2020 CODE AMENDMENTS

Official Code of Cobb County

Part I. Chapters 6, 78, and 134

Package II (Version 2)
Draft Code Amendments
Strikethrough Version

Board of Commissioners Public Hearing Dates
August 25, 2020 – 7:00 p.m.
September 8, 2020 – 9:00 a.m.

Planning Commission Public Hearing Date
September 1, 2020
Chapter 134 only

Cobb County Government

Cobb County...Expect the Best!

Section 6-1 of the Official Code of Cobb County, Georgia is amended by amending the following definitions to read as follows:

Live entertainment means music, comedy, readings, dancing, acting or other entertainment~~, excluding adult entertainment,~~ performed on the site. This classification includes dancing by patrons to live or recorded music, but excludes live conduct characterized by nudity or semi-nudity.

Nightclub means an establishment which operates with its primary income generation from the sales of alcoholic beverages, and which may offer live entertainment. ~~Should any establishment defined herein provide to its patrons entertainment such that the entertainment establishment may also be classified or defined as an adult entertainment establishment pursuant to the provisions of chapter 78, article III, division 8, such establishment must additionally procure a valid license for the operation of an adult entertainment establishment in accordance and through compliance with all requirements of such article.~~ All ~~such~~ nightclubs shall be equipped with air condition and shall maintain an adequate kitchen with a valid full service health department permit and with a sufficient number of servers and employees for cooking, preparing and serving food and meals for their patrons, provided that nightclubs located in hotels having dining room and kitchen facilities may be excluded from the requirement of maintaining a kitchen in connection with such nightclub; and further provided that a nightclub located in certain mixed-use developments identified in Section 6-133 is excluded from the requirement of maintaining a kitchen. ~~The principal business of such nightclubs shall be entertainment, and the serving of food shall be incidental thereto.~~

Section 6-117(a) of the Official Code of Cobb County, Georgia is amended by adding a new subsection (a)(8) and by amending subsection (b) to read as follows:

(a) No alcoholic beverage license may be issued where the application or other evidence shows any of the following conditions to exist:

...

(8) That the alcoholic beverage license is sought for use at a sexually oriented business, as defined in chapter 78, article III, division 8 of this code.

(b) Notwithstanding the circumstances set out in subsections (a)(1) through (a)(7) of this section, the license review board or the board of commissioners may waive such circumstances and grant a license. No waiver may be granted for the circumstance set out in subsection (a)(8).

Section 6-238(d) of the Official Code of Cobb County, Georgia is amended to read as follows:

(d) Exception. Nothing contained in subparagraph (b) of this section shall apply to the premises of any theatre, concert hall, art center, museum, or similar establishment primarily devoted to the arts or theatrical performances, where the performances

that are presented are expressing matters of serious literary, artistic, scientific, or political value. The exception contained in this subparagraph (d) shall not apply to any sexually oriented business.

Chapter 78, Article III, Division 8 of the Official Code of Cobb County, Georgia, is replaced in its entirety and amended to read as follows:

CHAPTER 78 – LICENSES, PERMITS AND BUSINESSES

ARTICLE III. – SPECIAL LICENSES AND REGULATORY FEES

DIVISION 8. - SEXUALLY ORIENTED BUSINESSES

Sec. 78-320. - Purpose; findings and rationale.

(a) *Purpose.* It is the purpose of this division to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the County, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the County. The provisions of this division 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 division 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 division to condone or legitimize the distribution of obscene material.

(b) *Findings and Rationale.* Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Board of Commissioners, and on findings, interpretations, and narrowing constructions incorporated in the cases of City of Littleton v. Z.J. Gifts D-4, L.L.C., 541 U.S. 774 (2004); City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425 (2002); City of Erie v. Pap's A.M., 529 U.S. 277 (2000); City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986); Young v. American Mini Theatres, 427 U.S. 50 (1976); Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991); California v. LaRue, 409 U.S. 109 (1972); N.Y. State Liquor Authority v. Bellanca, 452 U.S. 714 (1981); Sewell v. Georgia, 435 U.S. 982 (1978); FW/PBS, Inc. v. City of Dallas, 493 U.S. 215 (1990); City of Dallas v. Stanglin, 490 U.S. 19 (1989); and

Stardust, 3007 LLC v. City of Brookhaven, 899 F.3d 1164 (11th Cir. 2018); HH-Indianapolis, LLC v. Consol. City of Indianapolis/Marion County, 889 F.3d 432 (7th Cir. 2018); HH-Indianapolis, LLC v. Consol. City of Indianapolis/Marion County, 265 F. Supp. 3d 873 (S.D. Ind. 2017); Flanigan's Enters., Inc. v. City of Sandy Springs, 703 F. App'x 929 (11th Cir. 2017); Stardust 3007, LLC v. City of Brookhaven, 348 Ga. App. 711 (2019); Maxim Cabaret, Inc. v. City of Sandy Springs, 304 Ga. 187 (2018); Oasis Goodtime Emporium I, Inc. v. City of Doraville, 297 Ga. 513 (2015); Trop, Inc. v. City of Brookhaven, 296 Ga. 85 (2014); Goldrush II v. City of Marietta, 267 Ga. 683 (1997); Flanigan's Enters., Inc. v. Fulton County, 596 F.3d 1265 (11th Cir. 2010); Peek-a-Boo Lounge v. Manatee County, 630 F.3d 1346 (11th Cir. 2011); Daytona Grand, Inc. v. City of

