

AN ORDINANCE 10-120
ENTITLED

**AN ORDINANCE ESTABLISHING ZONING REQUIREMENTS AND
REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES; REPEALING PRIOR
ORDINANCES IN CONFLICT AND FOR OTHER PURPOSES.**

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

WHEREAS, the Board of Commissioners finds that sexually oriented businesses, as a category of establishments, are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

WHEREAS, there is convincing documented evidence that sexually oriented businesses, as a category of establishments, have deleterious secondary effects and are often associated with crime and adverse impacts on surrounding properties; and

WHEREAS, the Board of Commissioners desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from crime; preserve the quality of life; preserve the character of surrounding neighborhoods; and deter the spread of urban blight; and

WHEREAS, the City recognizes its constitutional duty to interpret, construe, and amend its laws to comply with constitutional requirements as they are announced; and

WHEREAS, with the passage of any ordinance, the City and Board of Commissioners accept as binding the applicability of general principles of criminal and civil law and procedure and the rights and obligations under the United States and Georgia Constitutions, Georgia Code, and the Georgia Rules of Civil and Criminal Procedure; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the U.S. Constitution or the Georgia Constitution, but to enact legislation to further the content-neutral government interests of the City, to wit, the controlling of secondary effects of sexually oriented businesses.

NOW THEREFORE, BE IT ORDAINED by the Board of Commissioners of the City of Albany, Georgia and it is hereby ordained by authority of same:

Section 1. Purpose and Findings.

- (A) Purpose. It is the purpose of this ordinance to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the City of Albany, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the city. The provisions of this ordinance 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 ordinance 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 ordinance to condone or legitimize the distribution of obscene material.

(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 Board of City Commissioners, 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 (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);

and *Artistic Entertainment, Inc. v. City of Warner Robbins, GA*, 331 F.3d 1196 (11th Cir. 2003); *Artistic Entertainment, Inc. v. City of Warner Robbins, GA*, 311 F.3d 1334 (11th Cir. 2002); *Ward v. County of Orange*, 217 F.3d 1257 (11th Cir. 1999); *Boss Capitol, 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); and other cases, including:

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); *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,

Los Angeles, California – 1977; Whittier, California – 1978; Phoenix, Arizona – 1979; Islip, New York – 1980; Austin, Texas – 1986; Manatee County, Florida – 1987; Garden Grove, California – 1991; Times Square Business Improvement District, New York, New York – 1994; St. Cloud, Minnesota – 1994; St. Mary's, Georgia – 1996; Ellicottville, New York – 1998; Denver, Colorado – 1998; Daytona Beach, Florida – 2004; Fort Worth, Texas – 2004; and the Report to the American Center for Law and Justice On the Secondary Impacts of Sex Oriented Businesses, (March 31, 1996, State of Pennsylvania), and the Report of the Attorney General's Working Group On The Regulation of Sexually-Oriented Businesses, (June 6, 1989, State of Minnesota), and;

Rural Hot Spots: The Case of Adult Businesses by Richard McCleary; Crime Impact Studies by Municipal and State Government on Harmful Secondary Effects of Sexually-Oriented Businesses; Do "Off-Site" Adult Businesses Have Secondary Effects? Legal Doctrine, Social Theory, and Empirical Evidence; Negative Secondary Effects of Sexually Oriented Businesses: Summaries of Key Reports; Report To: The American Center for Law & Justice on the Secondary Impacts of Sex Oriented Business; Crime Risk in the Vicinity of Sexually Oriented Business: A Report to the Centralia City Attorney's Office; *Starship Enterprise of Atlanta, Inc. v. Fulton County, et al.*; *Reliable Consultants, Inc., et al. v. City of Kennedale, Texas*; Survey of

