

1 FIRST READING: May 11, 2021

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5 PASSED _____

6
7 AN ORDINANCE NO. BR2021-11

8
9 AN ORDINANCE TO ESTABLISH THE RULES AND
10 REGULATIONS FOR THE OPERATION OF SEXUALLY
11 ORIENTED BUSINESSES; AND FOR OTHER PURPOSES.

12
13 **WHEREAS**, it is the purpose of this ordinance to regulate sexually oriented
14 businesses in order to promote the health, safety, and general welfare of the citizens
15 of the City, and to establish reasonable and uniform regulations to prevent the
16 deleterious secondary effects of sexually oriented businesses within the City. The
17 provisions of this division have neither the purpose nor effect of imposing a
18 limitation or restriction on the content or reasonable access to any communicative
19 materials, including sexually oriented materials. Similarly, it is neither the intent nor
20 effect of this division to restrict or deny access by adults to sexually oriented
21 materials protected by the First Amendment, or to deny access by the distributors
22 and exhibitors of sexually oriented entertainment to their intended market. Neither
23 is it the intent nor effect of this division to condone or legitimize the distribution of
24 obscene material.

25 **WHEREAS**, based on evidence of the adverse secondary effects of adult uses
26 presented in hearings and in reports made available to the City Council, and on

27 findings, interpretations, and narrowing constructions incorporated in the cases of
28 *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles*
29 *v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S.
30 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v.*
31 *American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S.
32 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority*
33 *v. Bellanca*, 452 U.S. 714 (1981); *Sewell v. Georgia*, 435 U.S. 982 (1978); *FW/PBS,*
34 *Inc. v. City of Dallas*, 493 U.S. 215 (1990); *City of Dallas v. Stanglin*, 490 U.S. 19
35 (1989); and *Stardust, 3007 LLC v. City of Brookhaven*, 899 F.3d 1164 (11th Cir.
36 2018); *HH-Indianapolis, LLC v. Consol. City of Indianapolis/Marion County*, 889
37 F.3d 432 (7th Cir. 2018); *HH-Indianapolis, LLC v. Consol. City of*
38 *Indianapolis/Marion County*, 265 F. Supp. 3d 873 (S.D. Ind. 2017); *Flanigan's*
39 *Enters., Inc. v. City of Sandy Springs*, 703 F. App'x 929 (11th Cir. 2017); *Stardust*
40 *3007, LLC v. City of Brookhaven*, 348 Ga. App. 711 (2019); *Maxim Cabaret, Inc. v.*
41 *City of Sandy Springs*, 304 Ga. 187 (2018); *Oasis Goodtime Emporium I, Inc. v. City*
42 *of Doraville*, 297 Ga. 513 (2015); *Trop, Inc. v. City of Brookhaven*, 296 Ga. 85
43 (2014); *Goldrush II v. City of Marietta*, 267 Ga. 683 (1997); *Flanigan's Enters., Inc.*
44 *v. Fulton County*, 596 F.3d 1265 (11th Cir. 2010); *Peek-a-Boo Lounge v. Manatee*
45 *County*, 630 F.3d 1346 (11th Cir. 2011); *Daytona Grand, Inc. v. City of Daytona*
46 *Beach*, 490 F.3d 860 (11th Cir. 2007); *Jacksonville Property Rights Ass'n, Inc. v.*

47 *City of Jacksonville*, 635 F.3d 1266 (11th Cir. 2011); *Artistic Entertainment, Inc. v.*
48 *City of Warner Robins*, 331 F.3d 1196 (11th Cir. 2003); *Artistic Entertainment, Inc.*
49 *v. City of Warner Robins*, 223 F.3d 1306 (11th Cir. 2000); *Williams v. Morgan*, 478
50 F.3d 1316 (11th Cir. 2007); *Gary v. City of Warner Robins*, 311 F.3d 1334 (11th Cir.
51 2002); *Ward v. County of Orange*, 217 F.3d 1350 (11th Cir. 2002); *Boss Capital,*
52 *Inc. v. City of Casselberry*, 187 F.3d 1251 (11th Cir. 1999); *David Vincent, Inc. v.*
53 *Broward County*, 200 F.3d 1325 (11th Cir. 2000); *Sammy's of Mobile, Ltd. v. City*
54 *of Mobile*, 140 F.3d 993 (11th Cir. 1998); *Lady J. Lingerie, Inc. v. City of*
55 *Jacksonville*, 176 F.3d 1358 (11th Cir. 1999); *This That And The Other Gift and*
56 *Tobacco, Inc. v. Cobb County*, 285 F.3d 1319 (11th Cir. 2002); *DLS, Inc. v. City of*
57 *Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Grand Faloon Tavern, Inc. v. Wicker,*
58 670 F.2d 943 (11th Cir. 1982); *International Food & Beverage Systems v. Ft.*
59 *Lauderdale*, 794 F.2d 1520 (11th Cir. 1986); *5634 E. Hillsborough Ave., Inc. v.*
60 *Hillsborough County*, 2007 WL 2936211 (M.D. Fla. Oct. 4, 2007), *aff'd*, 2008 WL
61 4276370 (11th Cir. Sept. 18, 2008) (per curiam); *Fairfax MK, Inc. v. City of*
62 *Clarkston*, 274 Ga. 520 (2001); *Morrison v. State*, 272 Ga. 129 (2000); *Flippen*
63 *Alliance for Community Empowerment, Inc. v. Brannan*, 601 S.E.2d 106 (Ga. Ct.
64 App. 2004); *Oasis Goodtime Emporium I, Inc. v. DeKalb County*, 272 Ga. 887
65 (2000); *Chamblee Visuals, LLC v. City of Chamblee*, 270 Ga. 33 (1998); *World*
66 *Famous Dudley's Food & Spirits, Inc. v. City of College Park*, 265 Ga. 618 (1995);

