

AN ORDINANCE

REPEALING Chapter 8-20 (Adult Entertainment Establishments), **ADOPTING** new Chapter 8-20 (Adult Establishments), and **AMENDING** Section 8-8-2-130(A), and Section 8-4-040(C) of the Code of Ordinances of the City of Marietta, Georgia.

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

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

WHEREAS, with the passage of any ordinance, the city and the city council 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 ordinance 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 city, to wit, the controlling of secondary effects of adult establishments.

NOW, THEREFORE BE IT HEREBY ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MARIETTA, GEORGIA, THAT:

Section 1: Chapter 8-20 of the Code of Ordinances of the City of Marietta, Georgia is hereby repealed, and a new Chapter 8-20 is adopted, as follows:

CHAPTER 8-20 – ADULT ESTABLISHMENTS

8-20-010 - 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 city, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of adult establishments within the city. 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 city council, 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 Faloon 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 (III. 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); *Cobb County v. Morrison, et al.*, No. 20-1-07595-49 (Order Granting Injunction, July 16, 2021); *Tokyo Gwinnett, LLC v. Gwinnett County*, No. 1:15-cv-2606, 2022 WL 1027633 (N.D. Ga. April 6, 2022);

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 city council 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 city has a substantial government interest in preventing and/or abating. The city's interest in regulating adult establishments extends to preventing future secondary effects of either current or future adult establishments that may locate in the city. The city finds that the cases and documentation relied on in this chapter are reasonably believed to be relevant to said secondary effects.

The city 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.

8-20-020 - 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.

“Adult Arcade” means 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.”

“Adult Bookstore” means 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:

- (a) At least 25% of the establishment's displayed merchandise consists of said items, or
- (b) At least 25% of the establishment's revenues derive from the sale or rental, for any form of consideration, of said items, or
- (c) 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
- (d) 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
- (e) The establishment regularly offers for sale or rental at least five hundred (500) of said items; or
- (f) 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.

“*Adult Cabaret*” means 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.

“*Adult Establishment*” means an “adult arcade,” an “adult bookstore,” an “adult cabaret,” an “adult motion picture theater,” or a “sexual device shop.”

“*Adult Motion Picture Theater*” means 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.

“*Business License Manager*” means the City of Marietta Business License Manager or his or her designee.

“*Characterized by*” means 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.

“*City*” means the City of Marietta, Georgia.

“*Employ, Employee, and Employment*” 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.

“*Establish or Establishment*” means and includes any of the following:

- (a) The opening or commencement of any adult establishment as a new business;
- (b) The conversion of an existing business, whether or not an adult establishment, to any adult establishment; or
- (c) The addition of any adult establishment to any other existing adult establishment.

“*Floor Space*” means the floor area inside an establishment that is visible or accessible to patrons for any reason, excluding restrooms.

“*Hearing Officer*” means an attorney, not otherwise employed by the city, who is licensed to practice law in Georgia, and retained to serve as an independent tribunal to conduct hearings under this chapter.

“*Influential Interest*” means 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.

“*Licensee*” means 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.

“*Nudity or Nude Conduct*” means 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).

“*Operate*” means to cause to function or to put or keep in a state of doing business.

“*Operator*” means any person who manages, supervises, or controls the adult establishment 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.

“*Person*” means an individual, proprietorship, partnership, corporation, association, or other legal entity.

“*Premises*” means 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.

“*Regional Shopping Mall (Enclosed)*” means 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.

“*Regularly*” means the consistent and repeated doing of an act on an ongoing basis.

“*Semi-Nude or Semi-Nudity*” means 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).

“*Sexual Device*” means 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.

“*Sexual Device Shop*” means a commercial establishment:

- (a) where more than 100 sexual devices are regularly made available for sale or rental; or
- (b) 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.

