

AN ORDINANCE REGULATING ADULT ENTERTAINMENT ESTABLISHMENTS

Sec. 1. Findings; public purpose.

Based on the experiences of other counties and municipalities, which experiences are found to be relevant to the problems faced by Lowndes County, Georgia, and based on other evidence to the Board of Commissioners, the Board of Commissioners takes note of the conditions and secondary effects attendant to the commercial exploitation of human sexuality, which do not vary greatly among the various communities within our country.

It is the finding of the Board of Commissioners 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, live commercial nudity in general, and cinematographic or videographic

adult entertainment are disorderly conduct, prostitution, public solicitation, public indecency, drug use and drug trafficking. Among the undesirable community conditions identified in other communities with the commercial combination of live nudity and alcohol, commercial nudity in general, and cinematographic or videographic adult entertainment are depression of property values and acceleration of community blight in the surrounding neighborhood, increased allocation of and expenditure for law enforcement personnel to preserve law and order, and increased burden on the judicial system as a consequence of the criminal behavior hereinabove described. The Board of Commissioners finds it is reasonable to believe that some or all of these undesirable community conditions will result in the county, as well.

Furthermore, it is the finding of the Board of Commissioners that other forms of adult entertainment including, but not limited to, adult book stores, adult novelty shops, adult video stores, peep shows, adult theaters, and massage parlors have an adverse effect upon the quality of life in surrounding communities.

The Board of Commissioners finds that the negative secondary effects of adult entertainment establishments upon the county are similar whether the adult entertainment establishment features live nude dancing, offers cinematographic or videographic viewing of sexual activity or

other adult entertainment, or sells, rents or otherwise provides videos, movies or other reproductions depicting sexual activities or other adult entertainment.

The Board of Commissioners therefore 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 entertainment establishments. Therefore, the Board of Commissioners finds that licensing and regulations are necessary for any adult entertainment establishment in the unincorporated areas of the county. The Board of Commissioners 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 community conditions and further finds that such will not infringe upon the protected Constitutional rights of freedom of speech or expression. To that end, this Ordinance is hereby adopted.

Sec. 2. Definitions.

Except as specifically defined herein, all words used in this Ordinance shall be as defined in the most recent edition of the New Illustrated Book of Development Definitions (Rutgers). Words

not defined herein or in the above book shall be construed to have the meaning given by common and ordinary use, and shall be interpreted within the context of the sentence and section in which they occur.

Adult bookstore means any commercial establishment in which more than ten square feet of floor space is used for the display or offer for sale or rent of any book or publication, film, or other medium which depicts sexually explicit nudity or sexual conduct by its emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

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

Adult entertainment means entertainment that is characterized by an emphasis on the depiction, display or the featuring of "specified anatomical areas."

Adult entertainment establishment shall be defined to include the following types of business:

(1) Any commercial establishment that employs or uses any person live, in any capacity in the sale or service of beverages or food while such person is unclothed or in such attire, costume or clothing, so as to expose any portion of his or her "specified anatomical areas," as defined herein;

(2) Any commercial establishment which provides live entertainment where any person appears unclothed or in such attire, costume or clothing as to expose any portion of his or her "specified anatomical areas" as defined herein, or where such performances are distinguished or characterized by an emphasis on "specified sexual activities," as defined herein;

(3) Any commercial establishment which holds, promotes, sponsors or allows any contest, promotion, special night, event or any other activity where live patrons of the establishment are encouraged or allowed to engage in any of the conduct described in subsections (1) and (2) of this definition;

(4) Any commercial establishment having a substantial or significant portion of its stock in trade, books, magazines or other periodicals, videotapes or movies or other reproductions, whether for sale or rent, which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" as defined herein or "specified anatomical areas" as defined herein, or having a segment or section of such establishment comprising more than ten square feet of its total floor space, devoted to the sale, rent or display of such material or which derives more than five percent of its net sales from the sale or rental of such material;

