STATE OF GEORGIA
COUNTY OF FULTON

**AN ORDINANCE AMENDING CHAPTER 26, ARTICLE II OF THE CODE OF ORDINANCES OF THE CITY OF SANDY SPRINGS CONCERNING ADULT ESTABLISHMENTS**

**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

**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 Chapter 26 Article II of the Code of Ordinances of the City of Sandy Springs is hereby amended as follows.

Section 1. Chapter 26, Article II, Adult Establishments of The Code of the City of Sandy Springs, Georgia is hereby amended to read as follows:

ARTICLE II. ADULT ESTABLISHMENTS

**Sec. 26-21. Findings.**
The council of the city is deeply and profoundly concerned about the many types of criminal activities frequently engendered by adult establishments.
(1) The city is becoming an increasingly attractive place for the location of commercial enterprises and of residences for families, and the council is committed to adopting ordinances designed to protect the quality of life for its constituents.
(2) The council desires to establish policies that provide the maximum protection of the general welfare, health, morals, and safety of the residents of the city.
(3) 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, provided in O.C.G.A. § 36-60-3.
(4) The state 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 authority seeking to regulate adult establishments must have evidence of a relationship between the proposed regulation and the undesirable secondary effects it seeks to control.
(5) The state supreme court further held in the same opinion that in passing its regulation, a local government may rely on the experience of other counties and municipalities to demonstrate such a relationship.
(6) The United States Supreme Court, in *City of Renton v. Playtime Theatres, 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.
(7) The city council has received extensive evidence of secondary effects that are currently occurring within the city at adult establishments. Such evidence consisting of direct testimony of undercover agents and citizens that detailed in explicit terms that violations of law are occurring within the existing adult establishments located within the city. Further, that at least one uniformed county police officer was observing these violations and failed to act on such blatant violations. The city council has 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 establishment located within the city. The city council has considered the testimony in contrast with studies and precedents offered by the adult entertainment business.

a. The city council has 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 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 establishments are a result of the county's failure to enforce such laws. Moreover, the city council notes the study prepared by the county in the early 1990s coincided with the time period Captain Lance was providing police protection for an adult establishment, therefore, condemning the validity of such studies.

b. The city council has 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 establishments.

(8) 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 the city, the city council notes the documented negative economic, physical, and social impact adult entertainment businesses have on the community.

(9) 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.

(10) The council further finds it has an important governmental interest in reducing crime and protecting surrounding properties from adverse impacts, which interest is unrelated to the suppression of speech.

(11) It is the intent of the city council to enact an ordinance, narrowly tailored, sufficient to combat the undesirable secondary effects of adult entertainment businesses, including the serving and consumption of alcoholic beverages at adult entertainment facilities.

(12) The city council desires to regulate the adult entertainment businesses within the city limits. Notwithstanding, this article is not to be construed as an endorsement from the city of these establishments. The city council understands 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.

(13) It is the intent of this article to regulate the time, place, and manner of the operation of businesses or facilities that offer adult entertainment as defined in section 26-22. It is well established and has been the experience of other communities in the state 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 while furthering the substantial governmental interest of combating the secondary effects of public nudity and adult entertainment from areas and uses of the community that are incompatible. Areas and

uses that are to be protected from adult entertainment include, but are not limited to, residential, churches, day care centers, libraries, recreational facilities, and schools.

(14) Based on the experiences of other counties and municipalities, the city council takes 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.

(15) The city council further finds 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. *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *5634 East Hillsborough Ave., Inc. v. Hillsborough County*, 2007 WL 2936211 (M.D. Fla. Oct. 4, 2007), *aff'd*, 2008 WL 4276370 (11th Cir. Sept. 18, 2008) (*per curiam*). *See also California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981).

(16) 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 described in this article. The city council finds it is reasonable to believe that some or all of these undesirable community conditions are occurring, and will continue to occur in the city.

(17) The city council further finds that other forms of adult entertainment including, but not limited to, adult bookstores, adult novelty shops, adult video stores, peep shows, and adult theaters have an adverse effect upon the quality of life in surrounding communities.

