

STATE OF GEORGIA

COUNTY OF FULTON

**AN ORDINANCE MENDING ORDINANCE NO. 2005-12-20, AN ORDINANCE RELATING TO THE LICENSING AND RULES OF OPERATION OF ADULT ENTERTAINMENT ESTABLISHMENTS AND PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT.**

**BE IT ORDAINED** by the City Council of Sandy Springs, Georgia while in regular session on June 20, 2006 at 7:00 p.m. as follows:

**SECTION 1.** The Mayor and Council of the City of Sandy Springs are deeply and profoundly concerned about the many types of criminal activities frequently engendered by adult entertainment establishments; and

**SECTION 2.** The City is becoming an increasingly attractive place for the location of commercial enterprises and of residence for younger families with small children; and

**SECTION 3.** The Mayor and Council of the City of Sandy Springs desire to establish policies that provide the maximum protection of the general welfare, health, morals, and safety of the residents of the City of Sandy Springs; and

**SECTION 4.** O.C.G.A § 36-60-3 provides that the governing authority of each municipal corporation is authorized to enact ordinances which have the effect of restricting the operation of adult bookstores and video stores to areas zoned for commercial or industrial purposes; and

**SECTION 5.** The Georgia Supreme Court, in Chambers d/b/a "Neon Cowboy" v. Peach County, Georgia, 266 Ga. 318 (1996), held that local governments may adopt ordinances designed to combat the undesirable secondary effects of sexually explicit businesses, and further held that a governing body seeking to regulate adult entertainment establishments must have evidence of a relationship between the proposed regulation and the undesirable secondary effects it seeks to control; and

**SECTION 6.** The Georgia Supreme Court further held in the same opinion that in passing its regulation, a governing body may rely on the experience of other counties and municipalities to demonstrate such a relationship; and

**SECTION 7.** The United States Supreme Court, in City of Renton v. Playtime Theater, Inc., 475 U.S. 41 (1986), held that a local government may rely on the experience of other cities in enacting legislation to regulate adult entertainment business; and

**SECTION 8.** The Mayor and City Council have received extensive evidence of secondary effects which are currently occurring within Sandy Springs at adult entertainment establishments. Such evidence consisting of direct testimony of undercover agents and citizens which detailed in explicit terms that violations of law are occurring within the existing adult entertainment establishments located within Sandy Springs. Further, that at least one uniformed Fulton Police officer was observing these violations and failed to act on such blatant violations. The Mayor and City Council have considered the affidavit and guilty plea involving former Fulton County Police Department Captain Mark Lance wherein he pled guilty to extorting

protection money from an adult entertainment establishment located in Sandy Springs. The Mayor and City Council have considered the testimony in contrast with studies and precedents offered by the adult entertainment business.

The Mayor and City Council have considered live testimony from Dr. Bill Holland, former Deputy Director for the Georgia Bureau of Investigation, over the Georgia Crime Information Center ("GCIC") and Dr. Richard Clarke, Director of Planning for the City of Atlanta Police Department and from Dillon Fries, certified real estate appraiser, former member of the Appraisal Foundation Advisory Council and the Metro Atlanta Relocation Council, and has testified in state and federal courts across the country. The testimony of such witnesses in the weighed opinion of the Mayor and City Council is that the studies proffered by the adult entertainment industry are not credible on balance given the presence of the undesirable effects which are currently existing including alcohol abuse, fights, sex for hire, prostitution, diminished property values and deterioration of neighborhoods. Moreover, based on the evidence presented on balance, it appears that the lack of police reports at adult entertainment establishments are a result of Fulton County's failure to enforce such laws. Moreover, the Mayor and City Council notes the study prepared by Fulton County in the early 1990s coincided with the time period Captain Lance was providing police protection for an adult entertainment establishment, therefore, condemning the validity of such studies.

The Mayor and City Council have further received direct testimony involving adult bookstores, explicit media outlets, and adult novelty stores wherein one such establishment used glory holes and booths and considered direct testimony from an undercover former law enforcement officer that illegal activities occurred at one of the adult entertainment establishments.

**SECTION 9.** Based on the experiences of other municipalities and counties, including, but not limited to, Tucson, Arizona; Garden Grove, California; Ellicottville, New York; New York, New York; Oklahoma City, Oklahoma; Dallas, Texas; Houston, Texas; St. Croix County, Wisconsin; and Gwinnett County, Georgia which are found to be relevant to the problems faced by Sandy Springs, Georgia. The Mayor and City Council note the documented negative economic, physical, and social impact adult entertainment businesses have on the community; and

**SECTION 10.** Among the undesirable community conditions identified with live nude entertainment at which alcohol is served or consumed are depression of property values in the surrounding neighborhood, increased expenditure for the allocation of law enforcement personnel to preserve law and order; increased burden on the judicial system as a consequence of the criminal behavior, and acceleration of community blight; and

**SECTION 11.** The Mayor and Council further find it is an important governmental function of reducing crime and protecting property values which are unrelated to the suppression of speech; and