- (5) Any commercial establishment utilizing an enclosed building with a capacity of 50 or more persons used for cinematographic or videographic presentation of material distinguished by or characterized by an emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas", as defined herein, for observation by patrons therein;
- (6) Any adult motion picture theater, adult motion picture arcade, adult mini-motion picture theater, adult bookstore, adult video store, adult hotel, or adult motel, as defined herein;
- (7) The definition of "adult entertainment establishment" shall not include traditional or mainstream theater, which means a theater, movie theater, concert hall, museum, educational institution, or similar establishment which regularly features live or other performances or showings which are not distinguished or characterized by an emphasis on the depiction, display, or description or the featuring of specified anatomical areas or specified sexual activities in that the depiction, display, description or featuring is incidental to the primary purpose of any performance. Performances and showings are regularly featured when they comprise at least 80 percent of all annual performances or showings.

Adult hotel or motel means a hotel or motel wherein material is presented which is distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

Adult mini-motion picture theater means an enclosed building with a capacity for less than 50 persons used for presenting material distinguished or characterized by an emphasis on matter depicting or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

Adult motion picture arcade means any place to which the public is permitted or invited wherein paper currency, coin- or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

Adult motion picture theater means an enclosed building with a capacity of 50 or more persons, used for presenting material distinguished or characterized by an emphasis on matter depicting,

describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

Adult video store means any establishment having a substantial or significant portion of its stock in trade, video tapes or movies or other reproductions, whether for sale or rent, which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, or an establishment with a segment or section, comprising five percent or more of its total floor space, devoted to the sale or display of such material or which derives more than five percent of its net revenue from sales and rental of such video tapes, movies or other reproductions which are characterized or distinguished or relating to specified sexual activities or specified anatomical areas.

Children's day care facility shall be defined as a structure or portion of a structure wherein is provided care and supervision of children away from their place of residence for less than 24 hours per day on a regular basis for compensation. For the purpose of this Ordinance the term "children's day care facility" shall include but not be limited to the terms "nursery school," "early learning center," "pre-kindergarten," "private kindergarten," "play school," or "pre-school."

Operator means the manager or other individual principally in charge of an adult entertainment establishment.

Owner means any individual or entity holding more than a 20 percent direct or indirect ownership interest in an adult entertainment establishment.

Premises means the defined, closed or partitioned establishment, whether room, shop or building wherein adult entertainment is performed, shown, carried out, engaged in or otherwise made available.

Specified anatomical areas shall include the following:

- (1) Less than completely and opaquely covered human genitals or pubic region, cleft of the buttocks, 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 sexual activities shall be defined to mean and include any of the following:

- (1) Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual

relationship and any of the following sexually oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zooerasty;

(2) Human or animal ejaculation, sodomy, oral copulation, coitus or masturbation;

(3) Fondling or other erotic touching of nude human genitals, pubic region, buttocks or female breast;

(4) Masochism, erotic or sexually oriented torture, beating or the infliction of pain; or

(5) Erotic or lewd touching, fondling or other sexual contact with an animal by a human being.

Sec. 3. License required.

It shall be unlawful for any person, association, partnership, corporation, limited liability company, or other legal entity to operate, engage in, conduct, or carry on, in or upon any premises within the unincorporated area of the county an adult entertainment establishment as defined in this Ordinance without first procuring an annual license to do so except as provided in section 11(b) when the County Manager fails to approve or deny an application for an adult entertainment license within 30 days as required by this Ordinance. 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 this state or the United States or any other ordinance or resolution of this County. No annual license for an adult entertainment establishment shall be issued by the county if a license to sell alcoholic beverages or malt beverages and wine for consumption on the premises has been issued for the premises. Any premises licensed as an adult entertainment establishment shall not be eligible to apply at any time for or hold a license to sell alcoholic beverages or malt beverages and wine for consumption on the premises. There shall be an annual regulatory fee for each adult entertainment establishment licensed within the county in the amount of \$750.00. The annual regulatory fee must be paid to the County Manager within ten days after the County Manager approves the initial application for an adult entertainment establishment license or a renewal thereof. In any event, no adult entertainment establishment license or renewal thereof shall be issued until the most recent annual regulatory fee has been paid. All licenses granted hereunder shall expire on December 31 of each year. Licensees who desire to renew their license shall file an application with the County Manager on the form provided for renewal of the license for the ensuing year. Applications for renewal must be filed before November 30 of each year. Any renewal application received after November 30 shall pay, in addition to said annual regulatory fee, a late