(18) The city council further finds that the negative secondary effects of adult establishments upon the city are similar whether the adult establishment features live nude dancing or sells books/videotapes depicting sexual activities. *H & A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007); *High Five Investments, LLC v. Floyd County*, No. 4:06-CV-0190-HLM (N.D. Ga. Mar. 14, 2008).

(19) Therefore, the city council finds 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 establishments by restricting hours of operation, prohibiting alcohol sale or consumption, and restricting the distance from other adult establishments and restricting the distance from residential areas, schools, public parks, churches, and children's day care facilities.

(20) The city council finds that licensing and regulations are necessary for any adult establishment.

(21) The city council finds 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 city council directed the city attorney to prepare this article.

(22) The city council hereby re-adopts and incorporates these pre-enactment findings and evidence into the adoption of the following code amendments.

**Sec. 26-22. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Adult bookstore* means a commercial establishment or facility in the city that maintains 25 percent or more of its floor area for the display, sale, and/or rental of the following items (aisles and walkways used to access these items shall be included in "floor area" maintained for the display, sale, and/or rental of the items):

(1) Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, videocassettes, CDs, DVDs or other video reproductions, or slides or other visual representations which are characterized by their emphasis upon the display 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.

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

*Adult entertainment* means live conduct characterized by the display of specified anatomical areas. None of the definitions contained in this section shall be construed to permit any act that is in violation of any city, county or state law.

*Adult entertainment establishment* means any establishment or facility in Sandy Springs where adult entertainment is regularly sponsored, allowed, presented, sold, or offered to the public.

*Adult establishment* means any adult bookstore, adult entertainment establishment, adult motion picture theater, or adult motion picture arcade.

*Adult motion picture arcade* means a commercial establishment 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 regularly 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 upon matter displaying specified sexual activities or specified anatomical areas.

*Adult motion picture theater* means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas are regularly shown to more than five persons for any form of consideration.

*Church, temple or place of worship* means a facility in which persons regularly assemble for religious ceremonies. This shall include, on the same lot, accessory structures and uses such as minister's and caretaker's residences and others uses identified under the provisions for administrative and use permits.

*Day care facility* means a use in which shelter, care, and supervision for seven or more persons on a regular basis away from their residence for less than 24 hours a day. A day care facility may provide basic educational instruction. The term shall include nursery school, kindergarten, earlylearning center, play school, pre-school, and group day care home.

*Golf course* means a use of land for playing the game of golf. The term shall not include miniature golf, but may include a country club and a driving range as an accessory use.

*Hearing officer* means an attorney, not otherwise employed by the City, who is licensed to practice law in Georgia, and retained to serve as an independent tribunal to conduct hearings under this article.

*Library* means a place set apart to contain books and other literary material for reading, study, or reference, for use by members of a society or the general public.

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

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

*Owner* means any individual or entity holding more than a 30 percent interest in any sole proprietorship, partnership, or member-managed limited liability company controlling, operating, or owning an adult establishment.
*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.
*Premises* means the building for which or upon which a license is issued hereunder and the terms "premises" 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 term "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.
*Recreational court, private.* An improved area designed and intended for the playing of a game or event such as basketball or tennis, and which serves a single family dwelling(s), duplex dwellings and/or multifamily dwellings, or combinations of dwelling types, including such improved areas which are owned and/or controlled by a neighborhood club or similar organization. A basketball goal adjoining a driveway of typical residential driveway dimensions shall not constitute a recreational court.
*Recreational court, public* means an improved area designed and intended for the playing of a game or event such as basketball or tennis, and is operated as a business or as a club unless such club is a neighborhood club or similar organization identified under recreational court, private.
*Recreation fields* means an outside area designed and equipped for the conduct of sports and leisuretime activities including but not limited to softball, soccer, football, and field hockey.
*Regularly* means the consistent and repeated doing of an act on an ongoing basis.
*School* means any educational facility established under the laws of the state (and usually regulated in matters of detail by local authorities), in the various districts, counties, or towns, maintained at the public expense by taxation, and open, usually without charge, to all residents of the city, town or other district or private facility which has students regularly attending classes and which teach subjects commonly taught in these schools of this state.
*Specified anatomical areas* shall include any of the following:
(1) 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.
*Specified criminal activities* shall include any of the following specified crimes for which less than five years has elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:
(1) rape, child molestation, sexual assault, sexual battery, aggravated sexual assault, aggravated sexual battery, or public indecency;
(2) prostitution, keeping a place of prostitution, pimping, or pandering;
(3) obscenity, disseminating or displaying matter harmful to a minor, or use of child in sexual performance;
(4) any offense related to any sexually-oriented business, including controlled substance offenses, tax violations, racketeering, crimes involving sex, crimes involving prostitution, or crimes involving obscenity;
(5) any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; or
(6) any offense in another jurisdiction that, had the predicate act(s) been committed in Georgia, would have constituted any of the foregoing offenses.
*Specified sexual activities* shall include any of the following:

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

**Sec. 26-23. Location and distance requirements.**

(a) No adult establishment that features adult entertainment shall be located any closer than 50 feet from any premises authorized and licensed to sell alcoholic beverages or malt beverages or wine for consumption on the premises. For the measurement required by this subsection, distance shall be measured from the nearest entrance to the public of the structure or tenant space in which the applicant is located to the nearest entrance to the public of the structure or tenant space in which the premises authorized and licensed to sell alcoholic beverages or malt beverages or wine for consumption on the premises is located.
(b) Additional location restrictions for adult establishments are as follows:
(1) All boundary lines of the property containing an adult establishment as filed must be located at least 300 feet from the properties listed below:
a. The property line of Suburban A, Suburban B, Suburban C, R-1, R-2, R-2A, R-3, R-3A, R-4A, R-4, R-5, R-5A, R-6, NUP, CUP, TR, A, A-L, AG-1 zoned property, or property conditioned for residential purposes.
b. The property line of any public park, public recreational fields, public recreational courts, public golf course, public playground, public playing field, government building owned and/or occupied by such government, library, civic center, public or private school, commercial day care facility or church.
(2) For the measurements required by section 26-23(b) as amended, the distance shall be measured from the structure or tenant space of the applicable adult establishment to the closest property line of the zoned property or uses outlined in this section.
(c) No adult establishment shall be located any closer than 400 feet from any other adult establishment. For the measurement required by this subsection, distance shall be measured from the nearest entrance to the public of the structure or tenant space in which the applicant is located to the nearest entrance to the public of the structure or tenant space in which the other adult establishment is located.

**Sec. 26-24. Rules of operation.**

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:
*Fixed stage* shall be defined as a raised floor area designed exclusively for use by adult entertainers at least four feet from the seating area of patrons, and on which no patron shall be allowed.
*Full lighted* shall mean illumination equal to three and one-half footcandles per square foot.
(b) *Compliance with rules.* Adult establishments, and any person, firm, partnership, or corporation licensed hereunder, shall comply with the following rules and regulations pertaining to the operation of the adult establishment and governing conduct on the premises of the establishment:
(1) No adult establishment shall operate between the hours of 4:00 a.m. and 8:00 a.m. Monday through Saturday. No adult establishment shall operate between the hours of 2:55 a.m. and 9:00 a.m. on Sunday.
(2) No person under the age of 18 years shall be permitted on the premises of an adult establishment.

(3) No adult entertainment shall occur within four feet of any patron or in any location other than on a fixed stage.
(4) No patron, customer or guest shall be permitted to have any physical contact with any part of the body or clothing of any adult entertainer.
(5) The license shall be displayed in a prominent place on the premises at all times.
(6) No licensee or his employees or contractors shall permit any alcoholic beverages to be served or consumed on the premises.
(7) All areas of an adult establishment shall be fully lighted at all times patrons are present on the premises.
(8) All adult entertainment which is licensed or 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.
(c) *License revocation.* Violations of these rules and regulations may result in the revocation of the license.

