

ORDINANCE

WHEREAS, the City of McIntyre, Georgia (the "City") has reviewed and analyzed numerous studies, reports, articles, judicial decisions, and the experience and legislative findings of other municipalities and counties concerning the impacts or "secondary effects" of sexually oriented businesses and the sale, distribution, and display of sexually oriented materials (collectively, "Sexually Oriented Business Activities") on the areas in which such Activities are located or take place; and

WHEREAS, in conjunction with the adoption of this Ordinance, the City is adopting an Ordinance to Restrict the Location of Adult Entertainment Establishments (the "Adult Use Zoning Ordinance") to, among other things, prevent the location of Sexually Oriented Business Activities from adversely affecting or slowing the growth of business areas, adversely affecting or decreasing residential property values or otherwise adversely affecting or interfering with other sensitive land uses such as schools, child care centers, parks, cemeteries, public housing facilities, and places of worship; and

WHEREAS, Sexually Oriented Business Activities can cause or contribute significantly to increase in criminal activity in the areas in which they are located or take place, thereby taxing crime prevention, law enforcement, and public health services; and

WHEREAS, Sexually Oriented Business Activities often encourage prostitution, increase the frequency of sexual assaults, attract or encourage other related criminal activity, and generally increase public health and safety risks; and

WHEREAS, Sexually Oriented Business Activities can cause or contribute significantly to the deterioration of residential neighborhoods, can impair the character and quality of such neighborhoods and the housing located therein, and can inhibit the proper maintenance

2

and growth of residential neighborhoods, limiting or reducing the availability of quality, affordable housing for the area residents and reducing the value of property in such areas; and

WHEREAS, Sexually Oriented Business Activities can undermine the stability of other established business and commercial uses in the areas in which Sexually Oriented Business Activities are located or take place and can cause or contribute significantly to the deterioration of such business and commercial uses, thereby causing or contributing to a decline in such uses, an inhibition on business and commercial growth, and a resulting adverse impact on local government revenues and property values; and

WHEREAS, Sexually Oriented Business Activities can have dehumanizing and distracting influence on young people and students attending schools, can diminish or destroy the enjoyment and family atmosphere of parks, playgrounds, forest preserves, and other public recreational areas, can interfere with or even destroy the spiritual experience of attending church, synagogue, or other places of worship, and can interfere with or even destroy the opportunity for solemn and respectful contemplation at cemeteries and similar facilities; and

WHEREAS, the presence of Sexually Oriented Business Activities is perceived by the public and neighboring business owners and residents as an indication that the area in which such Activities occur or take place is in decline and deteriorating, a perception that can quickly lead to such decline and deterioration, promoting businesses and residents to flee the affected area to avoid the consequences of such decline and deterioration; and

WHEREAS, the exterior appearance, including signage, of Sexually Oriented Business Activities can have an adverse impact on young people and students, can contribute to the decline in property values associated with Sexually Oriented Business Activities, and can

otherwise cause or contribute significantly to the adverse impacts and secondary effects of Sexually Oriented Business Activities on the areas in which such Activities are located or take place; and

WHEREAS, the Mayor and City Council of the City have determined that Sexually Oriented Business Activities will, unless properly regulated, have these and other severe adverse impacts and secondary effects on the City and its residents; and

WHEREAS, for the reasons set forth above, among others, the Mayor and City Council of the City have found and determined that it is essential to the health, safety, and general welfare of the City and its residents to adopt comprehensive licensing regulations relating to Sexually Oriented Business Activities, to the distribution and display of sexually oriented materials, and to the types and operations of sexually oriented businesses that may locate in the City; and

WHEREAS, the Mayor and City Council have further found and determined that the establishment of the regulations established pursuant to this Ordinance on the operation, maintenance, and structural aspects of Sexually Oriented Business Activities is necessary to minimize to the greatest extent possible, or to eliminate altogether, the public health and safety risks that customarily, but unnecessarily, exist in connection with such Activities; and

WHEREAS, the Mayor and City Council have further found and determined that the regulations established pursuant to this Ordinance, including specifically, but without limitation, the adult establishment age limitations and employees record keeping requirements, are necessary to address, mitigate, and if possible, eliminate the adverse impacts and secondary effects of Sexually Oriented Business Activities on the areas in which such Activities are located or take place and on the persons who are exposed to those Activities, to ensure that these Activities are

4

established, managed and operated in a safe and legal manner at all times, and to ensure that the unnecessary public health risks associated with Sexually Oriented Business Activities are minimized to the greatest extent possible, or eliminated altogether; and

WHEREAS, the Mayor and City Council have further found and determined that the limitations on the hours of operation of Sexually Oriented Business Activities set forth in this Ordinance are necessary to protect and secure neighboring uses, to control adverse noise and traffic impacts associated with Sexually Oriented Business Activities, to enhance enforcement and implementation of the regulations set forth herein, and to otherwise address, mitigate and, if possible, eliminate the adverse impacts and secondary effects of Sexually Oriented Business Activities; and

WHEREAS, the Mayor and City Council of the City have further found and determined that the disclosure and background information requirements set forth in this Ordinance relating to the owners, operators, managers, employees, and others in a position of control over Sexually Oriented Business Activities are necessary in order for the City to implement and enforce the terms and conditions of this Ordinance, to aid in the prevention of crime related to Sexually Oriented Business Activities, to minimize to the greatest extent possible, or eliminate altogether, the public health risks associated with Sexually Oriented Business Activities, and to otherwise carry out the purposes and objectives of the regulations established herein; and

WHEREAS, the regulations established pursuant to this Ordinance are in no way based on the content of any protected speech associated with Sexually Oriented Business Activities, and the purpose and intent of the regulations established pursuant to this Ordinance is

5

not to restrict or prohibit protected speech associated with Sexually Oriented Business Activities, but rather it is to address, mitigate, and if possible, eliminate the adverse impacts and secondary effects of Sexually Oriented Business Activities on the areas in which such Activities are established, managed, and operated in a safe and legal manner at all times; and

WHEREAS, the City has for many years engaged in rigorous, firm and effective policies and regulations relating to uses and activities that could have adverse impacts on the continued stability and vitality of the residential and business areas of the City, and the regulations imposed by this Ordinance , are a continuation of and consistent with those long-standing policies and regulations; and

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF McINTYRE, GEORGIA, AS FOLLOWS:

SECTION 1. Recitals .