charge of 20 percent thereon. If a license renewal application is received on or after January 1, 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. If a license application is received on or after January 1, investigative and administrative costs as hereinafter set forth in this Ordinance will be assessed. All licenses granted hereunder shall be for the calendar year and the full annual regulatory fee must be paid for a license renewal application filed prior to July 1 of the license year. One-half of a full annual regulatory fee shall be paid for a license renewal application filed on or after July 1 of the license year. Any person renewing any license issued hereunder who shall pay the annual regulatory fee, or any portion thereof, on or after January 1, shall, in addition to said annual regulatory fee and late charges, pay simple interest on the delinquent balance at the interest rate equal to the "underpayment rate" pursuant to Section 6621(a)(2) of the Internal Revenue Code and the Treasury Regulations thereunder for underpayment of federal income tax as such rate is in effect from time to time.

Sec. 4. On-premises operator required.

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

Sec. 5. Application process and qualifications.

(a) *Process.* Any person, association, partnership, corporation, limited liability company, or other legal entity desiring to obtain a license to operate, engage in, conduct, or carry on any adult entertainment establishment in the unincorporated areas of the county shall make application to the County Manager. Such application shall be made on forms furnished by the county, shall be made in the name of the adult entertainment establishment by an applicant who is a natural person and an agent of the adult entertainment establishment and shall include the name(s) of the operator(s) as defined herein and of the owner(s) as defined herein. If the adult entertainment establishment is a corporation, then the agent for purposes of making application for a license hereunder shall be an officer of the corporation. If the adult entertainment establishment is a form of partnership, the agent for such purposes shall be an individual who is a general partner of the partnership. If the adult entertainment establishment is a limited liability company, the agent for such purposes shall be an individual member or manager. At the time of submitting such

application, a nonrefundable fee payable in cash or by cashier's or bank check in the amount of \$300.00 shall be paid to the County Manager to defray, in part, the cost of investigation and reporting required by this Ordinance. The County Manager shall issue a receipt showing that such application fee has been paid. The application for license does not authorize the operation of, engaging in, conduct or carrying on of any adult entertainment establishment.

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

(1) The full true name and any other names currently or previously used by the applicant, and each of the operator(s) and the owner(s);

(2) The present address and telephone number of the applicant, and each of the operator(s) and the owner(s);

(3) The previous addresses of the applicant, and each of the operator(s) and the owner(s), if any, for a period of five years immediately prior to the date of the application and the dates of residence at each;

(4) Acceptable written proof that the applicant, the operator(s) and the owner(s), in each case where natural persons, are at least 18 years of age;

- (5) The operator(s)' height, weight, color of eyes and hair and date and place of birth;
- (6) Two color photographs of the operator(s) at least two inches by two inches taken within the last six months prior to the date of the application;
- (7) The business, occupation or employment history of the applicant, the operator(s) and owner(s), in each case where natural persons, for the five years immediately preceding the date of application;
- (8) The business license history of the adult entertainment establishment, including any predecessors in interest, seeking a license and whether such establishment, in previous operations in this or any other location under license, has had such license or permit for an adult entertainment business or similar type of business revoked or suspended, the reason therefore, and the business activity or occupation subsequent to such action of revocation or suspension;
- (9) If the application is made on behalf of a corporation, the name of the corporation, exactly as shown in its Articles of Incorporation or charter, together with a copy of its Certificate of Incorporation, Articles of Incorporation, and Bylaws, and a Certificate of Existence dated within (30) thirty days prior to of the date of the application from the Georgia Secretary of State as to the corporation's existence and good standing (and, if the corporation is not organized in the

