

STATE OF GEORGIA

COUNTY OF HALL

**A RESOLUTION TO AMEND THE CODE OF ORDINANCES OF HALL COUNTY**

**WITH REGARD TO ADULT ESTABLISHMENTS REGULATIONS**

**WHEREAS**, adult establishments require special supervision from the public safety agencies of the County in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the County; and

**WHEREAS**, the County's Board of Commissioners finds that adult establishments, as a category of establishments, are frequently used for unlawful sexual activities, including prostitution, and sexual liaisons of a casual nature; and

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

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

**WHEREAS**, certain sexually oriented products and services offered to the public are recognized as not inherently expressive and not protected by the First Amendment, *see, e.g., Heideman v. South Salt Lake City*, 348 F.3d 1182, 1195 (10th Cir. 2003) ("On its face, the Ordinance applies to all 'sexually oriented businesses,' which include establishments such as 'adult motels' and 'adult novelty stores,' which are not engaged in expressive activity."); *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); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 224 (1990) (escort services and sexual encounter services); and

**WHEREAS**, there is documented evidence of adult establishments, including adult bookstores and adult video stores, manipulating their inventory and/or business practices to avoid regulation while retaining their essentially "adult" nature, *see, e.g., Z.J. Gifts D-4, L.L.C. v. City of Littleton*, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001) (finding retail adult store's "argument that it is not an adult entertainment establishment" to be "frivolous at best"); *People ex rel. Deters v. The Lion's Den, Inc.*, Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005) (noting that "the accuracy and credibility" of the evidence on inventory in adult retail store was suspect, and that testimony was "less than candid" and "suggested an intention to obscure the actual amount of sexually explicit material sold"); *City of New York v. Hommes*, 724 N.E.2d 368 (N.Y. 1999) (documenting manipulation of inventory to avoid adult classification); *Taylor v. State*, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002) (noting that

“the nonadult video selections appeared old and several of its display cases were covered with cobwebs”); *HH-Indianapolis, LLC v. Consol. City of Indianapolis/Marion County*, 889 F.3d 432 (7th Cir. 2018); *HH-Indianapolis, LLC v. Consol. City of Indianapolis/Marion County*, 265 F. Supp. 3d 873 (S.D. Ind. 2017); and

**WHEREAS**, the manner in which an establishment holds itself out to the public is a reasonable consideration in determining whether the establishment is an adult establishment, *see, e.g., East Brooks Books, Inc. v. Shelby County*, 588 F.3d 360, 365 (6th Cir. 2009) (“A prominent display advertising an establishment as an ‘adult store,’ moreover, is a more objective indicator that the store is of the kind the Act aims to regulate, than the mere share of its stock or trade comprised of adult materials.”); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 261 (1991) (Scalia, J., concurring in part and dissenting in part) (“[I]t is most implausible that any enterprise which has as its constant intentional objective the sale of such [sexual] material does not advertise or promote it as such.”); *see also Johnson v. California State Bd. of Accountancy*, 72 F.3d 1427 (9th Cir. 1995) (rejecting First Amendment challenge to statute which used the phrase “holding out” to identify conduct indicative of the practice of public accountancy, but did not ban any speech); *Spencer v. World Vision, Inc.*, 633 F.3d 723 (9th Cir. 2010) (O’Scannlain, J., concurring) (concluding that whether an entity “holds itself out” as religious is a neutral factor and that factor helps to ensure that the entity is a *bona fide* religious entity); and

**WHEREAS**, the County intends to continue to regulate such businesses as adult establishments through a narrowly tailored ordinance designed to serve its substantial government interest in protecting the health, safety, and welfare of the community, including by preventing the negative secondary effects of adult establishments; and

**WHEREAS**, the Board of Commissioners is not aware of any adult establishments currently operating, or seeking to operate, in unincorporated Hall County; and

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

**WHEREAS**, the County’s Board of Commissioners wishes to update its definitions and regulations for adult establishments; and

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

**WHEREAS**, it is not the intent of this resolution to suppress any speech activities protected by the U.S. Constitution or the Georgia Constitution, but to enact legislation to further the content-neutral governmental interests of the County, to wit, the controlling of secondary effects of adult establishments; and

**WHEREAS**, the County’s Board of Commissioners believes that these changes to its adult establishments regulations as described herein are in the best interests of residents and

businesses of Hall County, Georgia, and would promote the public health, safety, and general welfare of such residents and businesses.

**NOW, THEREFORE**, the Board of Commissioners does hereby amend The Official Code of Hall County, Georgia as follows:

1.

Chapter 5.20 (Adult Entertainment Establishments) is hereby amended by deleting Chapter 5.20 in its entirety and inserting in lieu thereof a new Chapter 5.20 which provides as follows:

**“Chapter 5.20. – ADULT ESTABLISHMENTS**

**5.20.010. - Purpose; findings and rationale.**

- A. *Purpose.* It is the purpose of this chapter to regulate adult establishments in order to promote the health, safety, and general welfare of the citizens of the County, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of adult establishments within the County. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material.
- B. *Findings and Rationale.* Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Board of Commissioners, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap’s A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); *Sewell v. Georgia*, 435 U.S. 982 (1978); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *City of Dallas v. Stanglin*, 490 U.S. 19 (1989); and

