

An Ordinance of Fannin County,
A political subdivision of the State of Georgia
To Regulate
ADULT ENTERTAINMENT ESTABLISHMENTS

CHAPTER 1-1. ADULT ENTERTAINMENT ESTABLISHMENTS

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Sec. 1-1-1. Purpose.

The purpose of this chapter is to regulate certain types of businesses, including, but not limited to, adult entertainment establishments to the end that the many types of criminal activities frequently engendered by such businesses will be curtailed. However, it is recognized that such regulation cannot defacto approach prohibition. Otherwise a protected form of expression would vanish. As to adult dance establishments, this chapter represents a balancing of competing interests: Reduced criminal activity and protection of neighborhoods through the regulation of adult entertainment establishments versus the protected rights of adult entertainment establishments and patrons.

Section 1-1-2. Definitions

Adult bookstore means an establishment having a substantial or significant portion of its stock in trade, books, magazines or other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas or an establishment with a segment or section, comprising 20 percent of its net sales consisting of printed material which are distinguished or characterized by their emphasis on matter depicting or relating to specified sexual activities or specified anatomical areas.

Adult business means either:

- 1) Any business other than those expressly specified in this article, where employees or patrons expose specified anatomical areas or engage in specified sexual activities; or
- 2) Any other business or establishment which offers its patrons services or entertainment characterized by an emphasis on matter depicting, describing, discussing or relating to specified sexual activities or specified anatomical areas.

Adult dancing establishment means a business that features dancers displaying or exposing specified anatomical areas.

Adult hotel or motel means a hotel or motel wherein material is presented which is distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

Adult mini-motion picture theater means an enclosed building with a capacity for less than 50 persons used for presenting material distinguished or characterized by an emphasis on matter depicting or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

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

Adult store means a commercial establishment or other establishment which has a significant or substantial portion of its stock in trade (20 percent or more) or derives a significant or substantial portion (20 percent or more) of its revenues or devotes a significant or substantial portion (20 percent or more) of its interior business or advertising to the sale, rental or any form of consideration of any instruments, devices, paraphernalia, products, article or articles which are designed, sold or viewed for use in connection with "specified sexual activities" as defined herein, or which are sold or marketed primarily for stimulation of human genital organs.

Adult video store means any establishment having a substantial or significant portion of its stock in trade, video tapes or movies or other reproductions, whether for sale or rent, which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas or an establishment with a segment or section, comprising five percent of its total floor space, devoted to the sale or display of such material or which derives more than five percent its net sales from videos which are characterized or distinguished or relating to specified sexual activities or specified anatomical areas.

Encounter center or rap establishment means any business, agency or person who, for any form of consideration or gratuity, provides a place where two or more persons may congregate, assemble or associate for the primary purpose of engaging in, describing or discussing specified sexual activities, or exposing specified anatomical areas.

Erotic dance establishment means a nightclub, theater or other establishment which features live performances by topless and/or bottomless dancers, go-go dancers, strippers or similar entertainers, where such performances are distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

Escort bureau or introduction services means any business, agency or person who, for a fee, commission, hire, reward or profit furnishes or offers to furnish names of persons, or who introduces, furnishes or arranges for persons who may accompany other persons to or about social affairs, entertainments or places of amusement, or who may consort with others about any place of public resort or within any private quarters.

Church means a temple or building consecrated to the honor of God or other supreme being and religion; or an assembly of persons united by the profession of the same religious faith, meeting together routinely for religious worship.

Good moral character means a person is of good moral character according to this chapter if that person has not been convicted of a drug-related or alcohol-related felony or sex-related crime in the past five years.

Minor means any person who has not attained the age of 18 years

Specified anatomical areas shall include any of the following:

- 1) Less than completely and opaquely covered human genitals or pubic region; buttock; or female breast below a point immediately above the top of the areola; or
- 2) Human male genitalia in a discernible turgid state, even if completely and opaquely covered.

Sec. 1-1-3. Regulations

- a) No person, firm, partnership, corporation, or other entity shall advertise, or cause to be advertised, an adult entertainment establishment, as defined in this chapter, without a valid adult entertainment establishment license issued pursuant to this chapter.
- b) An adult entertainment establishment applicant shall maintain and retain for a period of two years the names, addresses, and ages of all persons employed.
- c) No adult entertainment establishment applicant shall employ or contract with a dancer a person under the age of 18 years or a person not licensed pursuant to this chapter.
- d) No person under the age of 18 years shall be admitted to an adult entertainment establishment.
- e) An adult entertainment establishment, as defined in this chapter, shall be closed between 12:00 midnight and 10:00 a.m
- f) No employee or agent of any adult entertainment establishment shall fondle or caress any patron and no patron shall fondle or caress any dancer or any other employee or agent of any adult entertainment establishment. Nor shall the manager or owner of the adult entertainment establishment allow such activity.
- g) If any portion, or subparagraph, of this section of this chapter or its application to any person or circumstance, is held invalid by a court of competent jurisdiction, the remainder of application to other persons or circumstances shall not be affected.