Daytona Beach, 490 F.3d 860 (11th Cir. 2007); Jacksonville Property Rights Ass'n, Inc. v. City of Jacksonville, 635 F.3d 1266 (11th Cir. 2011); Artistic Entertainment, Inc. v. City of Warner Robins, 331 F.3d 1196 (11th Cir. 2003); Artistic Entertainment, Inc. v. City of Warner Robins, 223 F.3d 1306 (11th Cir. 2000); Williams v. Morgan, 478 F.3d 1316 (11th Cir. 2007); Gary v. City of Warner Robins, 311 F.3d 1334 (11th Cir. 2002); Ward v. County of Orange, 217 F.3d 1350 (11th Cir. 2002); Boss Capital, Inc. v. City of Casselberry, 187 F3d 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); 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); Starship Enters. of Atlanta, Inc. v. Coweta County, No. 3:09-CV-123, R. 41 (N.D. Ga. Feb. 28, 2011); High Five Investments, LLC v. Floyd County, No. 4:06-CV-190, R. 128 (N.D. Ga. Mar. 14, 2008); 10950 Retail, LLC v. Fulton County, No. 1:06-CV-1923, R. 62 Order (N.D.

Ga. Dec. 21, 2006); 10950 Retail, LLC v. Fulton County, No. 1:06-CV-1923, R. 84 Contempt Order (N.D. Ga. Jan. 4, 2007); Z.J. Gifts D-4, L.L.C. v. City of Littleton, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001); People ex rel. Deters v. The Lion's Den, Inc., Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005); Reliable Consultants, Inc. v. City of Kennedale, No. 4:05-CV-166-A, Findings of Fact and Conclusions of Law (N.D. Tex. May 26, 2005); Starship Enterprises of Atlanta, Inc. v. Gwinnett County, No. 17A-00699-1 (Order Granting Summary Judgment and Permanent Injunction, Jan. 12, 2018);

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

(1) Sexually oriented businesses, 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) Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with

such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.

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

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

Sec. 78-321. - Definitions.

For purposes of this division, 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, and where a fee is charged to access the booths or rooms or to view the images displayed on the image-producing devices.

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 percent of the establishment's displayed merchandise consists of said items; or

(b) At least 25 percent 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 percent 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 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 where films or videos characterized by their emphasis upon "specified sexual activities" or "specified anatomical areas" are regularly shown.

Characterized by means describing the essential character or quality of an item. As applied in this division, no business shall be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

Church means a place where persons regularly assemble for religious worship.

County means Cobb County, Georgia.

Director means the Director of the Cobb County Community Development Agency or his or her designee.

Employ, employee, and employment describe and pertain to any person who works or engages in activity for pay on the premises of a sexually oriented business, 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.

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 an employee of the County, who is licensed to practice law in Georgia, and retained to serve as an independent tribunal to conduct hearings under this division.

Hospital means a building or portion thereof designed and used for therapeutic treatment of bed patients who are physically or mentally ill.

Influential interest means the actual power to control or influence the operation, management, or policies of the sexually oriented business or legal entity which operates the sexually oriented business. An individual is deemed to have an "influential interest" if he or she (1) is the on-site general manager of the sexually oriented business, (2) owns a financial interest of 30 percent 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 sexually oriented business.

Licensee means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In the case of an employee, it shall mean the person in whose name the sexually oriented business 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 division, a "fully opaque covering" must be non-flesh colored, shall not consist of any substance that can be washed or peeled off the skin (such as paint, make-up, or latex), and shall not simulate the appearance of the anatomical area that it covers.

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

Operator means any person on the premises of a sexually oriented business who manages, supervises, or controls the business or a portion thereof. A person may be found to be an operator regardless of whether such person is an owner, part owner, or licensee of the business.

Package store means a business establishment whose primary business activity is the retail sale of alcoholic beverages by the package.

Park means any lands or facility owned, operated, controlled or managed by any county, city or federal government or any governmental entity in and upon which recreational activities or places are provided for the recreation and enjoyment of the general public.

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

Premises means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the sexually oriented business.

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.

Residence means a house, apartment, mobile home, boardinghouse or roominghouse, duplex or other multifamily housing for human dwelling, or any property zoned therefor.

School means state, county, city, church or other schools, public or private, as teach the subjects commonly taught in the common schools of this state, and vocational schools, colleges, post-high-school learning centers, kindergartens and day care centers for persons of all ages.