Appraisals, Fort Worth & Dallas – Effects of Land Uses on Surrounding Property Values; The Evidence of Relationships between Adult-Oriented Businesses and Community Crime and Disorder; Evaluation Potential Secondary Effects of Adult Cabarets in Daytona Beach, FL – A Study of Calls for Service to the Police in Reference to Ordinance 02-496; Report on the Secondary Effects of the Concentration of Adult Use Establishments in the Time Square Area; Study & Recommendations for Adult Entertainment Businesses in the Town of Islip; Adult Business Study – Town and Village of Ellicottville – Cattaraugus County, NY; Summary of Review and Conclusions Regarding the City of St. Cloud’s Regulation of Adult Use Businesses; and Adult Entertainment Business Study for Manatee County,

the Board of City Commissioners finds:

- (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, 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.
- (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 ordinance, exists independent of any comparative analysis between sexually-oriented and nonsexually-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 business that may locate in the city. The city finds that the cases and documentation relied on in this ordinance are reasonably believed to be relevant to said secondary effects.

Section 2. Definitions.

Sexually oriented business is any one (1) or more of the following:

- a) *Adult bookstore.* An establishment having a significant portion of its stock in trade, books, magazines, printed material, and other periodicals which are distinguished or characterized by their substantial emphasis on matters depicting, describing or relating to “specified sexual activities” or “specified anatomical areas,” as defined below. For purposes of this subsection, the aforementioned items shall be collectively referred to as “adult material.” It shall be presumed that a business has a “significant portion of its stock in trade” in adult material if any one (1) of the following criteria is satisfied:
 - 1) Twenty (20) percent or more of the merchandise displayed for sale consists of adult material; or
 - 2) Twenty (20) percent or more of the stock in trade consists of adult material; or
 - 3) Twenty (20) percent or more of all inventory consists of adult material; or

- 4) Twenty (20) percent or more of the retail floor area is devoted to adult material (not including storerooms, stock areas, bathrooms, basements or any portion of the business not open to the public); or
 - 5) Twenty (20) percent or more of the gross sales (including rentals) result from the sale or rental of adult material; or
 - 6) Twenty (20) percent or more of the dollar value of all merchandise displayed at any time is attributable to adult material.
- b) *Adult novelty store.* An establishment having a significant portion of its stock in trade, "sexually oriented devices," which means any artificial or simulated "specified anatomical area" or other device or paraphernalia that is designed in whole or part for "specified sexual activities" but shall not mean any contraceptive device. It shall be presumed that a business shall have a "significant portion of its stock in trade" in "sexually oriented devices" if any one (1) of the following criteria is satisfied:
- 1) Twenty (20) percent or more of the merchandise displayed for sale consists of "sexually oriented devices;" or
 - 2) Twenty (20) percent or more of the stock in trade consists of "sexually oriented devices;" or
 - 3) Twenty (20) percent or more of all inventory consists of "sexually oriented devices;" or
 - 4) Twenty (20) percent or more of the retail floor area is devoted to "sexually oriented devices" (not including storerooms, stock areas, bathrooms, basements or any portion of the business not open to the public); or
 - 5) Twenty (20) percent or more of the gross sales result from the sale of "sexually oriented devices;" or
 - 6) Twenty (20) percent or more of the dollar value of all merchandise displayed at any time is attributable to "sexually oriented devices."
- c) *Adult video store.* An establishment having a significant portion of its stock in trade, video tapes, digital video services (DVDs), movies or other reproductions, whether for sale or rent, which are distinguished or characterized by their substantial emphasis on matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," as defined below. For purposes of this subsection, the aforementioned items shall be collectively referred to as "adult material." It shall be presumed that a business shall have a "significant portion of its stock in trade" in adult material if any one (1) of the following criteria is satisfied:
- 1) Twenty (20) percent or more of the merchandise displayed for sale consists of adult material; or
 - 2) Twenty (20) percent or more of the stock in trade consists of adult material; or
 - 3) Twenty (20) percent or more of all inventory consists of adult material; or
 - 4) Twenty (20) percent or more of the retail floor area is devoted to adult material (not including storerooms, stock areas, bathrooms, basements or any portion of the business not open to the public); or
 - 5) Twenty (20) percent or more of the gross sales (including rentals) result from the sale or rental of adult material; or
 - 6) Twenty (20) percent or more of the dollar value of all merchandise displayed at any time is attributable to adult material.