The foregoing recitals are incorporated herein as the findings and determinations of the Mayor and City Council of the City.

SECTION 2. Short Title .

This Ordinance shall be known as, and may be referred to as, the "McIntyre Adult Use Licensing Ordinance."

SECTION 3. Definitions .

For the purpose of this Ordinance, the following terms, phrases, and words shall have the meanings given herein.

A. Adult Booth. Any area of an Adult Entertainment Establishment set off from the remainder of such Establishment by one or more walls or other dividers or partitions and used to show, play, or otherwise demonstrate any Adult Materials or to view any live

6

performance that is distinguished or characterized by an emphasis on the exposure, depiction, or description of Specified Anatomical Areas or the conduct or simulation of Specified Sexual Activities.

B. Adult Entertainment Establishment. Any of the following Commercial Establishments, as defined herein:

1. Adult Store. Any Commercial Establishment (a) that contains one or more Adult Booths; (b) that as a substantial or significant portion of its business offers for sale, rental, or viewing any Adult Materials; or (c) that has a segment or section devoted to the sale or display of Adult Materials.
2. Adult Theater. Any Commercial Establishment that as a substantial or significant portion of its business features or provides films, motion pictures, video or audio cassettes, slides, or other visual representations or recordings of any kind that are distinguished or characterized by an emphasis on the exposure, depiction, or description of Specified Anatomical Areas, or the conduct or the simulation of Specified Sexual Activities.

C. Adult Establishment Employee. Any individual, including entertainers, who work in or at, or render any services directly related to the operation of an, Adult Entertainment Establishment; provided, however, that this definition shall not include persons delivering goods, materials (other than Adult Materials),

food and beverages, or performing maintenance or repairs, to the Licensed Premises.

D. Adult Establishment License. A license issued for an Adult Entertainment Establishment pursuant to the provisions of this Ordinance.

E. Adult Establishment Patron. Any individual, other than an Adult Establishment Employee, present in or at any Adult Entertainment Establishment at any time when such Adult Entertainment Establishment is open for business; provided, however, that this definition shall not include persons delivering goods, materials (other than Adult Materials), food and beverages, or performing maintenance or repairs, to the Licensed Premises.

F. Adult Material. Any of the following, whether new or used:

1. (a) Books, magazines, periodicals, or other printed matter, or digitally-stored materials; or
(b) Films, motion pictures, video or audio cassettes, slides, computer displays, or other visual representations or recordings of any kind, that are distinguished or characterized by an emphasis on the exposure, depiction, or description of Specified Anatomical Areas, or the conduct or simulation of Specified Sexual Activities.
2. Instruments, novelties, devices, or paraphernalia that are designed for use in connection with Specified Sexual Activities, or that depict or describe Specified Anatomical Areas.

G. Adult Use Commissioner. The Mayor of the City, pursuant to Section 4 of this Ordinance.

- H. Commercial Establishment. Any place where admission, services, performances, or products are provided for or upon payment of any form of consideration.
- I. Days. Calendar days, unless otherwise specifically set forth in this Ordinance.
- J. Licensed Premises. The place or location described in an Adult Establishment License where an Adult Entertainment Establishment is authorized to operate. No sidewalks, streets, parking areas, public right-of-way, or grounds adjacent to any such place or location shall be included within the Licensed Premises.
- K. Effective Date. The Effective Date of this Ordinance shall be deemed to be February 1, 2000.
- L. Licensee. Any person or entity that has been issued an Adult Establishment License pursuant to the provisions of this Ordinance.
- M. Nude or State of Nudity. A state of dress or undress that exposes to view (1) less than completely and opaquely covered human genitals; pubic region; anus; or female breast below a point immediately above the top of the areolae, but not including any portion of the cleavage of the female breast exhibited by a dress, blouse, shirt, leotard, bathing suit, or other wearing apparel, provided the areolae is not exposed; or (2) human male genitals in a discernibly turgid state, even if completely and opaquely covered, or any device or covering that, when worn, simulates human male genitals in a discernibly turgid state.
- N. Reviewing Departments. The Police Department.
- O. Semi-Nude. A state of dress or undress in which clothing covers no more than

the human genitals, pubic region, anus, and areolae of the female breast, as well as portions of the body covered by supporting straps or devices or by other minor accessory apparel such as hats, gloves, and socks.

P. Specified Anatomical Areas. Any of the following:

1. Less than completely and opaquely covered human genitals; pubic region; buttocks; anus; or female breast below a point immediately above the top of the areolae, but not including any portion of the cleavage of the female breast exhibited by a dress, blouse, shirt, leotard, bathing suit, or other wearing apparel, provided the areolae is not exposed.
2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered, or any device or covering that, when worn, simulates human male genitals in a discernibly turgid state.

Q. Specified Sexual Activities. Any of the following:

1. Fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts.
2. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy.
3. Masturbation, actual or simulated.
4. Human genitals in a state of sexual stimulation, arousal, or tumescence.
5. Excretory functions as part of or in connection with any of the activities set forth in Paragraphs 1,2,3, or 4 of this definition.

SECTION 4. Adult Use Commissioner .

The Mayor of the City is hereby designated as the Adult Use Commissioner

pursuant to the terms and conditions of this Ordinance. The Adult Use Commissioner shall have the following powers and duties:

1. To administer and rule upon the applications for, and the issuance, renewal, suspension, and revocation of Adult Establishment Licenses as set forth in this Ordinance.
2. To conduct or provide for such inspections of Adult Entertainment Establishments as shall be necessary to determine and ensure compliance with the provisions of this Ordinance and other applicable provisions of law.
3. To periodically review the provisions of this Ordinance and the conduct and operation of Adult Entertainment Licenses, and to make such related reports and recommendations to the City Council as the Adult Use Commissioner shall deem necessary.
4. To conduct such hearings, studies, and reports on Adult Entertainment Establishments, and the regulations relating thereto, as the Adult Use Commissioner shall deem necessary, and to conduct such hearings on the revocation or suspension of an Adult Establishment License as required pursuant to Section 15 of this Ordinance.
5. To take such further actions as the Adult Use Commissioner shall deem necessary to carry out the purposes and intent of this Ordinance and to exercise such additional powers in furtherance thereof as are implied or incident to those powers and duties expressly set forth in this Ordinance.

