

SPECIAL CALLED MEETING

A Special Called Meeting was held by the Spalding County Board of Commissioners in Room 108 in the Courthouse Annex, Thursday, August 23, 2007 beginning at 5:45 o'clock p.m. Commission Chairman Eddie Freeman presided, and Commissioners Edward Goss, Jr. and Johnnie McDaniel were present for a quorum. Also present were County Manager William P. Wilson, Jr.; County Attorney James R. Fortune, Jr.; and Executive Secretary Teresa Watson.

I. CALL TO ORDER

II. ORDER OF BUSINESS

1. Consider, on second reading, Ordinance #2007-17 to the Spalding County Code of Ordinances to amend Part VI Licensing and Regulation, Chapter 3, Adult Business Regulations to provide for the Deletion of Chapter 3 in its Entirety and Insertion of the Replacement Chapter 3.

SPALDING COUNTY, GEORGIA ORDINANCE NO. 2007-17

SPALDING COUNTY BOARD OF COMMISSIONERS ORDINANCE REGULATING SEXUALLY ORIENTED BUSINESSES

BE IT ORDAINED that the Board of Commissioners of Spalding County, Georgia, and it is ordained by the authority of the same, that Chapter Three of the Code of Ordinances is amended by repealing in its entirety present Chapter Three, Adult Business Regulations, and enacting in lieu thereof a new Chapter Three to read as follows:

“Chapter Three: Sexually Oriented Businesses

Section 6-3001 Findings and Public Purpose

Based on the experiences of other counties and municipalities, including, but not limited to, Austin, Texas, Daytona, Florida, Gwinnett County, Georgia, and Garden Grove, California, which experiences are found to be relevant to the problems faced by Spalding County, Georgia; and based on the documentary evidence and oral testimony presented at the Board of Commissioners' hearing on August 14, 2007, and based upon the holdings and evidence of the harmful secondary effects caused by sexually oriented businesses described in prior judicial opinions such as 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); 44 Liquormart v. Rhode Island, 517 U.S. 484 (1996); Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991); City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986); New York State Liquor Authority v. Bellanca, 452 U.S. 714 (1981), Young v. American Mini Theatres, Inc., 427 U.S. 50 (1976); California v. Laue, 409 U.S. 109 (1972); Daytona Grand, Inc. v. City of Daytona Beach, Fla., 490 F.3d 860 (11th Cir. 2007); Zibtluda, LLC v. Gwinnett County, 411 F.3d 1278 (11th Cir. 2007); Peek-A-Boo Lounge of Bradenton, Inc. v. Manatee County, Fla., 337 F.3d 1251 (11th Cir. 2003); Sammy's of Mobile, Ltd. v. City of Mobile, 140 F.3d 993 (11th Cir. 1998), the Spalding County Board of Commissioners takes note of the well-known and self-evident 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 of Spalding County 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 herein above described. The Board of Commissioners finds it is reasonable to believe that some or all of these undesirable community conditions will result in Spalding County, as well.

Furthermore, it is the finding of the Spalding County Board of Commissioners that other forms of adult entertainment including, but not limited to, adult bookstores, 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 of Spalding County, Georgia, 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 daycare facilities to prevent or reduce the adverse impacts of sexually oriented businesses, also commonly referred to as adult entertainment establishments.

Therefore, the Board of Commissioners of Spalding County finds that licensing and regulations are necessary for any adult entertainment establishment. The Board 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.

Section 6-3002 Definitions

Except as specifically defined herein, all words used in this Ordinance shall be as defined in the The Latest 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.

- (A) "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 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.
- (B) "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.
- (C) "Adult entertainment" means entertainment that is characterized by an emphasis on the depiction, display or the featuring of "specified anatomical areas."
- (D) "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 6-3002(D) (1) and (2) herein;
 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 comprising more than ten square feet of its total floor space, devoted to the sale or display of such material or which derives more than 5% of its net sales from the sale or rental of such material;
 5. Any commercial establishment utilizing an enclosed building with a capacity of fifty (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 live theater (mainstream theater) which means a theater, concert hall, museum, educational institution or similar establishment which regularly features live performances 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.
- (E) "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;
- (F) "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;
- (G) "Adult motion picture arcade" means any place to which the public is permitted to be 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;
- (H) "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;
- (I) "Adult Video Store" means any establishment having 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 of its total floor space, devoted to the sale or display of such material or which derives more than five percent of its net sales from videos which are characterized or distinguished or relating to specified sexual activities or specified anatomical areas;