- d) *Adult business.* An establishment, other than those expressly specified in this section, where employees or patrons expose specified anatomical areas or engage in specified sexual activities.
- e) *Adult theater.* An enclosed building, or enclosed or semi-enclosed room or booth within an enclosed building, with a capacity of two (2) or more persons, used for presenting material distinguished or characterized by a substantial emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas for observation by *patrons* therein.
- f) *Adult arcade.* Any place to which the public is permitted or invited wherein 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 (5) or fewer persons per machine at any one (1) time and where the images so displayed are distinguished or characterized by a substantial emphasis on matter depicting or describing specified sexual activities or specified anatomical areas.
- g) *Erotic entertainment/dance establishment.* A nightclub, theater, or other establishment which features live performances by dancers, entertainers, strippers, or similar entertainers, where such performances are distinguished or characterized by a substantial emphasis on specified sexual activities or specified anatomical areas.
- h) *Adult movie house.* Any movie theater which on a regular, continuing basis shows films rated "X" by the Motion Picture Coding Association of America or any movie theater which presents for public viewing on a regular, continuing basis so-called "adult films" depicting sexual conduct.
- i) *Explicit media outlet.* Any commercial establishment which has an inventory of goods that is composed of at least of 50 percent of books, pamphlets, magazines, or other printed publications, films, or other media which depict specified sexual activities or specified anatomical areas.

Public place of worship. A permanent stand alone building where persons regularly assemble for religious worship and shall be publicly designated as a church, but shall not include a residence also used for religious purposes.

Specified anatomical areas shall include any of the following:

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

Specified sexual activities shall include any of the following:

- a) Actual or simulated intercourse, oral copulation, anal intercourse, oral anal copulation, bestiality, direct physical stimulation or 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, sapphism, zooerasty; or
- b) Clearly depicted human genitals in a state of sexual stimulation, arousal, or tumescence; or
- c) Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation; or
- d) Fondling or touching of nude human genitals, pubic regions, buttocks, or female breasts; or
- e) Masochism, erotic or sexually oriented torture, beating, or the infliction of pain; or

- f) Erotic or lewd touching, fondling or other sexually-oriented contact with an animal by a human being; or
- g) Human excretion, urination, menstruation vaginal or anal irrigation.

Section 3. Location of sexually oriented businesses.

(a) Sexually oriented businesses, as defined by this ordinance, shall be located:

- 1) on only a major thoroughfare that is *W. Broad Avenue, Slappeg Blvd., Oglethorpe Blvd., or Dawson Rd.*; **and** that is within a portion of a parcel zoned as district *C3, M1, or M2*, **AND**
- 2) at least two hundred fifty (250) feet from any parcel occupied by a school building, school grounds, college campus, public place of worship, licensed daycare, neighborhood public park or public playground, library, or any area zoned primarily for residential purposes.

(b) It shall be unlawful, in the City of Albany, to establish, operate, or cause to be operated a sexually oriented business outside the areas specified in subsection (a) of this section, unless permitted elsewhere in this ordinance.

(c) It shall be unlawful to establish, operate, or cause to be operated an *adult movie house, explicit media outlet or erotic entertainment/dance establishment*, as specified, in the city, unless said sexually oriented business is at least:

- (1) One thousand (1,000) feet from any parcel occupied by a school building, school grounds, college campus, public place of worship, licensed daycare, neighborhood public park or public playground, library, or any area zoned primarily for residential purposes.

(d) *Measurement.* 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 on the parcel containing the sexually oriented business, including signs and roof overhangs that is 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 use(s) or zoning districts identified in subsection (a) above.