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. 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.

Sexual device means any three 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 intended 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 any 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 primarily dedicated to providing durable medical equipment.

Sexually oriented business means an adult arcade, an adult bookstore, and adult cabaret, an adult motion picture theater, or a sexual device shop.

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 subsection (a) of this definition.

Transfer of ownership or control of a sexually oriented business 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 a sexually oriented business would ordinarily be positioned while watching a film, videocassette, digital video disc, or other video on an image-producing device.

Sec. 78-322. - License required.

(a) Sexually Oriented Business License. It shall be unlawful for any person to operate a sexually oriented business in the County without a valid sexually oriented business license.

(b) Employee License. It shall be unlawful for any person to be an employee, as defined in this division, of a sexually oriented business in the County without a valid sexually oriented business employee license, except that a person who is a licensee under a valid sexually oriented business license shall not be required to also obtain a sexually oriented business employee license. It shall be unlawful for any person who operates a sexually oriented business to employ a person at the establishment who does not have a valid sexually oriented business employee license.

(c) Application. An applicant for a sexually oriented business license or a sexually oriented business employee license shall file in person at the office of the Community Development Agency (or other office designated by the Director) a completed application made on a form provided by the Director. A sexually oriented business may designate an individual with an influential interest in the business to file its application for a sexually oriented business 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 license 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 a sexually oriented business license, the business name, location, legal description, mailing address and phone number of the sexually oriented business.

(5) If the application is for a sexually oriented business 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 division, 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 sexually oriented business in which an applicant has had an influential interest, has, in the previous five (5) years, and at a time during which the applicant had the influential interest:

(i) Been found by a court of law to have been operating unlawfully;

(ii) Been enjoined from engaging in conduct prohibited by law;

(iii) Been held in contempt of court for operating contrary to a court order;

(iv) Been declared by a court of law to be a nuisance; or

(v) Been subject to an order of closure.

(8) An application for a sexually oriented business 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 division shall submit a diagram indicating that the setup and configuration of the premises meets the requirements of the applicable regulations. See Sections 78-332 and 78-336. The Director may waive the requirements of this subsection (8) for a renewal application if the applicant adopts a legal description and a sketch or diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(9) A signed and sworn affidavit verifying the applicant's lawful presence in the United States as required by O.C.G.A. § 50-36-1. If the applicant is a partnership, limited liability company, corporation, or other legal entity, a signed and sworn affidavit verifying the lawful presence of each individual that executes the application on behalf of the applicant. With regard to a renewal application, if an individual has previously complied with the requirements of this subsection (9), the Director may waive the requirements of this subsection for that individual.

(10) If the application is for a sexually oriented business license, a signed and sworn affidavit attesting that the establishment either uses the federal work authorization program in accordance with federal regulations or that the applicant employs fewer than 11 people or otherwise does not fall within the requirements of O.C.G.A. § 36-60-6.

(11) If the application is for a sexually oriented business employee license, the name and address of the establishment where the applicant intends to use the employee license.

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

(d) Signature. A person who seeks a sexually oriented business employee license under this section shall sign the application for a license. If a person who seeks a sexually oriented business license under this section is an individual, he shall sign the application for a license as applicant. If a person who seeks a sexually oriented business license is other than an individual, each person with an influential interest in the sexually oriented business or in a legal entity that controls the sexually oriented business shall sign the application for a license as applicant. Each applicant must be qualified under this division 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 division shall be maintained by the office of the Director on a confidential basis, and such information may be disclosed only 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.

Sec. 78-323. - Issuance of license.

(a) Sexually Oriented Business License. Upon the filing of a completed application for a sexually oriented business license, the applicant shall be considered to hold a Temporary License if the completed application is from a sexually oriented business that was lawfully commenced, and is lawfully operating, in the County and the completed application indicates that the applicant is entitled to an annual sexually oriented business license. The Temporary License shall expire upon the final decision of the County to deny or grant an annual license. Within thirty (30) days of the filing of a completed sexually oriented business license application, the Director shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The Director shall issue a license unless:

(1) An applicant is less than eighteen (18) years of age.

(2) An applicant has failed to provide information required by this division for issuance of a license or has falsely answered a question or request for information on the application form.

(3) The license fee required by this division has not been paid.

(4) The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this division.

(5) The sexually oriented business, as defined herein, is not in compliance with Section 78-338 of this division or the location requirements in Chapter 134 of the Official Code of Cobb County.

(6) Any sexually oriented business in which an applicant has had an influential interest, has, in the previous five (5) years, and at a time during which the applicant had the influential interest:

(i) Been found by a court of law to have been operating unlawfully;

(ii) Been enjoined from engaging in conduct prohibited by law;

(iii) Been held in contempt of court for operating contrary to a court order;

(iv) Been declared by a court of law to be a nuisance; or

(v) Been subject to an order of closure.