**SECTION 12.** It is the intent of the Mayor and City Council to enact an ordinance, narrowly tailored, sufficient to combat the undesirable secondary effects of the serving and consumption of alcoholic beverages at adult entertainment facilities; and

**SECTION 13.** The Mayor and City Council of the City of Sandy Springs desire to regulate the adult entertainment businesses within the City limits. Notwithstanding, this ordinance is not to be construed as an endorsement from the city of these establishments. The Mayor and City Council understand that adult entertainment businesses are actually protected under the free speech clause of the First Amendment of the Constitution of the United States for their role in

communicating "erotic speech." The courts allow communities to regulate speech, not based on the content of the speech, but in time, place, and manner in which it is presented;

**SECTION 14.** It is the intent of this chapter to regulate the time, place, and manner of the operation of businesses or facilities that offer adult entertainment as defined in this ordinance. It is well established and has been the experience of other communities in Georgia and throughout the United States that adult entertainment, which includes public nudity, has been associated with and may encourage disorderly conduct, prostitution and sexual assault. This section advances the substantial government interest in promoting and protecting public health, safety, and general welfare, maintaining law and order and prohibiting public nudity. The section is narrowly constructed to protect the First Amendment rights of citizens of the City of Sandy Springs while furthering the substantial governmental interest of combating the secondary effects of public nudity and adult entertainment from areas and uses of the community which are incompatible. Areas and uses which are to be protected from adult entertainment include but are not limited to residential, churches, day care centers, libraries, recreational facilities, and schools.

**SECTION 15.** Based on the experiences of other counties and municipalities, the Mayor and City Council take note of the patent conditions and secondary effects attendant to the commercial exploitation of human sexuality, which do not vary greatly among the similar communities within our country.

**SECTION 16.** The Mayor and City Council further find that public nudity (either partial or total) under certain circumstances, particularly circumstances related to the sale and consumption of alcoholic beverages in establishments offering live nude entertainment or "adult entertainment," (whether such alcoholic beverages are sold on the premises or not) begets criminal behavior and tends to create undesirable community conditions. In the same manner, establishments offering cinematographic or videographic adult entertainment have the same deleterious effects on the community. Among the acts of criminal behavior found to be associated with the commercial combination of live nudity and alcohol consumption or sale, live commercial nudity in general, and cinematographic or videographic adult entertainment are disorderly conduct, prostitution, public solicitation, public indecency, fighting, battery, assaults, drug use and drug trafficking.

**SECTION 17.** Among the undesirable community conditions identified in other communities with the commercial combination of live nudity and alcohol consumption or sale, commercial nudity in general, and cinematographic or videographic adult entertainment are depression of property values and acceleration of community blight in the surrounding neighborhood, increased allocation of and expenditure for law enforcement personnel to preserve law and order, and increased burden on the judicial system as a consequence of the criminal behavior hereinabove described. The Mayor and City Council find it is reasonable to believe that some or all of these undesirable community conditions are occurring, and will continue to occur in the City.

**SECTION 18.** The Mayor and City Council further find that other forms of adult entertainment including, but not limited to, adult book stores, adult novelty shops, adult video stores, peep shows, and adult theaters have an adverse effect upon the quality of life in surrounding communities.

**SECTION 19.** The Mayor and City Council further find that the negative secondary effects of adult entertainment establishments upon the city are similar whether the adult entertainment establishment features live nude dancing or sells books/video tapes depicting sexual activities.

Therefore, the Mayor and City Council find that it is in the best interests of the health, welfare, safety and morals of the community and the preservation of its businesses, neighborhoods, and of churches, schools, residential areas, public parks and children's day care facilities to prevent or reduce the adverse impacts of adult entertainment establishments by restricting hours of operation, prohibiting alcohol sale or consumption, and restricting the distance from other adult entertainment establishments and restricting the distance from residential areas, schools, public parks, churches, and children's day care facilities. The Mayor and City Council find that licensing and regulations are necessary for any adult entertainment establishment. The Mayor and City Council find that these regulations promote the public welfare by furthering legitimate public and governmental interests, including but not limited to, reducing criminal activity and protecting against or eliminating undesirable activities impacting adversely the community conditions and further finds that such will not infringe upon the protected Constitutional rights of freedom of speech or expression. To that end, the Mayor and City Council directed the City Attorney to prepare the attached Ordinance entitled Adult Entertainment.

**SECTION 20.** That two public hearings for this purpose shall be held before the Mayor and City Council at City Hall, 7840 Roswell Road, Suite 540, Sandy Springs, Georgia 30350, at 7 o'clock p.m., on the 20<sup>th</sup> and 27<sup>th</sup> days of December, 2005.

**SECTION 21.** That this Ordinance shall become effective on January 1, 2006, all previously adopted ordinances applicable to adult businesses are hereby repealed unless determined that said laws were not validly adopted. Any adult business which was duly licensed by Fulton County as of the December 1, 2005 moratorium passed by the Mayor and City Council of Sandy Springs, shall be granted an additional forty-five (45) days to submit its application for licensing within Sandy Springs. There shall be no grandfathered or non-conforming continuing use granted by virtue of this additional time for application and license approval unless otherwise provided for in this Ordinance.

