ADULT ENTERTAINMENT ORDINANCE

WHEREAS, the Board of Commissioners, Forsyth County, Georgia finds that a need exists to regulate the location of adult entertainment establishments within Unincorporated Forsyth County; and

WHEREAS, O.C.G.A. § 36-60-3 provides that the governing authority of each county is authorized to enact ordinances which have the effect of restricting the operation of adult entertainment establishments to areas zoned for industrial purposes; and

WHEREAS, The Georgia Supreme Court, in Chambers d/b/a Neon Cowboy v. Peach County, Georgia, 266 Ga. 318 (1996), held that local governments may adopt ordinances designed to combat the undesirable secondary effects of sexually explicit businesses, and further held that a governing body seeking to regulate adult entertainment establishments must have evidence of a relationship between the proposed regulation and the undesirable secondary effects it seeks to control; and

WHEREAS, the Georgia Supreme Court further held in the same opinion that in passing regulations, a governing body may rely on the experience of other counties and municipalities to demonstrate such a relationship; and

WHEREAS, the United States Supreme Court, in Young v. American Mini Theaters, Inc., 427 U.S. 50 (1976), held that adult entertainment uses are subject to carefully tailored regulation to minimize the adverse land use impacts, and that zoning can legitimately be utilized to regulate such uses by establishing zones where adult entertainment uses are most compatible with other uses or the surrounding neighborhood, or by requiring minimum distances to be maintained between adult uses and other uses; and

WHEREAS, the United States Supreme Court, in City of Renton v. Playtime Theater, Inc., 475 U.S. 41 (1986), held that a local government may rely on the experience of other jurisdictions in enacting legislation to regulate adult entertainment uses; and

WHEREAS, the Georgia Supreme Court, in Club Southern Burlesque, Inc. v. City of Carrollton, 265 Ga. 527, 457 S.E.2d 816 (1995), held that the licensing of adult entertainment establishments is not a per se violation of the First Amendment, and further held that requiring that owners and employees of adult entertainment establishments be of "good moral character," as defined, was neither overbroad nor unconstitutional, and further held that ordinances which permit a government to consider the health, safety and welfare of the citizens, and the preservation of neighborhoods, do not unconstitutionally give officials unfettered discretion in demanding information from applicants where ascertainable standards are set forth in the ordinance; and

WHEREAS, the Board of Commissioners of Forsyth County, pursuant to said authority, has obtained copies of studies from Minneapolis, Minnesota; St. Paul, Minnesota; Austin, Texas, Oklahoma City; and Indianapolis, Indiana; and

WHEREAS, the Board of Commissioners of Forsyth County has heard testimony from law enforcement officers and real property appraisers knowledgeable as to the undesirable secondary effects associated with adult entertainment establishments.

NOW THEREFORE, pursuant to their authority, the Board of Commissioners of Forsyth County hereby amends the Ordinances of Forsyth County by striking Ordinance No. 85 in its entirety and replacing same with the following:

SECTION 1 – PURPOSE AND INTENT

It is the intent and purpose of this Ordinance to regulate the place of operation of adult entertainment establishments as defined herein. This Ordinance is intended to be a carefully tailored regulation to minimize the adverse land use impacts caused by the undesirable secondary effects of adult entertainment establishments. The Board of Commissioners of Forsyth County finds that restricting adult entertainment establishments to industrially zoned areas and imposing development standards can legitimately regulate such establishments by delineating zones where adult entertainment establishments are most compatible with other uses and the surrounding neighborhood. The Board also finds that requiring minimum distances to be maintained between adult entertainment establishment uses and other uses will afford the most protection to residential uses. It is not the intent or purpose of the Board of Commissioners, in enacting this Ordinance, to deny any person's right to speech, conduct or expression protected by the Untied States or Georgia Constitutions. In the enactment of this Ordinance, the Board intends to adopt a content neutral measure to address the secondary effects of adult entertainment establishments.

The Board of Commissioners find, based on a 1984 study entitled Adult Entertainment Business in Indianapolis, that areas with sexually oriented businesses have higher crime rates than similar areas with no sexually oriented business. Specifically, the Board finds that the study reveals that sex-related crimes, defined in the study as rape, indecent exposure, obscene conduct, child molestation, adult molestation, and commercial sex, are much more prevalent in areas where adult entertainment is offered than in areas where no adult entertainment is offered. The same finding is true as to the occurrences of major crimes.

The Board of Commissioners further finds, based on a May 19, 1986 study from Austin, Texas, entitled Report on Adult Oriented Businesses in Austin, that a severe decline in residential property values may be precipitated by the presence of an adult entertainment establishment, particularly where that adult entertainment establishment is located within one block of residential property uses. Furthermore, the Board finds that there is an indication that the introduction of adult entertainment establishments into

areas of family-oriented, owner-occupied residential neighborhoods may precipitate a transition to a more transient, renter-occupied neighborhood, which leads to depressed property values and urban blight.