- (J) "Conviction" A conviction includes a plea of guilty, a plea of nolo contendere, or any diversionary disposition (including First Offender treatment) resulting from a finding or admission of guilt, or a plea of nolo contendere, in a judicial proceeding. For purposes of this Ordinance, a plea of guilty or nolo contendere as to any offense for which the individual was allowed to avail himself of the Georgia First Offender Act, or its equivalent in any other jurisdiction, is considered a conviction, regardless whether there was ever an adjudication of guilt.
- (K) "Employee" means any and all persons, including managers, entertainers and independent contractors, who work in or at or render any services directly related to the operation of an adult entertainment establishment.
- (L) "Operator" means the manager or other person principally in charge of an adult entertainment establishment;
- (M) "Owner" means any individual or entity holding more than a 30% interest in an adult entertainment establishment;
- (N) "Patron" means any person who enters an adult entertainment establishment, without regard to whether a purchase is made from the adult entertainment establishment, compensation is paid to the adult entertainment establishment, or any employee of the adult entertainment establishment for merchandise, entertainment or service; provided, however, that the term "patron" shall not include persons who enter an adult entertainment establishment for the sole purpose of providing service or merchandise to the adult entertainment establishment who do not remain in the adult entertainment establishment after the purpose has been accomplished including, but not limited to, persons performing construction, repair or maintenance on the premises or delivering goods or merchandise to the adult entertainment establishment and any such similar activity;
- (O) "Person" means any individual, partnership, corporation, trust, incorporated or unincorporated association, joint venture, or other entity or group of persons, however organized;
- (P) "Premises" means the defined, closed or partitioned establishment, whether room, shop or building wherein adult entertainment is performed;
- (Q) "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, zooerasty; or
 2. Human or animal ejaculation, sodomy, oral copulation, coitus or masturbation; or
 3. Fondling or other erotic touching of nude human genitals, pubic region, buttocks or female breast; or
 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.
- (R) "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.
- (S) "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 twenty-four (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."
- (T) "County Manager" shall mean the County Manager of Spalding County, Georgia, or his or her designee.

Section 6-3003 License Required:

- (A) It shall be unlawful for any person, association, partnership, or corporation to operate, engage in, conduct, or carry on, in or upon any premises within the unincorporated area of Spalding County an adult entertainment establishment as defined in this ordinance without an annual license or after any such license has expired or been revoked or suspended.
- (B) It shall be unlawful for any person to knowingly perform any work, service or entertainment related to the operation of adult entertainment establishment that does not possess a current license.
- (C) The failure to post an adult entertainment establishment license in the manner required herein shall be prima facie evidence that an adult entertainment establishment has not obtained such a license. In addition, it shall be prima facie evidence that any person who performs any business, service or adult entertainment in an adult entertainment establishment in which an annual adult entertainment establishment license is not posted in the manner required herein had knowledge that such establishment is not licensed.
- (D) The issuance of such an annual license shall not be deemed to authorize, condone or make legal any activity thereunder if the same is deemed illegal or unlawful under the laws of the State of Georgia or the United States.
- (E) No annual license for an adult entertainment establishment shall be issued by the County if the premises to be used also holds a license to sell alcoholic beverages or malt beverages and wine for consumption on the premises. Any adult entertainment establishment shall not be eligible to apply at any time for a license to sell alcoholic beverages or malt beverages and wine for consumption on the premises.
- (F) License Fee. There shall be an annual regulatory fee for each adult entertainment establishment licensed within Spalding County in the amount of \$1,000.00. The annual regulatory fee must be paid to Spalding County at the time application for a license or renewal of a license is made. No adult entertainment establishment license or renewal thereof shall be issued without payment of the annual regulatory fee.
- (G) Renewal of Licenses. All licenses granted hereunder shall expire on December 31st 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. The form shall require the applicant to update, under oath, the information provided in the initial application. Applications for renewal must be filed before October 31 of each year. Any renewal application received after October 31 shall be assessed, in addition to said annual regulatory fee, a late charge of twenty percent (20%). If a license renewal application is received 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 after January 1, investigative and administrative costs as hereinafter set forth in this Ordinance will be assessed.

Section 6-3004 On-premises Operator Required

The owner(s) of 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.