## ADULT ENTERTAINMENT

### Article 1. General Provisions

#### *Section 1: Definitions*

The following terms used in this chapter defining adult entertainment establishments shall have the meanings indicated below:

(a) "*Adult bookstore*" means a commercial establishment or facility licensed to do business in City of Sandy Springs having twenty-five percent (25%) or more of its display area, for any form of consideration, including but not limited to sales or rental, any one or more of the following materials:

- (1) Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, CD's, DVD's or other video reproductions, or slides or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas", as defined herein; or
- (2) Instruments, devices, novelties, toys or other paraphernalia that are designed for use in connection with "specified sexual activities" as defined herein or otherwise emulate, simulate, or represent "specified anatomical areas" as defined herein.

(b) "*Adult business*" means either:

- (1) Any business other than those expressly specified in this article, where employees or patrons expose "specified anatomical areas" or engage in "specified sexual activities"; or
- (2) Any other business or establishment which offers its patrons services or entertainment characterized by an emphasis on matter depicting, describing, discussing or relating to "specified sexual activities" or "specified anatomical areas."

(c) "*Adult dancing establishment*" means a business that features dancers displaying or exposing "specified anatomical areas."

(d) "*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.

(e) "*Adult entertainment*" means permitting, performing, or engaging in live acts:

- (1) of touching, caressing or fondling of the breasts, buttocks and anus, vulva, or genitals;
- (2) of the displaying of any portion of the areola of the female breast, or any portion of his/her pubic hair, cleft of the buttocks, anus, vulva, or genitals;
- (3) of displaying of pubic hair, anus, vulva, or genitals;

- (4) or acts which simulate sexual intercourse (whether homosexual or heterosexual), masturbation, sodomy, bestiality, oral copulation, or flagellation.

None of the definitions contained in this Section 1(e) shall be construed to permit any act which is in violation of any city, county or state law.

(f) "*Adult entertainment establishment*" means any adult bookstore, adult video store, adult dancing establishment, adult motion picture theater, adult mini-motion picture theatre, adult hotel or motel, adult motion picture arcade, erotic dance establishment, or encounter center or rap establishment, as herein defined which may be distinguished or characterized by an emphasis on matter depicting, describing, relating to "specified sexual activities" and/or "specified anatomical areas."

(g) "*Adult motion picture theater*" means an enclosed building with a capacity of fifty (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.

(h) "*Adult movie theater*" means any movie theater which on 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) "*Adult mini-motion picture theater*" means an enclosed building with a capacity for less than fifty (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.

(j) "*Adult hotel or motel*" means a hotel or motel 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."

(k) "*Adult motion picture arcade*" means 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 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 describing "specified sexual activities" or "specified anatomical areas."

(l) "*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 their 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 (5%) of its total floor space, devoted to the sale or display of such material or which derives more than five percent (5%) its net sales from videos which are characterized or distinguished or relating to "specified sexual activities" or "specified anatomical areas."

(m) "*Church*" means a temple or building consecrated to the honor of God or other supreme being and religion; or an assembly of persons united by the profession of the same religious faith, meeting together routinely for religious worship.

(m) "*Erotic dance establishment*" means a nightclub, theater or other establishment which features live performances by topless and/or bottomless dancers, go-go dancers, strippers or similar entertainers, where such performances are distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."

(o) "*Encounter center or rap establishment*" means any business, agency or person who, for any form of consideration or gratuity, provides a place where two or more persons may congregate, assemble or associate for the primary purpose of engaging in, describing or discussing "specified sexual activities," or exposing "specified anatomical areas."

(p) "*Escort bureau*" or "*introduction services*" means any business, agency or person who, for a fee, commission, hire, reward or profit furnishes or offers to furnish names or persons, or who introduces, furnishes or arranges for persons who may accompany other persons to or about social affairs, entertainments or places of amusement, or who may consort with others about any place of public resort or within any private quarters.

(q) "*Explicit media outlet*" means any commercial establishment which has an inventory of goods that is composed of at least fifty (50%) of books, pamphlets, magazines, or other printed publications, films, or other media which depict sexually explicit nudity or sexual conduct.

(r) "*Good moral character*" means a person is who has not been convicted of a drug-related or alcohol-related felony or sex-related crime in the past five (5) years.

(s) "*Minor*" means any person who has not attained the age of eighteen (18) years.

(t) "*Operator*" means the manager or other person principally in charge of an adult entertainment establishment.

(u) "*Owner*" means any individual or entity holding more than a twenty percent (20%) interest in an adult entertainment establishment.

(v) "*Park*" means any lands or facility owned, operated, controlled or managed by any county, city or federal government or any governmental entity in and upon which recreational activities or places are provided for the recreation and enjoyment of the general public.

(w) "*Premises*" means the building for which or upon which a license is issued hereunder and "*premise*" and "*building*" are further defined as a structure or edifice enclosing a space within its exterior walls, and covered with a roof or outside top covering of a building or connected or attached or joined with or by a wall, roof, walkway or breezeway. Any structure or structures of any nature that share a wall, roof, walkway or breezeway shall be considered a single premises and building for the purposes of this Code. No building may be subdivided for the purpose of creating more than one premises for the purposes of this Code. In addition, the word "premises" shall include the land and real estate as well as its appurtenances, including the entire parcel together with the boundaries thereof, upon which the licensed premises sits as well as the area of land surrounding said premises.