67 *Airport Bookstore, Inc. v. Jackson*, 242 Ga. 214 (1978); *Entm't Prods., Inc. v. Shelby*
68 *County*, 721 F.3d 729 (6th Cir. 2013); *Lund v. City of Fall River*, 714 F.3d 65 (1st
69 Cir. 2013); *Imaginary Images, Inc. v. Evans*, 612 F.3d 736 (4th Cir. 2010); *LLEH,*
70 *Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); *Ocello v. Koster*, 354 S.W.3d
71 187 (Mo. 2011); *84 Video/Newsstand, Inc. v. Sartini*, 2011 WL 3904097 (6th Cir.
72 Sept. 7, 2011); *Plaza Group Properties, LLC v. Spencer County Plan Commission,*
73 *877 N.E.2d 877 (Ind. Ct. App. 2007); East Brooks Books, Inc. v. Shelby County*, 588
74 F.3d 360 (6th Cir. 2009); *Entm't Prods., Inc. v. Shelby County*, 588 F.3d 372 (6th
75 Cir. 2009); *Sensations, Inc. v. City of Grand Rapids*, 526 F.3d 291 (6th Cir. 2008);
76 *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir.
77 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *H&A*
78 *Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007); *Hang On, Inc. v.*
79 *City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Fantasy Ranch, Inc. v. City of*
80 *Arlington*, 459 F.3d 546 (5th Cir. 2006); *Illinois One News, Inc. v. City of Marshall,*
81 *477 F.3d 461 (7th Cir. 2007); G.M. Enterprises, Inc. v. Town of St. Joseph*, 350 F.3d
82 631 (7th Cir. 2003); *Richland Bookmart, Inc. v. Knox County*, 555 F.3d 512 (6th Cir.
83 2009); *Bigg Wolf Discount Video Movie Sales, Inc. v. Montgomery County*, 256 F.
84 Supp. 2d 385 (D. Md. 2003); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th
85 Cir. 1998); *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996);
86 *DCR, Inc. v. Pierce County*, 964 P.2d 380 (Wash. Ct. App. 1998); *City of New York*

87 *v. Hommes*, 724 N.E.2d 368 (N.Y. 1999); *Taylor v. State*, No. 01-01-00505-CR,
88 2002 WL 1722154 (Tex. App. July 25, 2002); *Fantasyland Video, Inc. v. County of*
89 *San Diego*, 505 F.3d 996 (9th Cir. 2007); *U.S. v. Baston*, 818 F.3d 651 (11th Cir.
90 2016); *Johnson v. California State Bd. of Accountancy*, 72 F.3d 1427 (9th Cir. 1995);
91 *Spencer v. World Vision, Inc.*, 633 F.3d 723 (9th Cir. 2010); *Gammoh v. City of La*
92 *Habra*, 395 F.3d 1114 (9th Cir. 2005); *Starship Enters. of Atlanta, Inc. v. Coweta*
93 *County*, No. 3:09-CV-123, R. 41 (N.D. Ga. Feb. 28, 2011); *High Five Investments,*
94 *LLC v. Floyd County*, No. 4:06-CV-190, R. 128 (N.D. Ga. Mar. 14, 2008); *10950*
95 *Retail, LLC v. Fulton County*, No. 1:06-CV-1923, R. 62 Order (N.D. Ga. Dec. 21,
96 2006); *10950 Retail, LLC v. Fulton County*, No. 1:06-CV-1923, R. 84 Contempt
97 Order (N.D. Ga. Jan. 4, 2007); *Z.J. Gifts D-4, L.L.C. v. City of Littleton*, Civil Action
98 No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001);
99 *People ex rel. Deters v. The Lion's Den, Inc.*, Case No. 04-CH-26, Modified
100 Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13,
101 2005); *Reliable Consultants, Inc. v. City of Kennedale*, No. 4:05-CV-166-A,
102 Findings of Fact and Conclusions of Law (N.D. Tex. May 26, 2005); *Starship*
103 *Enterprises of Atlanta, Inc. v. Gwinnett County*, No. 17A-00699-1 (Order Granting
104 Summary Judgment and Permanent Injunction, Jan. 12, 2018); and

105 **WHEREAS**, based upon reports concerning secondary effects occurring in
106 and around sexually oriented businesses, including, but not limited to, "Correlates

107 of Current Transactional Sex among a Sample of Female Exotic Dancers in
108 Baltimore, MD," *Journal of Urban Health* (2011); "Does the Presence of Sexually
109 Oriented Businesses Relate to Increased Levels of Crime?" *Crime & Delinquency*
110 (2012) (Louisville, KY); Metropolis, Illinois—2011-12; Manatee County, Florida—
111 2007; Hillsborough County, Florida—2006; Clarksville, Indiana—2009, 2013-
112 2019; El Paso, Texas—2008; Memphis, Tennessee—2006; New Albany, Indiana—
113 2009; Louisville, Kentucky—2004; Fulton County, GA—2001; Chattanooga,
114 Tennessee—1999-2003; Jackson County, Missouri—2008; Ft. Worth, Texas—
115 2004; Kennedale, Texas—2005; Greensboro, North Carolina—2003; Dallas,
116 Texas—1997; Houston, Texas—1997, 1983; Phoenix, Arizona—1995-98, 1979;
117 Tucson, Arizona—1990; Spokane, Washington—2001; St. Cloud, Minnesota—
118 1994; Austin, Texas—1986; Indianapolis, Indiana—1984; Garden Grove,
119 California—1991; Los Angeles, California—1977; Whittier, California—1978;
120 Oklahoma City, Oklahoma—1986; New York, New York Times Square—1994; the
121 Report of the Attorney General's Working Group On The Regulation Of Sexually
122 Oriented Businesses, (June 6, 1989, State of Minnesota); Dallas, Texas—2007;
123 "Rural Hotspots: The Case of Adult Businesses," *19 Criminal Justice Policy Review*
124 153 (2008); "Stripclubs According to Strippers: Exposing Workplace Sexual
125 Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for
126 Prostitution Resources, Minneapolis, Minnesota; "Sexually Oriented Businesses: An