State of Georgia, the Certificate of Authority issued by the Georgia Secretary of State authorizing the corporation to do business in Georgia, together with a Certificate of Existence dated within thirty (30) days prior to the date of the application issued by the state or other jurisdiction in which the corporation is organized). If the application is made on behalf of a limited liability company, the name of the limited liability company, exactly as shown in its Articles of Organization (or other charter document), together with a copy of its Certificate of Organization, Articles of Organization, limited liability company operating agreement, and a Certificate of Existence dated within thirty (30) days prior to the date of the application from the Georgia Secretary of State as to the limited liability company's existence and good standing (and, if the limited liability company is not organized in the State of Georgia, a Certificate of Authority issued by the Georgia Secretary of State authorizing the limited liability company to do business in Georgia, together with a Certificate of Existence as to the limited liability company's existence and good standing issued within thirty (30) days prior to the date of the application by the state or other jurisdiction in which the limited liability company is organized).

If the applicant is any type of partnership (including, without limitation, general partnership, limited partnership, limited liability partnership, limited liability limited partnership, or joint

venture) a copy of the applicant's partnership agreement together with any certificate of partnership or organization filed with and/or issued by any public office as to the organization of the entity, and where applicable a Certificate of Existence (or similar certificate) issued within thirty (30) days prior to the date of the application by the Georgia Secretary of State (or other public official in Georgia) as to the partnership's existence and good standing (and, if the partnership, is not organized in the State of Georgia, where applicable, a Certificate of Authority issued by the Georgia Secretary of State (or other public official in Georgia) authorizing the applicant to do business in Georgia, together with, where applicable, a Certificate of Existence dated within thirty (30) days prior to the date of the application issued by the state or jurisdiction in which the partnership is organized as to the partnership's existence and good standing). For any such applicant which is a corporation, limited liability company, form of partnership, association, or other legal entity, in each case where one or more of the direct or indirect owners of such entity is not an individual, then the applicant shall supply the information required by the provision of this subsection for each owner of such applicant which is not a natural person.

(10) The names and addresses of the owner and lessor of the real property upon which the adult entertainment establishment is to be operated, engaged in, conducted or carried on and a copy of the lease or rental agreement;

(11) With respect to the applicant, the operator(s) and the owner(s), all convictions, (excluding misdemeanor traffic violations unrelated to driving under the influence of drugs or alcohol) within the past five years, including a complete description of the crime or violation, the date of the crime or violation, date of conviction (including plea of guilty or nolo contendere), jurisdiction and any disposition, including any fine or sentence imposed and whether the terms of disposition have been fully completed. Each person required to disclose convictions hereunder shall also provide a signed and notarized consent, on forms prescribed by the Georgia Crime Information Center, authorizing the release of his or her criminal records to the County Manager.

(12) A complete set of fingerprints of the applicant, and, where natural persons, of the operator(s) and the owner(s);

(13) If the person or business entity on whose behalf application for a license is made is doing business under a trade name, a copy of the trade name certificate or application as properly recorded. If the application is made on behalf of a corporation or other legal entity, a copy of its

last annual registration, if any, filed with the Georgia Secretary of State (and, in the case of a foreign entity, the state or other jurisdiction in which the entity is organized);

(14) At least three written character references for each of the applicant, the operator(s) and owner(s), in each case who are natural persons, from individuals who are in no way related to the applicant or any operator(s) or owner(s) and who are not or will not benefit financially in any way from the application if the license is granted. The county shall prepare forms consistent with the provisions of this subsection for the applicant, the operator(s) and owner(s), who shall submit all character references on such forms;

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

(16) A plat, dated no sooner than sixty (60) days prior to the date of the application, prepared by and bearing the seal of a registered engineer or a registered land surveyor, licensed by this state, showing the location of the proposed premises where the adult entertainment establishment will be operated, engaged in, conducted or carried on in relation to the neighborhood, the surrounding zoning, its proximity to and distance from any residential zoned property including property zoned planned development and permitting residential uses, church, school, public park or

recreation facility, children's day care facility, establishment selling alcoholic beverages or malt beverages and wine, and any other adult entertainment establishment, in each case located on any parcel of land within 1,100 feet of the location of the proposed premises where the adult entertainment establishment will be operated;

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

- a. If application is made on behalf of an individual, the individual;
- b. If application is made on behalf of a form of partnership, by a general partner;
- c. If application is made on behalf of a corporation, by the president of the corporation;
- d. If application is made on behalf of a limited liability company, by a member or manager of the limited liability company;
- e. If application is made on behalf of any other organization or association, by its chief executive official or its majority owner.

