

ARTICLE IX. ADULT ENTERTAINMENT ESTABLISHMENTS

Sec. 23-301. Purpose and findings.

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

(b) *Findings.* Based on the experience of other urban counties and municipalities, including, but not limited to, Atlanta and Fulton County, Georgia; DeKalb County, Georgia; Richmond County, Georgia; Amarillo, Texas; Austin, Texas; Garden Grove, California; Houston, Texas; Renton, Washington; Phoenix, Arizona; Indianapolis, Indiana; St. Paul, Minnesota; Tucson, Arizona; Augusta, Georgia; LaGrange, Georgia; Dalton and Whitfield County, Georgia; Carrollton, Georgia; Smyrna, Georgia; and Ft. Lauderdale and Palm Beach, Florida, which experiences, we believe are relevant to the problems faced by the City of Rome, Georgia, the City Commission takes note of the notorious and self-evident conditions attendant to the commercial exploitation of human sexuality, which do not vary greatly among generally comparable communities within our country. Moreover, it is the findings of the commission that public nudity (either partial or total) under certain circumstances, particularly circumstances related to the sale and consumption of alcoholic beverages, begets criminal behavior and tends to create undesirable community conditions. Among the acts of criminal behavior identified with nudity and alcohol are disorderly conduct, prostitution, and drug trafficking and use. Among the undesirable community conditions identified with nudity and alcohol are depression of property values in the surrounding neighborhood, increased expenditure for and allocation of law enforcement personnel to preserve law and order, increased burden on the judicial system as a consequence of the criminal behavior herein above described, and acceleration of community blight by the concentration of such establishments in particular areas. Therefore, the limitation of nude conduct in establishments licensed to sell alcoholic beverages is in the public welfare and it is a matter of governmental interest and concern to prevent the occurrence of criminal behavior and undesirable community conditions normally associated with establishments which serve alcohol and also allow and/or encourage nudity. Based on these findings, this article is adopted to regulate certain types of businesses and to establish where such activity may or may not be conducted.

(Ord. No. 93-12-2, § I, 12-6-93; Ord. No. 95-3-3, § I, 3-6-95)

Sec. 23-302. Adult entertainment establishments defined.

Under this article, the term adult entertainment establishment shall include, without limitation, the following types of establishments, which shall be defined as follows:

Adult bookstore means an establishment having a substantial or significant portion of its stock in trade, books, magazines or other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas or an establishment with a segment or section, comprising five percent of its total floor space, devoted to the sale or

display of such materials or five percent of its net sales consisting of printed materials which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

Adult business means either:

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

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

Adult motion picture theater means an enclosed building with a capacity of 25 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 for observation by patrons therein.

Adult minimotion picture theater means an enclosed building with a capacity of less than 25 persons used for commercially presenting material distinguished or characterized by an emphasis on matter depicting or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

Adult 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 of specified anatomical areas.

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

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

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

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

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

(Ord. No. 93-12-2, § 1, 12-6-93; Ord. No. 95-3-3, § 1, 3-6-95)

Sec. 23-303. Definitions.

The following terms, as used in this article, shall have the meanings indicated below:

Church means a body of communicants gathered into church order united under one form of government by the profession of the same faith and the observance of the same ritual and ceremonies; place where persons regularly assemble for worship; congregation; organization for religious purposes.

Good moral character. A person is of good moral character according to this article if that person has not been convicted of a felony, or any crime not a felony if it involves moral turpitude, in the past five years. The city may also take into account such other factors as are necessary to determine the good moral character of the applicant or employee. Conviction shall include pleas of nolo contendere or bond forfeiture when charged with such crime.

Minor means, for the purposes of this article, any person who has not attained the age of 18 years.

Specified anatomical areas shall include any of the following:

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

Specified sexual activities means and shall 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; or
- (2) Clearly depicted human genitals in a state of sexual simulation, arousal or tumescence; or
- (3) Use of human or animal ejaculation, sodomy, oral copulation, coitus or masturbation; or
- (4) Fondling or touching of nude human genitals, pubic region, buttocks or female breast; or
- (5) Masochism, erotic or sexually oriented torture, beating or the infliction of pain; or
- (6) Erotic or lewd touching, fondling or other sexual contact with an animal by a human being; or
- (7) Human excretion, urination, menstruation, vaginal or anal irrigation.

(Ord. No. 93-12-2, § I, 12-6-93; Ord. No. 95-3-3, § I, 3-6-95)

Sec. 23-304. Regulations.