Section 6-3005 Application Process and Qualifications

- (A) Process.
 1. Any person, association, partnership or corporation desiring to obtain a license to operate, engage in, conduct, or carry on any adult entertainment establishment in the unincorporated areas of Spalding County shall make application to the County Manager. Such application shall be made on forms furnished by Spalding 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 partnership, the agent for such purposes shall be a general partner.
 2. At the time of submitting such application, a nonrefundable fee payable in cash or by certified check in the amount of \$300.00 shall be paid to the Licensing Clerk to defray, in part, the cost of investigation and report required by this ordinance. The Licensing Clerk shall issue a receipt showing that such application fee has been paid.
 3. 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 used by the applicant, the operator(s) and owner(s);
2. The present address and telephone number of the applicant, the operator(s) and owner(s);
3. The previous addresses of the applicant, the operator(s) and the owner(s), if any, for a period of five (5) 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) are at least eighteen (18) years of age (acceptable written proof shall consist of a valid State drivers license, or a certified copy of a birth certificate accompanied by state or federal government issued photo identification);
5. The operator(s)' height, weight, color of eyes and hair and date and place of birth;
6. Two (2) photographs of the operator(s) at least two (2) inches by two (2) inches taken within the last six months;
7. The business, occupation or employment history of the applicant, the operator(s) and owner(s) for the five (5) years immediately preceding the date of application; The business license history of the adult entertainment establishment seeking a license and whether such establishment, in previous operations in this or any other location under license, has had such license or permit for an adult entertainment business or similar type of business revoked or suspended, the reason therefore, and the business activity or occupation subsequent to such action of revocation or suspension;
8. If the application is made on behalf of a corporation, the name of the corporation, exactly as shown in its articles of incorporation or charter, together with the place and date of incorporation.
9. If the application is on behalf of a limited partnership, a copy of the Certificate of Limited Partnership filed with the County Clerk shall be provided. If one or more of the partners is a corporation, the provisions of this subsection pertaining to corporations shall apply;
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):
 - i. all felony convictions or convictions for a crime of moral turpitude during the sixty (60) month period preceding the application (including any convictions that were accorded, or that resulted in the applicant, owner(s) or operator(s) being under any type of criminal justice sentence during the sixty (60) month period preceding the application; and
 - ii. all convictions, regardless of age, that would qualify as a "Criminal offense against a victim who is a minor" or as a "Dangerous sexual offense" under O.C.G.A. §§ 42-1-12(a)(9)(A), (B) or (10)(A); and
 - iii. all convictions involving keeping a place of bestiality, necrophilia, public indecency, prostitution, pandering, pimping, public indecency, prostitution, sodomy, solicitation of sodomy, masturbation for hire, and sexual battery, rape
 - iv. The application should include 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.
 - v. 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 Spalding County Sheriff 's Department and Spalding County.
12. A complete set of fingerprints of the applicant and the operator(s);
13. If the person or business entity on whose behalf application for a license is being made is doing business under a trade name, a copy of the trade name as properly recorded. If the application is made on behalf of a corporation, a copy of its authority to do business in Georgia, including

articles of incorporation, trade name affidavit, if any, and last annual report, if any;

14. The address of the premises where the adult entertainment establishment will be operated, engaged in, conducted, or carried on;
15. In order to establish compliance with Section 6-3006(A), a plat by a registered engineer or a registered land surveyor, licensed by the State of Georgia, 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 any residential area, church, school, public park or children's daycare facility, establishment selling alcoholic beverages or malt beverages and wine or other adult entertainment establishment;
16. Each application for an adult entertainment establishment license shall be verified and acknowledged under oath to be true and correct by:
 - i. If application is made on behalf of an individual, the individual;
 - ii. If application is made on behalf of a partnership, by a general partner;
 - iii. If application is made on behalf of a corporation, by the president of the corporation;
 - iv. If application is made on behalf of any other organization or association, by the chief administrative official.

(C) Appearance by Applicant. The applicant shall personally appear before 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 application 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 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 of the actual receipt of the application within five (5) business days of actual receipt of such application. The County Manager shall approve or deny any application for an adult entertainment establishment license within thirty (30) days of actual receipt of such application. The application for an adult entertainment establishment license shall be granted if the Licensing and Revenue Manager finds:

1. The required \$300 investigative fee has been paid;
2. The applicant has not made a material misrepresentation in the application;
3. Neither the applicant, any operator(s), nor any owner(s) has been convicted of any offense set forth Section 6-3005(B)(11).
4. 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 prior to the date of application within the preceding five (5) years;
5. The applicant is at least eighteen (18) years of age;
6. The proposed premises will be located at least the minimum distances set forth in this Ordinance from any residential use, church, school, public park or children's daycare facility or establishment licensed to sell alcoholic beverages or malt beverages and wine for consumption on the premises, or another adult entertainment establishment; and
7. 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 Spalding County, the State of Georgia or the United States.