**Sec. 26-25. Adult establishment work permit.**
(a) No person, including but not limited to cashiers, stocking clerks, performers, dancers, adult entertainers, bartenders, barmaids, bouncers, valets, dj's, bar-backs, waiters, waitresses, bathroom attendants and musicians, working either as an independent contractor or as an employee at any establishment holding a license hereunder shall begin working at such establishment, either temporarily or permanently, until such person has made application for an adult establishment work permit (hereinafter referred to as "work permit") to the city police department and has been issued an annual work permit or a temporary work permit by the city police department. Upon the filing of a complete application for a work permit, the city police department shall immediately issue a temporary work permit to the applicant if the applicant seeks to work in a licensed adult establishment and the completed application, on its face, indicates that the applicant is eligible for an annual work permit. The temporary work permit shall expire upon the final decision of the city to deny or grant an annual work permit. Within thirty (30) days of receipt of a completed application, the city police department shall either issue an annual work permit or a written notice of nonclearance. In the event the city police department has not issued a work permit or has not issued a written notice of nonclearance within the 30-day period following receipt of a completed application, the applicant shall be deemed to have been granted an annual work permit hereunder and may begin work at the applicable adult establishment.
(b) All persons required to obtain a work permit hereunder, prior to the date of their first work in an adult establishment, shall report to the city police department for purposes of making application for a work permit to work at an adult establishment. The application shall be provided by the city police department and shall be signed by the applicant. An application shall be considered complete when it contains the following:
(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, a picture identification document containing the applicant's date of birth issued by a governmental agency, or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.
(4) The adult establishment work permit application fee.
(5) A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this article, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.
(6) A complete set of fingerprints taken by the city police department. The city police department shall provide fingerprinting service upon the request of the applicant during regular office hours.

The city police department shall conduct a criminal investigation to the extent allowed by law on any person making application for an adult establishment work permit under this section.
(c) Within thirty (30) days of receiving a completed application, the city police department shall issue an annual work permit to an applicant unless: (1) the applicant is less than eighteen (18) years of age; (2) the applicant has failed to provide information as required by this article for issuance of a work permit or has falsely answered a question or request for information on the application form; (3) the application fee for an adult establishment work permit required by this article has not been paid; or (4) the applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this article.
(d) If the applicant is deemed ineligible to receive a work permit hereunder based on any of the eligibility requirements contained in subparagraph (c), the city police department shall issue a written notice of nonclearance to the applicant stating that the person is ineligible for such work permit and explaining the reasons therefore..
(e) Any annual work permit issued hereunder shall expire 12 months from the date of issue shown on the work permit. The person issued an adult establishment work permit shall make application for renewal at least 60 days prior to the expiration of the work permit in order to continue working at the adult establishment after expiration of the 12-month issue period. The city council shall prescribe a reasonable application fee for an annual adult establishment work permit.
(f) Any person that has been granted a work permit hereunder shall bring such work permit to the applicable adult establishment and shall make it available to any member of the city police department upon request on the premises of an adult establishment. If the work permit is revoked or suspended, the work permit shall be returned to the city police department upon request. It shall be unlawful for any person to transfer, alter, conceal, deface or otherwise destroy the work permit or to refuse to return a work permit to the city police department in the event of suspension, revocation or expiration.
(g) If a person, subsequent to the issuance of a work permit hereunder, violates any provision of this article or otherwise becomes ineligible hereunder to receive a work permit, the city police department shall issue a written notice of intent to suspend or revoke the work permit.
(h) (1) When the city police department issues a written notice of nonclearance or a written notice of intent to suspend or revoke a work permit, the city police department shall immediately send such notice, which shall include the specific grounds under this article for such action, to the applicant or permittee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the city police department for the respondent. The notice shall also set forth the following: The respondent shall have ten (10) days after the delivery of the written notice to submit, at the office of the city clerk, a written request for a hearing.
(2) If the respondent does not request a hearing within said ten (10) days, the city police department's written notice shall become a final denial, suspension, or revocation, as the case may be, on the thirtieth (30th) day after it is issued, and shall be subject to the provisions of subparagraph (4) below.
(3) If the respondent does make a written request for a hearing within said ten (10) days, then the city clerk shall, within ten (10) days after the submission of the request, send a notice to the respondent indicating the date, time, and place of the hearing. The hearing shall be conducted not less than ten (10) days nor more than twenty (20) days after the date that the hearing notice is issued. The City shall provide for the hearing to be transcribed. At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the city police department's witnesses. The city police department shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the work permit. 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 shall issue a final written decision, including specific reasons for the decision pursuant to this article, to the respondent within five (5) days after the hearing. If the decision is to deny, suspend, or revoke the work permit, the decision shall advise the respondent of the right to appeal such decision to the superior court by writ of certiorari, and the decision shall not become effective until the thirtieth (30th) day after it is rendered. If the hearing officer's decision finds that no

grounds exist for denial, suspension, or revocation of the work permit, the hearing officer shall, contemporaneously with the issuance of the decision, order the city police department to immediately withdraw the notice and to notify the respondent in writing by certified mail of such action. Where applicable, the city police department shall contemporaneously therewith issue the annual work permit to the applicant.