(e) *Nonconforming uses.* A sexually oriented business that does not conform to this section but which was legally established and lawfully operating under local and state law prior to the effective date of this ordinance may continue to operate for two (2) years following that date in order to make a reasonable recoupment of its investment in the real property at the current location. At the conclusion of said two (2) years, the use will no longer be recognized as a lawful nonconforming use, and shall be terminated unless an extension of time has been granted, upon a showing of financial hardship, pursuant to the procedure set forth in the following subsection (d). An application for an extension based upon financial hardship ("hardship exception") shall be filed at least sixty (60) days, and not more than one hundred eighty (180) days, before the conclusion of the initial two-year-period.

(f) *Procedure for seeking hardship extension.* An application for a hardship extension shall be filed in writing with the Director of Code Enforcement and shall state the grounds for requesting an extension of time. Within ten (10) days after receiving the application, the Director of Code Enforcement shall schedule a public hearing on the application before the Director of Planning and Developmental Services, and the public hearing shall be conducted within thirty (30) days after the receipt of the application. Notice of the time and place of such public hearing shall be mailed to the applicant, shall be published at

least ten (10) 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. At the hearing, all parties shall have the right to offer testimony, documentary and tangible evidence bearing on the issues; may be represented by counsel, and shall have the right to confront and cross-examine witnesses. The Director of Planning and Developmental Services shall issue a written decision within ten (10) days after the public hearing on the application for a hardship extension. An extension under the provisions of this section shall be for a reasonable period of time commensurate with the investment involved, if the following criteria are met:

(1)The applicant has made a substantial investment, including but not limited to lease obligations incurred in an arms-length transaction, in the property or structure on or in which the nonconforming use is conducted; such property or structure cannot be readily converted to another, conforming use; and such investment was made prior to the effective date of this ordinance; and

(2)The applicant will be unable to recoup said investment as of the date established for termination of the use; and

(3)The applicant has made good faith efforts to recoup the investment and to relocate the use to a location in conformance with this section.

Section 4. License required.

(a) *Business license.* It shall be unlawful for any person, association, partnership, or corporation to operate a sexually oriented business, as defined by this ordinance, in the city without a valid sexually oriented business license.

(b) *Application.* An applicant for a sexually oriented business license shall file in person at the Code Enforcement Office a completed application made on a form provided by the Code Enforcement Office. A sexually oriented business may designate an individual with an influential interest in the business to file its application for a sexually oriented business license in person on behalf of the business. The application shall be signed as required by this ordinance and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items in this subsection accompanied by the appropriate licensing fee:

- 1) the applicant's full legal name and any other names used by the applicant in the preceding five (5) years.
- 2) Current business address or another mailing address for the applicant.
- 3) Written proof of age, in the form of a driver's license or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.
- 4) the business name, location, mailing address and phone number of the sexually oriented business.
- 5) a written statement of the precise nature of the use for which the license is sought
- 6) Signature of the applicant.

(c) *Incomplete Application.* Any submitted application that does not contain all required information, as set forth herein, shall be deemed incomplete and shall be denied.

- (d) *Registered Agent.* An applicant for a sexually oriented business license shall have a registered agent in Dougherty County upon whom may be served any notices contemplated by this ordinance.

Section 5. Fees.

The Occupational Tax Certificate contained in this code shall be paid by the holder of any sexually oriented business license. This tax will be calculated as specified in City Code Sec. 16-37(c), et seq. and Sec. 16-1000.

Section 6. Inspection.

Sexually oriented businesses shall permit agents of the City of Albany's Code Enforcement Department, from time to time on an occasional basis, to inspect portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this ordinance, during those times when the sexually oriented business is occupied by patrons or is open to the public. The City's Fire Department shall have authority to regularly inspect sexually oriented businesses, to determine compliance with and enforce all applicable fire, health and other codes of the city. This section shall be narrowly construed by the city to authorize only reasonable inspections of the licensed premises pursuant to this ordinance.

Section 7. Expiration and renewal of license.

- (a) Each license shall remain valid for a period of one (1) calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in this ordinance.
- (b) Application for renewal of an annual license should be made at least ninety (90) days before the expiration date of the current annual license, and when made less than ninety (90) days before the expiration date, the expiration of the current license will not be affected.