(E) The County Manager shall deny the application for an adult entertainment establishment license if the application fails to meet any requirement contained in Spalding County's Ordinance regulating adult entertainment establishments.

Section 6-3006 Regulation of Adult Entertainment Establishments

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

1. On any parcel of land that is within 1,000 feet of any other parcel of land zoned or used for residential purposes; provided, however, the phrase "property zoned or used for residential purposes" shall not include any property zoned for residential use for which a special use

permit has been granted for an indefinite period of time which permit allows a nonresidential use;

2. Within 1,000 feet of any parcel of land on which a church, school, college campus, public park or children's daycare facility is located any school, church, licensed child care center, public park, or property;
3. Within 1,000 feet of any parcel of land upon which any establishment selling alcoholic beverages or malt beverages or wine for consumption on the premises is located;
4. Within 1,000 feet of any parcel of land upon which another adult entertainment establishment regulated or defined hereunder is located.

(B) For purposes of this section, all distances shall be measured in a straight line, without regard to intervening structures or objects, from the nearest point of the building or structure used as part of the "premises" to the closest point on the property line of the parcel 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.

(C) Adult entertainment establishment employees

1. Qualifications.

- i. Employees of an adult entertainment establishment shall be not less than eighteen (18) years of age.
- ii. No employee employed as an adult entertainer shall have been convicted of an offense described in Section 6-3005(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 (5) years from the date of such conviction, unless a longer time is ordered by a court of competent jurisdiction.
- iii. 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.

2. Adult Entertainer Permit.

- i. Before any person may work as an adult entertainer, he or she shall file a notice with the County Manager of his or her intended employment on forms supplied by the Spalding County. The prospective employee shall pay a non-refundable permit application fee of \$50.00, 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 Spalding County Sheriff, and shall also provide a list of all of his or her convictions of offenses described in Section 6-3005(D)(3) of this Ordinance (including pleas of nolo contendere) within the past five (5) years. The County Manager shall approve or deny the permit within 10 days of the application. If the prospective adult entertainer is found to meet the requirements of this Section 6-3006(C), or if the County Manager fails to approve or deny the permit within 10 days of the application, the County Manager shall immediately issue the permit for which application was made, and the applicant shall have the right to engage in the conduct allowed by the permit for which an application was made. If approval is denied, the County Manager shall provide the prospective adult entertainer the reasons for the denial, and the prospective adult entertainer may, within five (5) days of said denial, appeal to the Spalding County Board of Commissioners, which shall uphold or reverse the decision within 15 days of such appeal.

3. Suspension or revocation of permit. Violation by an adult entertainer of the provisions of this ordinance and/or conviction of an offense described in Section 6-3005(D)(3) of this Ordinance shall subject an adult entertainer to suspension or revocation of the permit for employment. Whenever the County Manager finds that reasonable grounds exist to suspend or revoke a permit for employment issued hereunder based on a violation of this ordinance, the County Manager shall schedule a hearing before the Board of Commissioners to consider such action and shall notify the adult entertainer at least 10 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 Board of Commissioners shall make its decision within ten (10) days of the hearing and shall notify the adult entertainer promptly in writing.

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.
- (D) Hours of operation. An adult entertainment establishment may be open only between the hours of 8:00 a.m. and 2:00 a.m.
- (E) Display of licenses. An adult entertainment establishment licensee shall conspicuously display the license required by this ordinance.
- (F) Performance area. All performances by adult entertainers at adult entertainment establishments shall occur on a platform intended exclusively for that purpose which is raised no less than eighteen (18) inches from the level of the floor. Only those persons with a current adult entertainment permit issued pursuant to Section 6-3006(C)(2) shall be permitted onto the performance area during hours of operation.
- (G) Lighting. The premises of all adult entertainment establishments shall be equipped with overhead lighting of every place to which patrons are permitted access, at an illumination of not less than three and five-tenths (3.5) foot-candle per square feet, as measured at the floor level, and such illumination must be maintained at all times that any patron is present in or on the premises.
- (H) Exterior Display. 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.
- (I) Physical Layout of Facility. The premises of all adult entertainment establishments (other than Adult Hotels or Motels, Adult Motion Picture Arcades, and Adult Video Stores) shall be physically arranged in such manner that the entire interior portion of any booths, cubicles, rooms or stalls to which patrons are allowed access is visible from one common area of the premises. Visibility shall not be blocked or obscured by doors, curtains, drapes or any other obstruction whatsoever.
- (J) Access for Videos and Movies. Any adult entertainment establishment having available for customers, patrons or members any booth, room, or cubicle for the viewing of any video tapes or movies or other reproductions 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 of its total floor space, devoted to the sale or display of such material or which derives more than five percent of its net sales from videos which are characterized or distinguished or relating to specified sexual activities or specified anatomical areas 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:
 - i. Each booth, room or cubicle shall be separated from adjacent booths, rooms and cubicles and any nonpublic areas by a wall.
 - ii. Have at least one side totally open to a public lighted area or aisle so that there is an unobstructed view of anyone occupying the booth from the area in which the cash register for the adult entertainment establishment is located.
 - iii. 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.
 - iv. The floor must be light colored, nonabsorbent, smooth-textured and easily cleanable.
 - v. The lighting level of each booth, room or cubicle when not in use shall be a minimum of ten candles at all times, as measured from the floor.