*Stardust, 3007 LLC v. City of Brookhaven*, 899 F.3d 1164 (11th Cir. 2018); *HH-Indianapolis, LLC v. Consol. City of Indianapolis/Marion County*, 889 F.3d 432 (7th Cir. 2018); *HH-Indianapolis, LLC v. Consol. City of Indianapolis/Marion County*, 265 F. Supp. 3d 873 (S.D. Ind. 2017); *Flanigan’s Enters., Inc. v. City of Sandy Springs*, 703 F. App’x 929 (11th Cir. 2017); *Stardust 3007, LLC v. City of Brookhaven*, 348 Ga. App. 711 (2019); *Maxim Cabaret, Inc. v. City of Sandy Springs*, 304 Ga. 187 (2018); *Oasis Goodtime Emporium I, Inc. v. City of Doraville*, 297 Ga. 513 (2015); *Trop, Inc. v. City of Brookhaven*, 296 Ga. 85 (2014); *Goldrush II v. City of Marietta*, 267 Ga. 683 (1997); *Flanigan’s Enters., Inc. v. Fulton County*, 596 F.3d

1265 (11th Cir. 2010); *Peek-a-Boo Lounge v. Manatee County*, 630 F.3d 1346 (11th Cir. 2011); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *Jacksonville Property Rights Ass'n, Inc. v. City of Jacksonville*, 635 F.3d 1266 (11th Cir. 2011); *Artistic Entertainment, Inc. v. City of Warner Robins*, 331 F.3d 1196 (11th Cir. 2003); *Artistic Entertainment, Inc. v. City of Warner Robins*, 223 F.3d 1306 (11th Cir. 2000); *Williams v. Morgan*, 478 F.3d 1316 (11th Cir. 2007); *Gary v. City of Warner Robins*, 311 F.3d 1334 (11th Cir. 2002); *Ward v. County of Orange*, 217 F.3d 1350 (11th Cir. 2002); *Boss Capital, Inc. v. City of Casselberry*, 187 F.3d 1251 (11th Cir. 1999); *David Vincent, Inc. v. Broward County*, 200 F.3d 1325 (11th Cir. 2000); *Sammy's of Mobile, Ltd. v. City of Mobile*, 140 F.3d 993 (11th Cir. 1998); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (11th Cir. 1999); *This That And The Other Gift and Tobacco, Inc. v. Cobb County*, 285 F.3d 1319 (11th Cir. 2002); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Grand Faloan Tavern, Inc. v. Wicker*, 670 F.2d 943 (11th Cir. 1982); *International Food & Beverage Systems v. Ft. Lauderdale*, 794 F.2d 1520 (11th Cir. 1986); *5634 E. 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); *Fairfax MK, Inc. v. City of Clarkston*, 274 Ga. 520 (2001); *Morrison v. State*, 272 Ga. 129 (2000); *Flippen Alliance for Community Empowerment, Inc. v. Brannan*, 601 S.E.2d 106 (Ga. Ct. App. 2004); *Oasis Goodtime Emporium I, Inc. v. DeKalb County*, 272 Ga. 887 (2000); *Chamblee Visuals, LLC v. City of Chamblee*, 270 Ga. 33 (1998); *World Famous Dudley's Food & Spirits, Inc. v. City of College Park*, 265 Ga. 618 (1995); *Airport Bookstore, Inc. v. Jackson*, 242 Ga. 214 (1978); *Entm't Prods., Inc. v. Shelby County*, 721 F.3d 729 (6th Cir. 2013); *Lund v. City of Fall River*, 714 F.3d 65 (1st Cir. 2013); *Imaginary Images, Inc. v. Evans*, 612 F.3d 736 (4th Cir. 2010); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); *Ocello v. Koster*, 354 S.W.3d 187 (Mo. 2011); *84 Video/Newsstand, Inc. v. Sartini*, 2011 WL 3904097 (6th Cir. Sept. 7, 2011); *Plaza Group Properties, LLC v. Spencer County Plan Commission*, 877 N.E.2d 877 (Ind. Ct. App. 2007); *East Brooks Books, Inc. v. Shelby County*, 588 F.3d 360 (6th Cir. 2009); *Entm't Prods., Inc. v. Shelby County*, 588 F.3d 372 (6th Cir. 2009); *Sensations, Inc. v. City of Grand Rapids*, 526 F.3d 291 (6th Cir. 2008); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Heideman v. South Salt Lake City*, 348 F.3d 1182 (10th Cir. 2003); *H&A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006); *Illinois One News, Inc. v. City of Marshall*, 477 F.3d 461 (7th Cir. 2007); *G.M. Enterprises, Inc. v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003); *Richland Bookmart, Inc. v. Knox County*, 555 F.3d 512 (6th Cir. 2009); *Bigg Wolf Discount Video Movie Sales, Inc. v. Montgomery County*, 256 F. Supp. 2d 385 (D. Md. 2003); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996); *DCR, Inc. v. Pierce County*, 964 P.2d 380 (Wash. Ct. App. 1998); *City of New York v. Hommes*, 724 N.E.2d 368 (N.Y. 1999); *Taylor v. State*, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002); *Fantasyland Video, Inc. v. County of San Diego*, 505 F.3d 996 (9th Cir. 2007); *U.S. v. Baston*, 818 F.3d 651 (11th Cir. 2016); *Johnson v. California State Bd. of Accountancy*, 72 F.3d 1427 (9th Cir. 1995); *Spencer v. World Vision, Inc.*, 633 F.3d 723 (9th Cir. 2010); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *Z.J. Gifts D-4, L.L.C. v. City of Littleton*, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001); *People ex rel. Deters v. The Lion's Den, Inc.*, Case No. 04-

CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005); *Reliable Consultants, Inc. v. City of Kennedale*, No. 4:05-CV-166-A, Findings of Fact and Conclusions of Law (N.D. Tex. May 26, 2005); *Starship Enterprises of Atlanta, Inc. v. Gwinnett County*, No. 17A-00699-1 (Order Granting Summary Judgment and Permanent Injunction, Jan. 12, 2018);

and based upon reports concerning secondary effects occurring in and around adult establishments, including, but not limited to, “Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD,” *Journal of Urban Health* (2011); “Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime?” *Crime & Delinquency* (2012) (Louisville, KY); Metropolis, Illinois – 2011-12; Manatee County, Florida – 2007; Hillsborough County, Florida – 2006; Clarksville, Indiana – 2009, 2013-2019; El Paso, Texas – 2008; Memphis, Tennessee – 2006; New Albany, Indiana – 2009; Louisville, Kentucky – 2004; Fulton County, GA – 2001; Chattanooga, Tennessee – 1999-2003; Jackson County, Missouri – 2008; Ft. Worth, Texas – 2004; Kennedale, Texas – 2005; Greensboro, North Carolina – 2003; Dallas, Texas – 1997; Houston, Texas – 1997, 1983; Phoenix, Arizona – 1995-98, 1979; Tucson, Arizona – 1990; Spokane, Washington – 2001; St. Cloud, Minnesota – 1994; Austin, Texas – 1986; Indianapolis, Indiana – 1984; Garden Grove, California – 1991; Los Angeles, California – 1977; Whittier, California – 1978; Oklahoma City, Oklahoma – 1986; New York, New York Times Square – 1994; the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota); Dallas, Texas – 2007; “Rural Hotspots: The Case of Adult Businesses,” 19 *Criminal Justice Policy Review* 153 (2008); “Stripclubs According to Strippers: Exposing Workplace Sexual Violence,” by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; “Sexually Oriented Businesses: An Insider’s View,” by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; Sex Store Statistics and Articles; Indianapolis / Marion County Board of Zoning Appeals Documents; Law Enforcement and Private Investigator Affidavits (Adult Cabarets in Forest Park, GA and Sandy Springs, GA); DeKalb County Testimony and Reports – 2014; and Strip Club-Trafficking Documents,

the Board of Commissioners finds:

- (1) Adult establishments, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, human trafficking, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation. Alcohol consumption impairs judgment and lowers inhibitions, thereby increasing the risk of adverse secondary effects.
- (2) Adult establishments should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other adult establishments, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of adult establishments in one area.

- (3) Each of the foregoing negative secondary effects constitutes a harm which the County has a substantial government interest in preventing and/or abating. The County's interest in regulating adult establishments extends to preventing future secondary effects of either current or future adult establishments that may locate in the County. The County finds that the cases and documentation relied on in this chapter are reasonably believed to be relevant to said secondary effects.

The County hereby adopts and incorporates herein its stated findings and legislative record related to the adverse secondary effects of adult establishments, including the judicial opinions and reports related to such secondary effects.

#### **5.20.020. - Definitions.**

For purposes of this chapter, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

- A. *Adult arcade*: A commercial establishment to which the public is permitted or invited that maintains booths or rooms smaller than 100 square feet, wherein image-producing devices are regularly maintained to show images characterized by their emphasis upon matter exhibiting "specified sexual activities" or "specified anatomical areas."
- B. *Adult bookstore*: A commercial establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas." A "principal business activity" exists where the commercial establishment meets any one or more of the following criteria:
  - (1) At least 25% of the establishment's displayed merchandise consists of said items, or
  - (2) At least 25% of the establishment's revenues derive from the sale or rental, for any form of consideration, of said items, or
  - (3) The establishment maintains at least 25% of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items, as well as cashier stations where said items are rented or sold, shall be included in "floor space" maintained for the display, sale, or rental of said items); or
  - (4) The establishment maintains at least five hundred square feet (500 sq. ft.) of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items, as well as cashier stations where said items are rented or sold, shall be included in "floor space" maintained for the display, sale, or rental of said items); or

- (5) The establishment regularly offers for sale or rental at least five hundred (500) of said items; or
- (6) The establishment regularly makes said items available for sale or rental and holds itself out, in any medium, as an establishment that caters to adult sexual interests.
- C. *Adult cabaret*: A nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment that regularly offers live semi-nude conduct. No establishment shall avoid classification as an adult cabaret by offering nude conduct.
- D. *Adult establishment*: An “adult arcade,” an “adult bookstore,” an “adult cabaret,” an “adult motion picture theater,” or a “sexual device shop.”
- E. *Adult motion picture theater*: A commercial establishment to which the public is permitted or invited that maintains viewing rooms that are 100 square feet or larger wherein films or videos characterized by their emphasis upon “specified sexual activities” or “specified anatomical areas” are regularly shown.
- F. *Characterized by*: Describing the essential character or quality of an item. As applied in this chapter, no business shall be classified as an adult establishment by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.
- G. *County*: Hall County, Georgia.
- H. *Director*: Director of the Hall County Business License Division (or other section of the Hall County government that issues business licenses), or his or her designee.
- I. *Educational institution*: Any premises or site upon which there is an institution of learning for minors, whether public or private, which conducts regular classes and/or course of study. Included in the definition of the term “educational institution” are nursery schools, kindergartens, elementary schools, junior high schools, and senior high schools. The term does not include any premises or site upon which there is a vocational institution, professional institution, or institution of higher education, including community colleges, junior colleges, four-year colleges, or universities.
- J. *Employ, employee, and employment*: These terms describe and pertain to any person who works or engages in activity for pay on the premises of an adult establishment, on a full time, part time, temporary, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, lessee, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises, or an attorney, accountant, or similar state-licensed professional performing professional services for the business.
- K. *Establish or establishment*: Any of the following:

- (1) The opening or commencement of any adult establishment as a new business;
  - (2) The conversion of an existing business, whether or not an adult establishment, to any adult establishment; or
  - (3) The addition of any adult establishment to any other existing adult establishment.
- L. *Floor space*: The floor area inside an establishment that is visible or accessible to patrons for any reason, excluding restrooms.
- M. *Hearing officer*: An attorney, not an employee of the County, who is licensed to practice law in Georgia, and retained to serve as an independent tribunal to conduct hearings under this chapter.
- N. *Influential interest*: The actual power to influence or control the operation, management, or policies of the adult establishment or legal entity which operates the adult establishment. An individual is deemed to have an “influential interest” if he or she (1) is the on-site general manager of the adult establishment, (2) owns a financial interest of thirty percent (30%) or more of a business or of any class of voting securities of a business, or (3) holds an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the adult establishment.
- O. *Licensee*: A person in whose name a license to operate an adult establishment has been issued, as well as the individual or individuals listed as an applicant on the application for an adult establishment license. In the case of an “employee,” it shall mean the person in whose name the adult establishment employee license has been issued.
- P. *Nudity or nude conduct*: The showing of the human male or female genitals, pubic area, vulva, or anus with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola. For purposes of this chapter, a “fully opaque covering” must not consist of any substance that can be washed or peeled off the skin (such as paint, make-up, or latex).
- Q. *Operate*: To cause to function or to put or keep in a state of doing business.
- R. *Operator*: Any person on the premises of an adult establishment who manages, supervises, or controls the business or a portion thereof. A person may be found to be an operator regardless of whether such person is an owner, part owner, or licensee of the business.
- S. *Park*: 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 occur, or upon which places are provided for the recreation and enjoyment of the general public, or which is kept or maintained for ornament and/or recreation.



- T. *Person*: An individual, proprietorship, partnership, corporation, association, or other legal entity.
- U. *Premises*: The real property upon which the adult establishment is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the adult establishment, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for an adult establishment license.
- V. *Regional shopping mall (enclosed)*: A group of retail and other commercial establishments that is planned, developed, and managed as a single property, with on-site parking provided around the perimeter of the shopping center, and that is generally at least forty acres in size and flanked by two or more large “anchor” stores, such as department stores. The common walkway or “mall” is enclosed, climate-controlled and lighted, usually with an inward orientation of the stores facing the walkway.
- W. *Regularly*: The consistent and repeated doing of an act on an ongoing basis.
- X. *Religious institution*: Any premises or site which is used primarily or exclusively for religious worship and related religious activities.
- Y. *Residence*: A house, apartment, mobile home, boarding or rooming house, duplex, condominium or other multi-family housing for human dwelling.
- Z. *Semi-nude or semi-nudity*: The showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks, with less than a fully opaque covering. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part. For purposes of this chapter, a “fully opaque covering” must not consist of any substance that can be washed or peeled off the skin (such as paint, make-up, or latex).
- AA. *Sexual device*: Any three (3) dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, nipple, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily designed for protection against sexually transmitted diseases or for preventing pregnancy.
- BB. *Sexual device shop*: A commercial establishment:

- (1) Where more than 100 sexual devices are regularly made available for sale or rental; or
- (2) Where sexual devices are regularly made available for sale or rental and the establishment regularly gives special prominence to sexual devices (e.g., by using lighted display cases for sexual devices, having a room or discrete area of the establishment significantly devoted to sexual devices, positioning sexual devices near cash registers or similar points of sale, hosting events focused on sexual devices, or holding itself out to the public as a place that focuses on sexual devices).

This definition shall not be construed to include an establishment located within an enclosed regional shopping mall, an establishment containing a pharmacy that employs a licensed pharmacist to fill prescriptions on the premises, or an establishment that is enrolled in Medicare as a durable medical equipment, prosthetics, and supplies (DMEPOS) supplier.

*CC. Specified anatomical areas:*

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

*DD. Specified criminal activity:* 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, enticing a child for indecent purposes, sexual assault, sexual battery, aggravated sexual assault, aggravated sexual battery, or public indecency;
- (2) Prostitution, masturbation for hire, keeping a place of prostitution, pimping, or pandering;
- (3) Obscenity, disseminating or displaying matter harmful to a minor, or use of minor 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.

EE. *Specified sexual activity*: Any of the following:

- (1) Intercourse, oral copulation, masturbation or sodomy; or
- (2) Excretory functions as a part of or in connection with any of the activities described in (1) above.

FF. *Transfer of ownership or control*: When used of an adult establishment, any of the following:

- (1) The sale, lease, or sublease of the business;
- (2) The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or
- (2) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

GG. *Viewing room*: The room or booth where a patron of an adult establishment would ordinarily be positioned while watching a film, videocassette, digital video disc, or other video on an image-producing device.

**5.20.030. - License required.**

- A. *Adult Establishment License*. It shall be unlawful for any person to operate an adult establishment in the County without a valid adult establishment license.
- B. *Employee License*. It shall be unlawful for any person to be an “employee,” as defined in this chapter, of an adult establishment in the County without a valid adult establishment employee license, except that a person who is a licensee under a valid adult establishment license shall not be required to also obtain an adult establishment employee license. It shall be unlawful for any person who operates an adult establishment to employ a person at the establishment who does not have a valid adult establishment employee license.
- C. *Application*. An applicant for an adult establishment license or an adult establishment employee license shall file in person at the Hall County Business License Office (or other office designated by the Director) a completed application made on a form provided by the Director. An adult establishment may designate an individual with an influential interest in the business to file its application for an adult establishment license in person on behalf of the business. The application shall be signed as required by subsection (D) herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in this subsection (C), accompanied by the appropriate licensing fee:

- (1) The applicant's full legal name and any other names used by the applicant in the preceding five (5) years.
- (2) Current business address or another mailing address for the applicant.
- (3) Written proof of age, in the form of a driver's license, 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) If the application is for an adult establishment license, the business name, location, legal description, mailing address and phone number of the adult establishment.
- (5) If the application is for an adult establishment license, the name and business address of the statutory agent or other agent authorized to receive service of process.
- (6) 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 chapter, 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.
- (7) A statement of whether any adult establishment in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
  - (i) been found by a court of law to have been operating unlawfully;
  - (ii) been enjoined from engaging in conduct prohibited by law;
  - (iii) been held in contempt of court for operating contrary to a court order;
  - (iv) been declared by a court of law to be a nuisance; or
  - (v) been subject to an order of closure.
- (8) An application for an adult establishment license shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor area occupied by the business and a statement of floor area visible or accessible to patrons for any reason, excluding restrooms. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Applicants who are required to comply with the stage, booth, and/or room configuration requirements of this chapter shall submit a diagram indicating that the setup and configuration of the premises meets the requirements of the applicable regulations. See Sections 5.20.130 and 5.20.170. The Director may waive the requirements of this

subsection (8) for a renewal application if the applicant adopts a legal description and a sketch or diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

- (9) A signed and sworn affidavit verifying the applicant's lawful presence in the United States as required by O.C.G.A. § 50-36-1. If the applicant is a partnership, limited liability company, corporation, or other legal entity, a signed and sworn affidavit verifying the lawful presence of each individual that executes the application on behalf of the applicant. With regard to a renewal application, if an individual has previously complied with the requirements of this subsection (9), the Director may waive the requirements of this subsection for that individual.
- (10) If the application is for an adult establishment license, a signed and sworn affidavit attesting that the establishment either uses the federal work authorization program in accordance with federal regulations or that the applicant employs fewer than 11 people or otherwise does not fall within the requirements of O.C.G.A. § 36-60-6.
- (11) If the application is for an adult establishment employee license, the name and address of the establishment where the applicant intends to use the employee license.

The information provided pursuant to this subsection (C) shall be supplemented in writing by certified mail, return receipt requested, to the Director within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

- D. *Signature.* A person who seeks an adult establishment employee license under this section shall sign the application for a license. If a person who seeks an adult establishment license under this section is an individual, he shall sign the application for a license as applicant. If a person who seeks an adult establishment license is other than an individual, each person with an influential interest in the adult establishment or in a legal entity that controls the adult establishment shall sign the application for a license as applicant. Each applicant must be qualified under this chapter and each applicant shall be considered a licensee if a license is granted.
- E. The information provided by an applicant in connection with an application for a license under this chapter will not be disclosed by the Hall County Business License Office in response to a Georgia Open Records Act request except as may be required, and only to the extent required, by governing law or court order. Any information protected by the right to privacy as recognized by state or federal law shall be redacted prior to such disclosure.

#### **5.20.040. - Issuance of license.**

- A. *Adult Establishment License.* Upon the filing of a completed application for an adult establishment license, the Director shall issue a Temporary License to the applicant within three (3) business days if the completed application is from a preexisting adult establishment that is lawfully operating in the County and the completed application, on its

face, indicates that the applicant is entitled to an annual adult establishment license. The Temporary License shall expire upon the final decision to deny or grant an annual license. Within thirty (30) days of the filing of a completed adult establishment license application, the Director shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The Director shall issue a license unless:

- (1) An applicant is less than eighteen (18) years of age.
  - (2) An applicant has failed to provide information required by this chapter for issuance of a license or has falsely answered a question or request for information on the application form.
  - (3) The license application fee required by this chapter has not been paid.
  - (4) The adult establishment, as defined herein, is not in compliance with the interior configuration requirements of this chapter.
  - (5) The adult establishment, as defined herein, is not in compliance with Section 5.20.190 of this chapter or the location requirements in Title 17 of the Official Code of Hall County.
  - (6) Any adult establishment in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
    - (i) been found by a court of law to have been operating unlawfully;
    - (ii) been enjoined from engaging in conduct prohibited by law;
    - (iii) been held in contempt of court for operating contrary to a court order;
    - (iv) been declared by a court of law to be a nuisance; or
    - (v) been subject to an order of closure.
  - (7) An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this chapter.
- B. *Employee License.* Upon the filing of a completed application for an adult establishment employee license, the Director shall issue a Temporary License to the applicant within three (3) business days if the applicant seeks licensure to work in a licensed adult establishment and the completed application, on its face, indicates that the applicant is entitled to an annual adult establishment employee license. The Temporary License shall expire upon the final decision to deny or grant an annual license. Within thirty (30) days of the filing of a completed adult establishment employee license application, the Director shall either issue

a license to the applicant or issue a written notice of intent to deny a license to the applicant. The Director shall issue a license unless:

- (1) The applicant is less than eighteen (18) years of age.
  - (2) The applicant has failed to provide information as required by this chapter for issuance of a license or has falsely answered a question or request for information on the application form.
  - (3) The license application fee required by this chapter has not been paid.
  - (4) Any adult establishment in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
    - (i) been found by a court of law to have been operating unlawfully;
    - (ii) been enjoined from engaging in conduct prohibited by law;
    - (iii) been held in contempt of court for operating contrary to a court order;
    - (iv) been declared by a court of law to be a nuisance; or
    - (v) been subject to an order of closure.
  - (5) The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this chapter.
  - (6) The applicant has expressed the intent to use the adult establishment employee license at an establishment that is not licensed by the County to operate an adult establishment.
- C. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for an adult establishment, the address of the adult establishment. The adult establishment license shall be posted in a conspicuous place at or near the entrance to the adult establishment so that it may be read at any time that the business is occupied by patrons or is open to the public. An adult establishment employee shall keep the employee's license on his or her person or on the premises where the licensee is then working.

#### **5.20.050. - Fees.**

The initial license and annual renewal fees for adult establishment licenses and adult establishment employee licenses shall be as follows: two hundred dollars (\$200) for the initial fee for an adult establishment license and one hundred dollars (\$100) for annual renewal; fifty

dollars (\$50) for the initial adult establishment employee license and twenty-five dollars (\$25) for annual renewal.