127 Insider's View," by David Sherman, presented to the Michigan House Committee on
128 Ethics and Constitutional Law, Jan. 12, 2000; Sex Store Statistics and Articles;
129 Indianapolis/Marion County Board of Zoning Appeals Documents; Law
130 Enforcement and Private Investigator Affidavits (Adult Cabarets in Forest Park, GA
131 and Sandy Springs, GA); DeKalb County Testimony and Reports—2014; and Strip
132 Club-Trafficking Documents, the City Council finds:

133 (1) Sexually oriented businesses, as a category of commercial uses, are
134 associated with a wide variety of adverse secondary effects including, but not
135 limited to, personal and property crimes, human trafficking, prostitution,
136 potential spread of disease, lewdness, public indecency, obscenity, illicit drug
137 use and drug trafficking, negative impacts on surrounding properties, urban
138 blight, litter, and sexual assault and exploitation. Alcohol consumption
139 impairs judgment and lowers inhibitions, thereby increasing the risk of
140 adverse secondary effects.

141 (2) Sexually oriented businesses should be separated from sensitive land
142 uses to minimize the impact of their secondary effects upon such uses, and
143 should be separated from other sexually oriented businesses, to minimize the
144 secondary effects associated with such uses and to prevent an unnecessary
145 concentration of sexually oriented businesses in one area.

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

153 **THEREFORE, BE IT ORDAINED**, the City hereby adopts and
154 incorporates herein its stated findings and legislative record related to the adverse
155 secondary effects of sexually oriented businesses, including the judicial opinions and
156 reports related to such secondary effects and it is hereby ordained by the above-
157 referenced authority as follows:

158 **SECTION 1.**
159 **DEFINITIONS**
160

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

164 *Adult arcade* means a commercial establishment to which the public is
165 permitted or invited that maintains booths or rooms smaller than 100 square feet,
166 wherein image-producing devices are regularly maintained, and where a fee is

167 charged to access the booths or rooms or to view the images displayed on the image-
168 producing devices.

169 *Adult bookstore* means a commercial establishment which, as one of its
170 principal business activities, offers for sale or rental for any form of consideration
171 any one or more of the following: books, magazines, periodicals or other printed
172 matter, or photographs, films, motion pictures, video cassettes, compact discs, digital
173 video discs, slides, or other visual representations which are characterized by their
174 emphasis upon the display of "specified sexual activities" or "specified anatomical
175 areas." A "principal business activity" exists where the commercial establishment
176 meets any one or more of the following criteria:

177 (1) At least 25 percent of the establishment's displayed merchandise
178 consists of said items; or

179 (2) At least 25 percent of the establishment's revenues derive from the sale
180 or rental, for any form of consideration, of said items; or

181 (3) The establishment maintains at least 25 percent of its floor space for the
182 display, sale, and/or rental of said items (aisles and walkways used to access
183 said items, as well as cashier stations where said items are rented or sold, shall
184 be included in "floor space" maintained for the display, sale, or rental of said
185 items); or

186 (4) The establishment maintains at least 500 square feet of its floor space
187 for the display, sale, and/or rental of said items (aisles and walkways used to
188 access said items, as well as cashier stations where said items are rented or
189 sold, shall be included in "floor space" maintained for the display, sale, or
190 rental of said items); or

191 (5) The establishment regularly offers for sale or rental at least 500 of said
192 items; or

193 (6) The establishment regularly makes said items available for sale or rental
194 and holds itself out, in any medium, as an establishment that caters to adult
195 sexual interests.

196 *Adult cabaret* means a nightclub, bar, juice bar, restaurant, bottle club, or
197 similar commercial establishment that regularly offers live semi-nude conduct. No
198 establishment shall avoid classification as an adult cabaret by offering nude conduct.

199 *Adult motion picture theater* means a commercial establishment to which the
200 public is permitted or invited that maintains viewing rooms that are 100 square feet
201 or larger wherein films or videos characterized by their emphasis upon "specified
202 sexual activities" or "specified anatomical areas" are regularly shown.

203 *Characterized by* means describing the essential character or quality of an
204 item. As applied in this division, no business shall be classified as a sexually oriented

205 business by virtue of showing, selling, or renting materials rated NC-17 or R by the
206 Motion Picture Association of America.

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

209 *City* means City of Blue Ridge, Georgia.

210 *Director* means the Zoning, Land Development and Project Manager of the
211 City of Blue Ridge, Georgia or his or her designee.

212 *Employ, employee, and employment* describe and pertain to any person who
213 works or engages in activity for pay on the premises of a sexually oriented business,
214 on a full time, part time, temporary, or contract basis, regardless of whether the
215 person is denominated an employee, independent contractor, agent, lessee, or
216 otherwise. Employee does not include a person exclusively on the premises for
217 repair or maintenance of the premises or for the delivery of goods to the premises.

218 *Floor space* means the floor area inside an establishment that is visible or
219 accessible to patrons for any reason, excluding restrooms.

220 *Hearing officer* means an attorney, not an employee of the City, who is
221 licensed to practice law in Georgia, and retained to serve as an independent tribunal
222 to conduct hearings under this division.

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

225 *Influential interest* means the actual power to control or influence the
226 operation, management, or policies of the sexually oriented business or legal entity
227 which operates the sexually oriented business. An individual is deemed to have an
228 "influential interest" if he or she (1) is the on-site general manager of the sexually
229 oriented business, (2) owns a financial interest of 30 percent or more of a business
230 or of any class of voting securities of a business, or (3) holds an office (e.g.,
231 president, vice president, secretary, treasurer, managing member, managing director,
232 etc.) in a legal entity which operates the sexually oriented business.

233 *Licensee* means a person in whose name a license to operate a sexually
234 oriented business has been issued, as well as the individual or individuals listed as
235 an applicant on the application for a sexually oriented business license. In the case
236 of an employee, it shall mean the person in whose name the sexually oriented
237 business employee license has been issued.