(x) "*Reasonable grounds*" shall mean a violation or violations of Section 7(d)(3) of this Article.

(y) "*School*," "*school building*," or "*educational building*" shall apply only to state, county, city, church school buildings and to such building at such other schools in which are taught subjects commonly taught in the common schools and colleges of this state and which are public schools or private schools as defined in subsection (b) of O.C.G.A. § 20-2-690.

(z) "*Sexual conduct*" means acts of masturbation, homosexuality, sodomy, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, or buttocks, or, if such person is female, breast which, to average person, applying contemporary community standards, taken as a whole, lacks serious literary, artistic, political, or scientific value and predominantly appeals to the prurient interest, that is, a shameful or morbid interest in nudity or sex.

(aa) "*Specified sexual activities*" shall include any of the following:

- (1) Actual or simulated sexual intercourse, oral copulation, anal 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 relations, and any of the following sexually oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zoerasty; or
- (2) Clearly depicted human genitals in a state of sexual stimulation, arousal or tumescence; or
- (3) Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation; or
- (4) Fondling or touching of nude human genitals, pubic region, buttocks or female breast; or
- (5) Masochism, erotic or sexually oriented torture, beating or the inflicting of pain; or
- (6) Erotic or lewd touching, fondling or other sexual contact with an animal by a human being; or
- (7) Human excretion, urination, menstruation, vaginal or anal irrigation.

(bb) "*Specified anatomical areas*" shall include any of the following:

- (1) Less than completely and opaquely covered human genitals or pubic region; buttock; 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.

(cc) "*Sexually explicit nudity*" means a state of undress so as to expose the human male or female genitals or pubic area with less than full opaque covering or the depiction of covered or uncovered male genitals in a discernibly turgid state which, to the average person, applying contemporary community standards, taken as a whole, lacks serious literary, artistic, political, or scientific value and predominantly appeals to the prurient interest, that is, a shameful or morbid interest in nudity or sex.

#### *Section 2: Location*

Except as provided in (e) below, no adult business or use restricted hereunder shall be located:

- (a) Within four hundred (400) feet of any parcel of land which is zoned for multifamily or single family uses or purposes.
- (b) Within four hundred (400) feet of any parcel of land upon which a church, school, governmental building simultaneously owned and occupied by such government, library, civic center, neighborhood public park or neighborhood playground is located.
- (c) Within four hundred (400) feet of any parcel of land upon which another establishment regulated or defined hereunder is located.
- (d) Within any zoning category other than M-1, M-2, C-1, and C-2.
- (e) For locations of an explicit media outlet or adult movie house the above distance requirements shall be one thousand (1,000) feet from any school building (applies only to public and private school buildings), school grounds, college campus, public place of worship, or area zoned primarily for residential purposes. This one thousand (1,000) foot distance requirement for explicit media outlets and adult movie houses shall not apply to any said location which hold lawful permits or business license since July 1, 1997.
- (f) For the purposes of this section, distance shall be from property line to property line using the closest 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.

*Section 3: Rules of Operation*

Any person, firm, partnership, or corporation licensed hereunder shall comply with the following rules and regulations pertaining to the operation of the adult entertainment establishment:

- (1) No licensee shall operate between the hours of 4:00 a.m. and 8:00 a.m. on all days except Sundays when the licensee shall not operate between the hours 2:55 a.m. and 9:00 a.m.
- (2) No person under the age of eighteen (18) years shall be permitted on the premises.
- (3) No dancing or other performance by an adult entertainer at an adult entertainment establishment shall occur closer than four (4) feet to any patron.
- (4) No patron, customer or guest shall be permitted to have any physical contact with, touch, caress or fondle any specified anatomical area of or any part of the body or clothing of any adult entertainer.
- (5) No direct pay or any gratuity for adult entertainers or performers shall be placed on the person of the performer except by hand to hand.
- (6) All performers of adult entertainment shall be restricted to fixed stages, and no patron shall be permitted on such stages. Fixed stage shall be defined as a raised floor area designed exclusively for use by performers at least ten (10) feet from seating area of patrons.
- (7) The license shall be displayed in a prominent place on the premises at all times.
- (8) No licensee and his/her employees shall permit any alcoholic beverages to be served, offered, or consumed on the premises.
- (9) All areas of an adult entertainment establishment 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.

- (10) All adult entertainment which is 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.

Violations of these rules and regulations may result in the revocation of the license.

*Section 4: Employee Eligibility Requirements; Fingerprinting; Letter of Clearance, Suspension or Revocation*

(a) No person may be employed by an establishment holding a license hereunder until such person has been fingerprinted by the police department and has been issued a letter of clearance by the police department indicating the person has not violated any law defined by this article. A letter of clearance or non-clearance shall be issued within thirty (30) days by the police department indicating the person eligibility for such employment. This section shall apply to performers, entertainers, bartenders, barmaids, bouncers, and musicians, all of whom may be employed for temporary work as well as regular employees. In the event no letter is issued within the thirty (30) day period the applicant shall be deemed eligible for such employment.