“*Specified Anatomical Areas*” means and includes:

- (a) 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
- (b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

“*Specified Criminal Activity*” means 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:

- (a) Rape, child molestation, sexual assault, sexual battery, aggravated sexual assault, aggravated sexual battery, or public indecency;
- (b) Prostitution, keeping a place of prostitution, pimping, or pandering;
- (c) Obscenity, disseminating or displaying matter harmful to a minor, or use of minor in sexual performance;
- (d) 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;
- (e) Any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; or
- (f) Any offense in another jurisdiction that, had the predicate act(s) been committed in Georgia, would have constituted any of the foregoing offenses.

“*Specified Sexual Activity*” means any of the following:

- (a) intercourse, oral copulation, masturbation or sodomy; or
- (b) excretory functions as a part of or in connection with any of the activities described in (a) above.

“*Transfer of Ownership or Control*” of an adult establishment means any of the following:

- (a) The sale, lease, or sublease of the business;
- (b) The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or

- (c) 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.

“*Viewing Room*” means 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.

8-20-030 - License required.

- (a) *Adult Establishment License.* It shall be unlawful for any person to operate an adult establishment in the city 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 city 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 office of the business license manager a completed application made on a form provided by the business license manager. 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, along with a list of the business’s employees and a list identifying each of the business’s operators, as defined by Section 8-20-020.
 - (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 to have been operating unlawfully;
 - (ii) been enjoined by a court 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 to be a nuisance; or
 - (v) been subject to a court order requiring closure of the business or affirming revocation of any license required to operate the business.
- (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 8-20-130 and 8-20-170. The business license manager 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) If the application is for an adult establishment license, a statement whether the applicant is the owner of the premises wherein the establishment will be operated or holds a lease thereon for the period to be covered by the license. If the applicant is a lease holder, a copy of the lease shall be submitted with the license application.
- (10) 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 business license manager 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 office of the business license manager under public records laws 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.

8-20-040 - Issuance of license.

- (a) *Adult Establishment License.* Upon the filing of a completed application for an adult establishment license, the business license manager shall issue a Temporary License to the applicant within five (5) business days if the completed application is from a preexisting adult establishment that is, in all respects, lawfully operating in the city and the completed application, on its face, shows 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 business license manager shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The business license manager 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 8-20-190 of this chapter or the location requirements in the Zoning Ordinance.
 - (6) An applicant has repeatedly engaged in unlawful conduct on the premises for which the license is sought, or has repeatedly allowed unlawful conduct on the premises for which the license is sought. For purposes of this subparagraph, unlawful conduct has occurred repeatedly if it has occurred three (3) or more times in the previous twelve (12) months, or ten (10) or more times in the previous thirty-six (36) months. Each day on which unlawful conduct occurs will be considered a separate time or instance of unlawful conduct. For purposes of this subparagraph, unlawful conduct shall not include any act of advertising or distributing obscene matter or matter harmful to minors.
 - (7) 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 to have been operating unlawfully;
 - (ii) been enjoined by a court 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 to be a nuisance; or

- (v) been subject to a court order requiring closure of the business or affirming revocation of any license required to operate the business.
- (8) An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this chapter.
 - (9) An applicant has, in conjunction with seeking a license or any approval necessary to operate the adult establishment or occupy the business premises, engaged in any misrepresentation of material fact, or omission of material fact, concerning the nature of the business.
 - (10) An applicant has violated an express condition or stipulation on any license issued by the City of Marietta for the premises for which an adult establishment license is sought.
 - (11) The applicant is neither the owner of the premises wherein the establishment will be operated, nor the holder of a lease thereon for the period to be covered by the license.
 - (12) An employee or operator of the applicant operated an adult establishment that, in the previous five (5) years (and due to conduct occurring when the person was an operator of the adult establishment), has:
 - (i) been found by a court to have been operating unlawfully;
 - (ii) been enjoined by a court 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 to be a nuisance; or
 - (v) been subject to a court order requiring closure of the business or affirming revocation of any license required to operate the business.
- (b) *Employee License.* Upon the filing of a completed application for an adult establishment employee license, the business license manager 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, shows 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 business license manager shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The business license manager 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 to have been operating unlawfully;
 - (ii) been enjoined by a court 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 to be a nuisance; or
 - (v) been subject to a court order requiring closure of the business or affirming revocation of any license required to operate the business.
- (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 city 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 kept on the premises of the adult establishment so that it may be inspected by the business license manager and his or her agents 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.