Sec. 1-1-4. Certain activities prohibited

No person, firm, partnership, corporation or other entity shall publicly display or expose or allow the public display or exposure, with less than a full opaque covering, of any portion of a person's genitals, pubic area or buttocks in a lewd and obscene fashion.

Sec. 1-1-5. Adult entertainment establishment license required

It is unlawful for any person, association, partnership or corporation or other entity to engage in, conduct or carry on, in or upon any premises within Fannin County any of the adult entertainment establishments, as defined in this chapter, without an adult entertainment establishment license so to do. No adult entertainment establishment license so issued shall condone or make legal any activity thereunder if the same is deemed illegal or unlawful under the laws of the State of Georgia or the United States.

Sec. 1-1-6. Operation of unregulated premises unlawful

It is unlawful for any person to operate an adult bookstore, adult motion picture theater, adult minimotion picture theater, adult video store, adult hotel or motel, adult motion picture arcade, encounter center or rap establishment, escort bureau or introduction service, adult business, adult store, adult dancing establishment or erotic dance establishment unless such business shall have a currently valid adult entertainment establishment license or shall have made proper application for renewal within the time required thereof under this chapter, which adult entertainment establishment license shall not be under suspension or permanently or conditionally revoked.

Sec. 1-1-7. Admission of minors unlawful

It is unlawful for an applicant to admit or permit the admission of minors within a regulated premise.

Sec. 1-1-8. Sales to minors unlawful.

It shall be unlawful for any person to sell, barter or give, to any minor any service, material, device or thing sold or offered for sale by an adult bookstore, adult motion picture theater, adult massage parlor or adult dancing establishment or other adult entertainment facility.

Sec. 1-1-9. Location.

No adult business or use restricted hereunder shall be located:

- (a) Within 1,000 feet of any parcel of land which is used for multifamily or single-family purposes.
- (b) Within 1,000 feet of any parcel of land upon which a church, school, governmental building simultaneously owned and occupied by such government, library, civic center, neighborhood public park or neighborhood playground is located.
- (c) Within 1,000 feet of any parcel of land upon which another establishment regulated or defined hereunder is located.
- (d) Within 50 feet of any parcel of land upon which an establishment is licensed to sell any form of alcoholic beverages.

Sec. 1-1-10. Adult entertainment establishment employees

- (a) *Qualifications.* Employees of an adult entertainment establishment shall be not less than 18 years of age. Every employee must be of good moral character as defined herein. Any employee who is convicted of a sex-related crime, or drug-related or alcohol-related felony while employed as an adult entertainment establishment employee shall not thereafter work on any premises requiring licenses under this chapter for a period of five years from the date of such conviction, unless a longer time is ordered by a court of competent jurisdiction. The term convicted shall include an adjudication of guilt or a plea of guilty.
- (b) The application for a license does not authorize the engaging in, operation of, conduct of or carrying on of any adult entertainment establishment.

Sec. 1-1-12. Application contents

Each applicant for an adult entertainment establishment license shall contain the following information:

- a) The applicant's full true name.
- b) The present address and telephone number of the applicant.