Section 8. Suspension of license.

- (a) The director of Code Enforcement shall issue a written notice of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if the sexually oriented business licensee has knowingly violated this ordinance or has knowingly allowed an employee to violate this ordinance.
- (b) The director of Code Enforcement shall issue a written notice of intent to suspend a sexually oriented business employee license if the employee has knowingly violated this ordinance.

Section 9. Revocation of license.

- (a) The director of Code Enforcement shall issue a written notice of intent to revoke a sexually oriented business license, as applicable, if the licensee knowingly violates this ordinance or has knowingly allowed an employee to violate this ordinance and a suspension of the licensee's license has become effective within the previous twelve (12) month period.
- (b) The director of Code Enforcement shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if:

- (1) The licensee has knowingly given false information in the application for the sexually oriented business license.
- (2) The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of alcohol and/or controlled substances on the premises of the sexually oriented business;
- (3) The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises of the sexually oriented business;
- (4) The licensee knowingly or recklessly operated the sexually oriented business during a period of time when the license was finally suspended or revoked; or
- (5) The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity, as defined by the ordinance, to occur in or on the premises of the sexually oriented business.

(c) The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.

(d) When, after the notice and hearing procedure described in this ordinance, the city revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license for one (1) year from the date revocation becomes effective.

Section 10. Hearing for denial, revocation, and/or suspension of license and Appeal.

(a) When the director of Code Enforcement issues a written notice of intent to deny, suspend, or revoke a license, the director of Code Enforcement 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 Code Enforcement Department. The notice shall specify a date, not more than ten (10) business days after the date the notice is issued, on which the hearing officer, the City Manager, shall conduct a hearing on the Code Enforcement Director's written notice of intent to deny, suspend, or revoke the license.

At the hearing, the respondent (licensee) shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the Code Enforcement Director's witnesses. The Code Enforcement Director shall 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 (2) days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The hearing officer (City Manager) shall issue a written decision, including specific reasons for the decision pursuant to this ordinance, to the respondent within five (5) days after the hearing.

If the decision is to deny, suspend, or revoke the license, the decision shall not become effective until the thirtieth 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, pursuant to the Georgia Rules of Civil Procedure. If the City Manager, finds that no grounds exist for denial, suspension, or revocation of the license, the City Manager shall, contemporaneously with the issuance of the decision, order the Code Enforcement Director 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 Code Enforcement Director shall contemporaneously therewith issue the license to the applicant.

(b) If any court action challenging the decision of the hearing officer is initiated, the city shall prepare and transmit to the court a transcript of the hearing within ten (10) days after receiving written notice of the filing of the court action. The city shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any sexually oriented business that is operating as a sexually oriented business, on the date on which the completed business application, as applicable, is filed with the Office of Code Enforcement. Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the city's final administrative denial, suspension, or revocation decision, the Code Enforcement Director shall immediately issue the respondent a provisional license. The provisional license shall allow the respondent to continue operation of the sexually oriented business and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the city's final administrative decision. The provisional license shall not be construed to provide the applicant with any substantive right, entitlement, or claim of estoppel beyond the ability to operate until the court enters judgment on the respondent's appeal or other action to restrain or otherwise enjoin the city's final administrative decision.

Section 11. Transfer of license.

A licensee shall not transfer his or her 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.

Section 12. Regulations pertaining to sexually oriented business establishments.