(b) All persons subject to the provisions of this section shall, prior to the date of their first work in an adult entertainment establishment, report to the Police Department for purposes of being fingerprinted. Any change of place of employment by the person, within the City, shall be reported to the Police Department.

(c) The Police Department shall have a full search made relative to any police record of the person fingerprinted. In the event a person pleads guilty to, is found guilty of, or pleads *nolo contendere* to, prohibited conduct as defined in Section 8, the Police Department shall issue a letter to the person fingerprinted, as set forth in Section 4(a), stating that the person is ineligible for such employment and the person's employment shall immediately cease. In the event a non-clearance letter is issued the person seeking such employment may appeal the decision within thirty (30) days to the Mayor and City Council. In the event the Mayor and City Council affirm the non-clearance the person seeking such employment may seek review of such decision by filing a writ of certiorari in the superior court.

(d) Any letter of eligibility for employment issued hereunder shall expire on December 31 of each year. The Mayor and City Council may prescribe reasonable fees for certifying the eligibility of employment, or annual issuance of a letter of eligibility for employment.

(e) If a person, subsequent to the issuance of a letter of eligibility pleads guilty to, is found guilty of, or pleads *nolo contendere* to, prohibited conduct as defined in Section 8 (c), the issue of whether or not to suspend or revoke the eligibility to hold such employment shall be brought before the Mayor and City Council. The person shall receive reasonable notice of the time and date of the hearing to consider suspension or revocation. The person shall be entitled to present evidence and cross-examine any witnesses at the hearing, with or without legal counsel. The Mayor and City Council shall make its decision within ten (10) days of the hearing and shall notify the person in writing within five (5) business days of the decision. Any decision of the Mayor and City Council may be appealed to the superior court by writ of certiorari.

*Section 5: 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 an adult entertainment establishment as defined in this article without first procuring an annual license to do so except

when the City Manager fails to approve or deny an application for an adult entertainment license within thirty (30) days of receiving all information as a prerequisite for issuance of a license as required by this article.

(b) 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 Georgia or the United States.

(c) No annual license for an 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 an 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, nor shall such adult entertainment establishment allow patrons, members, or guests to bring in his/her own alcoholic beverage(s).

(d) No licensed premise for adult entertainment shall be located any closer than fifty (50) feet from, any premise authorized and licensed to sell alcoholic beverages or malt beverages or wine for consumption on the premises.

(e) There shall be an annual regulatory fee for each adult entertainment establishment licensed within the City as provided in Section 14 of this ordinance.

- (1) Any person, firm, partnership, or corporation desiring to operate an adult entertainment establishment within the territorial boundaries of the City of Sandy Springs, Georgia shall be required to file for a new license, with all supporting documentation pursuant to Section 7(b) of this ordinance.
- (2) An annual regulatory fee must be paid to the City Manager within ten (10) days after the City Manager approves the initial application for an adult entertainment establishment license. In any event, no adult entertainment establishment license shall be issued until the most recent annual regulatory fee has been paid.
- (3) Any person applying for 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 rate of six percent (6%) per annum.

*Section 6: On-premises operator required*

An adult entertainment establishment shall have a designated person(s) to serve as an on-premises operator. The operator(s) shall be principally in charge of the establishment and shall be located on the premises during all operating hours.

*Section 7: Application process and qualifications*

(a) *Process.* Any person, association, partnership or corporation desiring to obtain a license to operate, engage in, conduct, or carry on any adult entertainment establishment in the city shall make application to the City Manager of Sandy Springs. Such application shall be made on forms furnished by the City, shall be made in the name of the adult entertainment establishment by an applicant who is a natural person and an agent of the adult entertainment establishment and shall include the name(s) of the operator(s) as defined herein and of the owner(s) as defined herein. If the adult entertainment establishment 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 is a partnership, the agent for such purposes shall be a general partner. 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 manager to defray, in part, the cost of investigation and report required by this article. The City Manager shall issue a receipt showing that such application fee has been paid. The filing of an application for license does not authorize the operation of, engaging in, conduct or carrying on of any adult entertainment establishment.