- c) Acceptable written proof that the applicant is at least 18 years of age.
- d) Business, occupation or employment history of the applicant for the five years immediately preceding the date of application. Business or employment records of the applicant, partners in a partnership, directors and officers of a corporation or other entity shall be furnished.
- e) The business license or occupation tax history of the applicant and whether such applicant, in previous operations in this or any other county/city, state or territory under license, has had such license for an adult entertainment business or similar type of business revoked or suspended, the reason therefore, and the business activity or occupation subsequent to such action of suspension or revocation.
- f) If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter, together with the place and date of incorporation, and the names and addresses of each of its current officers and directors. If the applicant is a partnership, the applicant shall set forth the name, residence address and dates of birth of the partners. If the applicant is a limited partnership, it shall furnish a copy of its certificate of limited partnership filed with the Clerk of Superior Court. If one or more of the partners is a corporation, the provisions of this subsection pertaining to corporations shall apply. The applicant corporation or partnership shall designate one of its officers or general partners to act as its responsible managing officer. Such designated persons shall complete and sign all application forms required of an individual applicant under this chapter, but only one application fee shall be charged.
- g) If the applicant, any partners or any corporate officers or directors (if the applicant is a corporation) have been convicted of any crime involving good moral character in the past five years and, if so, a complete description of any such crime including date of violation, date of conviction, jurisdiction and any disposition, including any fine or sentence imposed and whether terms of disposition have been fully completed.
- h) If applicant is a person, corporation, partnership or other entity doing business under a trade name, a copy of the trade name properly recorded. If the applicant is a corporation, a copy of the authority to do business in Georgia, including articles of incorporation, trade name affidavit (if any), and current annual report filed with the Georgia Secretary of State.
- i) At least three character references from individuals who are in no way related to the applicant or individual shareholders, officers or directors of a corporation and who are not or will not benefit financially in any way from the application if the adult entertainment establishment license is granted and who have not been convicted of any crime involving moral character. The finance director shall prepare forms consistent with the provisions of this subsection for the applicant who shall submit all character references on such forms.
- j) Address of the premises to be regulated.
- k) Whether the premises are owned or rented by applicant.
- l) A certified plat by a registered engineer, licensed by the State of Georgia, showing the location of the proposed premises complies with the provisions contained herein, which provide that no adult business or use restricted shall be located within 1,000 feet of any parcel of land which is used for multifamily or single-family purposes; within 1,000 feet of any parcel of land upon which a church, school, governmental building simultaneously owned and occupied by such government, library, civic center, neighborhood public park or neighborhood playground is located; within 5,000 feet of any parcel upon which another establishment regulated or defined hereunder is located or within 50 feet of any parcel of land upon which an establishment is licensed to sell any form of alcoholic beverages.
- m) Such further information as may be required to review the applicant.

- n) Each applicant for an adult entertainment establishment license shall be verified and acknowledged under oath to be true and correct by:
 - 1. If the applicant is an individual, the individual;
 - 2. If by a partnership, by the manager or general partner;
 - 3. If a corporation, by the president of the corporation;
 - 4. If any other entity, organization or association, by the chief administrative official.

Sec. 1-1-13. Application—Investigation

The Fannin County Board of Tax Assessors shall refer the application to the Sheriff's Department of Fannin County for investigation; the Sheriff's Department shall have up to 21 days to investigate the application and the background of the applicant. Upon completion of the investigation and after a investigative report by the Sheriff is furnished to the Board of Tax Assessors, the Board of Tax Assessors shall grant the adult entertainment establishment license if the majority of the Board finds:

- a) The required fee has been paid;
- b) Application conforms in all respects to the provisions of this chapter;
- c) The applicant has not knowingly made a material misrepresentation in the application;
- d) The applicant has fully cooperated in the investigation of his application;
- e) The applicant, if an individual, or any officers or directors, if the applicant is a corporation, or any of the partners, including limited partners, if the applicant is a partnership, has not been convicted in a court of competent jurisdiction of an offense involving a sex-related crime or drug-related or alcohol-related felony or convicted of an attempt to commit any of the above-mentioned offenses, or convicted in any state of any offense which if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses;
- f) Applicant has not had an adult entertainment establishment license, or other similar license or permit denied or revoked for cause involving moral character in this city or any other city or county located in or out of this state prior to the date of application.
- g) The building, structure, equipment, or location of such business, as proposed by applicant, would comply with all distance laws;
- h) The applicant is at least 18 years of age;
- i) That the applicant, his or her employee, agent, partner, director, officer, or manager has not within five years of this date of the application knowingly allowed or permitted any of the specified sexual activities as defined herein to be committed or allowed in or upon the premises where such adult entertainment establishments is to be located, or to be used as a place in which solicitations for the specified sexual activities as defined herein openly occur;
- j) That on the date the business for which an adult entertainment establishment license is required herein commences, and thereafter, there will be a responsible person on the premises to act as manager at all times during which the business is open;
- k) That the proposed premises shall not be located within 1,000 feet of any parcel of land which is multifamily or single-family uses or purposes; within 1,000 feet of any parcel of land upon which a church, school, governmental building simultaneously owned and occupied by such government, library, civic center, neighborhood public park or neighborhood playground is located; or within 50 feet of any parcel of land upon which an establishment is licensed to sell any form of alcoholic beverages;

Sec. 1-1-14. Persons prohibited as licensees

- a) No adult entertainment establishment license provided for by this chapter shall be issued to or held by:
 - 1) An applicant who has not paid all required fees and taxes for a business at that location or property taxes;
 - 2) Any person who is not of good moral character;
 - 3) Any corporation, any of whose directors are not of good moral character;
 - 4) Any partnership, association, or other entity, any of whose partners or members are not of good moral character;
 - 5) Any applicant who is not qualified to hold and conduct business according to the laws of the United States, State of Georgia or Fannin County.