- (a) *Employees.* Employees of a sexually oriented business shall be not less than 18 years of age.
- (b) *Hours of operation.* A sexually oriented business may be open only between the hours of 8:00am and 1:00 am.
- (c) *Display of licenses.* A sexually oriented business licensee shall conspicuously display the license required by this ordinance.
- (d) *Performance area.* All dancing by adult entertainers at sexually oriented businesses shall occur on a platform, intended for that purpose, raised at least 19 inches from the level of the floor.
- (e) *Booths or viewing rooms.* All booth and viewing rooms on the premises shall be visible from the front entrance of the establishment. All seating surfaces inside booths or viewing rooms shall have doors where the bottom of the door is at least 42 inches from the floor. Only one individual shall occupy a booth, room or cubicle at any time.
- (f) *Lighting.* All areas of a sexually oriented business licensed hereunder shall be fully lighted at all times patrons are present. Full lighting shall mean illumination equal to 3.5 footcandles per square foot.
- (g) *Covering of windows and doors.* All sexually oriented businesses which are licensed and permitted by this ordinance shall be carried on inside a closed building with all windows doors covered so that the activities carried on inside cannot be viewed from the immediate areas surrounding the outside of the building.

Section 13. Penalties and enforcement.

(a) A person who knowingly violates, disobeys, omits, neglects, or refuses to comply with any of the provisions of this ordinance shall, upon conviction, be punished by fines not to exceed five hundred fifty dollars (\$500.00) per violation, or by imprisonment for a period not to exceed three (3) months, or by both. Each day a violation is committed, or permitted to continue, shall constitute a separate offense and shall be punished as such.

(b) The city's legal counsel is hereby authorized to institute civil proceedings necessary for the enforcement of this ordinance to prosecute, restrain, or correct violations hereof. Such proceedings, including injunction, shall be brought in the name of the city, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this ordinance, or any of the laws in force in the city or to exempt anyone violating this Code or any part of the said laws from any penalty which may be incurred.

Section 14. Applicability of ordinance to existing businesses.

Existing business licenses. All existing sexually oriented businesses are hereby granted a de facto temporary license to continue operation or employment for a period of ninety (90) days following the effective date of this ordinance. By the end of said ninety (90) days, all sexually oriented businesses must conform to and abide by the requirements of this ordinance.

Existing building permits. All landowners and property owners who possess a legally obtained and valid building permit prior to the enactment of this ordinance shall not be required to relocate their businesses to the land parcels C-3, M-1, and M-2, if such landowners' and property owners' businesses constitute sexually oriented businesses under this ordinance. All other regulations and requirements set forth in this ordinance shall apply to such landowners and property owners of sexually oriented businesses.

Section 15. Prohibited conduct.

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

(a) *Advertising without a license.* No person, partnership, corporation or other entity shall advertise or cause to be advertised a sexually oriented business without a valid sexually oriented business license issued pursuant to this ordinance.

(b) *Engaging in specified sexual activities prohibited.* No adult entertainer, other employee, patron or other person at a sexually oriented business shall be allowed to engage in any specified sexual activity as defined herein on the premises of any sexually oriented business.

(c) *Employment of minors or prohibited persons.* It shall be a violation of this ordinance for any person to knowingly allow a person under the age of eighteen (18) years on the premises of a sexually oriented business.

(d) *Contact between patrons and employees.* No dancing or other performance by an adult entertainer at a sexually oriented business shall occur closer than four (4) 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) *Sale and consumption of alcohol.* It shall be a violation of this ordinance for any person to sell, serve, distribute, use, consume or allow consumption of alcoholic beverages on the premises of any sexually oriented business, including, but not limited to, an *erotic entertainment/dance establishment*.

Section 16. Severability.

This ordinance and each section and provision of said ordinance hereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said ordinance, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid. Should any procedural aspect of this ordinance be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this ordinance.

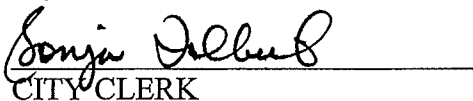
Section 17. Conflicting code provisions repealed.

Any provision(s) in the City of Albany Code of Ordinances specifically in conflict with any provision in this ordinance is hereby deemed inoperative and repealed.

Section 18. All Ordinances, or parts of Ordinances, in conflict herewith are repealed.


MAYOR

ATTEST:


CITY CLERK

Adopted: June 22, 2010

Introduced By Commissioner: Portell
Date(s) read: June 22, 2010