8-20-050 - 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.

8-20-060 - Inspection.

Adult establishments and adult establishment employees shall permit the business license manager 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.

8-20-070 - 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.

8-20-080 - Suspension.

- (a) The business license manager 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 business license manager 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.

8-20-090 - Revocation.

- (a) The business license manager 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 business license manager 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 or recklessly 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 city 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.

8-20-100 - Hearing; license denial, suspension, revocation; appeal.

- (a) When the business license manager issues a written notice of intent to deny, suspend, or revoke a license, the business license manager 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 or email. The notice shall be directed to the most current business address or other mailing address or email address on file with the business license manager for the applicant or licensee. The notice shall also set forth the following: The applicant or licensee shall have ten (10) business days after the issuance of the written notice to deliver, at the office of the business license manager, a written request for a hearing. If the applicant or licensee does not request a hearing within said ten (10) business days, the business license manager's written notice shall become a final denial, suspension, or revocation, as the case may be, on the fifteenth (15th) business day after it is issued.
- (b) If the applicant or licensee (hereafter, "petitioner") does make a written request for a hearing within said ten (10) business days, then the business license manager shall, within ten (10) days after receiving 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 thirty (30) 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 business license manager's witnesses. The business license manager 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 business license manager's licensing decision. The Hearing Officer shall affirm the business license manager'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 city 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 tenth (10th) day after it is rendered. If the Hearing Officer's decision finds that there is no substantial evidence to support the business license manager's licensing decision, the Hearing Officer shall, contemporaneously with the issuance of the decision, order the business license manager 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 business license manager shall contemporaneously therewith issue the license to the applicant.

- (e) If any court action challenging a licensing decision is initiated, the city shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any adult establishment that is, 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 business license manager: Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the city's enforcement of any denial, suspension, or revocation of a license, the business license manager 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 city'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 8-20-060, 8-20-120, 8-20-130, 8-20-140, and 8-20-170, and any violations thereof shall be subject to the provisions of Section 8-20-150. A Provisional License may be suspended under Section 8-20-080 or revoked under Section 8-20-090, and if an appeal is taken from that suspension or revocation decision, the city will issue no further Provisional License or stay of enforcement.

8-20-110 - 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.

8-20-120 - 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.

8-20-130 - 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 business license manager 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 (iv) 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.

8-20-140 - 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.

8-20-150 - 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 six (6) months, 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 city'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 city, 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 city or to exempt anyone violating this code or any part of the said laws from any penalty which may be incurred.

8-20-160 - Applicability of chapter to existing businesses.

- (a) *Licensing Requirements.* Preexisting adult establishments that are, in all respects, lawfully operating in the city in compliance with all state and local laws on the effective date of this chapter, and all adult establishment employees that are, in all respects, lawfully working in the city on the effective date of this chapter, may continue operation or employment for a period of thirty-five (35) days following the effective date of this chapter. Such businesses and employees must file a completed application for an annual license under this ordinance within twenty (20) days of the effective date of 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 8-20-130 and Subsection 8-20-170(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.

8-20-170 - 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. Without limiting the scope of the preceding sentence, an operator shall be deemed to have recklessly allowed another person to violate a regulation if, at the time of the violation, the operator failed to have an employee on duty and situated in at least one operator's station having a direct line of sight to the area of the establishment where the violation occurred.

- (h) A sign in a form to be prescribed by the business license manager, 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.

8-20-180 - 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.

8-20-190 - Location of adult establishments.