Sec. 1-1-15. Adult entertainment establishment license refusal, appeal.

If the Board of Tax Assessors, following review of the application and receipt of the investigative report from the Sheriff department, deems that the applicant does not fulfill the requirements as set forth herein, it shall notify the applicant of such opinion and, within 45 days of the date of application, provide copies of the investigation report and written reason for the denial to the applicant by certified mail. Any applicant who is denied an adult entertainment establishment license may appeal such denial to the administrative hearing officer pursuant the provisions hereinafter set forth by filing a written notice of appeal within ten days of the receipt of notice from the Board of Tax Assessors. Said notice shall be filed with the Clerk (of the Board of Commissioners) of Fannin County, Georgia. A hearing before the administrative hearing officer shall be scheduled within 45 days of such notice.

Sec. 1-1-16. Adult entertainment establishment license; renewal.

Adult entertainment establishment license may be renewed on a calendar year basis provided that the renewal application contains the same information required in the original application and that applicants continue to meet the requirements set out in this chapter. The renewal fee of \$500.00 for the adult entertainment establishment license shall be based on an amount needed to defray the costs of regulating adult entertainment establishments and enforcement of this chapter. Renewal applications shall be due by November 1 of the calendar year prior to the year for which such license is requested. The adult entertainment establishment license shall be for a calendar year period or for a remainder of a calendar year if issued after January 1 of any calendar year.

Sec. 1-1-17. Adult entertainment establishment license nontransferable

No adult entertainment establishment license may be sold, transferred, or assigned by a permittee, or by operation of law, to any other person or persons. Any such sale, transfer or assignment, or attempted sale, transfer or assignment, shall be deemed to constitute a voluntary surrender of such permit and such permit shall thereafter be null and void; provided and excepting, however, that if the applicant is a partnership and one or more of the partners should die, one or more of the surviving partners may acquire, by purchase or otherwise, the interest of the deceased partner or partners without effecting a surrender or termination of such adult entertainment establishment license, and in such case, the adult entertainment establishment license upon notification to the Chairman of the Fannin County Board of Commissioners, shall be placed in the name of the surviving partner. An adult entertainment establishment license issued to a corporation shall be deemed terminated and void when either any outstanding stock of the corporation is sold, transferred or assigned after the issuance of a license, or any stock authorized but not issued at the time of the granting of an adult entertainment establishment license is thereafter issued and sold, transferred or assigned or at such time as the Corporation is dissolved, be it either voluntarily or involuntarily.

Sec. 1-1-18. Change of location or name.

- a) No adult entertainment establishment shall move from the location specified on its adult entertainment establishment license until a new application pursuant to the provisions of this ordinance, has been filed with the Board of Tax Assessors and approval has been obtained from the Board of Tax Assessors. Such approval shall not be given unless all requirements and regulations, as contained herein, have been met.
- b) No applicant shall operate, conduct, manage, engage in, or carry on an adult entertainment establishment under any name other than his name and the name of the business as specified on his adult entertainment establishment license.
- c) No applicant shall operate, conduct, manage, engage in, or carry on an adult entertainment establishment under any name other than his name and the name of the business as specified on his adult entertainment establishment license.

Sec. 1-1-19. Penalty for violation

- a) Any person violating any provision of this chapter shall be punished as set forth hereinafter.
- b) Violations of this chapter shall also be grounds for suspension or revocation of the adult entertainment establishment license issued hereunder after hearing before the administrative hearing officer pursuant to the provisions hereinafter set forth.

Sec. 1-1-20. Unlawful operation declared nuisance.

Any adult business establishment operated, conducted, or maintained contrary to the provisions of this chapter shall be and the same is declared to be unlawful and a public nuisance. Fannin County may, in addition to, or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings for abatement, removal or enjoinder thereof, in the manner provided by law. It shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such adult entertainment establishment and restrain and enjoin any person from operating, conducting or maintaining an adult entertainment establishment contrary to the provisions of this ordinance.

Sec. 1-1-21. Alcoholic beverages--Prohibition

No person, association, partnership, corporation, or other entity licensed under this ordinance of Fannin County, Georgia, after the effective date of the ordinance codified in this section shall serve, sell, distribute or suffer the consumption or possession of any intoxicating liquor, beer or wine or controlled substance upon the premises of any licensee.