SECTION 5. Adult Establishment Licenses Generally.

- A. Adult Establishment License Required. An Adult Establishment License shall be required to establish, operate, or maintain an Adult Entertainment Establishment within the City.
- B. Operation Without License Prohibited. Except as provided in Subsection F of this Section with regard to Adult Entertainment Establishment existing prior to the effective date of this Ordinance, it shall be unlawful for any person not having a current and valid Adult Establishment License to establish, operate, or maintain an Adult Entertainment Establishment within the City at any time after the effective date of this Ordinance.
- C. Operation in Violation of License Prohibited. It shall be unlawful for any Licensee to establish, operate, or maintain an Adult Entertainment Establishment within the City except in the manner authorized by, and in compliance with, the provisions of this Ordinance and the Licensee's Adult Establishment License.
- D. Content and Display of License. Every Adult Establishment License shall be provided by the City and shall, at a minimum, prominently state on its face the name of the Licensee, the expiration date, and the address of the Adult Entertainment Establishment. Every Licensee shall cause the Licensee's Adult Establishment License to be framed, covered by glass, and hung at all times in plain view in a conspicuous place on the Licensed Premises so that it can be easily seen and read at any time by any person entering the Licensed Premises.

- 12
- E. License Term. Except hereinafter provided, Adult Establishment Licenses shall be operative and valid, unless first terminated, suspended, or revoked, for a term of one year commencing at issuance and terminating on December 31 of that same year.
- F. Renewal. An Adult Establishment License may be renewed only by making application as required for an initial License pursuant to Section 6 of this Ordinance. Application for renewal shall be made at least 30 days before the expiration of the then-current License Term. The expiration of the License shall not be affected or extended by a renewal application that is made less than 30 days before expiration.

SECTION 6. Form and Submittal of License Application.

- A. Required Form. An Application for an Adult Establishment License, or the renewal thereof, shall be made in writing to the Adult Use Commissioner on a form prescribed by the Adult Use Commissioner and shall be signed (I) by the applicant, if the applicant is an individual ; (II) by at least one of the persons entitled to share in the profits of the organization and having unlimited personal liability for the obligations of the organization and the right to bind all other such persons, if the applicant is a partnership (general or limited), joint venture, or any other type of organization; (III) by a duly authorized agent, if the applicant is a corporation; or (IV) by the trustee, if the applicant is a land trust. The application shall be verified by oath or affidavit as to all statements made on or in connection with the application and any attachments thereto. Each application shall specifically identify the applicant and the Licensed Premises

13

for which an Adult Entertainment License is sought. Each initial or renewal application shall be accompanied by seven identical copies.

B. Administrative Processing Fee and Security.

1. Administrative Processing Fee. Every applicant for an Adult Establishment License or for the renewal of an existing Adult Establishment License shall pay an Administrative Processing Fee in the amount of \$100 by certified check to the City at the time of filing such application. The Administrative Processing Fee shall in all cases be non-refundable and shall be deposited in the general corporate fund of the City.
2. Bond or Other Security. Each Adult Establishment License, and any renewals thereof, shall be conditioned on the acquisition and maintenance in good standing by the applicant and Licensee of a surety bond or other similar security in favor of the City in the amount of \$2,500 to the City. Before an Adult Establishment License may be issued, the applicant shall furnish such bond or security, and before, an Adult Establishment License is renewed or reinstated following revocation or suspension, the Licensee shall submit evidence that the bond or other security, in the amount required pursuant hereto, remains in full force and effect. The bond or other security, or part thereof, for an Adult Entertainment Establishment shall be forfeited automatically pursuant to Section 15.B.4 of this Ordinance in order to reimburse the City for the City's costs in association with the proceedings related to any suspension or revocation of

14

the License.

C. Required Information and Documents . Each application shall include the following information and documents:

1. (a) Individuals: The applicant's legal name, all of the applicant's aliases, the applicant's business address and social security number, written proof of the applicant's age, the citizenship and place of birth of the applicant and, if a naturalized citizen, the time and place of the applicant's naturalization.
- (b) Corporations: The applicant corporation's complete name and official business address; the legal name, all aliases, and the ages, business addresses, and social security numbers of all the directors, officers, and managers of the corporation and of every person owning or controlling more than 50 percent of the voting shares of the corporation; the corporation's date and place of incorporation and the objects for which it was formed; proof that the corporation is a corporation in good standing and authorized to conduct business in the State of Georgia, and the name of the registered corporate agent and the address of the registered office for service of process.
- (c) Partnerships (general or limited), joint ventures, or any other type of organization where two or more persons share in the profits and liabilities of the organization: The applicant organizations complete name and official business address; the legal name, all aliases, and the ages, business addresses, and social security numbers of each partner (other than limited

partners) or any other person entitled to share in the profits of the organization, whether or not at any such person is also obligated to share in the liabilities of the organization.

- (d) Land Trusts: The applicant land trust's complete name; the legal name, all aliases, and business addresses of the trustee of the land trust; the legal name, all aliases, and ages, business addresses, and social security numbers of each beneficiary of the land trust and the specific interest of each such beneficiary in the land trust; and the interest, if any, that the land trust holds in the Licensed Premises.
2. If a corporation or partnership is an interest holder that must be disclosed pursuant to Subparagraph 6.C.1 (b) or 6.C.1(c) above, then such interest holders shall disclose the information required in said Subparagraphs with respect to their interest holders.
 3. The general character and nature of the business of the applicant.
 4. The length of time that the applicant has been in the business of the character specified in response to Paragraph 3 above.
 5. The location, including street address and legal description, and telephone number, of the premises for which the Adult Establishment License is sought.
 6. The specific name of the business that is to be operated under the Adult Establishment License.
 7. The identity of each fee simple owner of the Licensed Premises.
 8. A diagram showing the internal and external configuration of the Licensed

16

Premises, including all doors, windows, entrances, exits, the fixed structural internal features of the Licensed Premises, plus the interior rooms, walls, partitions, stages, performance areas, and restrooms. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; provided, however, that each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions to an accuracy of plus or minus six inches and sufficient to show clearly the various interior dimensions of all areas of the Licensed Premises and to demonstrate compliance with the provisions of this Ordinance. No Licensed Premises shall be within 1,000 feet of a school, church or residential property. The requirements of this Paragraph shall not apply for renewal applications if the applicant adopts a diagram that was previously submitted for the License sought to be renewed and if the License certifies that the Licensed Premises has not been altered since the immediately preceding issuance of the License and that the previous diagram continues to accurately depict the exterior and interior layouts of the Licensed Premises. The approval or use of the diagram required pursuant to this Paragraph shall not be deemed to be, and shall not be interpreted or constructed to constitute, any other City approval otherwise required pursuant to applicable City ordinances and regulations.