238 *Nudity or nude conduct* means the showing of the human male or female
239 genitals, pubic area, vulva, or anus with less than a fully opaque covering, or the
240 showing of the female breast with less than a fully opaque covering of any part of
241 the nipple and areola. For purposes of this division, a "fully opaque covering" must
242 be non-flesh colored, shall not consist of any substance that can be washed or peeled
243 off the skin (such as paint, make-up, or latex), and shall not simulate the appearance
244 of the anatomical area that it covers.

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

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

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

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

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

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

264 *Regional shopping mall* (enclosed) means a group of retail and other
265 commercial establishments that is planned, developed, and managed as a single
266 property, with on-site parking provided around the perimeter of the shopping center,
267 and that is generally at least 40 acres in size and flanked by two or more large
268 "anchor" stores, such as department stores. The common walkway or "mall" is
269 enclosed, climate-controlled and lighted, usually with an inward orientation of the
270 stores facing the walkway.

271 *Regularly* means the consistent and repeated doing of an act on an ongoing
272 basis.

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

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

280 *Semi-nude or semi-nudity* means the showing of the female breast below a
281 horizontal line across the top of the areola and extending across the width of the
282 breast at that point, or the showing of the male or female buttocks. This definition
283 shall include the lower portion of the human female breast, but shall not include any

284 portion of the cleavage of the human female breasts exhibited by a bikini, dress,
285 blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed
286 in whole or in part.

287 *Sexual device* means any three-dimensional object designed for stimulation of
288 the male or female human genitals, anus, buttocks, nipple, or for sadomasochistic
289 use or abuse of oneself or others and shall include devices commonly known as
290 dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and
291 physical representations of the human genital organs. Nothing in this definition shall
292 be construed to include devices primarily intended for protection against sexually
293 transmitted diseases or for preventing pregnancy.

294 *Sexual device shop* means a commercial establishment:

- 295 (1) Where more than 100 sexual devices are regularly made available for
296 sale or rental; or
- 297 (2) Where sexual devices are regularly made available for sale or rental and
298 the establishment regularly gives special prominence to sexual devices (e.g.,
299 by using lighted display cases for sexual devices, having a room or discrete
300 area of the establishment significantly devoted to sexual devices, positioning
301 sexual devices near cash registers or similar points of sale, hosting events
302 focused on sexual devices, or holding itself out to the public as a place that
303 focuses on sexual devices).

304 This definition shall not be construed to include any establishment located
305 within an enclosed regional shopping mall, an establishment containing a pharmacy
306 that employs a licensed pharmacist to fill prescriptions on the premises, or an
307 establishment primarily dedicated to providing durable medical equipment.

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

310 *Specified anatomical areas* means and includes:

311 (1) Less than completely and opaquely covered human genitals, pubic
312 region, buttock, and female breast below a point immediately above the top
313 of the areola; and

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

316 *Specified criminal activity* means any of the following specified crimes for
317 which less than five years has elapsed since the date of conviction or the date of
318 release from confinement for the conviction, whichever is the later date:

319 (1) Rape, child molestation, sexual assault, sexual battery, aggravated
320 sexual assault, aggravated sexual battery, or public indecency;

321 (2) Prostitution, keeping a place of prostitution, pimping, or pandering;

322 (3) Obscenity, disseminating or displaying matter harmful to a minor, or
323 use of minor in sexual performance;

324 (4) Any offense related to any sexually-oriented business, including
325 controlled substance offenses, tax violations, racketeering, crimes involving
326 sex, crimes involving prostitution, or crimes involving obscenity;

327 (5) Any attempt, solicitation, or conspiracy to commit one of the foregoing
328 offenses; or

329 (6) Any offense in another jurisdiction that, had the predicate act(s) been
330 committed in Georgia, would have constituted any of the foregoing offenses.

331 *Specified sexual activity* means any of the following:

332 (1) Intercourse, oral copulation, masturbation or sodomy; or

333 (2) Excretory functions as a part of or in connection with any of the
334 activities described in subsection (1) of this definition.

335 *Transfer of ownership or control of a sexually oriented business* means any
336 of the following:

337 (1) The sale, lease, or sublease of the business;

338 (2) The transfer of securities which constitute an influential interest in the
339 business, whether by sale, exchange, or similar means; or

340 (3) The establishment of a trust, gift, or other similar legal device which
341 transfers the ownership or control of the business, except for transfer by
342 bequest or other operation of law upon the death of the person possessing the
343 ownership or control.

366 business. The application shall be signed as required by subsection (d) herein and
367 shall be notarized. An application shall be considered complete when it contains, for
368 each person required to sign the application, the information and/or items required
369 in this subsection (c), accompanied by the appropriate license fee:

370 (1) The applicant's full legal name and any other names used by the
371 applicant in the preceding five years.

372 (2) Current business address or another mailing address for the applicant.

373 (3) Written proof of age, in the form of a driver's license, a picture
374 identification document containing the applicant's date of birth issued by a
375 governmental agency, or a copy of a birth certificate accompanied by a picture
376 identification document issued by a governmental agency.

377 (4) If the application is for a sexually oriented business license, the business
378 name, location, legal description, mailing address and phone number of the
379 sexually oriented business.

380 (5) If the application is for a sexually oriented business license, the name
381 and business address of the statutory agent or other agent authorized to receive
382 service of process.

383 (6) A statement of whether an applicant has been convicted of or has pled
384 guilty or nolo contendere to a specified criminal activity as defined in this
385 division, and if so, each specified criminal activity involved, including the

386 date, place, and jurisdiction of each as well as the dates of conviction and
387 release from confinement, where applicable.

388 (7) A statement of whether any sexually oriented business in which an
389 applicant has had an influential interest, has, in the previous five years, and at
390 a time during which the applicant had the influential interest:

- 391 a. Been found by a court of law to have been operating unlawfully;
- 392 b. Been enjoined from engaging in conduct prohibited by law;
- 393 c. Been held in contempt of court for operating contrary to a court
394 order;
- 395 d. Been declared by a court of law to be a nuisance; or
- 396 e. Been subject to an order of closure.