**5.20.060. - Inspection.**

Adult establishments and adult establishment employees shall permit the Director and his or her agents to inspect, from time to time on an occasional basis, the portions of the adult establishment premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this chapter, during those times when the adult establishment is occupied by patrons or is open to the public. This section shall be narrowly construed to authorize only reasonable inspections of the licensed premises pursuant to this chapter.

**5.20.070. - Expiration and renewal of license.**

- A. Each license shall remain valid for a period of one calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in this chapter. When a renewal license is issued, it shall become effective the day after the previous license expires and shall remain valid for a period of one calendar year from its effective date unless otherwise suspended or revoked.
- B. Application for renewal of an annual license should be made at least ninety (90) days before the expiration date of the current annual license, and when made less than ninety (90) days before the expiration date, the expiration of the current license will not be affected.

**5.20.080. - Suspension.**

- A. The Director shall issue a written notice of intent to suspend an adult establishment license for a period not to exceed thirty (30) days if the adult establishment licensee has knowingly or recklessly violated this chapter or has knowingly or recklessly allowed an employee or any other person to violate this chapter.
- B. The Director shall issue a written notice of intent to suspend an adult establishment employee license for a period not to exceed thirty (30) days if the employee licensee has knowingly or recklessly violated this chapter.

**5.20.090. - Revocation.**

- A. The Director shall issue a written notice of intent to revoke an adult establishment license or an adult establishment employee license, as applicable, if the licensee knowingly or recklessly violates this chapter or has knowingly or recklessly allowed an employee or any other person to violate this chapter and a suspension of the licensee's license has become effective within the previous twelve-month (12-mo.) period.



- B. The Director shall issue a written notice of intent to revoke an adult establishment license or an adult establishment employee license, as applicable, if:
- (1) The licensee has knowingly given false information in the application for the adult establishment license or the adult establishment employee license;
  - (2) The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises of the adult establishment;
  - (3) The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises of the adult establishment;
  - (4) The licensee knowingly or recklessly operated the adult establishment during a period of time when the license was finally suspended or revoked;
  - (5) The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity or specified criminal activity to occur in or on the premises of the adult establishment;
  - (6) The licensee has knowingly or recklessly allowed a person under the age of twenty-one (21) years to consume alcohol on the premises of the adult establishment;
  - (7) The licensee has knowingly or recklessly allowed a person under the age of eighteen (18) years to appear in a semi-nude condition or in a state of nudity on the premises of the adult establishment; or
  - (8) The licensee has knowingly or recklessly allowed three (3) or more violations of this chapter within a twelve-month period.
  - (9) The licensee has failed to meet or maintain the qualifications to be issued or to hold the license.
- C. The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.
- D. When, after the notice and hearing procedure described in this chapter, the County revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued an adult establishment license or adult establishment employee license for one (1) year from the date revocation becomes effective.

**5.20.100. - Hearing; license denial, suspension, revocation; appeal.**

- A. When the Director issues a written notice of intent to deny, suspend, or revoke a license, the Director shall immediately send such notice, which shall state the grounds under this

chapter for such action, to the applicant or licensee 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 Director for the applicant or licensee. The notice shall also set forth the following: The applicant or licensee shall have ten (10) days after the delivery of the written notice to submit, at the office of the Director, a written request for a hearing. If the applicant or licensee does not request a hearing within said ten (10) days, the Director's written notice shall become a final denial, suspension, or revocation, as the case may be, on the fifteenth (15th) day after it is delivered to the applicant or licensee.

- B. If the applicant or licensee (hereafter, "petitioner") does make a written request for a hearing within said ten (10) days, then the Director shall, within ten (10) days after the submission of the request, send a notice to the petitioner 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 hearing may be transcribed by either party.
- C. At the hearing, the petitioner shall have the opportunity to present all relevant arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the Director's witnesses. The Director may also be represented by counsel, present evidence and witnesses, and cross-examine any of the petitioner's witnesses. The hearing shall take no longer than one (1) day, unless extended at the request of the petitioner to meet the requirements of due process and proper administration of justice. The petitioner shall have the burden of proving by a preponderance of the evidence that there is no substantial evidence to support the Director's licensing decision. The Hearing Officer shall affirm the Director's licensing decision if any substantial evidence in the record at the hearing supports any of the grounds set forth in the written notice of intent to deny, suspend, or revoke. The Hearing Officer shall issue a final written decision, including specific reasons for the decision pursuant to this chapter, to the petitioner and the County within five (5) days after the hearing.
- D. If the decision is to deny, suspend, or revoke the license, the decision shall advise the petitioner of the right to appeal such decision to a court of competent jurisdiction, and the decision shall not become effective until the fifth (5th) day after it is rendered. If the Hearing Officer's decision finds that there is no substantial evidence to support the Director's licensing decision, the Hearing Officer shall, contemporaneously with the issuance of the decision, order the Director to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the petitioner in writing by certified mail of such action. If the petitioner is not yet licensed, the Director shall contemporaneously therewith issue the license to the applicant.
- E. If any court action challenging a licensing decision is initiated, the County 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, in all respects, lawfully operating as an adult establishment, or any adult establishment employee that is lawfully employed as an adult establishment employee, on the date on which the completed business or employee

application, as applicable, is filed with the Director: Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the County's enforcement of any denial, suspension, or revocation of a license, the Director shall immediately issue the petitioner a Provisional License. The Provisional License shall allow the petitioner to continue operation of the adult establishment or to continue employment as an adult establishment employee and will expire upon the court's entry of a judgment on the petitioner's appeal or other action to restrain or otherwise enjoin the County's enforcement, unless the Provisional License is suspended or revoked prior to entry of said judgment. While a Provisional License is in effect, the provisional licensee shall comply with the regulations set forth in Sections 5.20.060, 5.20.120, 5.20.130, 5.20.140, and 5.20.170, and any violations thereof shall be subject to the provisions of Section 5.20.150. A Provisional License may be suspended under Section 5.20.080 or revoked under Section 5.20.090, and if an appeal is taken from that suspension or revocation decision, the County will issue no further Provisional License or stay of enforcement.