The Board of Commissioners further finds, based on an October 1980 study of the Minnesota Crime Prevention Center, Inc., Minneapolis, Minnesota, entitled An Analysis of the Relationship Between Adult Entertainment Establishments, *Crime and Housing Values*, that adult businesses do have a significant and consistent positive correlation with the crime rate index and a negative correlation with the mean single-family housing value. The Board of Commissioners also finds, based on this study, that adult entertainment businesses should be permitted only in locations that are at least 1,500 feet, from residential areas and that adult entertainment businesses should not be placed adjacent to one another.

The Board of Commissioners further finds, based on a June 1978 study from St. Paul, Minnesota, entitled Effects on Surrounding Area of Adult Entertainment Businesses in Saint Paul, that the presence of adult entertainment establishments correlates statistically with poor neighborhood conditions. The Board of Commissioners finds, based on this study that the location of adult entertainment establishments correlates significantly with neighborhood blight and deterioration.

Moreover, it is the finding of the Board of Commissioners that public nudity, either partial or total, under certain circumstances, particularly circumstances related to the sale and/or consumption of alcoholic beverages, leads to an increase in the surrounding area of criminal behavior and creates undesirable community conditions, blight and diminution in property values.

SECTION 2 – DEFINITIONS

Except as specifically defined herein, all words used in this article shall be as defined in the most recent edition of the New Illustrated Book of Development Definitions (Rutgers). Words not defined herein or in the above book shall be construed to have the meaning given by common and ordinary use, and shall be interpreted within the context of the sentence and section in which they occur.

Adult bookstore means any commercial establishment in which ten (10) or more square feet of floor space is used for the display or offer for sale of any book or publication, film, or other medium which depicts sexually explicit nudity or sexual conduct by its emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," as defined herein.

Adult entertainer means any person employed by an adult entertainment establishment who exposes his or her "specified anatomical areas," as defined herein. For purposes of this section, adult entertainers include employees as well as independent contractors.

Adult entertainment means entertainment that is characterized by an emphasis on the depiction, display or the featuring of "specified anatomical areas."

Adult entertainment establishment shall be defined to include the following types of business:

(1) Any commercial establishment that employs or uses any person live, in any capacity in the sale or service of beverages or food while such person is unclothed or in such attire, costume or clothing, so as to expose any portion of his or her "specified anatomical areas," as defined herein;

(2) Any commercial establishment which provides live entertainment where any person appears unclothed or in such attire, costume or clothing as to expose any portion of his or her "specified anatomical areas" as defined herein or where such performances are distinguished or characterized by an emphasis on "specified sexual activities," as defined herein;

(3) Any commercial establishment which holds, promotes, sponsors or allows any contest, promotion, special night, event or any other activity where live patrons of the establishment are encouraged or allowed to engage in any of the conduct described in subsections (1) and (2) herein;

(4) Any commercial establishment having a segment or section comprising more than ten square feet of its total floor space, devoted to the sale or display of, or which derives more than five percent of its net sales from the sale or rental of books, magazines, periodicals, videotapes, movies or other reproductions which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," as defined herein ;

(5) Any commercial establishment utilizing an enclosed building with a capacity of fifty (50) or more persons used for cinematographic or videographic presentation of material distinguished by or characterized by an emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas," as defined herein, for observation by patrons therein;

(6) Any adult motion picture theater, adult motion picture arcade, adult mini-motion picture theater, adult bookstore, adult video store, adult hotel, or adult motel, as defined herein;

(7) The definition of "adult entertainment establishment" shall not include traditional or live theater (mainstream theater) which means a theater, concert hall, museum, educational institution or similar establishment which regularly features live performances which are not distinguished or characterized by an emphasis on the depiction, display, or description or

the featuring of "specified anatomical areas" or "specified sexual activities," as defined herein, in that the depiction, display, description or featuring is incidental to the primary purpose of any performance.

(8) Any business or commercial establishment where any worker engages in the physical manipulation, washing, scrubbing, stroking or touching, for commercial or pecuniary gain, of another's body, directly or indirectly, using any body part, object, instrument, substance or device. The following are specifically exempted from this paragraph:

a. A person licensed as a massage therapist or apprentice massage therapist providing massage services only in a licensed massage establishment;
b. A person licensed under state law to practice medicine, surgery, osteopathy, chiropracty, naturopathy, or podiatry, or persons licensed as a physician's assistant, or holding a drugless practitioner's certificate;
c. A nurse registered under state law;
d. A barber or beautician license under state law;
e. A cosmetologist licensed under state law;
f. A person performing any services in any hospital, clinic, nursing home or sanitarium licensed under state law;
g. A person performing ear-piercing services;
h. An instructor, coach or trainer employed by or on behalf of any bona fide professional, Olympic or sanctioned amateur athletic team, governmental entity or any bona fide state, county or private educational institution;
i. A physical therapist licensed under state law.