397 (8) An application for a sexually oriented business license shall be
398 accompanied by a legal description of the property where the business is
399 located and a sketch or diagram showing the configuration of the premises,
400 including a statement of total floor area occupied by the business and a
401 statement of floor area visible or accessible to patrons for any reason,
402 excluding restrooms. The sketch or diagram need not be professionally
403 prepared but shall be drawn to a designated scale or drawn with marked
404 dimensions of the interior of the premises to an accuracy of plus or minus six
405 inches. Applicants who are required to comply with the stage, booth, and/or

406 room configuration requirements of this division shall submit a diagram
407 indicating that the setup and configuration of the premises meets the
408 requirements of the applicable regulations. The director may waive the
409 requirements of this subsection (8) for a renewal application if the applicant
410 adopts a legal description and a sketch or diagram that was previously
411 submitted and certifies that the configuration of the premises has not been
412 altered since it was prepared.

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

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

426 oriented business employee license, the name and address of the establishment
427 where the applicant intends to use the employee license.

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

432 (d) *Signature.* A person who seeks a sexually oriented business employee
433 license under this section shall sign the application for a license. If a person who
434 seeks a sexually oriented business license under this section is an individual, he shall
435 sign the application for a license as applicant. If a person who seeks a sexually
436 oriented business license is other than an individual, each person with an influential
437 interest in the sexually oriented business or in a legal entity that controls the sexually
438 oriented business shall sign the application for a license as applicant. Each applicant
439 must be qualified under this division and each applicant shall be considered a
440 licensee if a license is granted.

441 (e) The information provided by an applicant in connection with an
442 application for a license under this division shall be maintained by the office of the
443 director on a confidential basis, and such information may be disclosed only as may
444 be required, and only to the extent required, by governing law or court order. Any

445 information protected by the right to privacy as recognized by state or federal law
446 shall be redacted prior to such disclosure..

447 **SECTION 3:**
448 **Issuance of a License.**

449 (a) *Sexually oriented business license.* Upon the filing of a completed
450 application for a sexually oriented business license, the applicant shall be considered
451 to hold a temporary license if the completed application is from a sexually oriented
452 business that was lawfully commenced, and is lawfully operating, in the City and
453 the completed application indicates that the applicant is entitled to an annual sexually
454 oriented business license. The temporary license shall expire upon the final decision
455 of the City to deny or grant an annual license. Within 30 days of the filing of a
456 completed sexually oriented business license application, the director shall either
457 issue a license to the applicant or issue a written notice of intent to deny a license to
458 the applicant. The director shall issue a license unless:
459

- 460 (1) An applicant is less than 18 years of age.
461 (2) An applicant has failed to provide information required by this division
462 for issuance of a license or has falsely answered a question or request for
463 information on the application form.
464 (3) The license fee required by this division has not been paid.
465 (4) The sexually oriented business, as defined herein, is not in compliance
466 with the interior configuration requirements of this division.

467 (5) The sexually oriented business, as defined herein, is not in compliance
468 with the location requirements set forth in the City of Blue Ridge, Georgia
469 Ordinances.

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

- 473 a. Been found by a court of law to have been operating unlawfully;
- 474 b. Been enjoined from engaging in conduct prohibited by law;
- 475 c. Been held in contempt of court for operating contrary to a court
476 order;
- 477 d. Been declared by a court of law to be a nuisance; or
- 478 e. Been subject to an order of closure.

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

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

484 (b) *Employee license.* Upon the filing of a completed application for a
485 sexually oriented business employee license, the applicant shall be considered to
486 hold a temporary license if the applicant seeks licensure to work in a licensed

487 sexually oriented business and the completed application indicates that the applicant
488 is entitled to an annual sexually oriented business employee license. The temporary
489 license shall expire upon the final decision of the City to deny or grant an annual
490 license. Within 30 days of the filing of a completed sexually oriented business
491 employee license application, the director shall either issue a license to the applicant
492 or issue a written notice of intent to deny a license to the applicant. The director shall
493 issue a license unless:

- 494 (1) The applicant is less than 18 years of age.
- 495 (2) The applicant has failed to provide information as required by this
496 division for issuance of a license or has falsely answered a question or request
497 for information on the application form.
- 498 (3) The license fee required by this division has not been paid.
- 499 (4) Any sexually oriented business in which the applicant has had an
500 influential interest, has, in the previous five years, and at a time during which
501 the applicant had the influential interest:
 - 502 a. Been found by a court of law to have been operating unlawfully;
 - 503 b. Been enjoined from engaging in conduct prohibited by law;
 - 504 c. Been held in contempt of court for operating contrary to a court
505 order;
 - 506 d. Been declared by a court of law to be a nuisance; or

507 e. Been subject to an order of closure.

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

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

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

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

523 **SECTION 4**
524 **Fees.**
525

526 The fees for sexually oriented business licenses and sexually oriented business
527 employee licenses shall be as set forth in the schedule of fees as adopted by the City
528 Council.

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SECTION 5
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.

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SECTION 6
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.

551 (b) Application for renewal of an annual license should be made at least 90
552 days before the expiration date of the current annual license, and when made less
553 than 90 days before the expiration date, the expiration of the current license will not
554 be affected.

555 **SECTION 7**
556 **Suspension.**

557 (a) The director shall issue a written notice of intent to suspend a sexually
558 oriented business license for a period not to exceed 30 days if the sexually oriented
559 business licensee has knowingly or recklessly violated this division or has
560 knowingly or recklessly allowed an employee or any other person to violate this
561 division.
562

563 (b) The director shall issue a written notice of intent to suspend a sexually
564 oriented business employee license for a period not to exceed 30 days if the
565 employee licensee has knowingly or recklessly violated this division.
566

567 **SECTION 8**
568 **Revocation.**

569 (a) The director shall issue a written notice of intent to revoke a sexually
570 oriented business license or a sexually oriented business employee license, as
571 applicable, if the licensee knowingly or recklessly violates this division or has
572 knowingly or recklessly allowed an employee or any other person to violate this
573

574 division and a suspension of the licensee's license has become effective within the
575 previous 12-month period.

