the provisions of this article shall be and the same is hereby declared to be unlawful and a public nuisance. The city may, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceedings or proceedings for abatement, removal or enjoinder thereof in the manner provided by law. It may take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such ~~adult entertainment establishment~~sexually oriented business and restrain and enjoin any person from operating, engaging in, conducting or carrying on a ~~sexually oriented business~~ adult entertainment establishment contrary to the provisions of this article.

(Ord. No. 883, § 10-39, 12-22-2008)

Sec. 10-410. Conditions of ~~adult entertainment establishment~~sexually oriented businesses.

- (a) *Cleaning of licensed premises.* It shall be the duty of the operator to maintain the premises in a clean and sanitary condition and shall be in full compliance with all applicable ordinances and regulations of the city and the state. There shall be provided adequate facilities, equipment and supplies on the premises to meet this requirement, and adequate ventilation and illumination shall be provided to permit thorough, complete cleaning of the entire licensed premises. Trash and garbage shall not be permitted to accumulate or to become a nuisance on or in the immediate vicinity of the licensed premises but shall be disposed of daily or as often as collections permit. All ~~adult entertainment establishments~~ shall be kept in a clean, sanitary condition, and shall be in full compliance with all applicable ordinances and regulations of the city and the state.
- (b) *Inspection of licensed premises.* The city fire marshal shall have the authority to regularly inspect ~~adult entertainment establishments~~sexually oriented businesses, to determine compliance with and enforce all

applicable fire, health and other codes of the city and the state. [This section shall be narrowly construed by the city to authorize reasonable inspections of the licensed premises pursuant to this article, but not to authorize a harassing or excessive pattern of inspections.](#)

- (c) *Inspection for unsanitary or unsafe conditions.* The city police department shall have the authority to periodically inspect [adult entertainment establishments](#)~~sexually oriented businesses~~ to determine compliance with and enforce all provisions of this article and other applicable ordinances, regulations and laws.

(Ord. No. 883, § 10-40, 12-22-2008)

Sec. 10-421. Denial, suspension or revocation; hearing.

(a) *Grounds.*

- (1) A license may be denied to persons or entities that have submitted an incomplete application or that have failed to satisfy any of the requirements of this article.
- (2) Any of the following shall be grounds for suspension or revocation of a license:
 - a. The making of any statement on an application for a license issued hereunder which is material and is later found to be false;
 - b. Violation of any of the regulations or prohibitions of this article;
 - c. With respect to the applicant, operator and owner, conviction of or a plea of guilty or nolo contendere to any of the crimes which would make such person or [adult entertainment establishment](#)~~sexually oriented business~~ ineligible to hold a license under section 10-35(d).

- (b) [When the city issues a written notice of intent to deny, suspend, or revoke a license, the city administrator shall immediately send such notice, which shall include the specific grounds under this article for such action, to the applicant or licensee \(respondent\) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the city administrator manager for the respondent. The notice shall specify a date, not less than ten days nor more than 20 days after the date the notice is issued, on which the mayor and city council shall conduct a hearing on the city administrator's manager's intent to deny, suspend, or revoke the license.](#)

[\(1\) At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his behalf, and cross-examine any of the city administrator's manager's witnesses. The city administrator manager may also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The mayor and city council shall issue a written decision, including specific reasons for the decision pursuant to this article, to the respondent within five business days after the hearing.](#)

[\(2\) If the decision is to deny, suspend, or revoke the license, the decision shall not become effective until the 30th day after it is rendered, and the decision shall include a statement advising the respondent of the right to appeal such decision to a court of competent jurisdiction. If the mayor and city council's decision finds that no grounds exist for denial, suspension, or revocation of the license, the mayor and city council shall, contemporaneously with the issuance of the decision, order the city administrator manager to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the city administrator manager shall contemporaneously therewith issue the license to the applicant.](#)