(c) *Appearance by applicant.* The applicant shall personally appear before the County Manager and produce proof that a nonrefundable application fee, in an amount established by resolution of the Board of Commissioners, has been paid and shall present the executed application completed

in accordance with the requirements of this Ordinance containing the aforementioned and described information.

(d) *Investigation; standards for granting of license.* The county shall have thirty (30) days from the date of actual receipt of the application to verify the completeness of the application and to investigate the facts provided in the application and the background of the applicant, the operator(s) and owner(s). The County Manager shall stamp the date of actual receipt of each application on the first page thereof and notify the applicant in writing of the date of actual receipt of the application within five business days of actual receipt of such application. The County Manager shall approve or deny any application for an adult entertainment establishment license within 30 days of actual receipt of such application. The application for an adult entertainment establishment license shall be granted if the County Manager finds:

- (1) The required \$300.00 investigative fee has been paid;
- (2) The application is complete in all material respects in relation to the requirements of this Ordinance;
- (3) The applicant has not made any false statement or a material misrepresentation in the application;

(4) Neither the applicant nor any of the operator(s) or owner(s) has been convicted or pled guilty or entered a plea of nolo contendere to any crime involving keeping a place of prostitution, pandering, pimping, public indecency, prostitution, sodomy, solicitation of sodomy, masturbation for hire, sexual battery, rape, child molestation, enticing a child for indecent purposes, or any offense included in the definition of a "criminal offense against a victim who is a minor" as defined in O.C.G.A. § 42-1-12 within a period of the past five years prior to the date of the application. For purposes of this Ordinance, a conviction or plea of guilty or nolo contendere shall be ignored as to any offense for which the applicant was allowed to avail himself of the Georgia First Offender Act unless the applicant is later adjudicated guilty of having violated the terms of his first offender treatment;

(5) Neither the applicant nor any of the operator(s) or owner(s) has had an adult entertainment establishment license or other similar license or permit revoked for cause by this county or any other county or municipality located in or out of this state within the preceding five years prior to the date of the application ;

(6) The building, structure, equipment and location of the premises of the adult entertainment establishment as proposed by the applicant would comply with all applicable laws, including but not limited to health, zoning, distance, fire and safety requirements and standards;

(7) The applicant is at least 18 years of age;

(8) On the date the business for which a license is required herein commences, and thereafter, there will be an operator(s) as defined herein on the premises at all times during which the business is open;

(9) The proposed premises will be located at least the minimum distances set forth in this Ordinance from any residential zoned property including property zoned planned development and permitting residential uses, church, school, public park or recreation facility, children's daycare facility, establishment licensed to sell alcoholic beverages or malt beverages and wine for consumption on the premises, or another adult entertainment establishment; and

(10) The grant of such license will not cause a violation of and will not be in conflict with this Ordinance or any other law, ordinance or regulation, of Lowndes County, the State of Georgia or the United States.

The County Manager shall deny the application for an adult entertainment establishment license if the application is found not to be complete in all material respects, contains any false or materially misleading statement, or it fails to meet any requirement contained in this Ordinance regulating adult entertainment establishments.

Sec. 6. Regulation of adult entertainment establishments.