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

- (b) No later than March first of each year, an **adult entertainment** establishment licensee shall file a verified report with the license officer showing the licensee's gross receipts and amounts paid to dancers for the preceding calendar year.
- (c) An **adult entertainment** establishment licensee shall maintain and retain for a period of two years the names, addresses and ages of all persons employed as dancers.
- (d) No **adult entertainment** establishment licensee shall employ or contract with as a dancer a person under the age of 18 years or a person not licensed pursuant to this article.
- (e) No person under the age of 18 years shall be admitted to an **adult entertainment** establishment.
- (f) An **adult entertainment** establishment may be open only between the hours of 8:00 am. and 1:00 a.m. Monday through Saturday. No **adult entertainment** establishment shall be open on Christmas Day.
- (g) An **adult entertainment** establishment licensee shall conspicuously display all licenses required by this article.
- (h) All dancing shall occur on a platform intended for that purpose which is raised at least two feet from the level of the floor.
- (i) No dancing shall occur closer than ten feet to any patron.
- (j) No dancer shall fondle or caress any patron, and no patron shall fondle or caress any dancer.
- (k) No patron shall directly pay or give any gratuity to any dancer.
- (l) No dancer shall solicit any pay or gratuity from any patron.
- (m) All areas of an establishment licensed hereunder shall be fully lighted at all times patrons are present. Full lighting shall mean illumination equal to three and five-tenths foot candles per square foot.
- (n) If any portion or subparagraph of this section of this article 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.

(Ord. No. 93-12-2, § I, 12-6-93; Ord. No. 95-3-3, § I, 3-6-95)

Sec. 23-305. Certain activities prohibited.

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

(Ord. No. 93-12-2, § I, 12-6-93; Ord. No. 95-3-3, § I, 3-6-95)

Sec. 23-306. License required.

It shall be unlawful for any person, association, partnership or corporation to engage in, conduct or carry on in or upon any premises within the City of Rome any **adult entertainment** establishment without a license so to do. No permit so issued shall condone or make legal any activity thereunder if the same is deemed illegal or unlawful under the laws of the State of Georgia or the United States.

(Ord. No. 93-12-2, § I, 12-6-93; Ord. No. 95-3-3, § I, 3-6-95)

Sec. 23-307. Operation of unlicensed premises unlawful.

It shall be unlawful for any person to operate an **adult entertainment** establishment unless such business shall have a currently valid license or shall have made proper application for renewal within the time required thereof under this article, which license shall not be under suspension or permanently or conditionally revoked.

(Ord. No. 93-12-2, § I, 12-6-93; Ord. No. 95-3-3, § I, 3-6-95)

Sec. 23-308. Admission of minors unlawful.

It shall be unlawful for a licensee to admit or permit the admission of minors within a licensed premises.

(Ord. No. 93-12-2, § I, 12-6-93; Ord. No. 95-3-3, § I, 3-6-95)

Sec. 23-309. Sales to minors unlawful.

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

(Ord. No. 93-12-2, § I, 12-6-93; Ord. No. 95-3-3, § I, 3-6-95)

Sec. 23-310. Location.

No **adult entertainment** establishment or use restricted hereunder shall be located:

- (1) Within 500 feet of any parcel of land which is either named or used for residential uses or purposes;
- (2) Within 500 feet of any parcel of land upon which a church, school, governmental building, library, civic center, public park or playground is located;
- (3) Within 500 feet of any parcel of land upon which another establishment regulated or defined hereunder is located;
- (4) Within 500 feet of any parcel of land upon which any other **adult entertainment** establishment is located;
- (5) Within any zoning category other than the following categories:
 - (a) General Heavy Commercial (H-C);
 - (b) Light industrial (L-I); and

(c) Heavy industrial (H-I).

(6) On less than three acres of land containing at least 100 feet of road frontage.

For the purposes of this section, distance shall be by airline measurement from any door of the establishment to the closest 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.

(Ord. No. 93-12-2, § I, 12-6-93; Ord. No. 95-3-3, § I, 3-6-95; Ord. No. 02-7-8, § I, 7-15-02)

Sec. 23-311. Adult entertainment establishment employees.