3. Occupants. Only one individual shall occupy a booth, room or cubicle at any time. No occupant of same shall engage in any type of sexual activity, cause any bodily discharge or litter while in the booth, room or cubicle. No individual shall damage or deface any portion of the booth, room or cubicle.

Section 6-3007 Conduct or activities prohibited.

- (A) Presence of minors. No Adult Entertainment Establishment, and no owner, operator, employee, or adult entertainer of any Adult Entertainment Establishment shall allow or permit any person under the age of eighteen (18) to be in or upon the premises of an adult entertainment establishment.
- (B) Engaging in specified sexual activities prohibited. No patron or other person at an adult entertainment establishment shall engage in or perform any specified sexual activities as defined herein on the premises of any adult entertainment establishment.
- (C) Sale, consumption of alcohol. No Adult Entertainment Establishment, and no owner, operator, employee, or adult entertainer of any Adult Entertainment Establishment shall serve, sell, distribute or suffer the consumption or possession of any alcoholic beverages, malt beverages or wine or controlled substance upon the premises of the adult entertainment establishment.
- (D) Presence of Intoxicated Persons. No Adult Entertainment Establishment, and no owner, operator, employee, or adult entertainer of any Adult Entertainment Establishment shall allow onto the premises of the adult entertainment establishment any person who is in a state of noticeable intoxication.
- (E) Contact between patrons, employees. No employee, adult entertainer or patron of an adult entertainment establishment, while on the premises of an adult entertainment establishment, shall:
 1. touch, fondle or caress any specified anatomical area of another person; or
 2. knowingly permit a person to touch, fondle or caress any specified anatomical area of another person, whether such specified anatomical areas are clothed, unclothed, covered or exposed.
- (F) Payment and gratuities. No entertainer shall solicit, demand or receive any payment or gratuity from any patron for any act prohibited herein and while on the premises of an adult business, and no adult entertainer shall receive any payment or gratuity from any patron except as follows:
 1. While such adult entertainer is on the stage a patron may place such payment or gratuity into a box affixed to the stage; or
 2. While such adult entertainer is not on the stage but while on the premises of an adult entertainment establishment and is clothed so as to not expose to view any specified anatomical area, a patron may either place such payment or gratuity into the entertainer's hand, or under a leg garter worn by such entertainer at least four (4) inches below the bottom of the pubic region.
- (G) Specified Sexual Activities. No adult entertainment establishment, and no owner, operator, employee, or adult entertainer of any adult entertainment establishment shall:
 1. perform or engage in any specified sexual activities as defined herein at an adult entertainment establishment;
 2. permit any patron or other person at an adult entertainment establishment to engage in or perform any specified sexual activities as defined herein;
 3. wear or use any device or covering exposed to view which simulates any specified anatomical area;
 4. use artificial devices or inanimate objects to perform or depict any specified sexual activities;
 5. permit any patron or other person at an adult entertainment establishment to use artificial devices or inanimate objects to perform or depict any specified sexual activities.
- (H) Sexual Misconduct. It is a violation of this ordinance for any adult entertainment establishment to permit, and for any owner, operator, employee, patron or adult entertainer of any adult entertainment establishment to permit or participate in any act relating of bestiality, necrophilia, public indecency, prostitution, pandering, pimping, public indecency, sodomy, solicitation of

sodomy, or masturbation for hire while on the premises of an adult entertainment establishment.

- (I) Unpermitted Adult Entertainers. No Adult Entertainment Establishment, and no owner, operator or employee shall employ, contract with, or permit any person to expose his or her specified anatomical areas on the premises of any adult entertainment establishment if such person does not possess a current and valid adult entertainer permit pursuant to Section 6-3006(C)(2) of this ordinance.
- (J) False Statements. Whoever, for the purpose of influencing in any way the action of Spalding County in connection with its execution or enforcement of this ordinance knowingly and willfully: (a) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (b) makes any materially false, fictitious, or fraudulent statement or representation; or (c) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000) per violation or by imprisonment not to exceed 60 days, or both. In addition to the criminal penalties set forth herein, violation of this provision shall also be grounds for denial or revocation of a license or permit.

