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## Chapter 13

### ADULT ENTERTAINMENT

#### ARTICLE I. IN GENERAL

**Secs. 13-1—13-30. Reserved.**

#### ARTICLE II. ADULT ENTERTAINMENT ESTABLISHMENTS<sup>1</sup>

##### ***DIVISION 1. GENERALLY***

###### **Sec. 13-31. Rationale and findings.**

- (a) *Purpose.* It is the purpose of this article to regulate sexually oriented businesses in order to promote the health, safety, morals, 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 article 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 article 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 article to condone or legitimize the distribution of obscene material.
- (b) *Findings and rationale.* Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the City Council, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 124 S.Ct. 2219 (June 7, 2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *Pap's A.M. v. City of Erie*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 426 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); and *Artistic Entertainment, Inc. v. City of Warner Robins, GA*, 331 F.3d 1196 (11th Cir. 2003); *Artistic Entertainment, Inc. v. City of Warner Robins, GA*, 223 F.3d 1306 (11th Cir. 2000); *Williams v. Pryor*, 240 F.3d 944 (11th Cir. 2001); *Williams v. A.G. of Alabama*, 378 F.3d 1232 (11th Cir. 2004); *Gary v. City of Warner Robins*, 311 F.3d 1334 (11th Cir. 2002); *Ward v. County of Orange*, 217 F.3d 1350 (11th Cir. 2000); *Boss Capital, Inc. v. City of Casselberry*, 187 F.3d 1251 (11th Cir. 1999); *David Vincent, Inc. v. Broward*

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<sup>1</sup>State law reference(s)—Giving massages in places used for lewdness, prostitution, assignation or masturbation for hire, O.C.G.A. § 16-6-17; giving of massages in places used for lewdness, prostitution or masturbation for hire, O.C.G.A. § 16-6-17; nudity and related acts on premises where alcoholic beverages are sold, O.C.G.A. § 3-3-40 et seq.; restriction of adult bookstores and movie houses to certain areas, O.C.G.A. § 36-60-3; establishment, maintenance or use of building, structure or place for unlawful sexual purposes, O.C.G.A. § 41-3-1.

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*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); *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); and other cases, including: *Fairfax MK, Inc. v. City of Clarkston*, 274 Ga. 520 (2001); *Morrison v. State*, 272 Ga. 129 (2000); *Sewell v. Georgia*, 233 S.E.2d 187 (Ga. 1977), dismissed for want of a substantial federal question, 435 U.S. 982 (1978) (sexual devices); *Flippen Alliance for Community Empowerment, Inc. v. Brannan*, 601 S.E.2d 106 (Ga. 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); and based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Grove, California - 1991; Houston, Texas - 1983, 1997; Phoenix, Arizona - 1979, 1995-98; Chattanooga, Tennessee - 1999-2003; Minneapolis, Minnesota - 1980; Los Angeles, California - 1977; Whittier, California - 1978; Spokane, Washington - 2001; St. Cloud, Minnesota - 1994; Littleton, Colorado - 2004; Oklahoma City, Oklahoma - 1986; Dallas, Texas - 1997; San Diego, California - 2003; Greensboro, North Carolina - 2003; Amarillo, Texas - 1977; New York, New York Times Square - 1994; and the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the City Council 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, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on property values, urban blight, litter, and sexual assault and exploitation.
- (2) Sexually oriented businesses should be separated from certain land uses to minimize the impact of their secondary effects upon such uses and the surrounding area, 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. This substantial government interest in preventing secondary effects, which is the county's rationale for this article, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, 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 article are reasonably believed to be relevant to said secondary effects.

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## **Sec. 13-32. Definitions.**

For purposes of this chapter, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

*Administrator* means the Euharlee Zoning Administrator or his or her designee.