~~Denial; procedure. Within 30 days of actual receipt of an application for an adult entertainment establishment license, the city administrator shall either approve or deny the application. In no event shall the city administrator's decision whether to approve or deny the adult entertainment establishment license application be withheld for more than 30 days after actual receipt of the application. In the event that such an application is held without decision for a period of more than 30 days, however, the license application shall be deemed approved, and expressive conduct may begin immediately notwithstanding the fact that no license has been issued. The city administrator shall issue an adult entertainment establishment license to an applicant who informs the city administrator of the fact that an application has been submitted, but no decision has been made thereon for a period of more than 30 days following actual receipt of the application. Notwithstanding the fact that the license provided by this section shall not be a prerequisite to the commencement of business operations contemplated by the application, the city administrator shall issue an adult entertainment establishment license under such circumstances within three business days of actual receipt of written notice by the applicant of such circumstances. In the event that the city administrator denies an application for an adult entertainment establishment license, notice of such denial shall be delivered to the applicant in person or by certified mail within five business days of such denial. Any person aggrieved by any decision of City, its officials, employees or agents, pursuant to this article, may seek review of such decision by filing an appropriate pleading in the Superior Court of Gordon County or any other court of competent jurisdiction.~~

- (c) ~~Suspension or revocation; procedure. Whenever the mayor and council finds reasonable grounds exist to suspend or revoke a license issued hereunder, the city administrator shall schedule a hearing to consider such suspension or revocation and shall, at least 20 days prior to the hearing, notify the licensee of the time and date of the hearing and the proposed action and the grounds therefor. The licensee shall be entitled to present evidence and cross examine any witnesses at the hearing, with or without legal counsel. The mayor and council shall make its decision within ten days of the hearing and shall notify the licensee in writing within five business days of the decision. Any person aggrieved by the decision of the mayor and council may seek review of such decision by filing an appropriate pleading in the Superior Court of Gordon County or any other court of competent jurisdiction.~~

(Ord. No. 883, § 10-41, 12-22-2008)

Sec. 10-432. Miscellaneous.

Nothing contained in this article shall be deemed to permit or condone any activity whatsoever which is otherwise found to be obscene, lewd or illegal under applicable code, regulation or statute which provides any prohibition upon nudity or sexual activity. Further, the activities and uses which are regulated and permitted by this article shall only be allowed if they are not obscene or lewd and not in violation of any other such prohibitions on nudity or sexual activity.

(Ord. No. 883, § 10-42, 12-22-2008)

Sec. 10-443. Physical layout of establishment.

Any ~~adult entertainment establishment~~sexually oriented business having available for customers, patrons or members any booth, room, or cubicle for the private viewing of any ~~adult entertainment~~sexually oriented entertainment must comply with the following requirements:

- (1) *Access.* Each booth, room or cubicle shall be totally accessible to and from aisles and public areas of the establishment, and shall be unobstructed by any curtain, door, lock, or other control-type or view-obstructing devices or materials.
- (2) *Construction.* Every booth, room or cubicle shall meet the following construction requirements:

- a. Each booth, room or cubicle shall be separated from adjacent booths, rooms and cubicles and any nonpublic areas by a wall.
- b. Each booth, room or cubicle shall have at least one side totally open to a public, lighted aisle so that there is an unobstructed view at all times of anyone occupying same.
- c. All walls shall be solid and without openings, extended from the floor to a height of not less than six feet and be light-colored, nonabsorbent, smooth-textured and easily cleanable.
- d. The floor must be light-colored, nonabsorbent, smooth-textured and easily cleanable.
- e. The lighting level of each booth, room or cubicle when not in use shall be a minimum of ten candles at all times, as measured from the floor.

(3) *Occupants.* Only one individual shall occupy a booth, room or cubicle at any time. No occupant of same shall engage in any type of sexual activity, cause any bodily discharge or litter while in the booth, room or cubicle. No individual shall damage or deface any portion of the booth, room or cubicle.

(Ord. No. 883, § 10-43, 12-22-2008)

Sec. 10-454. Automatic license forfeiture for nonuse.

Any holder of any license hereunder who shall for a period of three consecutive months after the license has been issued cease to operate the business and sale of the product or products authorized shall after the said three-month period automatically forfeit the license without the necessity of any further action.

(Ord. No. 883, § 10-44, 12-22-2008)

Sec. 10-46. City's failure to meet time requirements.

In the event that a city official is required to take an act or do a thing pursuant to this article within a prescribed time and fails to take such act or do such thing within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the city official under this article, and not completed in the time prescribed, includes approval of conditions necessary for approval by the city of an applicant or licensee's application for a sexually oriented business license or a sexually oriented business employee's license (including a renewal), the license shall be deemed granted and the business or employee allowed to commence operations or employment the day after the deadline for the city's action has passed.