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

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

Adult motion picture arcade means any place to which the public is permitted to be invited wherein paper currency, coin- or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing "specified sexual activities" or "specified anatomical areas," as defined herein.

Adult motion picture theater means an enclosed building with a capacity of fifty (50) or more persons, used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," as defined herein, for observation by patrons therein.

Adult video store means any establishment with a segment or section comprising five (5) percent of its total floor space devoted to the sale or display of material, or which derives more than five (5) percent of its net sales from videos which are characterized or distinguished by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," as defined herein.

Children's day care facility shall be defined as a structure or portion of a structure wherein is provided care and supervision of children away from their place of residence for less than 24 hours per day on a regular basis for compensation. For the purpose of this article the term "children's day care facility" shall include but not be limited to the terms "nursery school," "early learning center," "pre-kindergarten," "private kindergarten," "play school," or "pre-school."

Operator means the manager or other person principally in charge of an adult entertainment establishment.

Owner means any individual or entity holding more than a twenty (20) percent interest in an adult entertainment establishment.

Park means a tract of land kept for ornament or recreation and maintained as public property.

Premises means the defined, closed or partitioned establishment, whether room, shop or building wherein adult entertainment is performed.

Specified sexual activities shall be defined to mean and include any of the following:

(1) Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship and any of the following sexually oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zooerasty;

(2) Use of human or animal ejaculation, sodomy, oral copulation, coitus or masturbation;

(3) Fondling or other erotic touching of nude human genitals, pubic region, buttocks or female breast;

(4) Masochism, erotic or sexually oriented torture, beating or the infliction of pain; or

(5) Erotic or lewd touching, fondling or other sexual contact with an animal by a human being.

Specified anatomical areas shall include the following:

(1) Less than completely and opaquely covered human genitals or pubic region, cleft of the buttocks, or female breast below a point immediately above the top of the areola; or

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

SECTION 3 – ADULT ENTERTAINMENT LICENSE

A. License Required

It shall be unlawful for any person, association, partnership, or corporation to operate, engage in, conduct, or carry on, in or upon any premises within the unincorporated area of the County an adult entertainment establishment as defined in this Ordinance without first procuring an annual license to do so, except as provided in Section 12(a)(3) of this Ordinance when the County Administrator or his or her designated representative fails to approve or deny an application for an adult entertainment license within thirty (30) days as required by this Ordinance. The issuance of such an annual license shall not be deemed to authorize, condone or make legal any activity thereunder if the same is deemed illegal or unlawful under the laws of the State or the United States. No annual license for an adult entertainment establishment shall be issued by the County if the premises to be used also holds a license to sell alcoholic beverages or malt beverages and wine for consumption on the premises. Any premises licensed as an adult entertainment establishment shall not be eligible to apply at any time for a license to sell alcoholic beverages or malt beverages and wine for consumption on the premises.

B. License Fee

There shall be an initial license fee for each adult entertainment establishment in the amount of $750.00, which shall be due and payable to the County Administrator or his or her designated representative upon the granting of an adult entertainment establishment license. There shall also be an annual regulatory fee for each adult entertainment establishment licensed within the County in the amount of $750.00. The annual regulatory fee must be paid to the County Administrator or his or her designated

representative no later than November 30 of the year preceding the year for which the renewal is to be effective. In any event, no adult entertainment establishment license or renewal thereof shall be issued until the most recent annual regulatory fee has been paid. All licenses granted hereunder shall expire on December 31 of each year. Licensees who desire to renew their license shall file an application with the County Administrator on the form provided for renewal of the license for the ensuing year. Applications for renewal must be filed before November 30 of each year. Any renewal application received after November 30 shall pay, in addition to said annual regulatory fee, a late charge of 20 percent. If a license renewal application is received after January 1, such application shall be treated as an initial application and the applicant shall be required to comply with all rules and regulations for the granting of licenses as if no previous license had been held. If a license application is received after January 1, investigative and administrative costs as hereinafter set forth in this Ordinance will be assessed. All licenses granted hereunder shall be for the calendar year and the full annual regulatory fee must be paid for a license renewal application filed prior to July 1 of the license year. One-half of a full annual regulatory fee shall be paid for a license renewal application filed after July 1 of the license year. Any person renewing any license issued hereunder who shall pay the annual regulatory fee, or any portion thereof, after January 1, shall, in addition to said annual regulatory fee and late charges, pay simple interest on the delinquent balance at the annual rate then charged by the Internal Revenue Service of the United States on unpaid federal income taxes.