Sec. 1-1-22. Revocation and appeal

- a) The Sheriff of Fannin County, Georgia, shall be authorized to suspend or revoke an adult entertainment establishment license previously granted herein. In the event the Sheriff of Fannin County seeks to suspend or to revoke an adult entertainment establishment license, the Sheriff shall give written notice to the licensee of such action and such notice shall contain a specification of the violation or violations upon which the suspension or revocation is based, shall state the time and place of the hearing and shall be served upon the licensee by certified mail or by personal service

at least five days prior to the time set for the hearing before the administrative hearing officer as provided for herein.

- b) The Sheriff shall be authorized to suspend or revoke an adult entertainment establishment license in the event of any of one or more of the following:
 - 1) A licensee gave false or misleading information in the original or renewal application process;
 - 2) A licensee has knowingly allowed possession, use or sale of controlled substances on the premises and/or knowingly allowed possession, use, or sale of controlled substances to a minor on the premises;
 - 3) A licensee has knowingly allowed the violation of an ordinance of Fannin County or a violation of any criminal law of the State of Georgia to occur on the premises;
 - 4) A licensee has violated any of the provisions of this ordinance;
 - 5) A licensee has been convicted of any drug-related, alcohol related crime by the State of Georgia or by Fannin County regarding an offense which was committed on the premises or which would otherwise violate the provisions of this chapter; and
 - 6) A licensee fails to pay any fee, tax, fine, or other amount of money due to Fannin County under this ordinance or any other taxing ordinance of Fannin County.

- c) In the event the Sheriff of Fannin County shall suspend or revoke any adult entertainment establishment license hereunder, the suspension or revocation shall be for a period not less than one day nor more than 365 days, within the discretion of the Sheriff. Provided, however, that the licensee shall be authorized to continue in business until that date of the hearing scheduled pursuant to procedure herein after set forth. No applicant may apply for an adult entertainment establishment license during any period of suspension or revocation. In any hearing the administrative hearing officer shall consider, among other things, the severity of the allegations, the evidence submitted and the testimony presented, in making any decision on upholding, denying or modifying the suspension or revocation, and the duration of either.

Sec. 2-1-1 Administrative hearing officer / procedure

- 1) The administrative hearing officer shall be appointed by the Board of Commissioners. The initial appointment shall run until the first Monday in January, 2003. Thereafter, beginning on the first Tuesday in January, all terms shall be for four (4) years. The hearing officer shall be paid from the general fund of the County. The hearing officer shall be paid the sum of \$250.00 for each hearing held.
- 2) The duties of the administrative hearing officer shall be the hearing of all issues under the ordinances of Fannin County which would determine the granting, denial, probating, suspending or revoking of any license or permit granted under Fannin County ordinances.
- 3) The jurisdiction of the hearing officer over the licenses or permits shall be in addition to and concurrent with that of the Superior Court of Fannin County, except that the hearing officer is specifically prohibited from awarding any punishment involving a fine and/or imprisonment.
- 4) Jurisdiction of and procedures for administrative hearing officer:
 - a) Any action against any licensee or permittee holding a license or permit issued pursuant to this ordinance. Said action shall be brought by the

Fannin County Attorney, the Chairman of the Board of Commissioners; Sheriff; and

- b) Any claim by any citizen aggrieved by an administrative decision made by the Fannin County Board of Commissioners authorized to make such decisions.
- c) Any hearing before the administrative hearing officer shall be on a date and time certain which shall be reflected on the summons issued by the attorney or by the county clerk on behalf of any aggrieved citizen.
- d) The summons shall contain a date and time certain and shall be served on responding party more than five (5) days before any scheduled hearing. The summons shall be served by certified mail return receipt requested or by personal service by authorized person in the Fannin County Sheriff's Department.
- e) The administrative hearing officer shall have the authority to hear evidence and subpoena witnesses on behalf of Fannin County or the aggrieved citizen and shall generally conduct the hearings in accordance with the requirements of due process as required by the United States Constitution and the Constitution of the State of Georgia. The administrative hearing officer shall entertain any and all evidence relevant to the matter without regard to evidentiary rules regarding hearsay.
- f) The standard of review for a citizen aggrieved by an administrative decision is arbitrary and capricious.
- g) The standard for an action against a licensee or permittee is preponderance of the evidence.
- h) The administrative hearing officer may promulgate any rules of procedure not in conflict with this ordinance or other law.
- i) Whenever, from any cause, the administrative hearing officer is unable to be in attendance, or it should appear that he or she is disqualified in any case, it shall be the duty of the administrative hearing officer to appoint a hearing officer pro hac vice to preside over the hearing in place and stead of the administrative hearing officer, and all actions of the appointee shall be binding as if performed by the administrative hearing officer.