Secs. 10-475—10-119. Reserved.

ARTICLE III. ENTERTAINMENT CLUBS

Sec. 10-120. Findings; legal authority; public purpose.

(a) Based upon recent inquires from individuals desirous of establishing in the city an entertainment center open to the general public in which to congregate, be entertained by musical performances, either live or recorded, dance, purchase and consume food and beverages, and generally socialize, we take note that such activities in a nonpublic building without supervision and regulation could lend itself to such conduct that could be unlawful, endangers the safety and well-being of its patrons, and generally endangers the public at large.

Commented [KH1]: My understanding is that these entertainment clubs are something different from adult entertainment, but they may want to make that clear in the definitions because it isnt entirely clear to me what falls in this section.

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- (b) This article is adopted pursuant to the authority granted by article I, section 1-102(a) of the 1983 Charter of the City of Calhoun, Georgia.
- (c) This article is further adopted to protect the safety, health, peace, security, good order, comfort, convenience and general welfare of the city and its inhabitants.

(Ord. No. 799, 3-14-2005)

Sec. 10-121. 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:

Entertainment club.

- (1) The term "entertainment club" means commercial premises which are open to the public, the primary function of which is to offer patrons an opportunity to engage in social activities such as dancing, or the enjoyment of live or prerecorded music, or the enjoyment of entertainment provided by dancers or other performers. As an incidental function, an entertainment club may sell and serve food and beverages to its patrons.
- (2) The term "entertainment club" does not include the following:
 - a. Premises which serve alcoholic beverages as defined by the laws of the state and ordinances of the city;
 - b. Theaters where the patrons sit in parallel rows of fixed seats;
 - c. Full-service restaurants where the only entertainment consists of background music which is incidental to the primary function of serving food;
 - d. Outdoor performances;
 - e. A banquet, party or celebration conducted for invited guests which is not open to the public;
 - f. Dances or events sponsored and operated by a governmental entity, an educational institution, or nonprofit religious, charitable, benevolent, fraternal, or social organization.

[g. Sexually oriented businesses as defined in section 10-32 of this chapter.](#)

Club premises means any place where an entertainment club is operated or maintained, including all hallways, bathrooms, parking areas and other adjacent portions of the premises which are accessible to the public during operating hours.

Teen club means any entertainment club which restricts its admissions to persons under the age of 21 years of age.

Over 21 club means any entertainment club which restricts its admission to persons age 21 years and over.

Sexually oriented entertainment means any showing of, or depiction of, or engaging in "specified sexual activities" or "specified anatomical areas" as defined in section 10-31.

Person means one or more natural persons, corporations, partnerships, associations, or other entities capable of having an action at law or equity brought against such entity.

(Ord. No. 799, § 1, 3-14-2005)

Sec. 10-122. Entertainment club license required.

It is unlawful for any person to own, lease, operate, manage or maintain an entertainment club in the City without first obtaining an entertainment club license from the city. For multi-use facilities which include an entertainment club, a separate and additional license must be issued for the entertainment club operation.

(Ord. No. 799, § 2, 3-14-2005)

Sec. 10-123. License application procedures.

In addition to the application procedures referred to in section 10-124, an applicant for an entertainment club license shall provide the following:

- (1) A written statement setting forth all measures proposed to insure that adequate traffic control, crowd protection and security, both inside and outside the premises, will be maintained and that the ages of patrons admitted to the entertainment club will be monitored.
- (2) A statement electing whether the entertainment club will be operated either exclusively as a teen club or exclusively as an over twenty-one club, and a statement of the proposed schedule of operating hours and days.
- (3) A statement of whether the applicant, or the applicant's officers, directors, partners or any other person involved in the operation or management of the entertainment club has been convicted within the preceding five years of any crimes involving firearms, gambling, racketeering, controlled substances, sexual offenses, prostitution, assault, or contributing to the delinquency of a minor.
- (4) Payment of a fee of \$1,000.00 for the initial license, of which \$750.00 will be refunded if the license application is denied.

(Ord. No. 799, § 3, 3-14-2005)

Sec. 10-124. Procedures for issuance or denial of license.

