

STATE OF GEORGIA
COUNTY OF FULTON

AN ORDINANCE AMENDING SECTION 38-119 AND SECTION 38-120 OF THE CODE OF ORDINANCES OF THE CITY OF SANDY SPRINGS CONCERNING OFFENSES

WHEREAS, the Mayor and City Council of the City of Sandy Springs are charged with the protection of the public health, safety, and welfare of the citizens of Sandy Springs; and

WHEREAS, the State of Georgia authorizes the City of Sandy Springs to exercise regulations where it sees fit to maintain the safety and welfare of the citizens; and

WHEREAS, the City has a substantial government interest in protecting order and morality, *Williams v. Morgan*, 478 F.3d 1316, 1323 (11th Cir. 2007) (quoting *Lofton v. Sec'y of the Dept. of Children and Family Servs.*, 358 F.3d 804, 819 n.17 (11th Cir. 2004)); and

WHEREAS, commercial distribution of obscene material is injurious to public order and morality and is not protected by the First Amendment, *Miller v. California*, 413 U.S. 15 (1973); *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); *Chamblee Visuals, LLC v. City of Chamblee*, 506 S.E.2d 113 (Ga. 1998) (same); and

WHEREAS, the City has a substantial government interest in preventing the negative secondary effects of establishments which trade in indecent and obscene materials, *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *H&A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007); *People ex rel. Deters v. The Ljon's Den, Inc.*, Case No. 04-CH-26, (Ill. 4th Jud. Cir. 2005); and

NOW, THEREFORE, to accomplish the foregoing, the Mayor and City Council of the City of Sandy Springs, Georgia while in regular session on April 21, 2009 at 6:00 p.m., pursuant to their authority, do hereby ordain that sections within Chapter 38, Offenses and Miscellaneous Provisions, of the Code of Ordinances of the City of Sandy Springs are hereby amended as follows.

Section 1. Section 38-119 of The Code of the City of Sandy Springs, Georgia is hereby amended to read as follows:

Sec. 38-119. Public indecency.

It shall be unlawful for any person to perform any of the following acts in a public place:

- (1) An exposure of one's genitals, or of one's breasts, if female, except in a place designed for same.

Section 2. Section 38-120 of The Code of the City of Sandy Springs, Georgia is hereby amended to read as follows:

Sec. 38-120. Obscenity and related offenses.

- (a) A person commits the offense of distributing obscene material when the following occurs:

- (1) He sells, rents, or leases to any person any obscene material of any description, knowing the obscene nature thereof, or offers to do so, or possesses such material with the intent to do so, provided that the word "knowing," as used in this section, shall be deemed to be either actual or constructive knowledge of the obscene contents of the subject matter.
 - (2) A person has constructive knowledge of the obscene contents if he has knowledge of facts which would put a reasonable and prudent person on notice as to the suspect nature of the material.
 - (3) The character and reputation of the individual charged with an offense under this law, and the character and reputation of the business establishment involved may be placed in evidence by the defendant on the question of intent to violate this law. Undeveloped photographs, molds, printing plates, and the like shall be deemed obscene notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.
- (b) Material is obscene if:
- (1) To the average person, applying contemporary community standards, taken as a whole, it predominantly appeals to the prurient interest, that is, a shameful or morbid interest in nudity, sex, or excretion;
 - (2) The material taken as a whole lacks serious literary, artistic, political, or scientific value; and
 - (3) The material depicts or describes, in a patently offensive way, sexual conduct specifically defined as follows:
 - a. Acts of sexual intercourse, heterosexual or homosexual, normal or perverted, actual or simulated;
 - b. Acts of masturbation;
 - c. Acts involving excretory functions or lewd exhibition of the genitals;
 - d. Acts of bestiality or the fondling of sex organs of animals; or
 - e. Sexual acts of flagellation, torture, or other violence indicating a sadomasochistic sexual relationship.
- (c) Any device designed or marketed as useful primarily for the stimulation of human genital organs is obscene material under this section. However, nothing in this subsection shall be construed to include a device primarily intended to prevent pregnancy or the spread of sexually transmitted diseases.
- (d) It is an affirmative defense under this section that selling, renting, or leasing the material was done for a bona fide medical, scientific, educational, legislative, judicial, or law enforcement purpose.
- (e) A person who commits the offense of distributing obscene material shall be guilty of a violation of this Code.

Section 3. It is the intention of the Mayor and Council, and it is hereby ordained, that the provisions of this Ordinance shall become and be made part of the Code of Ordinances, City of Sandy Springs, Georgia. All ordinances or parts of ordinances in conflict herewith are repealed.

Section 4. If any clause, paragraph, phrase, section, sentence, or word of this ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining clauses, paragraphs, phrases, sections, sentences, or words of this ordinance.

Section 5. This Ordinance is effective April 21, 2009.

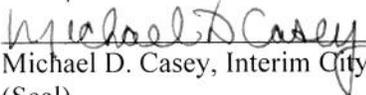
ORDAINED this the 21st day of April, 2009.

Approved:



Eva Galambos, Mayor

Attest:



Michael D. Casey, Interim City Clerk
(Seal)