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

*Adult bookstore or adult video store* means a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following items: 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 purpose* means that the commercial establishment:

- (1) Has a substantial portion of its displayed merchandise which consists of said items; or
- (2) Has a substantial portion of the wholesale value of its displayed merchandise which consists of said items; or
- (3) Has a substantial portion of the retail value of its displayed merchandise which consists of said items; or
- (4) Derives a substantial portion of its revenues from the sale or rental, for any form of consideration of said items; or
- (5) Maintains a substantial section of its interior business space for the sale or rental or said items; or
- (6) Regularly features said items, and prohibits access by minors, because of age, to the premises or the portion of the premises occupied by said items, and regularly advertises itself as providing "adult," "xxx," "triple-x," "x-rated," "sex," "sexual," "pornography," "porn," or "erotic" material on signage visible from a public right-of-way.

*Adult cabaret* means a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features persons who appear semi-nude.

*Adult motel* means a motel, hotel, or similar commercial establishment which:

- (1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes,

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other photographic reproductions, or live performances which are characterized by the display of "specified sexual activities" or "specified anatomical areas"; and which advertises the availability of such material by means of a sign visible from the public right-of-way, or by means of any on or off-premises advertising, including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or

- (2) Offers a sleeping room for rent for a period of time that is less than ten hours; or
- (3) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten hours.

*Adult motion picture theater* means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas" are regularly shown to more than five persons for any form of consideration.

*City* mean the City of Euharlee, Georgia

*City Council* means the City Council of Euharlee, Georgia.

*Characterized by* means describing the essential character or quality of an item. As applied in this article, 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.

*County* means Bartow County, Georgia.

*Employ, employee, and employment* describe and pertain to any person who performs any service on the premises of a sexually oriented business, on a full time, part time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, 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.

*Establish or establishment* shall mean and include any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business;
- (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or
- (3) The addition of any sexually oriented business to any other existing sexually oriented business.

*Hearing body* shall mean the City Council of Euharlee, Georgia.

*Influential interest* means any of the following:

- (1) The actual power to operate the sexually oriented business or control the operation, management or policies of the sexually oriented business or legal entity which operates the sexually oriented business; or
- (2) Holding an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the sexually oriented business.

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*Licensed day-care center* means a facility licensed by the State of Georgia, whether situated within the county or not, that provides care, training, education, custody, treatment or supervision for more than 12 children under 14 years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than 24 hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

*Licensee* shall mean 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 case of an "employee," it shall mean the person in whose name the sexually oriented business employee license has been issued.

*Nudity or a state of nudity* means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage 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.

*Operate or cause to operate* shall mean 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 causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

*Person* shall mean 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 licensee, as described in the application for a business license pursuant to section 4-65 of this article.

*Regularly* means and refers to the consistent and repeated doing of the act so described.

*Semi-nude or state of 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 dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

*Semi-nude model studio* means a place where persons regularly appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

This definition does not apply to any place where persons appearing in a state of semi-nudity did so in a modeling class operated:

- (1) By a college, junior college, or university supported entirely or partly by taxation;

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- (2) By a private college or university which maintains and operates educational programs in which credits are transferable to college, junior college, or university supported entirely or partly by taxation; or
- (3) In a structure:
  - a. Which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; and
  - b. Where, in order to participate in a class a student must enroll at least three days in advance of the class.

*Sexual device* means designed or marketed as useful primarily for the stimulation of human genital organs. This definition shall include devices commonly known as dildos, vibrators, penis pumps, 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 that regularly features sexual devices. Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing medical or healthcare products or services, nor shall this definition be construed to include commercial establishments which do not restrict access to any portion of their premises by reason of age.

*Sexual encounter center* shall mean a business or commercial enterprise that, as one of its principal business purposes, purports to offer for any form of consideration, physical contact in the form of wrestling or tumbling between persons of the opposite sex when one or more of the persons is semi-nude.

*Sexually oriented business* means an "adult arcade," an "adult bookstore or adult video store," an "adult cabaret," an "adult motel," an "adult motion picture theater," a "semi-nude model studio," a "sexual device shop," or a "sexual encounter center."