After receiving a complete application for an entertainment club license, as specified in section 10-123, the city shall follow the following procedures:

- (1) The city administrator shall forward copies of the application to appropriate city officials for their comments regarding compliance with regulations under their jurisdiction. The city administrator shall consider all materials and comments submitted and shall issue or deny the license within 20 working days after the date on which a completed application was filed, unless the applicant agrees to an extension of the time period in writing.
- (2) An entertainment club license shall be denied by the city administrator for anyone or more of the following grounds:
 - a. If the business premises do not comply with all applicable city ordinances and state laws;
 - b. If the application is incomplete or if it contains any material misrepresentation;
 - c. If the application does not show adequate measures for the protection of the public health, safety and welfare in terms of traffic control, crowd protection and security both inside and outside the premises, and the monitoring of the ages of patrons admitted to the entertainment club.

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- (3) If the city administrator denies a license, written notice of the denial stating the reason why shall be sent to the applicant within two working days after the denial. The applicant shall have a period of ten working days after the date of license denial to appeal in writing to the mayor and council, who shall conduct a hearing as provided hereinafter in section 10-129(c).

(Ord. No. 799, § 4, 3-14-2005)

Sec. 10-125. Operating rules and regulations.

The following operating rules and regulations shall apply to all entertainment clubs in the city:

- (1) The standards of conduct applicable to all businesses in the city shall apply to entertainment clubs.
- (2) Persons of the following ages shall not be permitted to enter or remain on the premises of a teen club:
 - a. Under the age of 16 years unless accompanied by a parent or legal guardian;
 - b. 17 years of age or older except for bona fide employees or entertainers hired by the licensee to work in the club.
- (3) No person under the age of 21 years shall be permitted to enter or remain on the premises of an over-21 club unless accompanied by a parent or legal guardian, except for entertainers hired by the licensee to work in the club.
- (4) Teen clubs shall be operated only on Monday through Saturday (excluding Thanksgiving Day and Christmas Day), and shall close on Monday through Thursday at 10:00 p.m. and Friday and Saturday at 11:00 p.m.
- (5) Over 21 clubs may operate any night of the week and shall close at 2:00 a.m.
- (6) It shall be the obligation of the licensee to employ an adequate number of qualified security personnel who will be present on club premises during all operating hours to maintain peace and order and to ensure compliance with all applicable laws of the state and of the city.
- (7) It shall be the obligation of the licensee to insure that no alcoholic beverages or controlled substances are offered for sale or consumed on the entertainment club premises.
- (8) It shall be the obligation of the licensee to remove from the club premises any person who is, or appears to be, under the influence of, or affected by the use of, alcohol or drugs, or whose conduct poses a physical danger to the safety of others present.
- (9) It shall be the obligation of the licensee to provide proper and adequate illumination of all portions of the club premises which are available for public use. Such illumination shall be not less than ten footcandles at floor level at all times when the premises are open to the public or when any member of the public is permitted to enter and remain on the premises.
- (10) It shall be the obligation of the licensee to prevent loitering, the creation of public nuisances or disturbances of the peace by any patrons of the entertainment club on club premises or in the immediate vicinity. The term "loitering" shall not include walking between the club building and a patron's vehicle, nor shall it include the act of waiting in line to gain admission to the club.
- (11) It shall be the obligation of the licensee to clean up all litter resulting from club operations. The cleanup shall occur within eight hours after the end of each day's operation and shall extend for a two-block radius around the club.
- (12) Any failure on the part of the licensee to perform the obligations stated in subsections (6) through (11) of this section shall be considered an unlawful act and a violation of this article.

(Ord. No. 799, § 5, 3-14-2005)

Sec. 10-126. Restrictions on multiuse facilities.

- (a) No teen club shall be located on premises used at any time during the week or weekend as a sexually oriented entertainment facility or as a facility to serve alcoholic beverages. If otherwise permitted to be located in the same premises as an over 21 club, no teen club shall be operated within 12 hours of the operation of an over 21 club on the same premises, nor shall an over 21 club be operated within 12 hours of the operation of a teen club on the same premises.
- (b) Subject to the provisions of subsection (a) of this section, a teen club may only be located on the same premises with another licensed business if:
 - (1) All businesses on the premises comply with the provisions of this article relating to teen clubs;
 - (2) The teen club is physically segregated from the space used by the other businesses and has a separate entrance into the building which is exclusively for the use of its patrons; or
 - (3) Only one business operates at a time on the premises, and the premises are closed altogether for not less than one hour between the close of one business operations and the opening of another.