Section 6-3008 Penalty for Violation.

Any person knowingly violating any of the provisions of this Ordinance shall be guilty of a misdemeanor, punishable by a fine not to exceed one thousand dollars (\$1,000.00) per violation or by imprisonment for a period not to exceed 60 days, or both. Each day of operation in violation of this ordinance shall be deemed a separate offense. In addition to the criminal penalties set forth herein, violation of this provision shall also be grounds for denial or revocation of a license or permit.

Section 6-3009 Unlawful Operation Declared Nuisance

Any adult entertainment establishment operated, conducted or maintained 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.

Section 6-3010 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 for Unsanitary or Unsafe Conditions. The Spalding County Sheriff shall have the authority to periodically inspect adult entertainment establishments to determine compliance with and enforce all provisions of this ordinance.

Section 6-3011 Denial, Suspension or Revocation; Hearing.

- (A) Grounds.
 - 1. A license may be denied to persons or entities that have submitted an incomplete application or that have failed to satisfy any of the requirements of Spalding County's ordinance regulating Sexually Oriented Businesses found at Sections 6-3001 through 6-3016 of the Spalding County Code of Ordinances.
 - 2. Any of the following shall be grounds for suspension or revocation of a license:
 - (i) The making of any material false statement on an application for a license issued hereunder;
 - (ii) Violation of any of the regulations or prohibitions of this ordinance;
 - (iii) 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 6-3005(D)(3) above.
- (B) Denial; Procedure. Within thirty (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 thirty (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 thirty (30) days, then on the expiration of the thirtieth (30th) 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, notwithstanding the fact that no license has been issued. In the event that the County Manager denies an application for an adult entertainment establishment license, notice of such denial shall be delivered to the applicant in person or by certified mail within 5 business days of such denial, but in no event more than thirty (30) days after actual receipt of the application.

- (C) **Suspension or Revocation; Procedure.** Whenever the County Manager finds reasonable grounds exist to suspend or revoke a license issued hereunder, the Board shall schedule a hearing before the Board of Commissioners 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 Board of Commissioners shall make its decision within ten (10) days of the hearing and shall notify the licensee in writing within 5 business days of the decision.

Section 6-3012 Judicial Review

Any applicant aggrieved by any decision of Spalding County pursuant to this Ordinance denying, revoking or suspending a license or permit, may seek judicial review of such decision by filing an appropriate pleading in the Superior Court of Spalding County or any other court of competent jurisdiction including, but not limited to, a Mandamus Petition pursuant to Official Code of Georgia Annotated Sections 9-6-20 through 9-6-28.

Section 6-3013 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.

Section 6-3014 Severability

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

Section 6-3014 Automatic License Forfeiture for Nonuse

Any holder of any license hereunder who shall for a period of three (3) consecutive months after the license has been issued cease to operate the business and sale of the product or products authorized shall after the said three (3) month period automatically forfeit the license without the necessity of any further action.

Section 6-3015 Repeal of Conflicting Provisions

All Resolutions or Ordinances, or parts thereof, in conflict with this Ordinance are hereby repealed.

Section 6-3016 Effective Date and Existing Uses

This Ordinance shall be effective five (5) days after it is enacted, except that:

- (A) Sections 6-3003(A) – (C) shall be effective 45 days after this Ordinance is enacted;
- (B) Section 6-3004 requiring an on premises operator shall be effective 45 days after this Ordinance is enacted;
- (C) Section 6-3006(A) relating to location restrictions is not applicable to existing adult entertainment establishments;
- (D) Sections 6-3006(C) – (J) shall be effective 45 days after this Ordinance is enacted; and
- (E) Section 6-3007(I) shall be effective 45 days after this Ordinance is enacted.

THIS ORDINANCE IS ADOPTED this the 23rd day of August, 2007.”

Motion to approve, on second reading, Ordinance #2007-17 to the Spalding County Code of Ordinances to amend Part VI Licensing and Regulation, Chapter 3, Adult Business Regulations to provide for the Deletion of Chapter 3 in its Entirety and Insertion of the Replacement Chapter 3 by Commissioner McDaniel, seconded by Commissioner Goss, carried by a vote of 3-0.