**5.20.110. - Transfer of license.**

A licensee shall not transfer his or her license to another, nor shall a licensee operate an adult establishment under the authority of a license at any place other than the address designated in the adult establishment license application.

**5.20.120. - Hours of operation.**

No adult establishment shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day.

**5.20.130. - Regulations pertaining to operation of adult arcade or adult motion picture theater.**

- A. A person who operates or causes to be operated an adult arcade or adult motion picture theater shall comply with the following requirements.
  - (1) Each application for an adult establishment license shall contain a diagram of the premises showing the location of all operator's stations, booths or viewing rooms, overhead lighting fixtures, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The Director may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

- (2) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.
- (3) The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.
- (4) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no specified sexual activity occurs in or on the premises.
- (5) It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:
  - (i) That the occupancy of viewing rooms less than 100 square feet is limited to one person.
  - (ii) That specified sexual activity on the premises is prohibited.
  - (iii) That the making of openings between viewing rooms is prohibited.
  - (iv) That violators will be required to leave the premises.
  - (v) That violations of these regulations are unlawful.
- (6) It shall be the duty of the operator to enforce the regulations articulated in (5)(i) through (v) above.
- (7) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose, excluding restrooms, from at least one of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.
- (8) It shall be the duty of the operator to ensure that no porous materials are used for any wall, floor, or seat in any booth or viewing room.

- B. It shall be unlawful for a person having a duty under subsections (A)(1) through (A)(8) to knowingly or recklessly fail to fulfill that duty.
- C. No patron shall knowingly or recklessly enter or remain in a viewing room less than 100 square feet in area that is occupied by any other patron.
- D. No patron shall knowingly or recklessly be or remain within one foot of any other patron while in a viewing room that is 100 square feet or larger in area.
- E. No person shall knowingly or recklessly make any hole or opening between viewing rooms.

**5.20.140. - Loitering, exterior lighting and monitoring, and interior lighting requirements.**

- A. It shall be the duty of the operator of an adult establishment to: (i) ensure that at least two conspicuous signs stating that no loitering is permitted on the premises are posted on the premises; (ii) designate one or more employees to monitor the activities of persons on the premises by visually inspecting the premises at least once every ninety (90) minutes or inspecting the premises by use of video cameras and monitors; and (iii) provide lighting to the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. Said lighting shall be of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than one (1.0) foot candle as measured at the floor level. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.
- B. It shall be the duty of the operator of an adult establishment to ensure that the interior premises shall be equipped with overhead lighting of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level and the illumination must be maintained at all times that any customer is present in or on the premises.
- C. No adult establishment shall erect a fence, wall, or similar barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right of way.
- D. It shall be unlawful for a person having a duty under this section to knowingly or recklessly fail to fulfill that duty.

**5.20.150. - Penalties and enforcement.**

- A. A person who violates any of the provisions of this chapter shall be guilty of a violation and, upon conviction, shall be punishable by fines not to exceed one thousand dollars (\$1,000.00) per violation, or by imprisonment for a period not to exceed sixty (60) days, or by both such fine and imprisonment. For violations of this chapter that are continuous with respect to time, each day that the violation continues is a separate offense. For violations of

this chapter that are not continuous with respect to time, each violation is a separate offense.

- B. Any premises, building, dwelling, or other structure in which an adult establishment is repeatedly operated or maintained in violation of this chapter shall constitute a nuisance and shall be subject to civil abatement proceedings in a court of competent jurisdiction.
- C. The County's legal counsel is hereby authorized to institute civil proceedings necessary for the enforcement of this chapter to enjoin, prosecute, restrain, or correct violations hereof. Such proceedings shall be brought in the name of the County, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this chapter, or any of the laws in force in the County or to exempt anyone violating this code or any part of the said laws from any penalty which may be incurred.

**5.20.160. - Applicability of chapter to existing businesses.**

- A. *Licensing Requirements.* All preexisting adult establishments lawfully operating in the County in compliance with all state and local laws prior to the effective date of this chapter, and all adult establishment employees working in the County prior to the effective date of this chapter, are hereby granted a *De Facto* Temporary License to continue operation or employment for a period of ninety (90) days following the effective date of this chapter. By the end of said ninety (90) days, all adult establishments and adult establishment employees must apply for a license under this chapter.
- B. *Interior Configuration Requirements.* Any preexisting adult establishment that is required to, but does not, have interior configurations or stages that meet at least the minimum requirements of section 5.20.130 and subsection 5.20.170(B) shall have ninety (90) days from the effective date of this chapter to conform its premises to said requirements. During said ninety (90) days, any employee who appears within view of any patron in a semi-nude condition shall nevertheless remain, while semi-nude, at least six (6) feet from all patrons.
- C. *Other Requirements.* Except as provided for in subsections (A) and (B), adult establishments shall comply with this chapter on the date that it takes effect.

**5.20.170. - Prohibited conduct.**

- A. No patron, employee, or any other person shall knowingly or intentionally, in an adult establishment, appear in a state of nudity or engage in a specified sexual activity.
- B. No person shall knowingly or intentionally, in an adult establishment, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six (6) feet from all patrons and on a stage at least eighteen (18) inches from the floor in a room of at least six hundred (600) square feet.