- (a) It shall be unlawful to establish, operate, or cause to be operated an adult establishment in the City of Marietta that is:
 - (1) Within 1,000 feet of any parcel of land which is zoned for multifamily or single family uses or purposes;
 - (2) Within 1,000 feet of any parcel of land upon which a church, elementary or secondary school, library, civic center, public park or public playground is located; or
 - (3) Within 500 feet of any parcel of land upon which another adult establishment is located.
- (b) For the purpose of subsection (a), distance shall be measured from property line to property line using the closest property lines of the parcels of land involved. The zoning and/or use of land in adjacent jurisdictions shall not disqualify any location within the City of Marietta from being available to an adult establishment.
- (c) Notwithstanding any provision in the Code of Ordinances of the City of Marietta 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) or the subsequent establishment or expansion of another adult establishment.
- (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 8-20-190 or in the Zoning Ordinance of the City of Marietta.

- (2) Notwithstanding anything to the contrary in the Code of Ordinances of the City of Marietta, 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 Code of Ordinances of the City of Marietta.
- (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 relocating to a conforming location. The application shall include an electronic copy of the business's accounting or bookkeeping records necessary to prove each of the foregoing elements, including the computer file(s) maintained in QuickBooks or any similar accounting or bookkeeping software and in any point-of-sale (POS) system used by the business. Within 20 days after receiving the application, the business license manager shall schedule a public hearing on the application before the Hearing Officer, which public hearing shall be conducted within 45 days after the business license manager'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 city's website or in a newspaper having general circulation in the city, 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 the applicant's showing that the applicant is a lawful nonconforming adult establishment and is unable to recoup its investments in the lawful use of the premises, made prior to the effective date of this section, unless the hardship extension is granted.

8-20-200 - 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.

Section 2: Section 8-8-2-130, Paragraph A, of the Code of Ordinances of the City of Marietta, Georgia is hereby amended as follows:

- A. The city manager shall deny a city license under this chapter on any of the following grounds:
1. Failure to meet state requirements for state license;
 2. Failure to pay required fees and taxes;
 3. Failure to provide valid information, documents and the like required by this chapter;
 4. False information in the application or attached documents;
 5. Improper residency of applicant, owner, or registered agents;
 6. Failure to pass review by the chief of police;
 7. Failure to post and maintain proper signs and advertisements required in this chapter;
 8. Failure to meet distance or location;
 9. Prior convictions as herein provided;
 10. Failure to meet any other requirements in this chapter for a license of the class applied for or any other requirement in any other provision of the Marietta City Code or Charter; or
 11. The applicant's business is an adult establishment as defined in Section 8-20-020.

Section 3: Section 8-4-040, Paragraph C, of the Code of Ordinances of the City of Marietta, Georgia is hereby amended as follows:

- C. The regulatory fee schedule for businesses in occupations and professions is as follows:
- Alcoholic Beverages175.00
 - Massage Parlors100.00
 - Pawn Shops1,500.00
 - Pawn Shop and Precious Metals and Gems2,000.00
 - Precious Metals and Gem without Pawn Shop500.00
 - Transient Vendors55.00
 - Fortune Telling55.00

Section 4: It is hereby declared to be the intention of this Ordinance that its sections, paragraphs, sentences, clauses, and phrases are severable and if any section, paragraph, sentence, clause, or phrase of this Ordinance is declared to be unconstitutional or invalid, it shall not affect any of the remaining sections, paragraphs, sentences, clauses, or phrases of this Ordinance.

Section 5: All Ordinances and parts of Ordinances in conflict with this Ordinance are hereby repealed.

Section 6: This Ordinance shall be effective upon signature or without the signature of the Mayor, subject to Georgia laws 1983, page 4119.

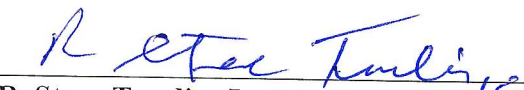
Approved as to Form:


 Daniel W. White, City Attorney

Approved by City Council:

APPROVED:

DATE: 8.12.22


 R. Steve Tumlin, Jr., Mayor

ATTEST:


 Stephanie Guy, City Clerk