C. License Non-Transferable

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

D. Change in Location or Name

(a) No adult entertainment establishment shall move from the location specified on its license until a notice of change of location has been provided to the County Administrator or his or her designated representative.

(b) No Licensee shall operate, conduct, manage, engage in or carry on an adult entertainment establishment under any name other than his/her/its name and the name of the business as specified on the license.

(c) Any application for an extension or expansion of a building or other place of business where an adult entertainment establishment is located shall require inspection and shall comply with the provisions and regulations of this Ordinance.

SECTION 4 – ON-PREMISES OPERATOR REQUIRED

An adult entertainment establishment shall have a designated person(s) to serve as an on-premises operator. The operator(s) shall be principally in charge of the establishment and shall be located on the premises during all operating hours.

SECTION 5 – APPLICATION PROCESS AND QUALIFICATIONS

(a) *Process.* Any person, association, partnership or corporation desiring to obtain a license to operate, engage in, conduct, or carry on any adult entertainment establishment in the unincorporated areas of the County shall make application to the County Administrator or to his or her designated representative. Such application shall be made on forms furnished by the County, shall be made in the name of the adult entertainment establishment by an applicant who is a natural person and an agent of the adult entertainment establishment and shall include the name(s) of the operator(s) as defined herein and of the owner(s) as defined herein. If the adult entertainment establishment is a corporation, then the agent, for purposes of making application for a license hereunder, shall be an officer of the corporation. If the adult entertainment establishment is a partnership, the agent for such purposes shall be a general partner. At the time of submitting such application, a nonrefundable investigative fee payable in cash or by certified check in the amount of $300.00 and a non-refundable license application fee of $100.00 shall be paid to the County Administrator or to his or her designated representative to defray, in part, the cost of investigation and reporting as required by this Ordinance. The County Administrator or his or her designated representative shall issue a receipt showing that such application fee(s) have been paid. The application for license does not authorize the operation of, engaging in, conduct or carrying on of any adult entertainment establishment.

(b) *Contents.* Each application for an adult entertainment establishment license shall contain the following information:

(1) The full true name and any other names used by the applicant, the operator(s), and owner(s);

(2) The present address and telephone number of the applicant, the operator(s), and owner(s);

(3) The previous addresses of the applicant, the operator(s), and the owner(s), if any, for a period of five (5) years immediately prior to the date of the application and the dates of residence at each;

(4) Acceptable written proof that the applicant, the operator(s), and the owner(s) are at least 18 years of age;

(5) The operator(s)' height, weight, color of eyes and hair and date and place of birth;

(6) Two photographs of the operator(s) at least two (2) inches by two (2) inches taken within the last six (6) months;

(7) The business, occupation or employment history of the applicant, the operator(s), and owner(s) for the five (5) years immediately preceding the date of application;

(8) The business license history of the adult entertainment establishment seeking a license and whether such establishment, in previous operations in this or any other location under license, has had such license or permit for an adult entertainment business or similar type of business revoked or suspended, the reason therefore, and the business activity or occupation subsequent to such action of revocation or suspension;

(9) If the application is made on behalf of a corporation, the name of the corporation, exactly as shown in its articles of incorporation or charter, together with the place and date of incorporation. If the application is on behalf of a limited partnership, a copy of the certificate of limited partnership filed with the County Clerk shall be provided. If one or more of the partners is a corporation, the provisions of this subsection pertaining to corporations shall apply;

(10) The names and addresses of the owner and lessor of the real property upon which the adult entertainment establishment is to be operated, engaged in, conducted, or carried on, and a copy of the lease or rental agreement;

(11) With respect to the applicant, the operator(s), and the owner(s), all convictions, (excluding misdemeanor traffic violations unrelated to

driving under the influence of drugs or alcohol) within the past five (5) years, including a complete description of the crime or violation, the date of the crime or violation, date of conviction (including plea of guilty or nolo contendere), jurisdiction and any disposition, including any fine or sentence imposed and whether the terms of disposition have been fully completed. Each person required to disclose convictions hereunder shall also provide a signed and notarized consent, on forms prescribed by the Georgia Crime Information Center, authorizing the release of his or her criminal records to the permits unit of the County police department;

(12) A complete set of fingerprints of the applicant and the operator(s);

(13) If the person or business entity on whose behalf an application is made for a license is doing business under a trade name, a copy of the trade name as properly recorded. If the application is made on behalf of a corporation, a copy of its authority to do business in the State, including articles of incorporation, trade name affidavit, if any, and last annual report, if any;