(4) If any court action challenging a work permit decision is initiated, the City shall prepare and transmit to the court a transcript of the hearing within thirty (30) 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 person lawfully working at an adult establishment on the date on which the completed work permit is filed with the city police department: Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the City's enforcement of any denial, suspension, or revocation of a temporary or annual work permit, the city police department shall immediately issue the respondent a Provisional Work Permit. The Provisional Work Permit shall allow the respondent to continue employment in an adult establishment 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 enforcement.

**Sec. 26-26. 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 establishment as defined in this article without an annual license to do so.

(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 the state or the United States.

(c) No annual license for an adult 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 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 establishment allow patrons, members, or guests to bring in or otherwise consume alcoholic beverages.

(d) Any person, firm, partnership, or corporation desiring to operate an adult establishment within the territorial boundaries of the city shall be required to file for a new license each year, with all supporting documentation pursuant to section 26-28(b).

**Sec. 26-27. On-premises operator required.**

An adult establishment shall have one or more designated persons to serve as an on-premises operator. An on-premises operator shall be principally in charge of the establishment and shall be located on the premises during all operating hours.

**Sec. 26-28. 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 establishment in the city shall make application to the city manager or designee of the city. Such application shall be made on forms furnished by the city, shall be made in the name of the adult establishment by an applicant who is a natural person and an agent of the adult establishment and shall include the names of the operators as defined herein and of the owners as defined herein. If the adult 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 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 or designee to defray, in part, the cost of investigation and report required by this article. The city manager or designee 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, conducting or carrying on of any new adult establishment. If a completed application and fee is submitted for a preexisting adult establishment that is lawfully operating in the City and the application, on its face, indicates that the applicant is entitled to an annual adult establishment license, the city manager shall immediately issue a Temporary License to the applicant. The Temporary License shall expire upon the final decision of the City to deny or grant an annual license.

(b) *Contents.* An application for an adult establishment license shall be considered complete when it contains the following information:

(1) The full true name and any other names used by the applicant, the operators and owners in the preceding five (5) years;

(2) The current business address or other mailing address of the applicant, the operators and owners;

(3) Written proof of age, in the form of a driver's license, a picture identification document containing the applicant's date of birth issued by a governmental agency, or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency, for each applicant, operator and owner;

(4) The business license history of the adult 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 therefor, and the business activity or occupation subsequent to such action of revocation or suspension;

(5) 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 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;

(6) For each applicant, operator, and owner, a statement of whether the person has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this article, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable. Each person required to disclose convictions hereunder shall also provide a signed and notarized consent, on forms prescribed by the state crime information center and made available at the city police department, authorizing the release of his or her criminal records to the permits unit of the city police department;

(7) A complete set of fingerprints of the applicant and the operators, taken by the city police department. The city police department shall provide fingerprinting service upon the request of the applicant(s) or operator(s) during regular office hours;

(8) The address of the premises where the adult establishment will be operated, engaged in, conducted, or carried on;

(9) The identity of the person(s) designated to serve as an on-premises operator who shall be principally in charge of the establishment and shall be located on the premises during all operating hours.

(10) Each application for an adult establishment license shall be personally verified and acknowledged under oath to be true and correct by:

a. The individual, if application is made on behalf of an individual;

b. The general partner, if application is made on behalf of a partnership;

c. The president of the corporation, if application is made on behalf of a corporation;

d. The managing member, if application is made on behalf of a limited liability company;

e. The chief administrative official, if application is made on behalf of any other organization or association.

(c) *Appearance by applicant.* The applicant shall personally appear before the city manager or designee and produce proof that the nonrefundable $300 application feehas been paid and shall present the application containing the aforementioned and described information.