2. Consider, on second reading, Ordinance #2007-18 to the Spalding County Code of Ordinances to provide for revisions to Part VI, Licensing and Regulation, Sale of Alcoholic Beverages for Consumption on Premises as to Condition of Premises; Restricted Acts; Qualifications of Licensee; and Distance Restriction from Adult Entertainment Establishments.

**SPALDING COUNTY, GEORGIA
ORDINANCE NO. 2007-18**

AN ORDINANCE TO PROHIBIT SPECIFIED TYPES OF ENTERTAINMENT, ATTIRE, AND CONDUCT UPON ANY PREMISES LICENSED TO SELL, SERVE, OR DISPENSE ALCOHOLIC BEVERAGES WITHIN THE UNINCORPORATED AREA OF SPALDING COUNTY, GEORGIA; TO REGULATE SPECIFIED TYPES OF EMPLOYMENT, LIVE ENTERTAINMENT, AND CONTESTS; TO ESTABLISH DISTANCE RESTRICTIONS BETWEEN LICENSED PREMISES AND ADULT ENTERTAINMENT ESTABLISHMENTS, AND FOR OTHER PURPOSES.

WHEREAS, on August 14, 2007, the Board of Commissioners of Spalding County, Georgia conducted an inquiry into the adverse secondary effects of adult entertainment establishments on the communities in which such establishments operate, which inquiry included the effects of adult entertainment in connection with the sale and consumption of alcoholic beverages; and

WHEREAS, as a result of this inquiry the Board of Commissioners have determined that adult entertainment in connection with the sale or consumption of alcoholic beverages has or may have serious adverse effects on the surrounding community, including an increase in certain types of criminal activity and a decrease in property values; and

WHEREAS, the nature of the Board of Commissioners' inquiry and findings resulting therefore are more fully described in 6-3001 of Spalding County's Ordinance Regulating Sexually Oriented Businesses, which findings and public purpose are expressly incorporated herein; and

WHEREAS, the Board of Commissioners hereby find and determine that it is in the best interest of the health, safety, welfare and morals of the citizens of Spalding County, Georgia, to regulate or prohibit to the fullest extent allowed by law the exhibition of nudity and conduct which emphasizes the exploitation of human sexuality at establishments licensed by Spalding County, Georgia to sell alcoholic beverages;

THEREFORE, BE IT ORDAINED THAT THE BOARD OF COMMISSIONERS OF SPALDING COUNTY, GEORGIA, AND IT IS ORDAINED BY THE AUTHORITY OF THE SAME, THAT ARTICLE C, CHAPTER ONE, PART VI OF THE CODE OF ORDINANCES IS AMENDED AS FOLLOWS:

Section 1. The Code of Ordinances is hereby amended at Article C, Chapter 1, Part VI, by repealing present Section 6-1071 in its entirety, and adopting in lieu thereof a new Section 6-1071 to read as follows:

“Sec. 6-1071. Condition of Premises; restricted acts.

The licensed premises shall be kept clean and shall be in full compliance with all regulations of Spalding County governing the conditions of premises; and:

- (a) The Spalding County health department shall regularly inspect such licensed premises to determine that such licensed premises are in compliance with all Spalding County and state health rules and regulations and report any violation to the county administrator.
- (b) The Spalding County fire department shall regularly inspect the premises to see that they are in compliance with all Spalding County and state fire regulations and report any violation to the county administrator.
- (c) The Spalding County inspections department shall regularly inspect the licensed premises to determine if the premises are in compliance with all technical codes of Spalding County and report any violation to the county administrator.