*Specified anatomical areas* means and includes:

- (1) 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
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

*Specified criminal activity* means:

- (1) Any of the following specified crimes for which less than five years elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:
  - a. A sexual offense as enumerated in O.C.G.A. § 16-6-1 (rape); § 16-6-4 (child molestation); § 16-6-22.1 (sexual battery); § 16-6-22.2 (aggravated sexual battery); or § 16-6-8 (public indecency);
  - b. A prostitution-related offense as enumerated in O.C.G.A. § 16-6-9 (prostitution); § 16-6-10 (keeping a place of prostitution); § 16-6-11 (pimping); or § 16-6-12 (pandering);

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- c. An obscenity offense as enumerated in O.C.G.A. § 16-12-80 (distributing obscene material), provided that, consistent with the decision in *This That And The Other Gift And Tobacco, Inc. v. Cobb County*, 285 F.3d 1319 (11th Cir. 2002), a conviction for advertising obscene materials enumerated in subsection (c) of the statute shall not be considered a specified criminal activity;
- d. A controlled substance offense as enumerated in O.C.G.A. § 16-13-30; § 16-13-30.1; § 16-13-30.2; or § 16-13-31;
- e. A racketeering offense as enumerated in O.C.G.A. § 14-14-4;
- f. A locational restriction offense as enumerated in O.C.G.A. § 36-60-3;

- (2) Any attempt, solicitation, or conspiracy to commit one of the foregoing offenses;
- (3) Any Georgia municipal ordinance violation based upon any of the crimes set forth above in subparagraphs (1)a. through (1)f., inclusive; or
- (4) 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:

- (1) Intercourse, oral copulation, masturbation or sodomy; or
- (2) Excretory functions as a part of or in connection with any of the activities described in subsection (1) above.

*Substantial* means at least 35 percent of the item(s) so modified.

*Transfer of ownership or control* of a sexually oriented business shall mean any of the following:

- (1) The sale, lease, or sublease of the business;
- (2) The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or
- (3) 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* shall mean the room, booth, or area where a patron of sexually oriented business would ordinarily be positioned while watching a film, videocassette, or other video reproduction.

### **Sec. 13-33. Classification.**

The classifications for sexually oriented businesses shall be as follows:

- (1) Adult bookstores or adult video stores;
- (2) Adult cabarets;
- (3) Adult motels;
- (4) Adult motion picture theaters;
- (5) Semi-nude model studios;

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- (6) Sexual device shops;
- (7) Sexual encounter centers.

**Secs. 13-34—13-64. Reserved.**

***DIVISION 2. LICENSES***

**Sec. 13-65. License required.**

- (a) It shall be unlawful for any person to operate a sexually oriented business in the City of Euharlee without a valid sexually oriented business license.
- (b) It shall be unlawful for any person to be an "employee," as defined in this chapter, of a sexually oriented business in City of Euharlee without a valid sexually oriented business employee license.
- (c) An applicant for a sexually oriented business license or a sexually oriented business employee license shall file in person at the office of City of Euharlee Clerk's Office a completed application made on a form provided by the city. The application shall be signed as required by subsection (e) 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 subsections (1) through (7) below, accompanied by the appropriate fee identified in section 13-67:
  - (1) The applicant's full true name and any other names used by the applicants in the preceding five years.
  - (2) Current business address or another mailing address of the applicant.
  - (3) Written proof of age consisting of either: (i) a driver's license, or (ii) 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 article, 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 years (and at a time during which the applicant had the influential interest):
    - a. Been declared by a court of law to be a nuisance; or

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- b. Been subject to a court order of closure or padlocking.

The information provided pursuant to subsections (1) through (7) of this subsection shall be supplemented in writing by certified mail, return receipt requested, to the zoning department within ten working days of a change of circumstances which would render the information originally submitted false or incomplete.

- (d) 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 space occupied by the business. 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 inches. Applicants who are required to comply with sections 13-75 and 13-79 of this chapter shall submit a diagram indicating that the interior configuration meets the requirements of those sections.
- (e) If a person who wishes to operate a sexually oriented business is an individual, he shall sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each person with an influential interest in the business shall sign the application for a license as applicant. Each applicant must be qualified under section 13-66 and each applicant shall be considered a licensee if a license is granted.