(b) *Contents.* Each application for an adult entertainment establishment license shall contain the following information:

- (1) The full true name and any other names used by the applicant, the operator(s) and owner(s);
- (2) The present address and telephone number of the applicant, the operator(s) and owner(s);
- (3) All previous addresses of the applicant, the operator(s) and the owner(s), if any, for a period five years immediately prior to the date of the application and the dates of residence at each;
- (4) Acceptable written proof that the applicant, the operator(s) and the owner(s) are at least 18 years of age;
- (5) The operator(s)' height, weight, color of eyes and hair and date and place of birth;
- (6) Two photographs of the operator(s) 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(s) and owner(s) for the five years immediately preceding the date of application;
- (8) The business license history of the adult entertainment establishment 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 an adult entertainment business or similar type of business revoked or suspended, the reason therefore, and the business activity or occupation subsequent to such action of revocation or suspension;
- (9) If the application 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 state and date of incorporation. If the application is on behalf of a limited partnership, a copy of the certificate of limited partnership filed with the Fulton County Clerk of Superior Court shall be provided. If one or more of the partners is a corporation, the provisions of this subsection pertaining to corporations shall apply;
- (10) The names and addresses of the owner and lessor of the real property upon which the adult entertainment establishment 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(s) and the owner(s), 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 or her criminal records to the permits unit of the city police department.
- (12) A complete set of fingerprints of the applicant and the operator(s);
- (13) If the person or business entity on whose behalf application for a license 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 (3) character references for the applicant, the operator(s) and owner(s) from individuals who are in no way related to the applicant or any operator(s) or owner(s) 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 requirements of this subsection for the applicant, the operator(s) and owner(s), who shall submit all character references on such forms;
- (15) 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 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 day care facility, establishment selling alcoholic beverages or malt beverages and wine or other adult entertainment establishment;
- (17) Provide certification from the Community Development Director or his/her designee of approved conditions of zoning pertaining to the property to be licensed, provide land administrative permits, provide an as-built survey depicting the location of the structure which will operate as the adult entertainment establishment, and pay the applicable license fee. Prior to the issuance of such license, the as-built survey shall be submitted to the department of public works for a determination as to whether the proposed site meets the standards set forth in the conditions of zoning and certifying that the proposed establishment location does not violate the distance restrictions set forth in Section 2 of this ordinance. Said determination shall be made within fourteen (14) days and if not made within said time it shall be deemed that the proposed site meets the standards;
- (18) Each application for an adult entertainment establishment license shall be personally 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;
  - 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 Manager and produce proof that a nonrefundable application fee, in an amount established by resolution of the Mayor and City Council, has been paid and shall present the application containing the aforementioned and described information.

(d) *Investigation; standards for granting of license.* The City shall have thirty (30) business days from the date of actual receipt of a completed application as set forth in Section 7(b), with all required supporting documentation, to investigate the facts provided in the application and the background of the applicant, the operator(s) and owner(s). The city manager of the city 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 (5) business days of actual receipt of such application. The City Manager shall approve or deny any application for an adult entertainment establishment license within thirty (30) days of actual receipt of such properly completed application. The time shall not commence until a completed application, with all supporting documentation, has been filed. The application for an adult entertainment establishment license shall be granted if the city manager finds:

- (1) The required \$300.00 investigative fee has been paid;
- (2) The applicant has not made a material misrepresentation in the application;
- (3) Neither the applicant nor any of the operator(s) or owner(s) has been convicted or pled guilty or entered a plea of *nolo contendere* to a crime involving moral turpitude, illegal gambling or illegal possession or sale of controlled substances or the illegal possession or sale of alcoholic beverages, including the sale or transfer of alcoholic beverages, including sale or transfer of alcoholic beverages to minors in a manner contrary to law, to 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 (5) years from the date of the filing of the application. 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 applicant nor any of the operator(s) or owner(s) has had an adult entertainment establishment license or other similar license or permit revoked for cause by this City, Fulton County or any other county, or municipality located in or out of this state within the preceding five (5) years prior to the date of application;
- (5) The building, structure, equipment and location of the premises of the adult entertainment establishment as proposed by the applicant would comply with all applicable laws, including but not limited to health, zoning, distance, fire and safety requirements and standards;
- (6) The applicant is at least 18 years of age;
- (7) On the date the business for which a license is required herein commences, and thereafter, there will be an operator(s) as defined herein on the premises at all times during which the business is open;
- (8) The proposed premises will be located at least the minimum distances set forth in Section 2 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
- (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, Fulton County, the State of Georgia, or the United States.

The city manager of the shall deny the application for an adult entertainment establishment license if the application fails to meet any requirement contained in the city's ordinance regulating adult entertainment establishments.

*Section 8: Conduct or activities prohibited*

(a) *Advertising without license.* No person, partnership, corporation or other entity shall advertise or cause to be advertised an adult entertainment establishment without a valid adult entertainment establishment license issued pursuant to this article.

(b) *Employment of minors or unpermitted persons.* No adult entertainment establishment licensee shall employ or contract with a person under the age of 18 years or an adult entertainer who has not obtained a permit pursuant to this article.

(c) *Contact between patrons, employees.* No dancing or other performance by an adult entertainer at an adult entertainment establishment shall occur closer than four (4) feet to any patron. No patron, customer or guest shall have any physical contact with any "specified anatomical area" of or any part of the body or clothing of any adult entertainer. No direct pay or any gratuity for adult entertainers or performers shall be placed on the person of the performer except by hand to hand. No adult entertainer shall solicit any pay or gratuity from any patron.

(d) *Engaging in specified sexual activities prohibited.* No adult entertainer, other employee, patron or other person at an adult entertainment establishment shall be allowed to engage in any "specified sexual activity" as defined herein on the premises of any adult entertainment establishment.

(e) *Public indecency prohibited.* No adult entertainer, 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.