- (d) The Spalding County sheriff's department shall periodically inspect the premises to determine if the licensed premises are in compliance with all provisions of this article and report any violation to the county administrator.
- (e) The premises of a licensee hereunder shall be open to an inspection at any and all times by members of the board of commissioners or their designated officers, agents, or employees.
- (f) The following types of entertainment, attire, and conduct are prohibited upon any premises licensed to sell, serve, or dispense alcoholic beverages for consumption on such premises within the unincorporated area of Spalding County:
 - (1) The employment or use of any person, in any capacity, in connection with the sale or service of alcoholic beverages while such person is exposing any of his or her "specified anatomical areas" as defined in Spalding County's Ordinance Regulating Sexually Oriented Businesses;
 - (2) Live entertainment where any person appears in the manner described in paragraph (f)(1) of this section or where any person performs, or simulates the performance of, any "specified sexual activity" as defined in Spalding County's Ordinance Regulating Sexually Oriented Businesses;
 - (3) The holding, promotion, sponsoring, or allowance of any contest, promotion, special night, event, or any other activity where patrons of the licensed establishment are encouraged or allowed to engage in any of the conduct described in paragraphs (1) and (2) above;
 - (4) The operation of any "adult entertainment establishment" as defined in Spalding County's Ordinance Regulating Sexually Oriented Businesses, whether or not such business has applied for or received a license pursuant to Spalding County's Ordinance Regulating Sexually Oriented Businesses; and
 - (5) Nothing contained in paragraph (f) of Section 6-1071 shall apply to the premises of any mainstream theater, which means a theater, concert hall, museum, educational institution or similar establishment which regularly features live performances 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. For the purposes of this Ordinance, "mainstream theater" shall mean any establishment excluded from the definition of "adult entertainment establishment" in Spalding County's Ordinance Regulating Sexually Oriented Businesses, and the phrases "specified anatomical areas" and "specified sexual activities" have the same meaning defined for those terms in Spalding County's Ordinance Regulating Sexually Oriented Businesses.
- (g) It shall be unlawful for any person employed or working in any capacity on any licensed premises to solicit or encourage patrons to purchase drinks to be consumed by or otherwise disposed of by any such person so employed or working.
- (h) No licensee shall knowingly permit any person to remove any alcoholic beverage sold or dispensed on the licensed premises to adjacent or other premises for the purpose of viewing any conduct or activity prohibited on the licensed premises by this article.
- (i) It shall be unlawful for any licensee hereunder to offer at any time any promotion, including the promotion commonly known as "Happy Hour" or whatever called, whereby alcoholic beverages are sold at reduced prices, or greater than normal quantities are sold or a standard price, to promote or encourage earlier or greater consumption of such alcoholic beverages.
- (j) It shall be unlawful for any licensee hereunder to offer within one (1) hour before closing of the premises as required herein, any promotion by whatever name called, including but not limited to, a "last call, " whereby mixed drinks containing more than two (2) ounces of distilled spirits are offered at regular prices or other prices.
- (k) It shall be unlawful for any licensee to employ, encourage, permit or assist any person to engage in any conduct or activity in violation of this article. If the licensed premises are used for such prohibited conduct or practices, or should any licensee permit such prohibited conditions or conduct to exist or be practiced on the premises, it shall be cause for suspension or revocation of the license of the premises.

- (l) The performance of any of the acts described in paragraph (f), (g), (h), (i), (j), or (k) at any establishment licensed to sell alcoholic beverages shall be grounds for the suspension or revocation of such license.”

Section 2. The Code of Ordinances is hereby amended at Article C, Chapter 1, Part VI, Section 6-1055 as follows:

- (a) The existing first unnumbered paragraph of Section 6-1055 is renumbered as paragraph (a).
- (b) The following language shall be added as paragraph (b) of Section 6-1055: “No license shall be granted for any business for which a license is required pursuant to Spalding County’s Ordinance Regulating Sexually Oriented Businesses.”

Section 3. The Code of Ordinances is hereby amended at Article C, Chapter 1, Part VI, by adding Section 6-1058.2 as follows:

“Section 6-1058.2. Distance Restriction from Adult Entertainment Establishments.

No original license shall be granted hereunder to any person for the sale of alcoholic beverages for consumption on the premises unless the property upon which such premises is to be located is 1,000 feet or more from any parcel of land upon which an adult entertainment establishment, as defined by Spalding County’s Ordinance Regulating Sexually Oriented Businesses, is located. For purposes of this section, all distances shall be measured in a straight line, without regard to intervening structures or objects, from the nearest point of the building or structure used as part of the “premises” to the closest point on the property line of the parcel 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.”

Section 4. This Ordinance shall be effective five (5) days after it is enacted.

THIS ORDINANCE IS ADOPTED this the twenty-third day of August, 2007.

Motion to approve, on second reading, Ordinance #2007-18 to the Spalding County Code of Ordinances to provide for revisions to Part VI, Licensing and Regulation, Sale of Alcoholic Beverages for Consumption on Premises as to Condition of Premises; Restricted Acts; Qualifications of Licensee; and Distance Restriction from Adult Entertainment Establishments by Commissioner McDaniel, seconded by Commissioner Goss, carried 3-0.

Mr. Fortune pointed out that commissioners should realize in the last section of the Adult Entertainment Ordinance that this Ordinance becomes effective in 5 days, except in some instances 45 days, and paragraph (c) is not applicable to existing adult entertainment establishments.

III. ADJOURNMENT

Motion to adjourn at 5:52 p.m. by Commissioner McDaniel, seconded by Commissioner Goss, carried by a vote of 3-0.

 County Clerk

 Chairman

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