9. The names of each governmental body from which, within five years immediately prior to the date of the present application, the applicant, or any of the individuals identified in the application pursuant to Paragraphs 1 or 2

17

of this Subsection, has received a license or other authorization to conduct or operate a business (a) substantially the same as an Adult Entertainment Establishment, and the names and addresses of each such business; (b) requiring a federal, state, or local liquor license; or (c) requiring a federal, state, or local gaming license.

10. The specific type or types of Adult Entertainment Establishment(s) that the applicant proposes to operate in the Licensed Premises.
11. A copy of each Adult Establishment License, liquor license, and gaming license currently held by the applicant, or any of the individuals identified in the application pursuant to Paragraphs 1 or 2 of this Subsection.
12. Whether the applicant, or any of the individuals identified in the application pursuant to Paragraphs 1 or 2 of this Subsection, has been, within five years immediately preceding the date of the application, convicted of, or pleaded nolo contendere to, any Specified Criminal Act. As to each conviction, the applicant or other individual shall provide the conviction date, the case number, the nature of the misdemeanor or felony violation(s) or offense(s), and the name and location of the court.
13. Whether the applicant, or any of the individuals identified in the application pursuant to Paragraphs 1 or 2 of this Subsection, has had a license or other authorization to conduct or operate a business substantially the same as an Adult Entertainment Establishment or any business requiring either a liquor or gaming license, revoked or suspended , and, if so, the date and grounds for

18

each such revocation or suspension, and the name and location of the establishment at issue.

14. The name of the individual or individuals who shall be the day-to-day, on-site managers of the proposed Adult Entertainment Establishment. If the manager is other than the applicant, the applicant shall provide, for each manager, all of the information required pursuant to Subparagraph 1(a), and Paragraphs 9,11,12 and 13 of this Subsection.

D. Incomplete Applications Returned. Any application for an Adult Establishment License that does not include all of the information and documents required pursuant to Subsection C of this Section as well as the Administrative Processing Fee and bond or other security required pursuant to Subsection B of this Section, shall be deemed to be incomplete and shall not be acted on or processed by the City. The Adult Use Commissioner shall, within five days of such submittal, return the incomplete application to the applicant along with a written explanation of the reasons why the application is incomplete.

Section 7. Processing of License Application.

A. Reviewing Departments. Within three days after receipt of a complete application for an Adult Entertainment Establishment License that includes all the information and documents required pursuant to Subsection 6.C of this Ordinance, as well as the Administrative Processing Fee and bond or other security required pursuant to 6.B of this Ordinance, the Adult Use Commissioner shall transmit a copy of the application to the Reviewing Departments.

B. Reviewing Department Reports. Each of the Reviewing Departments shall, within

19

25 days after transmittal of the application thereto, or within such other period of time as the City and the applicant may otherwise agree, (I) review the application; (II) conduct such inspections of the proposed Licensed Premises and background investigations of the applicant and any of the individuals identified in the application pursuant to Paragraphs 6.C.1., 6.C.2, or 6.C.14 of this Ordinance, regarding matters within their respective jurisdictions, as shall be reasonably necessary to verify the information set forth in the application and to determine whether the proposed Adult Entertainment Establishment and Licensed Premises comply with the requirements of this Ordinance and other applicable laws, codes, ordinances, rules, and regulations; and (III) prepare and submit to the Adult Use Commissioner a written report regarding the results and findings of such reviews, inspections, and investigations.

- C. Adult Use Commissioner Review. The Adult Use Commissioner shall also conduct such inspections and investigations as the Adult Use Commissioner shall deem reasonably to verify the information set forth in the application and to determine whether the proposed Adult Entertainment Establishment and Licensed Premises comply with the requirements of this Ordinance and other applicable laws, codes, ordinances, rules, and regulations.
- D. Reliance on Diagram. In the event that the Licensed Premises has not yet been constructed or reconstructed to accommodate the proposed Adult Entertainment Establishment, the Adult Use Commissioner and the Reviewing Departments shall base their respective written reports, investigations, and inspections to the extent

20

necessary, on the diagram submitted pursuant to Paragraph 6.C.8 of this Ordinance. Any Adult Entertainment Establishment shall not open for business until the Licensed Premises has been inspected and determined to be in substantial compliance with the diagram submitted with the application.

- E. Applicant Cooperation Required. An applicant for an Adult Establishment License shall cooperate fully in the inspections and investigations conducted by the Adult Use Commissioner and the Reviewing Departments. The applicant's failure or refusal (I) to give any information reasonably relevant to the investigation of the application; (II) to allow the Licensed Premises to be inspected; (III) to appear at any reasonable time or place for examination under oath regarding the application; or (IV) to otherwise cooperate with the investigation and inspection required by this Ordinance, shall constitute an admission by the applicant that the applicant is ineligible for an Adult Establishment License and shall be grounds for denial of the License by the Adult Use Commissioner.
- F. Time for Issuance or Denial. The Adult Use Commissioner shall, within 30 days after submittal of a properly completed application, or within such other period of time as the City and the applicant shall otherwise agree, either issue an Adult Establishment License pursuant to the provisions of Subsection 8.A of this Ordinance or deny issuance of the Adult Establishment License pursuant to the provisions of Subsection 8.B of the Ordinance. The Adult Use Commissioner shall issue or deny the License within said 30-day period, or such other period of time as shall have been agreed to by the City and the applicant, regardless of whether or

21

not the Adult Use Commissioner has received all of the Reviewing Department reports.