- C. No employee who appears semi-nude in an adult establishment shall knowingly or intentionally touch a customer or the clothing of a customer on the premises of an adult establishment. No customer shall knowingly or intentionally touch such an employee or the clothing of such an employee on the premises of an adult establishment.
- D. No person shall possess, use, or consume alcoholic beverages on the premises of an adult establishment.
- E. No person shall knowingly or recklessly allow a person under the age of eighteen (18) years to be or remain on the premises of an adult establishment.
- F. No operator of an adult establishment shall knowingly or recklessly allow a room in the adult establishment to be simultaneously occupied by any patron and any other employee who is semi-nude or who appears semi-nude on the premises of the adult establishment, unless an operator of the adult establishment is present in the same room.
- G. No operator or licensee of an adult establishment shall violate the regulations in this section or knowingly or recklessly allow an employee or any other person to violate the regulations in this section.
- H. A sign in a form to be prescribed by the Director, and summarizing the provisions of subsections (A), (B), (C), (D), and (E), shall be posted near the entrance of the adult establishment in such a manner as to be clearly visible to patrons upon entry. No person shall cover, obstruct, or obscure said sign.
- I. No adult establishment or sales of sexual devices shall be permitted as a home-based business.

**5.20.180. - Scienter required to prove violation or business licensee liability.**

This chapter does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a reckless mental state is necessary to establish a violation of a provision of this chapter. Notwithstanding anything to the contrary, for the purposes of this chapter, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the adult establishment licensee for purposes of finding a violation of this chapter, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

**5.20.190. - Location of adult establishments.**

- A. It shall be unlawful to establish, operate, or cause to be operated an adult establishment in unincorporated Hall County that is:

- (1) Within 750 feet of any residence or residential zoning district.
  - (2) Within 750 feet of an educational institution, religious institution, governmentally owned or operated building or structure, library, civic center, park, hospital, or prison.
  - (3) Within 750 feet of an establishment licensed to sell alcoholic beverages.
  - (4) Within 500 feet of another adult establishment.
- B. For the purpose of this section, measurements shall be made in a straight line from the closest part of any structure occupied by the adult establishment to the closest property line of the zoned property and uses identified in subsection (A), above. Where a use identified in subsection (A) is located in a multi-tenant development, the distance shall be measured to the closest part of the tenant space occupied by that use rather than the property line of the entire development, so as to maximize the number of locations available to adult establishments.
- C. Notwithstanding any provision in the Official Code of Hall County, Georgia to the contrary, an adult establishment in a location that satisfies the standards in this section shall not be deemed noncompliant with this section by virtue of the subsequent establishment or expansion of a land use or zoning district identified in subsection (A).
- D. *Amortization.*
- (1) As used in this section, “lawful nonconforming adult establishment” means a business that qualifies as an adult establishment, as defined in this chapter, that:
    - (i) was, in all respects, lawfully: established, continuously licensed, and continuously operated until this section was adopted;
    - (ii) has continuously, lawfully operated since this section was adopted; and
    - (iii) does not conform to the location standards for adult establishments set forth in this Section 5.20.190 or in Title 17 of the Official Code of Hall County, Georgia.
  - (2) Notwithstanding anything to the contrary in the Official Code of Hall County, Georgia, a lawful nonconforming adult establishment may continue to operate in its nonconforming location until December 31, 2023, in order to make a reasonable recoupment of its investment in said location that was made before the adoption of this section. On or before January 1, 2024, the adult establishment shall conform to the location standards for adult establishments in the Official Code of Hall County, Georgia.
  - (3) Hardship extension. A lawful nonconforming adult establishment may apply to extend the time to operate its adult establishment in its nonconforming location upon a showing of financial hardship. An application for an initial extension based upon



financial hardship shall be made by October 31, 2023. If a hardship extension is granted, subsequent applications for hardship extensions shall be made at least 60 days before the conclusion of the business's then-current extension period.

- (4) Procedure. An application for a hardship extension shall be filed in writing with the Director, shall include documentation showing that the establishment is a lawful nonconforming adult establishment, shall specify the length of extension requested, and shall include evidence of purchase and improvement costs, income earned and lost, depreciation, and costs of relocation. The application shall include an electronic copy of the business's accounting or bookkeeping records, including the computer file(s) maintained in QuickBooks or any similar accounting or bookkeeping software. Within 20 days after receiving the application, the Director shall schedule a public hearing on the application before the Hearing Officer, which public hearing shall be conducted within 45 days after the Director's receipt of the application. Notice of the time and place of such public hearing shall be published at least ten days before the hearing on the County's website or in a newspaper of general circulation published within the County, and shall identify the particular business and location for which the hardship extension is requested.
- (5) The Hearing Officer shall issue a written decision within ten days after the public hearing on the application for a hardship extension. The hardship extension shall be limited to a period of up to one year, as proven necessary by the applicant. The hardship extension shall be granted only upon a showing that the applicant is a lawful nonconforming adult establishment and is unable to recoup its investments, made prior to the effective date of this section, in its current location unless the hardship extension is granted.

#### **5.20.200. - Severability.**

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

#### **5.20.210. - Conflicting code provisions repealed.**

Any provision(s) in the Official Code of Hall County, Georgia specifically in conflict with any provision in this chapter is hereby deemed inoperative and repealed.

**5.20.220. - Effective date.**

This chapter shall become effective immediately upon its adoption.”

**SO RESOLVED**, this the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**HALL COUNTY BOARD OF COMMISSIONERS**

By: \_\_\_\_\_  
Richard Higgins, Chairman

ATTEST:

\_\_\_\_\_  
Jennifer Rivera, County Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Van Stephens, County Attorney