#### **Sec. 13-66. Issuance of license.**

- (a) Within 20 days of the filing date of a completed sexually oriented business license application, the administrator or his or her designee shall issue a license to the applicant or issue to the applicant a letter of intent to deny the application. The administrator shall issue a license unless:
  - (1) An applicant is less than 18 years of age.
  - (2) An applicant has failed to provide information as required by section 13-65 for issuance of a license or has falsely answered a question or request for information on the application form.
  - (3) The license application fee required by this chapter has not been paid.
  - (4) The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this chapter or is not in compliance with locational requirements of this article or the locational requirements of any other part of the City of Euharlee Code.
  - (5) Any sexually oriented business in which an applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):
    - a. Been declared by a court of law to be a nuisance; or
    - b. Been subject to an order of closure or padlocking.
  - (6) An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this article.

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- (7) The sexually oriented business, as defined herein, is not in compliance with the locational requirements of O.G.C.A. § 36-60-3 (i.e., is located within 1,000 feet of any school building, school grounds, college campus, public place of worship, public park, or area zoned for residential purposes), or the locational requirements of section 13-81 of this article.
- (b) Upon the filing of a completed application under subsection 13-65(c) for a sexually oriented business employee license, the administrator or his or her designee shall immediately issue a temporary license to the applicant, which temporary license shall expire upon the final decision of the county to deny or grant an annual license. Within 20 days of the filing date of a completed sexually oriented business employee license application, the zoning administrator shall either issue a license or issue a written notice of intent to deny a license to the applicant. The zoning administrator shall approve the issuance of a license unless:
  - (1) The applicant is less than 18 years of age.
  - (2) The applicant has failed to provide information as required by section 13-65 for issuance of a license or has falsely answered a question or request for information on the application form.
  - (3) The license application fee required by this chapter has not been paid.
  - (4) Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):
    - a. Been declared by a court of law to be a nuisance; or
    - b. Been subject to an order of closure or padlocking.
  - (5) The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this article.
- (c) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for 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. 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 or performing.

#### **Sec. 13-67. Fees.**

The initial license and annual renewal fees for sexually oriented business licenses and sexually oriented business employee licenses shall be as follows: \$100.00 for the initial fee for a sexually oriented business license and \$75.00 for annual renewal; \$50.00 for the initial sexually oriented business employee license and \$25.00 for annual renewal.

#### **Sec. 13-68. Inspection.**

- (a) Sexually oriented businesses and sexually oriented business employees shall permit the zoning administrator and his or her designee to inspect, from time to time on an occasional

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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 chapter, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed by the city to authorize reasonable inspections of the licensed premises pursuant to this chapter, but not to authorize a harassing or excessive pattern of inspections.

- (b) The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

**Sec. 13-69. Expiration 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 section 13-65 and section 13-67.
- (b) Application for renewal should be made pursuant to the procedures set forth in section 13-65 at least 90 days before the expiration date, and when made less than 90 days before the expiration date, the expiration of the license will not be affected.

**Sec. 13-70. Suspension.**

- (a) The city shall issue a written letter of intent to suspend a sexually oriented business license for a period not to exceed 30 days if the sexually oriented business licensee has knowingly violated this chapter or has knowingly allowed an employee to violate this chapter.
- (b) The city shall issue a written letter of intent to suspend a sexually oriented business employee license if the employee has knowingly violated this chapter.

**Sec. 13-71. Revocation.**

- (a) The city shall issue a letter of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if the licensee knowingly violates this chapter or has knowingly allowed an employee to violate this chapter and the licensee's license has been suspended within the previous 12-month period.
- (b) The city shall issue written 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;
  - (2) The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises;
  - (3) The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises;
  - (4) The licensee knowingly or recklessly operated the sexually oriented business during a period of time when the license was finally suspended or revoked;

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- (5) The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity to occur in or on the licensed premises; or
- (6) The licensee has knowingly or recklessly committed a specified criminal activity on or through the licensed premises.

- (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 section 13-72, the City Council revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for one year from the date revocation becomes effective.