(7) An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this division.

(8) An applicant has, in the previous five (5) years, engaged in any misrepresentation of fact, or omission of material fact, concerning the nature of the business for which the license is sought.

(b) Employee License. Upon the filing of a completed application for a sexually oriented business employee license, the applicant shall be considered to hold a Temporary License if the applicant seeks licensure to work in a licensed sexually oriented business and the completed application indicates that the applicant is entitled to an annual sexually oriented business employee license. The Temporary License shall expire upon the final decision of the County to deny or grant an annual license. Within thirty (30) days of the filing of a completed sexually oriented business employee license application, the Director shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The Director shall issue a license unless:

(1) The applicant is less than 18 years of age.

(2) The applicant has failed to provide information as required by this division for issuance of a license or has falsely answered a question or request for information on the application form.

(3) The license fee required by this division has not been paid.

(4) Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five (5) years, and at a time during which the applicant had the influential interest:

(i) Been found by a court of law to have been operating unlawfully;

(ii) Been enjoined from engaging in conduct prohibited by law;

(iii) Been held in contempt of court for operating contrary to a court order;

(iv) Been declared by a court of law to be a nuisance; or

(v) Been subject to an order of closure.

(5) The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this division.

(6) The applicant has expressed the intent to use the sexually oriented business employee license at an establishment that is not licensed by the County to operate a sexually oriented business.

(c) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the issued license number and its expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time that the business is occupied by patrons or is open to the public. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working.

(d) No license under this division shall be considered valid if the applicant submitted false information to obtain the license.

Sec. 78-324. - Fees.

The fees for sexually oriented business licenses and sexually oriented business employee licenses shall be as set forth in the schedule of fees as adopted by the board of commissioners.

Sec. 78-325. - Inspection.

Sexually oriented businesses and sexually oriented business employees shall permit the Director and his or her agents to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this division, during those times when the sexually oriented business 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 division.

Sec. 78-326. - 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 division. 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.

Sec. 78-327. - Suspension.

(a) The Director shall issue a written notice of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if the sexually oriented business licensee has knowingly or recklessly violated this division or has knowingly or recklessly allowed an employee or any other person to violate this division.

(b) The Director shall issue a written notice of intent to suspend a sexually oriented business employee license for a period not to exceed thirty (30) days if the employee licensee has knowingly or recklessly violated this division.

Sec. 78-328. - Revocation.

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

(b) The Director shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if:

(1) The licensee has knowingly given false information in the application for the sexually oriented business license or the sexually oriented business employee license;

(2) The licensee has failed to meet or maintain the qualifications to be issued or to hold the license;

(3) The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises of the sexually oriented business;

(4) The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises of the sexually oriented business;

(5) The licensee knowingly or recklessly operated the sexually oriented business during a period of time when the license was finally suspended or revoked;

(6) 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 sexually oriented business;

(7) 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 sexually oriented business;

(8) 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 sexually oriented business; or

(9) The licensee has knowingly or recklessly allowed three (3) or more violations of this division within a twelve-month period.

(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 division, the County revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for one (1) year from the date revocation becomes effective.

Sec. 78-329. - Hearing; license denial, suspension, revocation; appeal.

(a) When the Director issues a written notice of intent to deny, suspend, or revoke a license, the Director shall immediately send such notice, which shall state the grounds under this division for such action, to the applicant or licensee by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the Director for the applicant or licensee. The notice shall also set forth the following: The applicant or licensee shall have ten (10) days after the delivery of the written notice to submit, at the office of the Director, a written request for a hearing. If the applicant or licensee does not request a hearing within said ten (10) days, the Director's written notice shall become a final denial, suspension, or revocation, as the case may be, on the fifteenth (15th) day after it is delivered to the applicant or licensee.

(b) If the applicant or licensee (hereafter, "petitioner") does make a written request for a hearing within said ten (10) days, then the Director shall, within ten (10) days after the submission of the request, send a notice to the petitioner indicating the date, time, and place of the hearing. The hearing shall be conducted not less than ten (10) days nor more than twenty (20) days after the date that the hearing notice is issued. The hearing may be transcribed by either party.

(c) At the hearing, the petitioner shall have the opportunity to present all relevant arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the Director's witnesses. The Director may also be represented by counsel, present evidence and witnesses, and cross-examine any of the petitioner's witnesses. The hearing shall take no longer than one (1) day, unless extended at the request of the petitioner to meet the requirements of due process and proper administration of justice. The Hearing Officer shall affirm the Director's licensing decision if any substantial evidence in the record at the hearing supports any of the grounds set forth in the written notice of intent to deny, suspend, or revoke. The Hearing Office shall issue a final written decision, including specific reasons for the decision pursuant to this division, to the petitioner 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 Director's licensing decision, the Hearing Officer shall, contemporaneously with the issuance of the decision, order the Director to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the petitioner in writing by certified mail of such action. If the petitioner is not yet licensed, the Director shall contemporaneously therewith issue the license to the applicant.