- G. Decision Final. The action taken by the Adult Use Commissioner to issue or deny an Adult Establishment License pursuant, respectively, to Subsections 8.A or 8.B of this Ordinance shall be final and shall be subject to judicial review.

Section 8. Standards for Issuance or Denial of License.

- A. Issuance. The Adult Use Commissioner shall issue an Adult Establishment License to an applicant if, but only if, the Adult Use Commissioner finds and determines all of the following, based on the reports, investigations, and inspections conducted by the Adult Use Commissioner and the Reviewing Departments and on any other credible information on which it is reasonable for the Adult Use Commissioner to rely:

1. All information and documents required by Section 8 of this Ordinance for issuance of an Adult Establishment License have been properly provided and the material statements made in the application are true and correct.
2. For Adult Stores and Adult Theaters, all persons identified in the application pursuant to Paragraphs 6.C.1, 6.C.2, or 6.C.14 of this Ordinance are at least 18 years of age and not under any legal disability.
3. No person identified in the application pursuant to Paragraphs 6.C.1, 6.C.2, or 6.C.14 of this Ordinance has been convicted of, or pleaded nolo contendere to, any Criminal Act within five years immediately preceding the date of this application.

- 22
4. No person identified in the application pursuant to Paragraphs 6.C.1, 6.C.2, or 6.C.14 of this Ordinance has been convicted of, or pleaded nolo contendere to, any violation of a provision of this Ordinance within five years immediately preceding the date of the application.
 5. No person identified in the application pursuant to Paragraphs 6.C.1, 6.C.2, or 6.C.14 of this Ordinance is overdue on payment to the City of taxes, fees, fines, or penalties assessed against, or imposed on, any such individual in connection to any Adult Entertainment Establishment.
 6. No person identified in the application pursuant to Paragraphs 6.C.1, 6.C.2, or 6.C.14 of this Ordinance is residing with, or married to, a person (I) who has been denied an Adult Entertainment Establishment License within 12 months immediately preceding the date of the application, (II) whose Adult Establishment License has been revoked within 12 months immediately preceding the date of the application, or (III) whose Adult Entertainment License is under suspension at the time of application.
 7. The Adult Entertainment Establishment and the Licensed Premises, and the proposed operation of the Adult Entertainment Establishment, comply with all then-applicable building, health, and life safety codes and regulations and have received all necessary zoning approvals required pursuant to the then-applicable provisions of the City Zoning Ordinance, including specifically, but without limitation, the special use permit required for the Adult Entertainment Establishment.
 8. The applicant has confirmed in writing and under oath as part of the

23

application that the applicant has read this Ordinance and all provisions of the City Zoning Ordinance applicable to Adult Entertainment Establishments, that the applicant is familiar with their terms and conditions, and that the Licensed Premises and the proposed Adult Entertainment Establishment and its proposed operation are and shall be in compliance therewith.

B. Denial. If the Adult Use Commissioner determines that the applicant has not met any one or more of the conditions set forth in Subsection A of this Section, then the Adult Use Commissioner shall deny issuance of the Adult Establishment License and shall give the applicant a written notification and explanation of such denial. The Adult Use Commissioner's notice of denial shall be delivered in person or by certified U.S. mail, postage prepaid, return receipt requested, addressed to the applicant's address as set forth in the application. The Adult Establishment License shall be deemed denied on the day that the notice of denial is delivered in person or three days after it is placed in the U.S. mail as provided in this Subsection.

C. License Deemed To Be Issued. If the Adult Use Commissioner does not issue or deny the Adult Establishment License within 30 days after the properly completed application is submitted, then the Adult Establishment License applied for shall be deemed to have been issued.

Section 9. Inspection by the City.

A. Authority. The Adult Use Commissioner and other City representatives and

24

departments with jurisdiction shall periodically inspect all Adult Entertainment Establishments as shall be necessary to determine compliance with the provisions of this Ordinance and all other applicable law.

- B. Licensee Cooperation. A Licensee shall permit representatives of the City to inspect the Licensed Premises and the Adult Entertainment Establishment for the purpose of determining compliance with the provisions of this Ordinance and all other applicable law at any time during which the Licensed Premises is occupied or the Adult Entertainment Establishment is open for business.
- C. Interference or Refusal Illegal. It shall be unlawful for the Licensee, any Adult Establishment Employee, or any other person to prohibit, interfere with, or refuse to allow, any lawful inspection conducted by the City pursuant to this Ordinance or any other authority.
- D. Suspension or Revocation. Any such prohibition, interference, or refusal shall be grounds for suspension or revocation of the Adult Establishment License pursuant to Section 15 of this Ordinance.

Section 10. Change in Information.

During the pendency of any application for, or during the term of, any Adult Establishment License, the applicant or Licensee shall promptly notify the Adult Use Commissioner in writing (I) of any change in any material information given by the applicant or the Licensee in the application for such License, including specifically, but without limitation, any change in managers of the Adult Entertainment Establishment or in the individuals identified in the application pursuant to Paragraphs 6.C.1 or 6.C.2 of this Ordinance; or (II) if any of the events constituting grounds for suspension or revocation

28

the name of the Adult Entertainment Establishment and/or (ii) the specific type of Adult Entertainment Establishment conducted on the Licensed Premises. Temporary signage shall not be permitted in connection with any Adult Entertainment Establishment.

- I. Noise. No loudspeakers or sound equipment audible beyond the Licensed Premises shall be used at any time.
- J. Gambling and Related Devices Prohibited. No Adult Entertainment Establishment shall contain any video, pinball, slot, bagatelle, pigeon-hole, pool, or any other games, machines, tables or implements.
- K. Manager's Station. Each Adult Entertainment Establishment shall have one or more manger's stations. The interior of each Adult Entertainment Establishment shall be configured in such a manner that there is direct and substantially unobstructed view from at least one manager's station to every part of each area, except restrooms, of the Establishment to which any Adult Establishment Patron is permitted access for any purpose.

Section 12. Special Regulations For Adult Stores.

- A. Windows and Signs. Window areas for Adult Stores shall not be covered or obstructed in any way. No signs or other obstructions shall be placed in the windows.
- B. Age Limitations.
 - 1. No Adult Establishment Employee or Adult Establishment Patron at an Adult Store or a Licensed Premises used for an Adult Store shall be under the age of 18.