(a) *Qualifications.* Employees of an adult entertainment establishment shall be not less than 18 years of age. Every employee must be of good moral character as defined in this article. Any employee who is convicted of a crime constituting a felony or a crime not a felony involving moral turpitude while employed as an adult entertainment establishment employee shall not thereafter work on any licensed premises for a period of five years from the date of such conviction, unless a longer time is ordered by a court of competent jurisdiction. The term "convicted" shall include an adjudication of guilt on a plea of guilty or nolo contendere or the forfeiture of a bond when charged with a crime, and the terms "employed on the licensed premises" and "work on any licensed premises" shall include as well work done or services performed while in the scope of employment elsewhere than on the licensed premises.

(b) *Approval for employment.* Before any person may work on a licensed premises, he shall file a notice with the city clerk of his intended employment on forms supplied by the city clerk and shall receive approval of such employment from the city clerk. The prospective employee shall supply such information as the city clerk requires, including a set of fingerprints, on regular City of Rome or United States Department of Justice forms. Upon approval, the employee may begin working on the licensed premises. If approval is denied, the prospective employee may, within ten days of said denial, apply to the city clerk for a hearing. The decision of the city clerk after hearing may be appealed to the Rome City Commission which may issue such order as is required. An investigation fee of \$50.00 shall accompany the notice of intended employment or a receipt of the city clerk evidencing the payment of such fee at the time the notice is filed.

(c) *Suspension, revocation of license.* Violation of the provisions of this Code, the ordinances of the City of Rome, laws and regulations of the State of Georgia, or the rules and regulations of the city shall subject an employee to suspension or revocation of license.

(d) *Independent contractors.* For the purpose of this article, independent contractors shall be considered as employees and shall be licensed as employees, regardless of the business relationship with the owner or licensee of any adult entertainment establishment.

(Ord. No. 93-12-2, § I, 12-6-93; Ord. No. 95-3-3, § I, 3-6-95)

Sec. 23-312. Application for license.

(a) Any person, association, partnership or corporation desiring to obtain a license to operate, engage in, conduct or carry on any adult entertainment establishment shall make application to the city clerk or his designated representative. Prior to submitting such application, a nonrefundable fee, established by resolution of the city commission, shall be paid to the city clerk to defray, in part, the cost of investigation and report required by this article. The city clerk shall issue a receipt showing that such application fee has been paid.

(b) The application for license does not authorize the engaging in, operation of, conduct of or carrying on of any **adult entertainment** establishment.

(Ord. No. 93-12-2, § I, 12-6-93; Ord. No. 95-3-3, § I, 3-6-95)

Sec. 23-313. Application 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;
- (2) The present address and telephone number of the applicant;
- (3) The previous addresses of the applicant, if any, for a period of five years immediately prior to the date of the application and the dates of residence at each;
- (4) Acceptable written proof that the applicant is at least 18 years of age;
- (5) The applicant's height, weight, color of eyes and hair and date and place of birth;
- (6) Two photographs of the applicant at least two inches by two inches taken within the last six months;
- (7) Business, occupation or employment history of the applicant for the five years immediately preceding the date of application. Business or employment records of the applicant, partners in a partnership, directors and officers of a corporation and, if a corporation, all shareholders holding more than five percent of the shares of corporate stock outstanding;
- (8) The business license history of the applicant and whether such applicant, in previous operations in this or any other city, state or territory under license, has had such license or permit for an **adult entertainment** business or similar type of business revoked or suspended, the reason therefor, and the business activity or occupation subsequent to such action of suspension or revocation;
- (9) All convictions, including ordinance violations, exclusive of traffic violations, stating the dates and places of any such convictions;
- (10) If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter, together with the place and date of incorporation, and the names and addresses of each of its current officers and directors, and each stockholder holding more than five percent of the stock in the corporation. If the applicant is a partnership, the applicant shall set forth the name, residence address and dates of birth of the partners, including limited partners. If the applicant is a limited partnership, it shall furnish a copy of its certificate of limited partnership filed with the county clerk. If one or more of the partners is a corporation, the provisions of this subsection pertaining to a corporations shall apply. The applicant corporation or partnership shall designate one of its officers or general partners to act as its responsible managing officer. Such designated persons shall complete and sign all application forms required of an individual applicant under this article, but only one application fee shall be charged;
- (11) The names and addresses of the owner and lessor of the real property upon which the business is to be conducted and a copy of the lease or rental agreement;
- (12) Such other identification and information as the police department may require in order to discover the truth of the matters

hereinbefore specified as required to be set forth in the application;

(13) The age and date of birth of the applicant, of any partners, or of any and all officers, of any stockholders of more than five percent of the shares of the corporation stock outstanding, directors of the applicant if the applicant is a corporation;