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

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

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

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

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

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

592 (6) The licensee has knowingly or recklessly engaged in or allowed any
593 specified sexual activity or specified criminal activity to occur in or on the
594 premises of the sexually oriented business;

595 (7) The licensee has knowingly or recklessly allowed a person under the
596 age of 21 years to consume alcohol on the premises of the sexually oriented
597 business;

598 (8) The licensee has knowingly or recklessly allowed a person under the
599 age of 18 years to appear in a semi-nude condition or in a state of nudity on
600 the premises of the sexually oriented business; or

601 (9) The licensee has knowingly or recklessly allowed three or more
602 violations of this division within a 12-month period.

603 (c) The fact that any relevant conviction is being appealed shall have no
604 effect on the revocation of the license, provided that, if any conviction which serves
605 as a basis of a license revocation is overturned or reversed on appeal, that conviction
606 shall be treated as null and of no effect for revocation purposes.

607 (d) When, after the notice and hearing procedure described in this division,
608 the City revokes a license, the revocation shall continue for one year and the licensee
609 shall not be issued a sexually oriented business license or sexually oriented business
610 employee license for one year from the date revocation becomes effective..

611 **SECTION 9**
612 **Hearing; license denial, suspension, revocation; appeal.**

613
614 (a) When the director issues a written notice of intent to deny, suspend, or
615 revoke a license, the director shall immediately send such notice, which shall state
616 the grounds under this division for such action, to the applicant or licensee by
617 personal delivery or certified mail. The notice shall be directed to the most current
618 business address or other mailing address on file with the director for the applicant
619 or licensee. The notice shall also set forth the following: the applicant or licensee
620 shall have ten days after the delivery of the written notice to submit, at the office of
621 the director, a written request for a hearing. If the applicant or licensee does not
622 request a hearing within said ten days, the director's written notice shall become a
623 final denial, suspension, or revocation, as the case may be, on the 15th day after it is
624 delivered to the applicant or licensee.

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

631 (c) At the hearing, the petitioner shall have the opportunity to present all
632 relevant arguments and to be represented by counsel, present evidence and witnesses
633 on his or her behalf, and cross-examine any of the director's witnesses. The director

634 may also be represented by counsel, present evidence and witnesses, and cross-
635 examine any of the petitioner's witnesses. The hearing shall take no longer than one
636 day, unless extended at the request of the petitioner to meet the requirements of due
637 process and proper administration of justice. The hearing officer shall affirm the
638 director's licensing decision if any substantial evidence in the record at the hearing
639 supports any of the grounds set forth in the written notice of intent to deny, suspend,
640 or revoke. The hearing officer shall issue a final written decision, including specific
641 reasons for the decision pursuant to this division, to the petitioner within five days
642 after the hearing.

643 (d) If the decision is to deny, suspend, or revoke the license, the decision
644 shall advise the petitioner of the right to appeal such decision to a court of competent
645 jurisdiction, and the decision shall not become effective until the tenth day after it is
646 rendered. If the hearing officer's decision finds that there is no substantial evidence
647 to support the director's licensing decision, the hearing officer shall,
648 contemporaneously with the issuance of the decision, order the director to
649 immediately withdraw the intent to deny, suspend, or revoke the license and to notify
650 the petitioner in writing by certified mail of such action. If the petitioner is not yet
651 licensed, the director shall contemporaneously therewith issue the license to the
652 applicant.

653 (e) If any court action challenging a licensing decision is initiated, the City
654 shall consent to expedited briefing and/or disposition of the action, shall comply with
655 any expedited schedule set by the court, and shall facilitate prompt judicial review
656 of the proceedings. The following shall apply to any sexually oriented business that
657 is lawfully operating as a sexually oriented business, or any sexually oriented
658 business employee that is lawfully employed as a sexually oriented business
659 employee, on the date on which the completed business or employee application, as
660 applicable, is filed with the director: upon the filing of any court action to appeal,
661 challenge, restrain, or otherwise enjoin the City's enforcement of any denial,
662 suspension, or revocation of a license, the director shall immediately issue the
663 petitioner a provisional license. The provisional license shall allow the petitioner to
664 continue operation of the sexually oriented business or to continue employment as a
665 sexually oriented business employee and will expire upon the court's entry of a
666 judgment on the petitioner's appeal or other action to restrain or otherwise enjoin the
667 City's enforcement. While a provisional license is in effect, the provisional licensee
668 shall comply with all application regulations and ordinances.

669 **SECTION 10**
670 **Transfer of License.**
671

672 A licensee shall not transfer his or her license to another, nor shall a licensee
673 operate a sexually oriented business under the authority of a license at any place

674 other than the address designated in the sexually oriented business license
675 application.

676 **SECTION 11**
677 **Hours of Operation.**

678 No sexually oriented business shall be or remain open for business between
679
680 12:00 midnight and 6:00 a.m. on any day.

681 **SECTION 12**
682 **Regulations pertaining to operation of adult arcade or adult motion picture**
683 **theater.**

684 (a) A person who operates or causes to be operated an adult arcade or adult
685 motion picture theater shall comply with the following requirements:

686 (1) Each application for a sexually oriented business license shall contain a
687 diagram of the premises showing the location of all operator's stations, booths
688 or viewing rooms, overhead lighting fixtures, and restrooms, and shall
689 designate all portions of the premises in which patrons will not be permitted.
690 The diagram shall also designate the place at which the license will be
691 conspicuously posted, if granted. A professionally prepared diagram in the
692 nature of an engineer's or architect's blueprint shall not be required; however,
693 each diagram shall be oriented to the north or to some designated street or
694 object and shall be drawn to a designated scale or with marked dimensions
695 sufficient to show the various internal dimensions of all areas of the interior
696 of the premises to an accuracy of plus or minus six inches. The director may
697

698 waive the foregoing diagram for renewal applications if the applicant adopts
699 a diagram that was previously submitted and certifies that the configuration
700 of the premises has not been altered since it was prepared.