25

pursuant to Subsection 15.A of this Ordinance occur.

Section 11. Regulations Applicable To All Adult Entertainment Establishments.

A. General Compliance. All Licensed Premises and Adult Entertainment Establishments shall comply with the provisions of this Ordinance; all other applicable City ordinances, resolutions, rules, and regulations; and all other applicable federal, state, and local laws.

B. Hours of Operation.

1. No Adult Entertainment Establishment shall be opened for business at any time on any State of Georgia or federal holiday.
2. No Adult Theater shall be open for business at any time after 2:00 a.m. on any Sunday.
3. No Adult Store shall be open for business between the hours of 12:00 a.m. and 12:00 noon on any Sunday.
4. No Adult Entertainment Establishment shall be opened for business between the hours of 1:00 a.m. and 11:00 a.m. on any Monday, Tuesday, Wednesday, or Thursday, or between the hours of 2:00 a.m. and 11:00 a.m. on any Friday or Saturday.

C. Animals. No animals, except only for seeing-eye dogs required to assist the blind, shall be permitted at any time at or in any Adult Entertainment Establishment or Licensed Premises.

D. Restrooms. All restrooms in Adult Entertainment Establishments shall be equipped with standard toilets, sinks, and other traditional lavatory facilities. No

26

Adult Materials or live performances shall be provided or allowed at any time in the restrooms of an Adult Entertainment Establishment. Separate male and female restrooms shall be provided for and used by Adult Establishment Employees and Adult Establishment Patrons.

E. Restricted Access. No Adult Establishment Patron shall be permitted at any time to enter into any of the non-public portions of any Adult Entertainment Establishment, including specifically, but without limitation, any storage areas or dressing or other rooms provided for the benefit of Adult Establishment Employees. This subsection shall not apply to persons delivering goods and materials, food and beverages, or performing maintenance or repairs to the Licensed Premises; provided, however, that any such persons shall remain in such non-public areas only for the purpose and to the extent and time necessary to perform their job duties.

F. Specific Prohibited Acts.

1. No Adult Establishment Patron or any other person at any Adult Entertainment Establishment, other than an Adult Establishment Employee employed to provide adult entertainment in accordance with the regulations in this Ordinance, shall appear, be present, or perform while Nude or Semi-Nude.
2. No Adult Establishment Employee or any other person at any Adult Entertainment Establishment shall perform or conduct any Specified Sexual Activity with or for any Adult Establishment Patron or any other Adult Establishment Employee or any other person. No Adult Establishment Patron or

27

any other person at any Adult Entertainment Establishment shall perform or conduct any Specified Sexual Activity with or for any Adult Entertainment Establishment Employee or any other Adult Establishment Patron or any other person.

G. Exterior Display. No Adult Entertainment Establishment shall be maintained or operated in any manner that caused, creates, or allows public viewing of any Adult Material, or any entertainment depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas, from any sidewalk, public or private right-of-way, or any property other than the lot on which the Licensed Premises is located. No portion of the exterior of an Adult Entertainment Establishment shall utilize or contain any flashing lights, search lights, or spotlights, or any other similar lighting systems, or any words, lettering, photographs, silhouettes, drawing, or pictorial representations of any manner except to the extent specifically allowed pursuant to Subsection 1 of this Section with regards to signs. This Subsection shall apply to any advertisement, display, promotional material, decoration, or signs; to any performance or show; and to any window, door or other opening.

H. Signage Limitations. All signs for Adult Entertainment Establishments shall be flat wall signs. The maximum allowable sign area shall be one square foot of sign area per foot of lot frontage on a street, but in no event exceeding 32 square feet. The maximum number of signs shall be one per lot frontage. Signs otherwise permitted pursuant to this Ordinance shall contain only (I)

- 29
2. No person under the age of 18 shall be admitted to any Adult Store or to any Licensed Premises used for an Adult Store.
 3. No person under the age of 18 shall be allowed or permitted to remain at any Adult Store or any Licensed Premises used for an Adult Store.
 4. No person under the age of 18 shall be allowed or permitted to purchase or receive, whether for consideration or not, any Adult Material or other goods or services at or from any Adult Store or any Licensed Premises used for an Adult Store.

Section 13. Special Regulations For Adult Theaters.

- A. Seating. Each Adult Theater shall provide seating only in individual chairs with arms or in seats separated from each other by immovable arms and not on couches, benches, or any other multiple person seating structures. The number of seats shall equal the maximum number of persons who may occupy the Adult Theater.
- B. Aisle. Each Adult Theater shall have a continuous main aisle alongside the seating area in order that each person seated in the Adult Theater shall be visible from the aisle at all times.
- C. Sign. Each Adult Theater shall have a sign posted in a conspicuous place at or near each entranceway to the auditorium or similar area that lists the maximum number of persons who may occupy the auditorium area, which number shall not exceed the number of seats in the auditorium area.
- D. Age Limitations.
 1. No Adult Establishment Employee or Adult Establishment Patron at

an Adult Theater or a Licensed Premises used for an Adult Theater shall be under the age of 18.

2. No person under the age of 18 shall be admitted to any Adult Theater or to any Licensed Premises for an Adult Theater.
3. No person under the age of 18 shall be allowed or permitted to remain at any Adult Theater or any Licensed Premises used for an Adult Theater.
4. No person under the age of 18 shall be allowed or permitted to purchase or receive, whether for consideration or not, any Adult Material or other goods or services at or from any Adult Theater or any Licensed Premises used for an Adult Theater.

Section 14. Licensee Responsibility for Employees.

Every act or omission by an Adult Establishment Employee constituting a violation of the provisions of this Ordinance shall be deemed to be the act or omission of the Licensee if such act or omission occurs either with the authorization, knowledge, or approval of the Licensee, or as a result of the Licensee, or as a result of the Licensee's negligent failure to supervise the Adult Establishment Employee. The Licensee shall be punishable for any such act or omission in the same manner as if the Licensee committed the act or caused omission. Accordingly, any such act or omission of any such Employee constituting a violation of the provisions of this Ordinance shall be deemed, for purposes of determining whether the Licensee's Adult Establishment License shall be revoked, suspended, or renewed, to be the act or omission of the Licensee.