(a) *Location.* No adult entertainment establishment shall be located:

- (1) Within 1,000 feet of any parcel of land that falls within any of the following zoning districts as defined by the Lowndes County Unified Land Development Code: R-1, R-10, R-21, PD permitting residential uses, PD-R permitting residential uses;
- (2) Within 1,000 feet of any parcel of land on which all or any part of a church, school, college or university campus, public park or recreation facility, or children's day care facility is located;
- (3) Within 500 feet of any parcel of land upon which any establishment authorized to sell alcoholic beverages or malt beverages and wine is located;
- (4) In any zoning district other than a C-H district; or
- (5) Within 1,000 feet of any parcel of land upon which another adult entertainment establishment regulated or defined hereunder is located.

For purposes of this section, distance shall be by airline measurement from property line, using the closest points on the property lines of the parcels of land involved. The term "parcel of land" means any quantity of land capable of being described by location and boundary, designated and used or to be used as a unit.

(b) *Adult entertainment establishment employees.*

(1) *Qualifications.* Employees of an adult entertainment establishment shall be not less than 18 years of age. No employee employed as an adult entertainer shall have been convicted of an offense described in section 5(d)(3) of this Ordinance within the five years immediately preceding the proposed employment at or by an adult entertainment establishment. Any adult entertainer who is convicted of any such crimes while employed as an adult entertainer shall not thereafter work on any licensed premises for a period of five years from the date of such conviction, unless a longer time is ordered by a court of competent jurisdiction. The term "licensed premises" shall mean the premises where an adult entertainment establishment for which a license is obtained pursuant to this Ordinance operates, conducts or carries on its business. The term "convicted" shall include an adjudication of guilt or a plea of guilty or nolo

contendere or the forfeiture of a bond when charged with a crime in a court of competent jurisdiction.

(2) *Permit for employment.* Before any person may work as an adult entertainer on a licensed premises, as defined in subsection (1) of this Section, he or she shall file a notice with the County Manager of his or her intended employment on forms supplied by the County Manager and shall receive a permit for such employment from the County Manager. The prospective employee shall supply a signed and notarized consent, on forms prescribed by the Georgia Crime Information Center, authorizing the release of his or her criminal records to the County Manager. The prospective employee shall also provide a list of all of his or her convictions of offenses described in subsection 5(d)(3) herein (including pleas of nolo contendere) within the past five years. The County Manager shall approve or deny the permit within 15 days of the application. If the prospective employee is found to meet the requirements of this subsection (b), and upon payment of the permit fee, the County Manager shall issue a permit approving such employment within three (3) business days. Upon receipt of a permit, the employee may begin working on the licensed premises. If approval is denied, the County Manager shall provide the prospective adult entertainer in writing the reasons for the denial and the prospective employee may, within

ten days of said denial, appeal to the county Zoning Board of Appeals (“ZBA”) which shall uphold or reverse the decision within 45 days of such appeal. If the County Manager does not approve or deny an application for a license within 45 days of the date such application was received by the County Manager, then on the expiration of the 45th day: (1) the application shall be approved and the County Manager shall immediately issue the license for which application was made, and (2) the applicant shall have the right to begin operating in the manner allowed by the license for which application was made. The annual permit fee shall be \$25.00.

(3) *Suspension or revocation of permit; procedure.* Violation by an adult entertainer of the provisions of this Ordinance and/or conviction of an offense described in section 5(d)(3) of this Ordinance shall subject an adult entertainer to suspension or revocation of the permit for employment issued hereunder. Whenever the County Manager finds that reasonable grounds exist to suspend or revoke a permit for employment issued hereunder, the County Manager shall schedule a hearing before the ZBA to consider such action and shall notify the employee in writing at least 20 days prior to the hearing of the time and place of the hearing and the proposed action and grounds therefore. The employee shall be entitled to present evidence and cross-examine witnesses with or without legal counsel. The ZBA shall make its decision within ten

days of the hearing and shall notify the employee promptly in writing thereof. In the event that a permit for employment is suspended or revoked by the ZBA, a \$50.00 appeal cost shall be assessed against the permit holder.

(4) *Independent contractors.* For the purpose of this Ordinance, independent contractors working as adult entertainers shall be considered as employees and shall be required to satisfy the provisions of this Ordinance relating to employees of adult entertainment establishments, regardless of the business relationship with the owner or licensee of any adult entertainment establishment.