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

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

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

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

716 a. That the occupancy of viewing rooms less than 100 square feet is
717 limited to one person.

- 718 b. That specified sexual activity on the premises is prohibited.
- 719 c. That the making of openings between viewing rooms is prohibited.
- 720 d. That violators will be required to leave the premises.
- 721 e. That violations of these regulations are unlawful.
- 722 (6) It shall be the duty of the operator to enforce the regulations articulated
- 723 in subsections (5)a. through (5)e. of this section.
- 724 (7) The interior of the premises shall be configured in such a manner that
- 725 there is an unobstructed view from an operator's station of every area of the
- 726 premises, including the interior of each viewing room but excluding
- 727 restrooms, to which any patron is permitted access for any purpose. An
- 728 operator's station shall not exceed 32 square feet of floor area. If the premises
- 729 has two or more operator's stations designated, then the interior of the
- 730 premises shall be configured in such a manner that there is an unobstructed
- 731 view of each area of the premises to which any patron is permitted access for
- 732 any purpose, excluding restrooms, from at least one of the operator's stations.
- 733 The view required in this paragraph must be by direct line of sight from the
- 734 operator's station. It is the duty of the operator to ensure that at least one
- 735 employee is on duty and situated in each operator's station at all times that any
- 736 patron is on the premises. It shall be the duty of the operator, and it shall also
- 737 be the duty of any employees present on the premises, to ensure that the view

738 area specified in this paragraph remains unobstructed by any doors, curtains,
739 walls, merchandise, display racks or other materials or enclosures at all times
740 that any patron is present on the premises.

741 (8) It shall be the duty of the operator to ensure that no porous materials are
742 used for any wall, floor, or seat in any booth or viewing room.

743 (b) It shall be unlawful for a person having a duty under subsections (a)(1)
744 through (a)(8) to knowingly or recklessly fail to fulfill that duty.

745 (c) No patron shall knowingly or recklessly enter or remain in a viewing
746 room less than 100 square feet in area that is occupied by any other patron.

747 (d) No patron shall knowingly or recklessly be or remain within one foot of
748 any other patron while in a viewing room that is 100 square feet or larger in area.

749 (e) No person shall knowingly or recklessly make any hole or opening
750 between viewing rooms.

751 **SECTION 13**
752 **Loitering, exterior lighting and monitoring, and interior lighting**
753 **requirements.**

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

755 (1) Ensure that at least two conspicuous signs stating that no loitering is
756 permitted on the premises are posted on the premises;
757

758 (2) Designate one or more employees to monitor the activities of persons
759 on the premises by visually inspecting the premises at least once every 90
760 minutes or inspecting the premises by use of video cameras and monitors; and

761 (3) Provide lighting to the exterior premises to provide for visual inspection
762 or video monitoring to prohibit loitering. Said lighting shall be of sufficient
763 intensity to illuminate every place to which customers are permitted access at
764 an illumination of not less than one foot candle as measured at the floor level.
765 If used, video cameras and monitors shall operate continuously at all times
766 that the premises are open for business. The monitors shall be installed within
767 an operator's station.

768 (b) It shall be the duty of the operator of a sexually oriented business to
769 ensure that the interior premises shall be equipped with overhead lighting of
770 sufficient intensity to illuminate every place to which customers are permitted access
771 at an illumination of not less than five foot candles as measured at the floor level and
772 the illumination must be maintained at all times that any customer is present in or on
773 the premises.

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

777 (d) It shall be unlawful for a person having a duty under this section to
778 knowingly or recklessly fail to fulfill that duty.

779 **SECTION 14**
780 **Penalties and Enforcement.**
781

782 (a) A person who violates any of the provisions of this division shall be
783 guilty of a violation and, upon conviction, shall be punishable by fines not to exceed
784 \$1,000.00 per violation, or by imprisonment for a period not to exceed 60 days, or
785 by both such fine and imprisonment. For violations of this division that are
786 continuous with respect to time, each day that the violation continues is a separate
787 offense. For violations of this division that are not continuous with respect to time,
788 each violation is a separate offense.

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

793 (c) The City's legal counsel is hereby authorized to institute civil
794 proceedings necessary for the enforcement of this division to enjoin, prosecute,
795 restrain, or correct violations hereof. Such proceedings shall be brought in the name
796 of the City, provided, however, that nothing in this section and no action taken
797 hereunder, shall be held to exclude such criminal or administrative proceedings as
798 may be authorized by other provisions of this division, or any of the laws in force in

799 the City or to exempt anyone violating this Code or any part of the said laws from
800 any penalty which may be incurred.

801 **SECTION 15**

802 **Applicability of division to existing businesses.**

803
804 (a) Licensing requirements. All sexually oriented businesses lawfully
805 operating in the City in compliance with all state and local laws prior to the effective
806 date of this division, and all sexually oriented business employees working in the
807 City prior to the effective date of this division, are hereby granted a de facto
808 temporary license to continue operation or employment for a period of 90 days
809 following the effective date of this division. Within 60 days following the effective
810 date of this division, all sexually oriented businesses and sexually oriented business
811 employees must apply for a license under this division.

812 (b) Interior configuration requirements. Any sexually oriented business that
813 is required to, but does not, have interior configurations or stages that meet at least
814 the minimum requirements of this Ordinance shall have 90 days from the effective
815 date of this division to conform its premises to said requirements. During said 90
816 days, any employee who appears within view of any patron in a semi-nude condition
817 shall nevertheless remain, while semi-nude, at least six feet from all patrons.