Section 15. License Revocation or Suspension.

- A. Grounds. Pursuant to the procedures set forth in Subsection B of this Section,

31

the adult Use Commissioner may suspend for not more than 30 days, or revoke, any Adult Establishment License if the Adult Use Commissioner, based on credible and reasonably reliable information and evidence, determines that any one or more of the following has occurred:

1. The Licensee has violated any of the provisions or requirements of this Ordinance or the Adult Establishment License issued pursuant hereto, or the provisions of the City Zoning Ordinance applicable to the Licensed Premises or the Adult Entertainment Establishment.
2. The Licensee (I) knowingly or negligently furnished false or misleading information or withheld information on any application or other document submitted to the City for the issuance or renewal of any Adult Establishment License or (II) knowingly or negligently caused or suffered any other person to furnish or withhold any such information on the Licensee's behalf.
3. The Licensee has committed a felony of Criminal Act on the Licensed Premises.
4. The Licensee authorizes, approves, or, as a result of the Licensee's negligent failure to supervise the Licensed Premises or the Adult Entertainment Establishment, allows, an Adult Establishment Employee, an Adult Establishment Patron, or any other person to (I) violate any of the provisions or requirements of this Ordinance or of the provisions or requirements of the Adult Establishment License issued pursuant hereto, or (II) commit any felony or Criminal Act on the Licensed Premises.

5. The Licensee, or any person identified pursuant to Paragraphs 6.C.1, 6.C.2, or 6.C.14 of this Ordinance becomes disqualified for the issuance of an Adult Establishment License at any time during the term of the License at issue.

B. Procedure. An Adult Entertainment Establishment may be suspended for not more than 30 days or revoked pursuant to the terms and conditions set forth in this Subsection B.

1. Notice. Upon determining that one or more of the grounds for suspension or revocation under Subsection A of this Section may exist, the Adult Use Commissioner shall serve a written notice on the Licensee in person or by certified U.S. mail, postage prepaid, return receipt requested, addressed to the Licensee's address as set forth in the Licensee's application. The written notice shall, at a minimum, (I) state that Adult Use Commissioner has determined that the Adult Establishment License may be subject to suspension or revocation pursuant to Subsection 15.A of this Ordinance; (II) identify the specific grounds for the Adult Use Commissioner's determination; and (III) set a date for a hearing regarding the Adult Use Commissioner's determination as to the possibility of suspension or revocation of the Adult Establishment License. The date of the hearing shall be no less than five days after service of the Adult Use Commissioner's notice, unless an earlier or later date is agreed to by the Licensee and Adult Use Commissioner.
2. Hearing. The hearing shall be conducted by the Adult Use Commissioner. At the hearing, the Licensee may present and submit evidence and witnesses to refute the grounds cited by the Adult Use Commissioner for suspending or

revoking the License and the City and any other persons may submit evidence to sustain such grounds. The administrative record compiled on the Adult Entertainment Establishment pursuant to Section 16 of this Ordinance shall be made part of this hearing record. Within three days after the close of the hearing, the Adult Use Commissioner shall, have considered the record made at the hearing, render a decision in writing, setting forth the reasons for the decision. The action taken by the Adult Use Commissioner shall be final and shall be subject to judicial review.

3. Notice and Effective Date of Suspension or Revocation. The Adult Use Commissioner's written decision shall be posted at the office of the Adult Use Commissioner and shall be served on the Licensee in person or by certified U.S. mail, postage prepaid, return receipt requested, addressed to the Licensee's address as set forth in the Licensee's application. Any suspension or revocation, as the case may be, shall take effect on the day that the Adult Use Commissioner's written decision is delivered in person or three days after it is placed in the U.S. mail as provided in this paragraph.
4. Surrender of License and Security. Upon the suspension or revocation of an Adult Establishment License pursuant to this Ordinance , (I) the Adult Use Commissioner shall take custody of the suspended or revoked License; and (II) such part or all of the bond or other security submitted for the Adult Entertainment Establishment pursuant to Paragraph 6.B.2 of this Ordinance shall be forfeited as the Adult Use Commissioner shall deem necessary to

34

reimburse the City for the costs associated with the proceedings related to the suspension or revocation at issue. Such bond or other security shall be replenished to the equal amount required pursuant to Paragraph 6.B.2 of this Ordinance prior to the issuance of any new Adult Establishment License for the Licensed Premises or for the reinstatement of any suspended License.

Section 16. Administrative Record.

The Adult Use Commissioner shall cause to be kept in the Adult Use Commissioner's office an accurate record of every Adult Establishment License application received and acted on, together with all relevant information and material pertaining to such application, any Adult Establishment License issued pursuant thereto, and any Adult Entertainment Establishment operated pursuant to such Adult Establishment License.

Section 17. Recordkeeping by Licensee.

The Licensee of every Adult Entertainment Establishment shall maintain a register of all of its Adult Establishment Employees. For each such Employee, the register shall include the following information:

1. Legal name.
2. Any and all aliases.
3. Date of birth.
4. Gender.
5. Social security number.
6. Date of commencement of employment.
7. Date of employment termination, if applicable.
8. Specific job or employment duties.

The register shall be maintained for all current Employees and all Employees employed at any time during the preceding 36 months. The Licensee shall make the register of its Adult Establishment Employees available for inspection by the City immediately upon the demand at all

reasonable times.

Section 18. Penalty.

Any person who violates, neglects, refuses to comply with, or assists or participates in any way in the violation of, any of the provisions or requirements of this Ordinance or of any of the provisions or requirements of any Adult Establishment License, shall be fined not more than \$500 for each such violation. Each day such violation continues shall constitute a separate offense. The Adult Use Commissioner shall give written notice to any such person of any such person of any such violation and the fine imposed by serving a citation in person or by certified U.S. mail, postage prepaid, return receipt requested, addressed to the Licensee's address as set forth in the Licensee's application.

Section 19. Nuisance Declared.

Any Adult Entertainment Establishment established, operated, or maintained in violation of any of the provisions or requirements of this Ordinance or of any Adult Establishment License shall be, and the same is, declared to be unlawful and a public nuisance. The City may, in addition to or in lieu of any other remedies set forth in this Ordinance, commence an action to enjoin, remove, or abate such nuisance in the manner provided by the law and shall take such other steps and apply to the court or courts as may have jurisdiction to grant such relief as will abate or remove such public nuisance, and restrain and enjoin any person from establishing, operating, or maintaining an Adult Entertainment Establishment contrary to the provisions of this Ordinance.