(14) At least three (3) character references for the applicant, the operator(s), and owner(s) from individuals who are in no way related to the applicant or any operator(s) or owner(s), and who are not or will not benefit financially in any way from the application if the license is granted. The County shall prepare forms consistent with the provisions of this subsection for the applicant, the operator(s), and owner(s), who shall submit all character references on such forms;

(15) The address of the premises where the adult entertainment establishment will be operated, engaged in, conducted, or carried on;

(16) A plat by a registered engineer or a registered land surveyor, licensed by the State, showing the location of the proposed premises where the adult entertainment establishment will be operated, engaged in, conducted or carried on in relation to the neighborhood, the surrounding zoning, its proximity in feet to any residence, area zoned residential, church, school, library, college campus, public park, cemetery, government building, civic center, County historic resource (as identified in the Forsyth County Historic Resource Inventory), children's day care facility, establishment selling alcoholic beverages or malt beverages and wine, or other adult entertainment establishment;

(17) Each application for an adult entertainment establishment license shall be verified and acknowledged under oath to be true and correct by:

(A) If application is made on behalf of an individual, the individual;

(B) If application is made on behalf of a partnership, by a general partner;

(C) If application is made on behalf of a corporation, by the president of the corporation;

(D) If application is made on behalf of any other organization or association, by the chief administrative official.

(c) *Appearance by applicant.* The applicant shall personally appear before the County Administrator or his or her designated representative and produce proof that a nonrefundable application fee, in an amount established by this Ordinance or by any subsequent resolution of the Board of Commissioners, has been paid and shall present the application containing the aforementioned and described information.

(d) *Investigation; standards for granting of license.* The County shall have thirty (30) days from the date of actual receipt of the application and investigatory fee to investigate the facts provided in the application and the background of the applicant, the operator(s), and owner(s). The County Administrator or his or her designated representative shall stamp the date of actual receipt of each application on the first page thereof, and notify the applicant of the actual receipt of the application within five (5) business days of actual receipt of such application. The County Administrator or his or her designated representative shall approve or deny any application for an adult entertainment establishment license within thirty (30) days of actual receipt of such application. The application for an adult entertainment establishment license shall be granted if the County Administrator or his or her designated representative finds:

(1) The required $300.00 investigative fee has been paid;

(2) The applicant has not made a material misrepresentation in the application;

(3) Neither the applicant, nor any of the operator(s) or owner(s) has been convicted or pled guilty or entered a plea of nolo contendere to any crime involving keeping a place of prostitution, pandering, pimping, public indecency, prostitution, sodomy, solicitation of

sodomy, masturbation for hire, sexual battery, rape, child molestation, enticing a child for indecent purposes, or any offense included in the definition of a "criminal offense against a victim who is a minor" as defined in O.C.G.A. § 42-1-12(a)(4)(A) and (B), within a period of five (5) years prior to the date of the application. For purposes of this Ordinance, a conviction or plea of guilty or nolo contendere shall be ignored as to any offense for which the applicant was allowed to avail himself of the Georgia First Offender Act unless the applicant is later adjudicated guilty of having violated the terms of his first offender treatment;

(4) Neither the applicant, nor any of the operator(s) or owner(s) has had an adult entertainment establishment license or other similar license or permit revoked for cause by this County or any other county or municipality located in or out of this State prior to the date of application within the preceding five (5) years;

(5) The building, structure, equipment and location of the premises of the adult entertainment establishment as proposed by the applicant complies with all applicable laws, including but not limited to health, zoning, distance, fire and safety requirements and standards;

(6) The applicant is at least 18 years of age;

(7) On the date the business for which a license is required herein commences, and thereafter, there will be an operator(s) as defined herein on the premises at all times during which the business is open;

(8) The proposed premises will be located at least the minimum distances set forth in this Ordinance from any residential use, church, school, library, college campus, public park, cemetery, government building, civic center, County historic resource (as identified in the Forsyth County Historic Resource Inventory), children's day care facility, establishment selling alcoholic beverages or malt beverages and wine, or other adult entertainment establishment; and

(9) The grant of such license will not cause a violation of and will not be in conflict with this Ordinance or any other law, ordinance or regulation, of Forsyth County, the State of Georgia or the United States.

The County Administrator or his or her designated representative shall deny the application for an adult entertainment establishment license if the application fails to meet any requirement contained in this Ordinance.