(d) *Investigation; standards for granting of license.* The city shall have 30 days from the date of actual receipt of a completed application as set forth in subsection (b) of this section, to investigate the facts provided in the application and the background of the applicant, the operators and the owners. The city manager or designee 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 business days of actual receipt of such application. The city manager or designee shall approve or deny any application for an adult establishment license within 30 days of actual receipt of such properly completed application. In the event the city manager has not granted a license or has not issued a written notice of intent to deny the license within the 30-day period following the date of complete application, the annual adult establishment license shall be deemed to have been granted. The application for an adult establishment license shall be granted unless the city manager or designee finds:
(1) The required $300.00 fee has not been paid;
(2) The applicant has made a material misrepresentation in the application or has failed to provide information required by this article for issuance of license;
(3) The applicant or an operator or owner has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this article:
(4) The applicant or any of the operators or owners has had an adult establishment license or other similar license or permit revoked for cause by the city, the county or any other county, or municipality located in or out of this state within the preceding five years prior to the date of application;
(5) An applicant, operator, or owner is less than 18 years of age;
(6) The business has failed to identify an operator as defined herein that will be on the premises at all times during which the business is open;
(7) The location of the proposed premises does not comply with any requirement set forth in section 26-23.

**Sec. 26-29. Conduct or activities prohibited.**
(a) *Employment of minors or unpermitted persons.* No adult establishment 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.
(b) *Engaging in specified sexual activities prohibited.* No adult entertainer, other employee, patron or other person at an adult establishment shall be allowed to engage in any specified sexual activity as defined herein on the premises of any adult establishment.
(c) *Public indecency prohibited.* No adult entertainer, other employee, patron or other person at an adult establishment shall, while on the premises of an adult establishment, commit the offense of public indecency as defined in O.C.G.A. § 16-6-8.
(d) *Private rooms prohibited.* It shall be unlawful for any employee or independent contractor to engage in adult entertainment or to expose any specified anatomical areas in the presence of a patron in any separate area including, but not limited to, any room or booth, within an adult 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.
(e) *Physical layout requirements of booths, rooms, etc.* 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.

**Sec. 26-30. Scienter required to prove violation or business licensee liability.**
This article does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this article. Notwithstanding anything to the contrary, for the purposes of this article, an act by a person working on the premises of the adult establishment that constitutes grounds for suspension or revocation of that person's work permit shall be imputed to the adult establishment licensee for purposes of finding a violation of this article, or for purposes of license denial, suspension, or revocation, only if an officer, director, general partner, managing member, or operator of the adult establishment knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

**Sec. 26-31. Unlawful operation declared nuisance.**
Any adult 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 establishment and restrain and enjoin any person from operating, engaging in, conducting or carrying on an adult establishment contrary to the provisions of this article.

**Sec. 26-32. Inspection of adult establishment.**
The city police department shall have the authority to periodically inspect the portions of adult establishments where patrons are permitted, to determine compliance with all provisions of this article, during those times when the adult establishment is occupied by patrons or is otherwise open to the public.

**Sec. 26-33. 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 section 26-28.
(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, operators and owners, conviction of or a plea of guilty or nolo contendere to any specified criminal activity, as defined in this article.
(3) The city manager or his or her designee shall issue a written notice of intent to deny, suspend, or revoke an adult establishment license when the city manager or designee finds there are grounds for the denial, suspension, or revocation of the license.
(b) *Procedure.* (1) When the city manager issues a written notice of intent to deny, suspend, or revoke a license, the city manager shall immediately send such notice, which shall include the specific grounds under this article for such action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the city manager for the respondent. The notice shall also set forth the following: The respondent shall have ten (10) days after the delivery of the written notice to submit, at the office of the city clerk, a written request for a hearing.
(2) If the respondent does not request a hearing within said ten (10) days, the city manager's written notice shall become a final denial, suspension, or revocation, as the case may be, on the thirtieth (30th) day after it is issued, and shall be subject to the provisions of subparagraph (4) below.
(3) If the respondent does make a written request for a hearing within said ten (10) days, then the city clerk shall, within ten (10) days after the submission of the request, send a notice to the respondent indicating the date, time, and place of the hearing. The hearing shall be conducted not less than ten (10) days nor more than twenty (20) days after the date that the hearing notice is issued. The City shall provide for the hearing to be transcribed. At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the city manager's witnesses. The city manager 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 shall issue a final written decision, including specific reasons for the decision pursuant to this article, to the respondent within five (5) days after the hearing. If the decision is to deny, suspend, or revoke the license, the decision shall advise the respondent of the right to appeal such decision to the superior court by writ of certiorari, and the decision shall not become effective until the thirtieth (30th) day after it is rendered. If the hearing officer's decision finds that no grounds exist for denial, suspension, or revocation of the license, the hearing officer shall, contemporaneously with the issuance of the decision, order the city manager to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the city manager shall contemporaneously therewith issue the license to the applicant.
(4) If any court action challenging a licensing decision is initiated, the City shall prepare and transmit to the court a transcript of the hearing within thirty (30) 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 adult establishment that is lawfully operating as an adult establishment on the date on which the completed license application is filed with the city manager: Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the City's enforcement of any denial, suspension, or revocation of a Temporary License or annual license, the city manager shall immediately issue the respondent a Provisional License. The Provisional License shall allow the respondent to continue operation of the adult establishment 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 enforcement.