(f) *Private rooms prohibited.* It shall be unlawful for any employee to engage in entertainment or to expose any "specified anatomical areas" or engage in any "specified sexual activities" in the presence of a customer in any separate area, including but not limited to any room or booth, within an adult entertainment establishment to which entry or access is blocked or obscured by any door, curtain or other barrier separating entry to such area from any other area of the establishment.

(g) *Private booths prohibited.* Any adult entertainment business having available for customers, patrons, or members, any booth, room, or cubicle for the private viewing of any video or motion picture 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 video store, 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 area or aisle so that there is an unobstructed view of anyone occupying the booth from the area in which the cash register for the video store is located.
  - (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 cleaned.
  - (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.

#### *Section 9: Penalty for violation*

Any person violating any of the provisions of Section 8 of this article shall 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 sixty (60) days, or both. Each separate and specific act of conduct and each day of operation in violation of this article shall be deemed a separate offense.

*Section 10: Unlawful operation declared nuisance*

Any adult entertainment establishment 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, proceeding or proceedings for abatement, removal or injunction thereof in the manner provided by law. The City 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 and restrain and enjoin any person from operating, engaging in, conducting or carrying on an adult entertainment establishment contrary to the provisions of this article.

*Section 11: Conditions of adult entertainment establishment*

(a) *Cleaning of licensed premises.* 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, the county, and the state.

(b) *Inspection of licensed premises.* The City Fire Marshal shall have the authority to regularly inspect adult entertainment establishments, to determine compliance with and enforce all applicable fire, health and other codes of the county.

(c) *Inspection for unsanitary or unsafe conditions.* The City Police Department shall have the authority to periodically inspect adult entertainment establishments to determine compliance with all provisions of this article and other applicable ordinances, regulations and laws.

*Section 12: Denial, suspension or revocation of license; 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 the city's ordinance regulating adult entertainment establishments found in this Ordinance.

(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(s) and owner(s), conviction of or a plea of guilty or *nolo contendere* to any of the crimes which would make such person or adult entertainment establishment ineligible to hold a license under Section 7(d) above.

(b) *Denial; procedure.* Within thirty (30) days of actual receipt of a completed application, with all supporting documentation, for an adult entertainment establishment license, the City Manager shall either approve or deny the application. In no event shall the City Manager's decision whether to approve or deny the adult entertainment establishment license application be withheld for more than thirty (30) days after actual receipt of the completed application. However, in the event that such an application is held without decision for a period of more than thirty (30) days the license application shall be deemed approved, and expressive conduct may begin immediately notwithstanding the fact that no license has been issued. The director of the City's finance

department shall issue an adult entertainment establishment license to an applicant who informs the director of finance of the fact that an application has been submitted, but no decision has been made thereon for a period of more than thirty (30) days following actual receipt of the application. Notwithstanding the fact that the license provided by this sentence shall not be a prerequisite to the commencement of business operations contemplated by the application, the director of City's finance department shall issue an adult entertainment establishment license under such circumstances within three (3) business days of actual receipt of written notice by the applicant of such circumstances. In the event that the city manager denies an application for an adult entertainment establishment license, notice of such denial shall be delivered to the applicant in person or forwarded by certified mail to the address set forth in the application within five (5) business days of such denial. Any person aggrieved by any decision of the city, its officials, employees or agents pursuant to this Section, may seek review of such decision by filing an appropriate pleading in the superior court of the county or any other court of competent jurisdiction.

(c) *Suspension or revocation; procedure.* Whenever the Mayor and City Council finds reasonable grounds exist to suspend or revoke a license issued hereunder, the Mayor and City Council shall schedule a hearing to consider such suspension or revocation and shall, at least twenty (20) days prior to the hearing, notify the licensee of the time and date of the hearing and the proposed action and the grounds therefore. The licensee shall be entitled to present evidence and cross-examine any witnesses at the hearing, with or without legal counsel. The Mayor and City Council shall make its decision within ten (10) days of the hearing and shall notify the licensee in writing within five (5) business days of the decision. Any decision of the Mayor and City Council may be appealed to the superior court by writ of certiorari.

*Section 13: Non-Renewability; Change of Ownership of Establishment*

(a) All persons, firms, companies, or corporations, including limited liability corporations and professional corporations, licensed to operate adult businesses in the municipal limits of the City of Sandy Springs previously registered with Fulton County, Georgia shall be granted an additional forty-five (45) days to file a new application for a license to operate said adult entertainment establishment(s) with the City of Sandy Springs following the effective date of this Ordinance.

(b) All licenses granted after January 1, 2006 and under this chapter shall expire on December 31 of each year, commencing December 31, 2006. Licensees shall be required to file a new application, with the requisite fee enumerated in Sections 11 and 12, with the City Manager on the form provided for a new license for the ensuing year. 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. For any applications for a new license after January 1, 2006, an application must be filed on or before November 30 of each year. Any applications received after November 30 shall pay in addition to the annual fee, a late charge of twenty percent (20%). If a license application is received after January 1, reasonable investigative and administrative costs will be assessed as may be prescribed from time to time by the Mayor and City Council.