(c) *Hours of operation.* An adult entertainment establishment may be open only between the hours of 8:00 a.m. and 2:00 a.m.

(d) *Display of licenses.* An adult entertainment establishment licensee shall conspicuously display the license required by this Ordinance.

(e) *Performance area.* All dancing or other performing by adult entertainers at adult entertainment establishments shall occur on a platform intended for that purpose which is raised at least 18 inches from the level of the floor.

(f) *Lighting.* All areas of an adult entertainment establishment licensed hereunder shall be fully lighted at all times patrons are present. Full lighting shall mean illumination equal to at least 3.5 foot-candles per square foot measured from the floor.

(g) *Covering of windows and doors.* All adult entertainment which is licensed and permitted by this Ordinance 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.

Sec. 7. Conduct or activities prohibited.

(a) *Advertising without license.* No person, partnership, corporation, limited liability company, or other entity shall advertise or cause to be advertised an adult entertainment establishment in this county which does not then hold a valid adult entertainment establishment license issued pursuant to this Ordinance.

(b) *Employment of minors or unpermitted persons.* No adult entertainment establishment licensee shall employ or retain as an independent contractor a person under the age of 18 years and, in the case of an adult entertainer, who has not obtained a permit pursuant to this Ordinance.

(c) *Sale, consumption of alcohol.* No adult entertainment establishment licensee shall serve, sell, distribute or suffer the consumption, use, distribution or possession of any alcoholic beverages, malt beverages or wine, or any illegal drug or pharmaceutical (including without limitation any “controlled substance” as defined in O.C.G.A § 16-13-21 (4)), upon the premises of the licensee.

(d) *Contact between patrons, employees.* No dancing or other performance by an adult entertainer at an adult entertainment establishment shall occur closer than four feet to any patron, customer or guest. No patron, customer or guest shall be permitted to touch, caress or fondle any specified anatomical area of or any part of the body or clothing of any adult entertainer. No patron, customer or guest shall directly pay or give any gratuity to any adult entertainer. No adult entertainer shall solicit any pay or gratuity from any patron, customer, or guest.

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

(f) *Public indecency prohibited.* No adult entertainer, other employee, patron or other person at an adult entertainment establishment shall, while on the premises of an adult entertainment establishment, commit the offense of public indecency as defined in O.C.G.A. § 16-6-8.

(g) *Minors on Premises.* No adult entertainment licensee shall permit a person under the age of 18 years upon the premises of an adult entertainment facility during the hours of operation of such facility.

Sec. 8. Penalty for violation.

Any person violating any of the provisions of section 7 of this Ordinance shall be punishable by a fine and/or imprisonment as permitted by O.C.G.A. § 15-10-60. Each day of operation in violation of section 7 shall be deemed a separate violation

Sec. 9. Unlawful operation declared nuisance.

Any adult entertainment establishment operated, conducted or maintained in the unincorporated area of the county contrary to the provisions of this Ordinance shall be and the same is hereby declared to be unlawful and a public nuisance. The county 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 enjoinder thereof in the manner provided by law. It

may take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such adult entertainment establishment and restrain and enjoin any person from operating, engaging in, conducting or carrying on an adult entertainment establishment contrary to the provisions of this Ordinance.

Sec. 10. Conditions of adult entertainment establishment.

(a) *Cleaning of licensed premises.* All adult entertainment establishments shall be kept in a clean, sanitary condition, and shall be in full compliance with all applicable ordinances and regulations of the county and the state.

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

(c) *Inspection for unsanitary or unsafe conditions.* The county code enforcement department shall have the authority to regularly or periodically inspect adult entertainment establishments to determine compliance with and enforce all provisions of this Ordinance and other applicable ordinances, regulations and laws.

Sec. 11. Denial, suspension or revocation of license; hearing.

(a) *Grounds.*

(1) A license may be denied by the County Manager to persons or entities that have submitted an incomplete application, an application that contains a false or materially misleading statement or that have failed to satisfy any of the requirements of this Ordinance regulating adult entertainment establishments.