(Ord. No. 799, § 6, 3-14-2005)

Sec. 10-127. Access by police officers.

All police officers of the city shall have free access to all entertainment clubs for the purpose of inspection and to enforce compliance with the provisions of this article at all times that the premises are open to the patrons.

(Ord. No. 799, § 7, 3-14-2005)

Sec. 10-128. Checking the age of patrons.

- (a) It is the responsibility of the licensee to require picture identification or a reasonable equivalent showing the age of each person admitted to an entertainment club. It is unlawful for any person to knowingly or recklessly allow a person to enter or remain on the premises of an entertainment club in violation of the age restrictions of this article.
- (b) It is unlawful for any person to misrepresent his or her age for the purpose of obtaining admission to, or remaining at, an entertainment club in violation of the provisions of this article.

(Ord. No. 799, § 8, 3-14-2005)

Sec. 10-129. Suspension or revocation of licenses.

- (a) The city administrator may, at any time, suspend an entertainment club license whenever the licensee, or any manager, officer, director, agent, or employee of the licensee has caused, permitted or knowingly done any of the following:
 - (1) Failed to keep the building structure or equipment of the licensed premises in compliance with the applicable health, building, fire or safety laws, regulations or ordinances in a way which relates to or affects public health or safety on the entertainment club premises.

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- (2) Failed to comply with the operating rules and regulations of entertainment clubs specified in section 10-125.

Such suspension shall remain in effect until the conditions causing the suspension are cured and reasonable measures are taken to ensure that the same will not reoccur as determined by the city administrator.

- (b) The city administrator may, at any time, revoke an entertainment club license on anyone or more of the following grounds:
 - (1) Whenever the City learns that the licensee made a material false statement or representation, or failed to disclose any material information to the city, in connection with any application for the entertainment club license or any license renewal.
 - (2) Whenever the licensee or any manager, officer, director, agent or employee of the licensee fails within a reasonable time to cure a condition that caused a license suspension.
 - (3) Whenever the licensee or any manager, officer, director, agent or employee of the license knowingly permits conduct on the licensed premises that violates any federal, state or city criminal or penal statute, law or ordinance.
 - (4) Whenever operation of the entertainment club becomes the proximate cause of a significant increase in criminal activity on the premises or in the immediate vicinity in such a way as to endanger persons or property.
- (c) The suspension or revocation of a license may be appealed by the licensee to the mayor and council upon ten working days' written notice from the date of receipt of the notice of suspension or revocation from the city administrator. The licensee shall receive at least five days' written notice of the hearing to be conducted before the mayor and council. A hearing held before the mayor and council pursuant to this section shall be conducted informally, and the technical rules of evidence shall not apply. All testimony shall be under oath. The holder of the license shall be entitled to be represented by legal counsel, if desired, shall be able to cross examine any witness produced by the City, and shall be permitted to present witnesses and evidence in such licensee's own behalf. Pursuant to such hearing, a decision to uphold or reinstate the license shall be upon a majority vote of the mayor and council hearing the evidence. The licensee shall be promptly notified in writing on the mayor and council's finding and decision affecting said person's license. Appeals of the decision of the mayor and council shall be to the Superior Court of Gordon County, Georgia, filed within 30 days of the date of the written decision of the mayor and council.

(Ord. No. 799, § 9, 3-14-2005)

Sec. 10-130. Nuisance; injunction.

Any violation of this article is declared to be a nuisance. In addition to any other relief provided by this article, the city attorney may apply to a court of competent jurisdiction for an injunction to prohibit the continuation of any violation of this article. The application for relief may include seeking a temporary restraining order, temporary injunction and permanent injunction.

(Ord. No. 799, § 11, 3-14-2005)

Sec. 10-131. Penalty.

A person convicted of a violation of this article shall be punished by a fine not exceeding \$1,000.00 or imprisonment for a term not exceeding six months, or both. With respect to violations of this article that are continuous with respect to time, each day the violation continues is a separate offense.

(Ord. No. 799, § 12, 3-14-2005)

(Supp. No. 15)

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