**Sec. 13-72. Hearing; denial, revocation, and suspension; appeal.**

- (a) When the zoning administrator issues a written notice of intent to deny, suspend, or revoke a license, the administrator shall immediately send such notice, which shall include the specific grounds under this article for such action, to the applicant or license (respondent) 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 administrator for the respondent. The notice shall specify a date, not less than ten days nor more than 30 days after the date the notice is issued, on which the City Council shall conduct a hearing on the zoning administrator's intent to deny, suspend, or revoke the license.

At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the zoning administrator's witnesses. The zoning administrator shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The City Council shall issue a written decision, including specific reasons for the decision pursuant to this article, to the respondent within five business days after the hearing.

If the decision is to deny, suspend, or revoke the license, the decision shall not become effective until the 30th day after it is rendered, and the decision shall include a statement advising the respondent of the right to appeal such decision to a court of competent jurisdiction. If the City Council's decision finds that no grounds exist for denial, suspension, or revocation of the license, the City Council shall, contemporaneously with the issuance of the decision, order the administrator to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the zoning administrator shall contemporaneously therewith issue the license to the applicant.

- (b) If any court action challenging the City Council's decision is initiated, the City Council shall prepare and transmit to the court a transcript of the hearing within ten business days after receiving written notice of the filing of the court action. The City Council shall consent to

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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.

**Sec. 13-73. 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. 13-74. Hours of operation.**

No sexually oriented business shall be or remain open for business between 10:00 p.m. and 6:00 a.m. on any day.

**Sec. 13-75. Regulations pertaining to exhibition of sexually explicit films or videos.**

- (a) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than 150 square feet of floor space, a film, video cassette, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas 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, viewing rooms, overhead lighting fixtures, video cameras and monitors installed for monitoring purposes and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain video reproduction equipment. The diagram shall also designate the place at which the permit 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 zoning administrator or his or her designee 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 in the application filed pursuant to subsection (a)(1) above.
  - (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 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.

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- (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 licensed 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:
  - a. That the occupancy of viewing rooms is limited to one person.
  - b. That specified sexual activity on the premises is prohibited.
  - c. That the making of openings between viewing rooms is prohibited.
  - d. That violators will be required to leave the premises.
  - e. That violations of subparagraphs (b), (c) and (d) of this paragraph are unlawful.
- (6) It shall be the duty of the operator to enforce the regulations articulated in subsections (5)a. through e. above.
- (7) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed 32 square feet of floor area. If the premises has two 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 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.

(b) It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

**Sec. 13-76. Loitering, exterior lighting, visibility, and monitoring requirements.**

- (a) It shall be the duty of the operator of a sexually oriented business to: (a) post conspicuous signs stating that no loitering is permitted on such property; (b) designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every 90 minutes or inspecting such property by use of video cameras and monitors; and (c) provide lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. 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 unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

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- (c) No sexually oriented business shall erect a fence, wall, or other barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right of way.

**Sec. 13-77. Penalties and enforcement.**

- (a) A person who knowingly violates, disobeys, omits, neglects, or refuses to comply with any of the provisions of this chapter shall, upon conviction, be punishable by fines not to exceed \$1,000.00 per violation, or by imprisonment for a period not to exceed six months, or by both such fine and imprisonment. Each day a violation is committed, or permitted to continue, shall constitute a separate offense and shall be fined as such.
- (b) Notwithstanding subsection (a), the violation of provisions of this article by any person may be enjoined by instituting appropriate proceedings for injunction in any court of competent jurisdiction.

**Sec. 13-78. Prohibited activities.**

It is unlawful for a sexually oriented business to knowingly violate the following regulations or to knowingly allow an employee or any other person to violate the following regulations:

- (1) It shall be a violation of this article for a patron, employee, or any other person to knowingly or intentionally, in a sexually oriented business, appear in a state of nudity, regardless of whether such public nudity is expressive in nature.
- (2) It shall be a violation of this article for a person to 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 feet from any patron or customer and on a stage at least 18 inches from the floor in a room of at least 1,000 square feet.
- (3) It shall be a violation of this article for any employee who regularly appears semi-nude in a sexually oriented business to knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business.
- (4) It shall be a violation of this article for any person to sell, use, or consume alcoholic beverages on the premises of a sexually oriented business.