818 (c) Other requirements. Except as provided for in subsections (a) and (b)
819 above, sexually oriented businesses shall comply with this division on the date that
820 it takes effect..

SECTION 16
Prohibited Conduct.

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(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 feet from all patrons and on a stage at least 18 inches from the floor in a room of at least 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 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

843 semi-nude on the premises of the sexually oriented business, unless an operator of
844 the sexually oriented business is present in the same room.

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

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

852 SECTION 17

853 Scienter required to prove violation or business licensee liability.

854
855 This division does not impose strict liability. Unless a culpable mental state is
856 otherwise specified herein, a showing of a reckless mental state is necessary to
857 establish a violation of a provision of this division. Notwithstanding anything to the
858 contrary, for the purposes of this division, an act by an employee that constitutes
859 grounds for suspension or revocation of that employee's license shall be imputed to
860 the sexually oriented business licensee for purposes of finding a violation of this
861 division, or for purposes of license denial, suspension, or revocation, only if an
862 officer, director, or general partner, or a person who managed, supervised, or
863 controlled the operation of the business premises, knowingly or recklessly allowed

864 such act to occur on the premises. It shall be a defense to liability that the person to
865 whom liability is imputed was powerless to prevent the act.

866 **SECTION 18**
867 **Location of sexually oriented businesses.**
868

869 (a) It shall be unlawful to establish, operate, or cause to be operated a
870 sexually oriented business in the City of Blue Ridge that is:

- 871 (1) Within 750 feet of a residence or residential zoning district;
- 872 (2) Within 1,500 feet of a church, school, governmentally owned or
873 operated building, library, civic center, public park, hospital, community club,
874 or prison;
- 875 (3) Within 1,000 feet of another sexually oriented business; or
- 876 (4) Within 500 feet of an establishment licensed to sell alcoholic beverages
877 for consumption on the premises or to sell alcoholic beverages as a package
878 store.

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

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

891 (d) Amortization.

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

895 a. Was, in all respects, lawfully: established, continuously licensed,
896 and continuously operated until this division was adopted;

897 b. Has continuously, lawfully operated since this division was
898 adopted; and

899 c. Does not conform to the location standards for sexually oriented
900 businesses set forth in this Ordinance.

901 (2) Notwithstanding anything to the contrary in the Official Code of the
902 City of Blue Ridge, Georgia, a lawful nonconforming sexually oriented
903 business may continue to operate in its nonconforming location until
904 December 31, 2022, in order to make a reasonable recoupment of its
905 investment in said location that was made before the adoption of this division.

906 On or before January 1, 2023, the sexually oriented business shall conform to
907 the location standards for sexually oriented businesses in the Official Code of
908 the City of Blue Ridge, Georgia.

909 (3) Hardship extension. A lawful nonconforming sexually oriented business
910 may apply to extend the time to operate its sexually oriented business in its
911 nonconforming location upon a showing of financial hardship. An application
912 for an initial extension based upon financial hardship shall be made by
913 October 31, 2022. If a hardship extension is granted, subsequent applications
914 for hardship extensions shall be made at least 60 days before the conclusion
915 of the business's then-current extension period.

916 (4) Procedure. An application for a hardship extension shall be filed in
917 writing with the director, shall include documentation showing that the
918 establishment is a lawful nonconforming sexually oriented business, shall
919 specify the length of extension requested, and shall include evidence of
920 purchase and improvement costs, income earned and lost, depreciation, and
921 costs of relocation. The application shall include an electronic copy of the
922 business's accounting or bookkeeping records, including the computer file(s)
923 maintained in QuickBooks or any similar accounting or bookkeeping
924 software. Within 20 days after receiving the application, the director shall
925 schedule a public hearing on the application before the hearing officer, which

926 public hearing shall be conducted within 45 days after the director's receipt of
927 the application. Notice of the time and place of such public hearing shall be
928 published at least ten days before the hearing on the City's website or in a
929 newspaper of general circulation published within the City, and shall identify
930 the particular business and location for which the hardship extension is
931 requested.

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

939 **SECTION 19**
940 **REPEAL OF CONFLICTING ORDINANCES TO REMOVE CONFLICT**

941
942 On the effective date of this Ordinance, all parts of ordinances in conflict with
943 the terms of this ordinance are hereby repealed to the extent of the conflict, but it is
944 hereby provided that any ordinance or law which may be applicable hereto and aid
945 in carrying out and making effective the intent, purpose and provisions hereof, is
946 hereby adopted as a part hereof and shall be legally construed to be in favor of
947 upholding this Ordinance on behalf of the City of Blue Ridge, Georgia.

948 **SECTION 20**
949 **SEVERABILITY**

950
951 If any paragraph, subparagraph, sentence, clause, phrase or any other portion
952 of this Ordinance should be declared invalid or unconstitutional by any Court of
953 competent jurisdiction or if the provisions of any part of this Ordinance as applied
954 to any particular person, situation or set of circumstances is declared invalid or
955 unconstitutional, such invalidity shall not be construed to affect the provisions of
956 this Ordinance not so held to be invalid, or the application of this Ordinance to other
957 circumstances not so held to be invalid. It is hereby declared to be the legislative
958 intent of the City Council of the City of Blue Ridge, Georgia to provide for separate
959 and divisible parts and it does hereby adopt any and all parts hereof as may not be
960 held invalid for any reason.

961 **SECTION 21**
962 **EFFECTIVE DATE**

963
964 The effective date of this Ordinance shall be immediately upon its passage by
965 the City Council and execution by the Mayor or upon fifteen (15) days expiring from
966 the date of its passage without a veto of said Ordinance by the Mayor as set forth in
967 the City Charter at Section 3.23(b). Upon the Ordinance becoming effective, the
968 City Clerk shall insert the modifications, additions or deletions and publish the
969 Ordinance as amended.

970 SO ORDAINED, this ____ day of _____, 2021.

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978

BLUE RIDGE CITY COUNCIL

By: _____
Mayor

Attest:

City Clerk