(e) If any court action challenging a licensing decision is initiated, the County shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any sexually oriented business that is lawfully operating as a sexually oriented business, or any sexually oriented business employee that is lawfully employed as a sexually oriented business employee, on the date on which the completed business or employee application, as applicable, is filed with the Director: Upon the filing of

any court action to appeal, challenge, restrain, or otherwise enjoin the County's enforcement of any denial, suspension, or revocation of a license, the Director shall immediately issue the petitioner a Provisional License. The Provisional License shall allow the petitioner to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the petitioner's appeal or other action to restrain or otherwise enjoin the County's enforcement. While a Provisional License is in effect, the provisional licensee shall comply with the regulations set forth in Sections 78-325, 78-331, 78-332, 78-333, and 78-336, and any violations thereof shall be subject to the provisions of Section 78-334.

Sec. 78-330. - Transfer of license.

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

Sec. 78-331. - Hours of operation.

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

Sec. 78-332. - 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 a sexually oriented business license shall contain a diagram of the premises showing the location of all operator's stations, booths or viewing rooms, overhead lighting fixtures, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The Director may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(2) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.

(3) The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.

(4) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no specified sexual activity occurs in or on the premises.

(5) It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:

(i) That the occupancy of viewing rooms less than 100 square feet is limited to one person.

(ii) That specified sexual activity on the premises is prohibited.

(iii) That the making of openings between viewing rooms is prohibited.

(iv) That violators will be required to leave the premises.

(v) That violations of these regulations are unlawful.

(6) It shall be the duty of the operator to enforce the regulations articulated in subsections (5)(i) though (iv) of this section.

(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.

Sec. 78-333. - Loitering, exterior lighting and monitoring, and interior lighting requirements.

(a) It shall be the duty of the operator of a sexually oriented business to:

(1) Ensure that at least two conspicuous signs stating that no loitering is permitted on the premises are posted on the premises;

(2) 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

(3) 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 a sexually oriented business 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 sexually oriented business 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.

Sec. 78-334. - Penalties and enforcement.

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

(b) Any premises, building, dwelling, or other structure in which a sexually oriented business is repeatedly operated or maintained in violation of this division shall constitute a nuisance and shall be subject to civil abatement proceedings in a court of competent jurisdiction.

(c) The County's legal counsel is hereby authorized to institute civil proceedings necessary for the enforcement of this division to enjoin, prosecute, restrain, or correct violations hereof. Such proceedings shall be brought in the name of the County, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this division, or any of the laws in force in the County or to exempt anyone violating this code or any part of the said laws from any penalty which may be incurred.

Sec. 78-335. – Applicability of division to existing businesses.

(a) Licensing Requirements. All sexually oriented businesses lawfully operating in the County in compliance with all state and local laws prior to the effective date of this division, and all

sexually oriented business employees working in the County prior to the effective date of this division, are hereby granted a *De Facto* Temporary License to continue operation or employment for a period of ninety (90) days following the effective date of this division. Within sixty (60) days following the effective date of this division, all sexually oriented businesses and sexually oriented business employees must apply for a license under this division.

(b) Interior Configuration Requirements. Any sexually oriented business that is required to, but does not, have interior configurations or stages that meet at least the minimum requirements of Section 78-332 and Subsection 78-336(b) shall have ninety (90) days from the effective date of this division 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) above, sexually oriented businesses shall comply with this division on the date that it takes effect.

Sec. 78-336. – Prohibited conduct.

(a) No patron, employee, or any other person shall knowingly or intentionally, in a sexually oriented business, appear in a state of nudity or engage in a specified sexual activity.

(b) No person shall knowingly or intentionally, in a sexually oriented business, 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 a sexually oriented business shall knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business. No customer shall knowingly or intentionally touch such an employee or the clothing of such an employee on the premises of a sexually oriented business.

(d) No person shall possess, use, or consume alcoholic beverages on the premises of a sexually oriented business.

(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 a sexually oriented business.

(f) No operator of a sexually oriented business shall knowingly or recklessly allow a room in the sexually oriented business 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 sexually oriented business, unless an operator of the sexually oriented business is present in the same room.

(g) No operator or licensee of a sexually oriented business shall violate the regulations in this section or knowingly or recklessly allow an employee or any other person to violate the regulations in this section.

(h) A sign in a form to be prescribed by the Director, and summarizing the provisions of subsections (a), (b), (c), (d), and (e) of this section, shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry. No person shall cover, obstruct, or obscure said sign.

Sec. 78-337. - Scienter required to prove violation or business licensee liability.

This division 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 division. Notwithstanding anything to the contrary, for the purposes of this division, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the sexually oriented business licensee for purposes of finding a violation of this division, 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.

Sec. 78-338. - Location of sexually oriented businesses.