(2) Any of the following shall be grounds for the County Manager to suspend or revoke 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 or materially misleading;

b. Violation of any of the regulations or prohibitions of this Ordinance;

c. With respect to the applicant, operator(s) and owner(s), conviction of or a plea of guilty or nolo contendere to any of the crimes which would make such person or adult entertainment establishment ineligible to hold a license under section 5(d) above.

(b) *Denial; procedure.* Within 30 days of actual receipt of an application for an adult entertainment establishment license, the County Manager shall either approve or deny the application. In no event shall the County Manager's decision whether to approve or deny the

adult entertainment establishment license application be withheld for more than 30 days after actual receipt of the application. In the event that such an application is held without decision for a period of more than 30 days, however, the license application shall be deemed approved, and conduct for which a license was sought may begin immediately notwithstanding the fact that no license has been issued. The director of the county's finance department shall issue an adult entertainment establishment license to an applicant who informs the director of finance in writing of the fact that an application has been submitted, but no decision has been made thereon for a period of more than 30 days following actual receipt of the application. Notwithstanding the fact that the license provided by this sentence shall not be a prerequisite to the commencement of business operations contemplated by the application, the director of the county's finance department shall issue an adult entertainment establishment license under such circumstances within three business days of actual receipt of written notice by the applicant of such circumstances unless the director of the county's finance department determines the notice provided by the applicant is false. In the event that the County Manager denies an application for an adult entertainment establishment license, notice of such denial and the reasons therefore shall be delivered to the applicant in person or by certified mail, return receipt requested, within five

business days of such denial. Any person aggrieved by any decision of the county, its officials, employees or agents, pursuant to this Ordinance, may seek review of such decision by filing an appropriate pleading in the superior court of this county or any other court of competent jurisdiction including, but not limited to, a mandamus petition pursuant to O.C.G.A. §§ 9-6-20--9-6-28, provided such aggrieved person has exhausted the administrative remedies provided by this Ordinance. Any person aggrieved by any decision of the county, its officials, employees, or agents pursuant to this Ordinance who has exhausted the administrative remedies provided by this Ordinance may also seek review of such decision by filing a petition for writ of certiorari or an appeal to the superior court as allowed by state law.

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

Sec. 12. Miscellaneous.

Nothing contained in this Ordinance shall be deemed to permit or condone any activity whatsoever which is otherwise found to be obscene, lewd or illegal under applicable code, regulation or statute which provides any prohibition upon nudity or sexual activity. Further the activities and uses which are regulated and permitted by this Ordinance shall only be allowed if they are not obscene or lewd and not in violation of any other such prohibitions on nudity or sexual activity.

Sec. 13. Severability.

If any portion or subsection of this Ordinance or its application to any person or entity or circumstance, is held invalid by a court of competent jurisdiction, the remainder of this Ordinance including its application to other persons or entities or circumstances shall not be affected.

Sec. 14. Automatic license forfeiture for nonuse.

Any holder of any license hereunder who shall for a period of three consecutive months after the license has been issued cease to operate the business authorized shall after the said three-month period automatically forfeit the license without the necessity of any further action.

Sec. 15. Repeal of conflicting provisions.

All ordinances or parts of ordinances, or resolutions or parts of resolutions, in conflict herewith shall be, and the same is, repealed.

Sec. 16. Physical layout of establishment.

Any adult entertainment establishment having available for customers, patrons or members any booth, room, or cubicle for the private viewing of any adult entertainment 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 establishment, 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. Have at least one side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying same.

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 foot-candles per square foot, and when in use shall be a minimum of 3.5 foot-candles per square foot, in each case 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.

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This ordinance shall be deemed effective upon adoption.

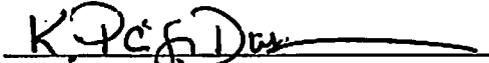
It is so ordained, this 14 day of July, 2009.

LOWNDES COUNTY:



Ashley Paulk, Chairman
Lowndes County Board of Commissioners

ATTEST:



K. Paige Dukes, County Clerk