(c) All licenses granted under this chapter shall be for the calendar year, and the full license fee must be paid for a license application filed prior to July 1 of the license year. One-half of a full license fee shall be paid for any license application filed after July 1 of the license year.

(d) Any person applying for a new license issued under this chapter who shall pay the required fee for an annual license, or any portion thereof, after January 1, shall, in addition to the annual

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.

(e) A change of ownership shall require a new license.

*Section 14: Fee*

The fee for the adult entertainment license shall be established by the City Council.

*Section 15: Compliance with Applicable Laws by Licensee*

Any person, firm, partnership, or corporation who holds an adult entertainment license must also display the occupation tax certificate issued hereunder in a conspicuous location. Failure to display the occupation tax certificate in a conspicuous location may result in a fine of \$50.00.

*Section 16: Nonconforming Uses/Amortization*

(a) Any adult entertainment establishment lawfully existing under the laws of Fulton County, Georgia as of December 1, 2005 which becomes a non-conforming use as a result of the enactment of this ordinance as to location shall be a grandfathered non-conforming use and may not be expanded or otherwise altered outside the scope of the non-conformity currently existing.

(b) Such nonconforming adult entertainment establishment as to location shall terminate within five years from the effective date of this section or from such later date that the adult entertainment establishment becomes nonconforming, except that such establishment may be continued for a limited period of time by the Mayor and City Council, provided that:

- (1) An application is made by the owner of such establishment to the Mayor and City Council at least one hundred twenty (120) days prior to the date on which such establishment became nonconforming; and
- (2) The Mayor and City Council shall find in connection with such establishment, that:
  - (a) The applicant had made, prior to the nonconformity, financial expenditures related to the nonconformity; and
  - (b) The applicant had not recovered ninety percent (90%) of the financial expenditures related to the nonconformity; and
  - (c) The period for which such establishment may be permitted to continue is the minimum period sufficient for the applicant to recover substantially all of the financial expenditures incurred related to the nonconformity, but not more than five (5) years.
- (3) For the purpose of this section, "financial expenditures" shall mean the capital outlay made by the applicant to establish the adult entertainment establishment, exclusive of the fair market value of the building in which such use is located and site improvements unrelated to the nonconforming adult entertainment establishment, i.e. paving, fencing, etc.
- (4) In order to secure an extension of time, the applicant must submit to the Mayor and City Council a written application for such extension which shall set for the following information:
  - (a) The amount of the financial expenditures for improvements in the existing enterprise through the date of passage and approval of this Ordinance;

- (b) The date each improvement was made with proof of expenditure;
  - (c) The amount of such financial expenditures that has been or will be realized through the effective date;
  - (d) The life expectancy of the existing enterprise, as based on federal depreciation guidelines;
  - (e) The existence or nonexistence of lease obligations, as well as any contingency clauses therein permitting the termination of such lease.
- (5) This information shall be supported by relevant documentary evidence such as financial statements, copies of lease agreements to premises and any equipment, and tax records. Copies of such documentary evidence must be attached to the application for extension. No investment that was not incurred by the date of passage and approval of this Ordinance shall be considered.
- (6) "Nonconforming" for purposes of this section is a use, lot or structure which use, lot or structure was lawful and valid
- (a) when established, as evidenced by a certificate of occupancy as provided in Article 23, Section 23.1 of the Sandy Springs Zoning Ordinance; and
  - (b) which use, lot or structure does not conform with one or more requirements of this chapter as a result of a change in the requirements subsequent to the establishment of or application for the subject use, lot or structure.

*Section 17: Alcoholic Beverages – prohibition; exceptions*

(a) No person, association, partnership or corporation licensed under this Article following the effective date of this Ordinance shall serve, sell, distribute or suffer the consumption or possession of any intoxicating liquor, beer or wine or controlled substance defined by Georgia law upon the premises of any licensee. Any licensee who had a license granted by Fulton County shall not be subject to this Section 17 until January 1, 2006, at which time all licensees within the City shall be subject to this provision, including those licensees licensed before the effective date hereof.

(b) This section shall not apply to nor prohibit the live performance of legitimate plays, operas, ballets at mainstream theaters, concert halls, museums or educational institutions which derive less than twenty (20) percent of its gross receipts from the sale of alcoholic beverages.

*Section 18: Penalties*

Any person, firm, partnership, or corporation violating the provisions of this Ordinance or prohibited conduct as defined herein, shall be guilty of a misdemeanor, punishable by a fine not to exceed \$500.00 per violation or by imprisonment for a period not to exceed ninety (90) days, or by both such fine and imprisonment. In addition to such fine or imprisonment, violation of this chapter shall also be grounds for immediate suspension or revocation of the license issued hereunder.

*Section 19: Repealer*

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

*Section 20: Severability*

If any section, subsection or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

*Section 21: Effective Date*

This ordinance shall take effect on the 20<sup>th</sup> day of June, 2006.

Approved:

  
Eva Galambos, Mayor

Attest:

  
Jeanette R. Marchiafava, City Clerk

(Seal)