SECTION 6 – REGULATION OF ADULT ENTERTAINMENT ESTABLISHMENTS

(a) *Location.* No adult entertainment establishment shall be located:

(1) Within 1000 feet of any parcel of land which is either used or zoned for residential uses or purposes ("residential area");

(2) Within 1000 feet of any parcel of land on which a church, school, library, college campus, public park, cemetery, government building, civic center, or children's day care or playground facility is located;

(3) Within 1000 feet of any parcel of land upon which any establishment authorized to sell alcoholic beverages or malt beverages and wine, either by the package or for consumption on the premises, is located;

(4) In any zoning district other than a M-1 (Light Industrial) or M-2 (Heavy Industrial);

(5) Within 500 feet of any parcel of land upon which another adult entertain establishment regulated or defined hereunder is located;

(6) Within 250 feet of the right-of-way of Georgia 400;

(7) Within 1000 feet of the County's Historic Resources as identified in the Forsyth County Historic Resource Inventory; or

(8) On any parcel of land less than one (1) acre, or on any parcel of land containing less than one-hundred fifty (150) feet of road frontage.

For purposes of this section, distance shall be by airline measurement from property line, using the closest points on the property lines of the parcels of land involved. The term "parcel of land" means any quantity of land capable of being described by location and boundary, designated and used or to be used as a unit.

(b) *Adult entertainment establishment employees.*

(1) *Qualifications.* Employees of an adult entertainment establishment shall be not less than 18 years of age. No employee employed as an adult entertainer shall have been convicted of an offense described in section 5(d)(3) of this Ordinance within the five (5) years immediately preceding the proposed employment at or by an

adult entertainment establishment. Any adult entertainer who is convicted of any such crimes while employed as an adult entertainer shall not thereafter work on any licensed premises for a period of five (5) years from the date of such conviction, unless a longer time is ordered by a court of competent jurisdiction. The term "licensed premises" shall mean the premises where an adult entertainment establishment for which a license is obtained pursuant to this Ordinance operates, conducts, or carries on its business. The term "convicted" shall include an adjudication of guilt or a plea of guilty or nolo contendere or the forfeiture of a bond when charged with a crime in a court of competent jurisdiction.

(2) *Permit for employment.* Before any person may work as an adult entertainer on a licensed premises, as defined in subsection (1) he or she shall file a notice with the County Administrator or his or her designated representative of his or her intended employment on forms supplied by the County Administrator or his or her designated representative and shall receive a permit for such employment from the County Administrator or his or her designated representative. The prospective employee shall supply a signed and notarized consent, on forms prescribed by the Georgia Crime Information Center, authorizing the release of his or her criminal records to the County Administrator or his or her designated representative. The prospective employee shall also provide a list of all of his or her convictions of offenses described in section 5(d)(3) of this Ordinance (including pleas of nolo contendere) within the past five (5) years. The County Administrator or his or her designated representative shall approve or deny the permit within fifteen (15) days of the application. If the prospective employee is found to meet the requirements of this subsection, then upon payment of the permit fee, the County Administrator or his or her designated representative shall issue a permit approving such employment within forty-eight (48) hours. If such permit is not issued within forty-eight (48) hours of such finding, the employee seeking the permit may commence work at the adult entertainment establishment, which is the subject of the permit application, without such a permit. Upon receipt of a permit, the employee may begin working on the licensed premises. If approval is denied, the County Administrator or his or her designated representative shall provide the prospective employee the reasons for the denial and the prospective employee may, within ten (10) days of said denial, appeal to the Forsyth County Board of Commissioners, who shall uphold or reverse the decision within thirty (30) days of such appeal. The annual permit fee shall be $25.00, and a non-refundable investigation fee in the amount of $50.00 shall

accompany the permit application to defray, in part, the cost of investigation and report required by this Ordinance.

(3) *Suspension or revocation of permit; procedure.* Violation by an adult entertainer of the provisions of this Ordinance and/or conviction of an offense described in section 5(d)(3) of this Ordinance shall subject an adult entertainer to suspension or revocation of the permit for employment. Whenever the County Administrator or his or her designated representative finds that reasonable grounds exist to suspend or revoke a permit for employment issued hereunder, the County Administrator or his or her designated representative shall schedule a hearing before the Forsyth County Board of Commissioners to consider such action, and shall notify the employee, at least twenty (20) days prior to the hearing, of the time and place of the hearing and the proposed action and grounds therefore. The employee shall be entitled to present evidence and cross-examine witnesses with or without legal counsel. The Forsyth County Board of Commissioners shall make its decision within ten (10) days of the hearing and shall notify the employee promptly in writing. In the event that the decision to suspend or revoke an employment permit is upheld, a $50.00 appeal cost shall be assessed against the appellant.

(4) *Independent contractors.* For the purpose of this Ordinance, independent contractors working as adult entertainers shall be considered as employees and shall be required to satisfy the provisions of this Ordinance relating to employees of adult entertainment establishments, regardless of the business relationship with the owner or licensee of any adult entertainment establishment.