**Sec. 26-34. Nonrenewability; 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

previously registered with the county shall be granted an additional 45 days to file a new application for a license to operate said adult establishment with the city following the effective date of the ordinance from which this article is derived.

(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 $300.00 fee, with the city manager or designee 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 20 percent. 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 city council.

(c) All licenses granted under this article 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 article 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.

**Sec. 26-35. Fee.**

The application fee for the adult establishment license shall be $300.00 and shall be paid as set forth in this article.

**Sec. 26-36. Compliance with applicable laws by licensee.**

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

**Sec. 26-37. Nonconforming adult establishment uses/amortization.**

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Financial expenditures* means the capital outlay made by the applicant to establish the adult establishment, exclusive of the fair market value of the building and property in and on which such use is located and site improvements unrelated to the nonconforming adult establishment, i.e. paving, fencing, etc.

*Nonconforming adult establishment use* means an adult establishment use which:

(1) Was lawful and valid when established, as evidenced by a certificate of occupancy as provided in article 23, section 23.1 of the city zoning ordinance; and

(2) Does not conform to one or more location requirements of this article or is not in a zoning district where a new adult establishment use would be allowed.

(b) Any adult establishment that is a nonconforming use shall not be expanded or otherwise altered outside the scope of the nonconformity currently existing.

(c) All nonconforming adult establishment uses shall terminate by December 31, 2010, except that a nonconforming adult establishment use may be continued beyond that date for a limited period of time authorized by the city council, provided that:
(1) An application has been made by the owner of such establishment to the city council within 120 days after January 1, 2006;
(2) The city council finds in connection with such establishment that:
a. The applicant had made, prior to the nonconformity, financial expenditures related to the nonconformity;
b. The applicant had not recovered 90 percent of the financial expenditures related to the nonconforming; 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 years;
(3) In order to secure an extension of time, the written application for such extension must set forth the following information:
a. The amount of the financial expenditures for improvements in the existing enterprise through the date of passage and approval of the ordinance from which this article was originally derived;
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.
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.

**Sec. 26-38. Alcoholic beverages prohibited; exceptions.**
No person, association, partnership, limited liability company, or corporation operating or working in an adult establishment shall serve, sell, distribute or suffer the consumption or possession of any intoxicating liquor, beer or wine or controlled substance defined by state law upon the premises of the adult establishment. Any adult establishment that had a license granted by the county shall not be subject to this section until January 1, 2006, at which time all adult establishments within the city shall be subject to this provision, including those licensed before the effective date of the ordinance from which this article is derived.

**Sec. 26-39. Penalties.**
Any person, firm, partnership, or corporation violating the provisions of this article shall be guilty of a violation of this Code, and shall be punished by a fine not to exceed $1,000.00 per violation or by imprisonment for a period not to exceed 60 days, or by both such fine and imprisonment. In addition to such fine and/or imprisonment, a violation of this article shall also be grounds for suspension or revocation of the license issued hereunder.

Secs. 26-40--26-65. Reserved.

**Section 2.** 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 3.** 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 4.** 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)