(14) If the applicant, any partners or any of the officers or stockholders holding more than five percent of the outstanding shares of the corporation, have ever been convicted of any crime constituting a felony, or any crime not a felony involving moral turpitude, in the past five years and, if so, a complete description of any such crime, including date of violation, date of conviction, jurisdiction and any disposition, including any fine or sentence imposed and whether terms of disposition have been fully completed;

(15) The city shall require the individual, applicant to furnish fingerprints of the applicant;

(16) If the applicant is a person doing business under a trade name, a copy of the trade name properly recorded. If the applicant is a corporation, a copy of authority to do business in Georgia, including articles of incorporation, trade name affidavit, if any, last annual report, if any;

(17) At least three character references from individuals who are in no way related to the applicant or individual shareholders, officers or directors of a corporation and who are not or will not benefit financially in any way from the application if the license is granted and who have not been convicted of any felony or a municipal code violation involving moral turpitude in the past five years. The licensing officer shall prepare forms consistent with the provisions of this subsection for the applicant, who shall submit all character references on such forms;

(18) Address of the premises to be licensed;

(19) Whether the premises are owned or rented and, if the applicant has a right to legal, possession of the premises, copies of those documents giving such legal right;

(20) A plat by a registered engineer, licensed by the State of Georgia, showing the location of the proposed premises in relation to the neighborhood, the surrounding zoning, its proximity to any church, school, public park, governmental building or site or other business hereunder regulated;

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

- a. If the applicant is an individual, the individual;
- b. If by a partnership, by the manager or general partner;
- c. If a corporation, by the president of the corporation;
- d. If any other organization or association, by the chief administrative official.

(Ord. No. 93-12-2, § I, 12-6-93; Ord. No. 95-3-3, § I, 3-6-95)

Sec. 23-314. Applicant to appear.

The applicant, if an individual, or designated responsible managing officer, if a partnership or corporation, shall personally appear before

the city clerk and produce proof that a nonrefundable application fee has been paid; that the application containing the aforementioned and described information has been presented to the city clerk; and that all information contained therein is true and correct.

(Ord. No. 93-12-2, § I, 12-6-93; Ord. No. 95-3-3, § I, 3-6-95)

Sec. 23-315. Application; investigation.

The city clerk shall have 45 days to investigate the application and the background of the applicant. Upon completion of the investigation, the city commission shall upon two readings, grant the license if it finds:

- (1) The required fee has been paid;
- (2) The application conforms in all respects to the provisions of this article;
- (3) The applicant has not knowingly made a material misrepresentation in the application;
- (4) The applicant has fully cooperated in the investigation of his application;
- (5) The applicant, if an individual, or any of the stockholders of the corporation, any officers or directors, if the applicant is a corporation, or any of the partners, including limited partners, if the applicant is a partnership, has not been convicted in a court of competent jurisdiction of an offense involving conduct or convicted of an attempt to commit any of the above-mentioned offenses, or convicted in any state of any offense which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses, or any crime involving dishonesty, fraud, deceit or moral turpitude;
- (6) The applicant has not had an **adult entertainment** establishment license or other similar license or permit denied or revoked for cause by this city or any other city located in or out of this state prior to the date of application;
- (7) The building, structure, equipment or location of such business as proposed by the applicant complies with all applicable laws, including but not limited to health, zoning, distance, fire and safety requirements and standards;
- (8) The applicant is at least 21 years of age;
- (9) That the applicant, his or her employee, agent, partner, director, officer, stockholder or manager has not, within five years of the date of the application, knowingly allowed or permitted any of the specified sexual activities as defined herein to be committed or allowed in or upon the premises where such **adult entertainment** establishment is to be located or to be used as a place in which solicitations for the specified sexual activities as defined herein openly occur;
- (10) That on the date the business for which a license is required herein commences, and thereafter, there will be a responsible person on the premises to act as manager at all times during which the business is open;
- (11) That the proposed premises is not to be located too close to any church, school, library, governmental building or site or any other business restricted hereunder;
- (12) That the grant of such license will not cause a violation of this article or any other ordinance or regulation of the City of Rome, State of Georgia or the United States;
- (13) Any other inquiry deemed necessary or desirable by the city to insure the health, safety and welfare of the citizens of the City

of Rome or the preservation of its neighborhoods.

(Ord. No. 93-12-2, § I, 12-6-93; Ord. No. 95-3-3, § I, 3-6-95; Ord. No. 95-8-6, § I, 8-21-95)

Sec. 23-316. Persons prohibited as licensees.