A sign in a form to be prescribed by the administrator of the zoning department and summarizing the provisions of subsections (1) through (4) above, shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry.

**Sec. 13-79. Scienter required to prove violation or business licensee liability.**

This article does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this article. Notwithstanding anything to the contrary, for the purposes of this article, 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

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finding a violation of this article, 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. 13-80. Failure of city to meet deadline not to risk applicant/licensee rights.**

In the event that a city official is required to take an act or do a thing pursuant to this article within a prescribed time, and fails to take such act or do such thing within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the county official under this article, and not completed in the time prescribed, includes approval of condition(s) necessary for approval by the county of an applicant or licensee's application for sexually oriented business license or a sexually oriented business employee's license (including a renewal), the license shall be deemed granted and the business or employee allowed to commence operations or employment the day after the deadline for the county's action has passed.

**Sec. 13-81. Location of sexually oriented businesses.**

- (a) Sexually oriented businesses are permitted in areas zoned C-1 General Commercial and I-1 General Industrial.
- (b) It shall be unlawful to establish, operate, or cause to be operated a sexually oriented business in the City of Euharlee, unless said sexually oriented business is at least:
  - (1) One thousand feet from any parcel occupied by another sexually oriented business, by a business licensed by the State of Georgia to sell alcohol, or by a place of worship; and
  - (2) One thousand feet from any parcel occupied by a licensed day care center, school, college, public park, or residence, or from any parcel that is zoned for residential uses; and
  - (3) One thousand feet from any parcel of land up on which any other adult entertainment establishment is located.
- (c) For the purpose of this section, measurements shall be made in a straight line in all directions without regard to intervening structures or objects, from the closest part of any structure, including signs and roof overhangs, used in conjunction with the sexually oriented business to the closest point on a property boundary or right-of-way associated with any of the land use(s) identified in subsections (a)(1) and (2) above.
- (d) Notwithstanding anything to the contrary in the City of Euharlee Code, a nonconforming sexually oriented business that is in all respects legally existing and operating prior to the effective date of this article, may continue to operate for two years following that date in order to make a reasonable recoupment of its investment in its current location. At the conclusion of said two years, the use will no longer be recognized as a lawful nonconforming use, provided that a nonconforming sexually oriented business may apply

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for one or more six-month extensions of the original two-year period upon a showing financial hardship. An application for an initial extension based upon financial hardship ("hardship exception") shall be made at least 60 days before the conclusion of the aforementioned two-year period. If a hardship extension is granted, subsequent applications for hardship extensions shall be made at least 60 days before the conclusion of the nonconforming sexually oriented business's current extension period.

- (e) *Procedure for seeking hardship extension.* An application for a hardship extension shall be filed in writing with the zoning department, and shall include evidence of purchase and improvement costs, income earned and lost, depreciation, and costs of relocation. Within ten days after receiving the application, the zoning department shall schedule a public hearing on the application before the Planning and Zoning Commission, which public hearing shall be conducted within 30 days after the zoning department'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 in a newspaper of general circulation published within the county, and shall contain the particular location for which the hardship extension is requested.

The Planning and Zoning Commission shall issue a written decision within ten days after the public hearing on the application for a hardship extension. The hardship extension shall be granted upon a showing that the nonconforming sexually oriented business is unable to recoup its investments, made prior to the effective date of this article, in its current location unless the hardship extension is granted.

### **Sec. 13-82. Additional Requirements for Adult Entertainment Establishments.**

At any adult entertainment establishment, the following are required:

- (a) Admission must be restricted to persons of the age of 18 years or more.
- (b) No adult entertainment shall be visible outside of the adult entertainment establishment, nor any photograph, drawing, word, sketch or other pictorial or graphic representation which includes lewd matter or display of sexually explicit material.