

AN ORDINANCE

AMENDING Section 8-20-020 of the Code of Ordinances of the City of Marietta, Georgia.

WHEREAS, the city council finds, and has previously found, that adult establishments, as a category of 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 has previously considered 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, *see* Ordinance No. 8297, Sec. 8-20-010, and incorporates that evidence herein by reference; 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) (noting ordinance's applicability to "'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 sexual device shops, 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*, No. 99-N-1696, 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. Lion's Den, Inc.*, No. 04-CH-26, Modified Permanent Injunction Order (Ill. 4th Judicial Cir., July 13, 2005) (noting that "the accuracy and credibility" of adult store's inventory evidence and testimony was suspect, "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); *Taylor v. State*, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002); *HH-Indianapolis, LLC v. Consol. City of Indianapolis/Marion County*, 265 F. Supp. 3d 873 (S.D. Ind. 2017), *aff'd* 889 F.3d 432 (7th Cir. 2018); and

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

WHEREAS, the city desires to amend certain definitions in its adult establishments ordinance; 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, 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: Section 8-20-020 of the Code of Ordinances of the City of Marietta, Georgia is amended to delete the defined term “Establish or Establishment” and its definition.

Section 2: Section 8-20-020 of the Code of Ordinances of the City of Marietta, Georgia is amended to revise the definition of “Sexual Device Shop” as follows:

“*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 a commercial establishment located within an enclosed regional shopping mall, or a commercial establishment that makes no more than 200 sexual devices regularly available for sale or rental and that operates a pharmacy employing a licensed pharmacist who regularly fills prescriptions in the same tenant space where the sexual devices are made available.

Section 3: 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 4: All Ordinances and parts of Ordinances in conflict with this Ordinance are hereby repealed.

Section 5: 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
Daniel W. White, City Attorney

By M. Payne
With permission

Approved by City Council:

APPROVED:

DATE: 5-30-23
5:35 a.m.

R. Steve Tumlin, Jr.
R. Steve Tumlin, Jr., Mayor

ATTEST:

Stephanie Guy
Stephanie Guy, City Clerk

Legistar No: 20230525

Ordinance Amendments Related to Section 8-20-020 - Adult Establishments (Definitions)


Motion to approve proposed amendments to City Code Section 8-20-020, Definitions, to delete the definition of "Establish or Establishment," and to amend the definition of "Sexual Device Shop."

Included in this Ordinance is the required waiver set forth in 1-4-040 (L) whereby the City Council gives its unanimous consent to authorize the adoption of this Ordinance at this City Council meeting without the necessity of placing this matter on the following regular City Council meeting.

DATE: May 30, 2023

5:35 P.M.


R. Steve Tumlin, Jr., Mayor


Stephanie Guy, City Clerk