(a) It shall be unlawful to establish, operate, or cause to be operated a sexually oriented business in unincorporated Cobb County that is:

(1) Within 750 feet of a residence or residential zoning district;

(2) Within 1,500 feet of a church, school, governmentally owned or operated building, library, civic center, public park, hospital, community club, or prison;

(3) Within 1,000 feet of another sexually oriented business; or

(4) Within 500 feet of an establishment licensed to sell alcoholic beverages for consumption on the premises or to sell alcoholic beverages as a package store.

(b) For the purpose of this section, measurements shall be made in a straight line from the closest part of any structure occupied by the sexually oriented business to the closest property line of the zoned property and uses identified in subsection (a), above. Where a use identified in subsection (a) is located in a multi-tenant development, the distance shall be measured to the closest part of the tenant space occupied by that use rather than the property line of the entire development, so as to maximize the number of locations available to sexually oriented businesses.

(c) Notwithstanding any provision in the Official Code of Cobb County, Georgia to the contrary, a sexually oriented business in a location that satisfies the standards in this section shall not be deemed noncompliant with this section by virtue of the subsequent establishment or expansion of a land use or zoning district identified in subsection (a).

(d) *Amortization.*

(1) As used in this section, "lawful nonconforming sexually oriented business" means a business that qualifies as a sexually oriented business, as defined in this division, that:

(i) was, in all respects, lawfully: established, continuously licensed, and continuously operated until this division was adopted;

(ii) has continuously, lawfully operated since this division was adopted; and

(iii) does not conform to the location standards for sexually oriented businesses set forth in this Section 78-338 or in Chapter 134 of the Official Code of Cobb County, Georgia.

(2) Notwithstanding anything to the contrary in the Official Code of Cobb County, Georgia, a lawful nonconforming sexually oriented business may continue to operate in its nonconforming location until December 31, 2021, in order to make a reasonable recoupment of its investment in said location that was made before the adoption of this division. On or before January 1, 2022, the sexually oriented business shall conform to the location standards for sexually oriented businesses in the Official Code of Cobb County, Georgia.

(3) Hardship extension. A lawful nonconforming sexually oriented business may apply to extend the time to operate its sexually oriented business 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, 2021. 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 sexually oriented business, shall specify the length of extension requested, and shall include evidence of purchase and improvement costs, income earned and lost, depreciation, and costs of relocation. The application shall include an electronic copy of the business's accounting or bookkeeping records, including the computer file(s) maintained in QuickBooks or any similar accounting or bookkeeping software. Within 20 days after receiving the application, the Director shall schedule a public hearing on the application before the Hearing Officer, which public hearing shall be conducted within 45 days after the Director's receipt of the application. Notice of the time and place of such public hearing shall be published at least ten days before the hearing on the County's website or in a newspaper of general circulation published within the County, and shall identify the particular business and location for which the hardship extension is requested.

(5) The Hearing Officer shall issue a written decision within ten days after the public hearing on the application for a hardship extension. The hardship extension shall be limited to a period of up to one year, as proven necessary by the applicant. The hardship extension shall be granted only upon a showing that the applicant is a lawful nonconforming sexually oriented business and is unable to recoup its investments, made prior to the effective date of this division, in its current location unless the hardship extension is granted.

Sec. 78-339. - Severability.

This division and each section and provision of said division hereunder, are hereby declared to be independent sections and subsections and, not withstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any

provisions of said division, 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 division be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this division.

Sec. 78-340. - Conflicting code provisions repealed.

Any provisions in this Code specifically in conflict with any provision in this division is hereby deemed inoperative and repealed.

Secs. 78-341—78-389. - Reserved.

Section 134-1 of the Official Code of Cobb County, Georgia is amended by deleting the following term and definition, as follows:

~~*Distance and measurement.* Distance from the proposed premises of an adult entertainment establishment shall be the measurement in lineal feet from the center of any door of customer entry of the proposed premises of the adult entertainment establishment to the nearest property line of any church, library, school, college, public park, residence or hospital. If the establishment is not on ground level, then the beginning point for measuring the distance shall be the point at ground level determined by measuring from the center of any door of customer entry perpendicular to the ground level. A radius shall be measured from the center of any door of customer entry of the proposed premises to the nearest property line of any church, library, school, college, public park, residence or hospital.~~

Section 134-1 of the Official Code of Cobb County, Georgia is amended by amending the following definition, to read as follows:

Live entertainment means music, comedy, readings, dancing, acting or other entertainment~~, excluding adult entertainment,~~ performed on the site. This classification includes dancing by patrons to live or recorded music, but excludes live conduct characterized by nudity or semi-nudity.

Section 134-1 of the Official Code of Cobb County, Georgia is amended by adding the following term and definition, to read as follows:

Sexually oriented business. An adult arcade, an adult bookstore, and adult cabaret, an adult motion picture theater, or a sexual device shop, as those terms are defined in section 78-321 of Official Code of Cobb County, Georgia.