(c) *Hours of operation.* An adult entertainment establishment may be open only between the hours of 9:00 a.m. and 2:00 a.m. Monday through Friday, and between the hours of 9:00 a.m. and 12:00 midnight on Saturday. No adult entertainment establishment shall be open on Sunday or on Christmas Day.

(d) *Display of licenses.* An adult entertainment establishment licensee shall conspicuously display the license required by this Ordinance.

(e) *Performance area.* All dancing by adult entertainers at adult entertainment establishments shall occur on a platform intended for that purpose which is raised at least 18 inches from the level of the floor.

(f) *Lighting.* All areas of an adult entertainment establishment licensed hereunder shall be fully lighted at all times patrons are present. Full lighting shall mean illumination equal to 3.5 footcandles per square foot.

(g) *Covering of windows and doors.* All adult entertainment which is licensed and permitted by this article shall be carried on inside a closed building with all windows and doors covered so that the activities carried on inside cannot be viewed from the immediate areas surrounding the outside of the building.

SECTION 7 – CONDUCT OR ACTIVITIES PROHIBITED

(a) *Advertising without license.* No person, partnership, corporation or other entity shall advertise or cause to be advertised an adult entertainment establishment without a valid adult entertainment establishment license issued pursuant to this Ordinance.

(b) *Employment of minors or unpermitted persons.* No adult entertainment establishment licensee shall employ or contract with a person under the age of 18 years, or an adult entertainer who has not obtained a permit pursuant to this Ordinance.

(c) *Sale, consumption of alcohol.* No adult entertainment establishment licensee shall serve, sell, distribute, or suffer the consumption or possession of any alcoholic beverages, malt beverages or wine or controlled substance upon the premises of the licensee.

(d) *Contact between patrons, employees.* No dancing or other performance by an adult entertainer at an adult entertainment establishment shall occur closer than four (4) feet to any patron. No patron, customer or guest shall be permitted to touch, caress or fondle any specified anatomical area of or any part of the body or clothing of any adult entertainer. No patron shall directly pay or give any gratuity to any adult entertainer. No adult entertainer shall solicit any pay or gratuity from any patron.

(e) *Engaging in specified sexual activities prohibited.* No adult entertainer, other employee, patron or other person at an adult entertainment establishment shall be allowed to engage in any "specified sexual activity," as defined herein, on the premises of any adult entertainment establishment.

(f) *Public indecency prohibited.* No adult entertainer, other employee, patron or other person at an adult entertainment establishment shall, while on the premises of an adult entertainment establishment, commit the offense of public indecency as defined in O.C.G.A. § 16-6-8.

SECTION 8 – PHYSICAL LAYOUT OF ESTABLISHMENT

Any adult entertainment establishment having available for customers, patrons or members any booth, room, or cubicle for the private viewing of any adult entertainment must comply with the following requirements:

(a) *Access.* Each booth, room or cubicle shall be totally accessible to and from aisles and public areas of the establishment, and shall be unobstructed by any curtain, door, lock, or other control-type or view-obstructing devices or materials.

(b) *Construction.* Every booth, room or cubicle shall meet the following construction requirements:

(1) Each booth, room or cubicle shall be separated from adjacent booths, rooms and cubicles and any nonpublic areas by a wall.

(2) Each booth, room, or cubicle shall have at least one side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying same.

(3) All walls shall be solid and without openings, extended from the floor to a height of not less than six feet and be light colored, nonabsorbent, smooth-textured, and easily cleanable.

(4) The floor must be light colored, nonabsorbent, smooth-textured, and easily cleaned.

(5) The lighting level of each booth, room or cubicle when not in use shall be a minimum of ten (10) candles at all times, as measured from the floor.

(c) *Occupants.* Only one (1) individual shall occupy a booth, room, or cubicle at any time. No occupant of same shall engage in any type of sexual activity, cause any bodily discharge, or litter while in the booth, room, or cubicle. No individual shall damage or deface any portion of the booth, room, or cubicle.

SECTION 9 – PENALTY FOR VIOLATION

Any person violating any of the provisions of Section 7 of this Ordinance shall be subject to citation and upon conviction in Magistrate Court a fine not to exceed $1,000.00 per violation or by imprisonment for a period not to exceed 60 days, or both. Each day of operation in violation of this Ordinance shall be deemed a separate offense.

SECTION 10 – UNLAWFUL OPERATION DECLARED NUISANCE

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

SECTION 11 – CONDITIONS OF ADULT ENTERTAINMENT ESTABLISHMENT

(a) *Cleaning of licensed premises.* All adult entertainment establishments shall be kept in a clean, sanitary condition, and shall be in full compliance with all applicable ordinances and regulations of the County and the State.

(b) *Inspection of licensed premises.* The County Administrator of his or her designated representative, the County Fire Chief, or the County Sheriff shall have the authority to regularly inspect adult entertainment establishments, to determine compliance with and enforce all applicable fire, health and other codes of the County.