Section 20. Computation of Time.

Unless otherwise specifically set forth in this Ordinance, the time within which any act by this Ordinance is to be done shall be computed by excluding the first day and including the last

36

day, unless the last day is Saturday, Sunday or a Federal or State of Georgia holiday, in which case it shall also be excluded. If the day immediately following such Saturday, Sunday, or holiday is also a Saturday, Sunday, or holiday, then such succeeding day shall also be excluded.

Section 21. Severability

In the event that any provision of this Ordinance, or any part thereof, or any application thereof to any person or circumstance, is for any reason held to be unconstitutional or otherwise invalid or ineffective by any court of competent jurisdiction on its face or as applied, such holding shall not affect the validity or effectiveness of any of the remaining provisions of this Ordinance, or any part thereof, or any application thereof to any person or circumstance or of said provision as applied to any other person or circumstance. It is hereby declared to be the legislative intent of the City that this Ordinance would have been adopted had such unconstitutional, invalid, or ineffective provisions not been included herein.

SO ORDAINED this 7th day of March, 2000.

Jack Bunker
MAYOR

ATTEST:

Chidlonies
CITY CLERK

1st - 1/4/2000
2nd - 2/15/2000
3rd - 3/7/2000
voted -

ORDINANCE

An Ordinance to amend the Code of Ordinances of the City of McIntyre, Georgia, to restrict live human nudity and sexually explicit conduct on premises where alcoholic beverages are served; to repeal conflicting ordinances; and for other purposes.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF
McINTYRE, GEORGIA, THAT:

SECTION 1. Findings; Purpose .

Having engaged in a factual investigation with respect to live human nudity and the sale and consumption of alcoholic beverages, the Mayor and Council of the City of McIntyre find that;

(1) The experience of Municipal areas, demonstrate that the notorious conditions attaching to the commercial exploitation of live human nudity do not vary greatly by geographic location.

(2) Recent developments in other municipalities indicate our municipality shares the experience of other cities for which comprehensive statistical studies have been performed.

(3) Live public human nudity (either partial or total), particularly in conjunction with the sale and consumption of alcoholic beverages tends to beget criminal behavior and tends to create undesirable community conditions.

(4) Among the acts of criminal behavior identified with criminal live human nudity and alcohol are disorderly conduct, prostitution and other sexual offenses, and drug offenses.

(5) Among the undesirable community conditions identified with commercial live human nudity and alcohol are depression of property values in the surrounding neighborhood,

increased expenditures for the allocation of law enforcement personnel to preserve law and order, increased burdens on the judicial system as a consequence of the criminal behavior, a decrease in the desirability of such areas for residential use, and acceleration of community blight by the concentration of such establishments in particular areas.

(6) Evidence drawn from personal experiences of McIntyre police officers indicate similar types of criminal behavior associated with these establishments which is of concern to the governing authority.

(7) It is in the best interest of the public health, safety and welfare to reduce the adverse impacts of live commercial human nudity associated with the sale and consumption of alcoholic beverages by redefining those portions of the City of Ordinances relating to these concerns.

SECTION 2 . Definitions .

(1) Alcoholic Beverage Establishment shall mean any restaurant, lounge or supper club holding a license under this Chapter for the sale of alcoholic beverages for consumption on the premises.

(2) Substantially Nude shall mean dressed or undressed in a manner so as to plainly expose to view any portion of a male's or female's pubic hair, anus, cleft of the buttocks, vulva, or genitals, or any portion of the female breasts below the top of the areola.

SECTION 3. Restrictions .

(1) No person shall appear Substantially Nude in any Alcoholic Beverage Establishment, and no owner or manager of an Alcoholic Beverage Establishment shall permit any person to appear Substantially Nude on the licensed premises.

(2) No owner or manager of an Alcoholic Beverage Establishment shall permit

any person to perform acts of, or which constitute or simulate:

a. Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, or any sexual acts which are prohibited by law.

b. The touching, caressing or fondling of the breasts, buttocks, anus or genitals; provided that random acts of patrons or employees, whose actions do not constitute actions taken pursuant to encouragement or acquiescence of the management of the establishment and are not for the purpose of entertainment, promotion, publicity, or notoriety shall not constitute violations of this Section.

c. No person shall engage in any of the acts identified in this section on the premises of an Alcoholic Beverage Establishment.

(3) The restrictions of this section shall apply to all persons physically present on the licensed premises regardless of whether such persons are categorized as employees, patrons, independent contractors or otherwise.

(4) In addition to prosecution of any person for violation of this Section, the business license of any premises upon which a violation of this Section occurs shall be subject to suspension or revocation. Any conviction or plea of guilty or nolo contendere in the City Court of McIntyre to a charge of violation of this Section shall be admissible in a license suspension or revocation proceeding.

SECTION 4 . All ordinances or parts of ordinances in conflict with this Ordinance are, to the extent of such conflict hereby repealed.

SO ORDAINED this 7th day of March, 2000

Jack Bauer
Mayor

Carol Daniels
City Clerk

Read - 1 - 1/4/2000 -
2 - 2/15/2000
3 - 3/7/2000
voted -

ORDINANCE

An Ordinance to amend Code Section 3-207 8 of the Code of Ordinances of the City of McIntyre, Georgia, to govern the rules for citizens addressing the Mayor and Council during City Council meetings.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF
McINTYRE, GEORGIA,

THAT Code Section 3-207 8 is deleted in its entirety and inserted in lieu thereof is the following language: "Limitations on addressing the council. Any person not a member of the city council who desires to address the council shall first have his or her name placed on the meeting agenda by the City Clerk no later than noon on the day prior to the city council meeting. When recognized by the presiding officer, the individual shall stand up, give his or her name and address for the record and direct his remarks to the council."

All ordinances or parts of ordinances in conflict with this Ordinance are, to the extent of such conflict hereby repealed.

SO ORDAINED this 18th day of July, 2000.

Jack Barber
Mayor

Cindy Amis
City Clerk