Section 134-37(a)(8) of the Official Code of Cobb County, Georgia is amended to delete the term "Adult entertainment establishments" from the list of uses that require a special land use permit, to read as follows:

(8) ~~Adult entertainment establishments.~~ [Reserved.]

Section 134-192 of the Official Code of Cobb County, Georgia is amended to delete the term "Adult entertainment establishments" and to replace it with the term "Sexually oriented businesses" where that term appears in the Summary of uses charts within that section.

Section 134-192 of the Official Code of Cobb County, Georgia is amended so that the Summary of uses chart that concerns the uses allowed in the GC, LI, and HI districts (among other

districts) is amended to delete the term "Adult entertainment establishments" and to replace it with the term "Sexually oriented businesses", and to reflect that sexually oriented businesses are Permitted Uses in the LI and HI districts and are not allowed in the GC district, as depicted below:

TYPE OF USE	OHR	OS	NS	PSC	TS	GC	RRC	IF	LI	HI
...										
~~Adult entertainment establishments~~ Sexually oriented businesses (*subject to section 78-338)						~~SLUP/ SE~~			P*	P*
...										

Section 134-193(11)(b) (concerning use limitations in the R-80 single-family residential district) of the Official Code of Cobb County, Georgia is amended to read as follows:

b. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-195(12)(b) (concerning use limitations in the R-40 single-family residential district) of the Official Code of Cobb County, Georgia is amended to read as follows:

b. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-196(12)(b) (concerning use limitations in the R-30 single-family residential district) of the Official Code of Cobb County, Georgia is amended to read as follows:

b. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-197(12)(b) (concerning use limitations in the R-20 single-family residential district) of the Official Code of Cobb County, Georgia is amended to read as follows:

b. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-198(12)(b) (concerning use limitations in the R-15 single-family residential district) of the Official Code of Cobb County, Georgia is amended to read as follows:

b. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-199(12)(f) (concerning use limitations in the R-12 single-family residential district) of the Official Code of Cobb County, Georgia is amended to read as follows:

f. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-201(12)(f) (concerning use limitations in the RA-4 single-family attached/detached residential district) of the Official Code of Cobb County, Georgia is amended to read as follows:

f. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-201.2(12)(f) (concerning use limitations in the RA-5 single-family attached/detached residential district) of the Official Code of Cobb County, Georgia is amended to read as follows:

f. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-201.3(12)(d) (concerning use limitations in the SC suburban condominium residential district) of the Official Code of Cobb County, Georgia is amended to read as follows:

d. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-202(12)(f) (concerning use limitations in the RA-6 single-family attached/detached residential district) of the Official Code of Cobb County, Georgia is amended to read as follows:

f. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-203.2(11)(f) (concerning use limitations for RSL nonsupportive residential units) of the Official Code of Cobb County, Georgia is amended to read as follows:

f. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-203.3(3) (concerning uses not permitted for RSL nonsupportive urban rental units) of the Official Code of Cobb County, Georgia is amended to read as follows:

(3) *Permitted uses.* Anything not permitted or allowed by special exception is prohibited. Permitted uses are as follows:

Attached residential units.

Detached residential units.

Accessory retail uses in RSL.

Further provided that no ~~adult entertainment uses~~ sexually oriented businesses or automotive uses shall be allowed.

Neighborhood retail uses provided that the total square footage of the uses does not exceed ten percent of the total floor area of the structure(s). Further provided that no ~~adult entertainment uses~~ sexually oriented businesses or automotive uses shall be allowed.

Section 134-203.3(11)(e) (concerning use limitations for RSL nonsupportive urban rental units) of the Official Code of Cobb County, Georgia is amended to read as follows:

e. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-204(12)(e) (concerning use limitations in the RM-8 residential multifamily district) of the Official Code of Cobb County, Georgia is amended to read as follows:

e. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-205(12)(e) (concerning use limitations in the FST fee simple townhouse residential district) of the Official Code of Cobb County, Georgia is amended to read as follows:

e. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-206(12)(f) (concerning use limitations in the RM-12 residential multifamily district) of the Official Code of Cobb County, Georgia is amended to read as follows:

f. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-207(12)(e) (concerning use limitations in the RM-16 residential multifamily district) of the Official Code of Cobb County, Georgia is amended to read as follows:

e. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-211(11)(e) (concerning use limitations in the LRO low-rise office district) of the Official Code of Cobb County, Georgia is amended to read as follows:

e. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-213(12)(*l*) (concerning use limitations in the NRC neighborhood retail commercial district) of the Official Code of Cobb County, Georgia is amended to read as follows:

l. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-214(11)(j) (concerning use limitations in the LRC limited retail commercial district) of the Official Code of Cobb County, Georgia is amended to read as follows:

j. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-215(13)(e) (concerning use limitations in the O&I office and institutional district) of the Official Code of Cobb County, Georgia is amended to read as follows:

e. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-216(12)(d) (concerning use limitations in the UVC urban village commercial district) of the Official Code of Cobb County, Georgia is amended to read as follows:

d. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-217(13)(p) (concerning use limitations in the PVC planned village community district) of the Official Code of Cobb County, Georgia is amended to read as follows:

p. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-218(13)(f) (concerning use limitations in the CRC community retail commercial district) of the Official Code of Cobb County, Georgia is amended to read as follows:

f. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-219(12)(h) (concerning use limitations in the RMR residential mid-rise district) of the Official Code of Cobb County, Georgia is amended to read as follows:

h. No ~~adult~~ entertainment uses sexually oriented businesses are permitted.

Section 134-220(12)(e) (concerning use limitations in the OMR office mid-rise district) of the Official Code of Cobb County, Georgia is amended to read as follows:

e. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-221(12)(j) (concerning use limitations in the RHR residential high-rise district) of the Official Code of Cobb County, Georgia is amended to read as follows:

j. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-221.1(3) (concerning uses not permitted in the UC urban condominium residential district) of the Official Code of Cobb County, Georgia is amended to read as follows:

(3) Permitted uses. Anything not permitted or allowed by special exception or condominium declaration and bylaws is prohibited. Permitted uses are as follows:

Condominiums.

Customary home occupations.

Designated recycling collection locations.

Livestock, nondomestic and wild animals, and poultry, on two or more acres.

Neighborhood retail uses, provided that the total square footage of the uses does not exceed ten percent of the total floor area of the condominium structure(s). Further provided that no ~~adult entertainment uses~~ sexually oriented businesses or automotive related uses shall be allowed.

Parking for vehicles.

Personal vehicle and equipment sales.

Section 134-221.1(12)(d) (concerning use limitations in the UC urban condominium residential district) of the Official Code of Cobb County, Georgia is amended to read as follows:

d. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-223(13)(c) (concerning use limitations in the OS office/service district) of the Official Code of Cobb County, Georgia is amended to read as follows:

c. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-224(13)(h) (concerning use limitations in the NS neighborhood shopping district) of the Official Code of Cobb County, Georgia is amended to read as follows:

h. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-225(12)(k) (concerning use limitations in the PSC planned shopping center district) of the Official Code of Cobb County, Georgia is amended to read as follows:

k. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-226(2)(a) (concerning definitions used in regulations for the TS tourist services district) of the Official Code of Cobb County, Georgia is amended to read as follows:

a. ~~Adult entertainment. See section 134-268 for definitions which apply to all adult entertainment establishments.~~ [Reserved.]

Section 134-227(2)(a) (concerning definitions used in regulations for the GC general commercial district) of the Official Code of Cobb County, Georgia is amended to read as follows:

a. ~~Adult entertainment. See section 78-321 for definitions which apply to all adult entertainment establishments.~~ [Reserved.]

Section 134-227(3) of the Official Code of Cobb County, Georgia is amended by deleting "Adult entertainment" from the list of permitted uses in the GC general commercial district, to read as follows:

(3) *Permitted uses.* Permitted uses are as follows:

~~Adult entertainment.~~

Ambulance services, if accessory to a hospital or funeral home.

...

Section 134-227(12)(a) of the Official Code of Cobb County, Georgia is amended by deleting "Adult entertainment establishments" from the list of uses that are limited to locating in a regional activity center as a special exception use, to read as follows:

a. ~~Adult entertainment establishments (see section 134-268 for required standards).~~ [Reserved.]

Section 134-228(12)(g) (concerning use limitations in the RRC regional retail commercial district) of the Official Code of Cobb County, Georgia is amended to read as follows:

g. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-230(3) of the Official Code of Cobb County, Georgia is amended by adding "Sexually oriented businesses" to the list of permitted uses in the LI light industrial district, to read as follows:

(3) *Permitted uses.* Permitted uses are as follows:

...

Self-service storage facilities (subject to section 134-279).

Sexually oriented businesses (subject to section 78-338).

Shelters (homeless).

...

Section 134-231(3) of the Official Code of Cobb County, Georgia is amended by adding "Sexually oriented businesses" to the list of permitted uses in the HI heavy industrial district, to read as follows:

(3) *Permitted uses.* Permitted uses are as follows:

...

Self-service storage facilities (subject to section 134-279).

Sexually oriented businesses (subject to section 78-338.)

Shelters (homeless).

...

Section 134-272(5)(d) (concerning parking requirements) of the Official Code of Cobb County, Georgia is amended to delete the term "Adult entertainment establishments" and to replace it with the term "Sexually oriented businesses" where that term appears in the table within that section, as depicted below:

Type of Use	Parking Requirements
...	
Adult entertainment ~~establishments~~ Sexually oriented businesses	1 space per 100 square feet (net) of floorspace.
...	