(c) *Inspection for unsanitary or unsafe conditions.* The County Administrator of his or her designated representative or the County Sheriff shall have the authority to periodically inspect adult entertainment establishments to determine compliance with and enforce all provisions of this article and other applicable ordinances, regulations and laws.

SECTION 12 – DENIAL, SUSPENSION OR REVOCATION OF LICENSE; HEARING

(a) *Grounds.*

(1) A license may be denied to persons or entities that have submitted an incomplete application or that have failed to satisfy any of the requirements of this Ordinance.

(2) Any of the following shall be grounds for suspension or revocation of a license:

(A) The making of any statement on an application for a license issued hereunder which is material and is later found to be false;

(B) Violation of any of the regulations or prohibitions of this Ordinance;

(C) With respect to the applicant, operator(s) and owner(s), conviction of or a plea of guilty or nolo contendere to any of the crimes which would make such person or adult entertainment establishment ineligible to hold a license under section 5(d)(3) above.

(3) *Denial; procedure.* Within thirty (30) days of actual receipt of an application for an adult entertainment establishment license, the County Administrator or his or her designated representative shall either approve or deny the application. In no event shall the County Administrator or his or her designated representative 's decision whether to approve or deny the adult entertainment establishment license application be withheld for more than thirty (30) days after actual receipt of the application. In the event that such an application is held without decision for a period of more than thirty (30) days, however, the license application shall be deemed approved, and expressive conduct may begin immediately notwithstanding the fact that no license has been issued. The County Administrator or his or her designated representative shall issue an adult entertainment establishment license to an applicant who informs the County Administrator or his or her designated representative of the fact that an application has been submitted, but no decision has been made thereon for a period of more than thirty (30) days following actual receipt of the application. Notwithstanding the fact that the license provided by this sentence shall not be a prerequisite to the commencement of business operations contemplated by the application, the County Administrator or his or her designated representative shall issue an adult entertainment establishment license under such circumstances within three (3) business days of actual receipt of written notice by the applicant of such circumstances. In the event that the County Administrator or his or her designated representative denies an application for an adult entertainment establishment license, notice of such denial shall be delivered to the applicant in person or by certified mail within five (5) business days of such denial. Any person aggrieved by any decision of the County, its officials, employees, or agents, pursuant to this Ordinance, may seek review of such decision by filing an appropriate pleading in the Superior Court of the County or any

other court of competent jurisdiction including, but not limited to, a mandamus petition pursuant to O.C.G.A. §§ 9-6-20, *et seq.*

(4) *Suspension or revocation; procedure.* Whenever the County Administrator or his or her designated representative finds reasonable grounds exist to suspend or revoke a license issued hereunder, the County Administrator or his or her designated representative shall schedule a hearing before the Forsyth County Board of Commissioners to consider such suspension or revocation and shall, at least twenty (20) days prior to the hearing, notify the licensee of the time and date of the hearing and the proposed action and the grounds therefore. The licensee shall be entitled to present evidence and cross-examine any witnesses at the hearing, with or without legal counsel. The Forsyth County Board of Commissioners shall make its decision within ten (10) days of the hearing and shall notify the licensee in writing within five (5) business days of the decision.

SECTION 13 – MISCELLANEOUS

Nothing contained in this Ordinance shall be deemed to permit or condone any activity whatsoever which is otherwise found to be obscene, lewd, or illegal under applicable code, regulation, or statute. Further, the activities and uses which are regulated and permitted by this Ordinance shall only be allowed if they are not obscene or lewd and not in violation of any other such prohibitions on nudity or sexual activity.

SECTION 14 – SEVERABILITY

If any portion or subsection of this Ordinance, or its application to any person or circumstance, is held invalid by a court of competent jurisdiction, the remainder or application to other persons or circumstances shall not be affected.

SECTION 15 – AUTOMATIC LICENSE FORFEITURE FOR NONUSE

Any holder of any license hereunder who shall for a period of three (3) consecutive months after the license has been issued, cease to operate the business and sale of the product or products authorized shall after the said three-month period automatically forfeit the license without the necessity of any further action.

SECTION 16 – REPEAL OF CONFLICTING PROVISIONS

All resolutions or ordinances, or parts thereof, including the totality of existing Ordinance 85 in conflict with this Ordinance are hereby repealed.

SO ORDAINED THIS 16th DAY OF February, 2004, the public welfare demanding it.

FORSYTH COUNTY BOARD OF COMMISSIONERS

Jack Conway, Chairman

Marcie Kreager, Vice Chairman

Charles Laughinghouse, Secretary

David F. Pritchett, Member

Eddie Taylor, Member

Attest: _____
County Clerk