(a) No license provided for by this article shall be issued to or held by:

- (1) An applicant who has not paid all required fees and taxes for a business at that location or property taxes;
- (2) Any person who is not of good moral character;
- (3) Any corporation, any of whose officers, directors or stockholders holding over five percent of the outstanding issued shares of capital stock are not of good moral character;
- (4) Any partnership or association, any of whose officers or members holding more than five percent interest therein are not of good moral character;
- (5) Any person employing, assisted by or financed in whole or in part by any person who is not of good moral character;
- (6) Any applicant who is not qualified to hold and conduct a business according to the laws of the United States, the State of Georgia or the City of Rome.

(b) Should there be a sufficient number of current licenses to meet the needs and desires of the inhabitants of the city, no new licenses shall issue. In determining the needs and desires of the inhabitants, the standard of review shall be that the market is virtually unrestrained as defined in *Young v. American Mini Theaters, Inc.*, 427 U.S. 50.

(Ord. No. 93-12-2, § I, 12-6-93; Ord. No. 95-3-3, § I, 3-6-95)

Sec. 23-317. License--Refusal; appeal.

If the city clerk, following investigation of the applicant, deems that the applicant does not fulfill the requirements as set forth in this article, he shall notify the applicant by certified mail of such denial. Any applicant who is denied a license may appeal such denial as provided herein.

(Ord. No. 93-12-2, § I, 12-6-93; Ord. No. 95-3-3, § I, 3-6-95)

Sec. 23-318. Same--Renewal.

Licenses for **adult entertainment** establishments may be renewed by the city clerk on a year-to-year basis, provided that the licensees continue to meet the requirements set out in this article. The renewal fees for the **adult entertainment** establishment licenses shall be established by resolution of the city commission.

(Ord. No. 93-12-2, § I, 12-6-93; Ord. No. 95-3-3, § I, 3-6-95)

Sec. 23-319. Same--Nontransferable.

No **adult entertainment** establishment license may be sold, transferred or assigned by a licensee, or by operation of law, to any other person or persons. Any such sale, transfer or assignment or attempted sale, transfer or assignment shall be deemed to constitute a voluntary surrender of such 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 city, shall be placed in the name of the surviving partner. An **adult entertainment** establishment license issued to a corporation shall be deemed terminated and void when either any outstanding stock of the corporation is sold, transferred or assigned after the issuance of a license or any stock authorized but not issued at the time of the granting of a license is thereafter issued and sold, transferred or assigned.

(Ord. No. 93-12-2, § I, 12-6-93; Ord. No. 95-3-3, § I, 3-6-95)

Sec. 23-320. Change of location or name.

(a) No **adult entertainment** establishment shall move from the location specified on its license until a change of location fee, established by resolution of the city commission, has been deposited with the city and approval has been obtained from the city clerk. Such approval shall not be given unless all requirements and regulations as contained in the Code have been met.

(b) No licensee shall operate, conduct, manage, engage in or carry on an **adult entertainment** establishment under any name other than his name and the name of the business as specified on 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 article.

(Ord. No. 93-12-2, § I, 12-6-93; Ord. No. 95-3-3, § I, 3-6-95)

Sec. 23-321. Appeal--Procedure.

The licensee shall, within ten days after he has been notified of an adverse determination by the city clerk, submit a notice of appeal to the city clerk. The notice of appeal shall be addressed to the city commission and shall specify the subject matter of the appeal, the date of any original and amended application or requests, the date of the adverse decision (or receipt of notice thereof), the basis of the appeal, the action requested of the commission, and the name and address of the applicant. The clerk shall place the appeal on the agenda of the next regular city commission meeting occurring not less than five nor more than 30 days after receipt, of the application for commission's action.

(Ord. No. 93-12-2, § I, 12-6-93; Ord. No. 95-3-3, § I, 3-6-95)

Sec. 23-322. Same--Commission determines procedure.

When an appeal is placed on the commission's agenda, the commission may take either of the following actions:

- (1) Set a hearing date and instruct the city clerk to give such notice of hearing as may be required by law;
- (2) Appoint a hearing officer and fix the time and place for hearing. The hearing officer may or may not be a city employee and may be appointed for an extended period of time. The clerk shall assume responsibility for such publication of notice of the hearing as may be required by law. If a hearing officer is appointed, the hearing shall be conducted in accordance with the procedures set out in this article.

(Ord. No. 93-12-2, § I, 12-6-93; Ord. No. 95-3-3, § I, 3-6-95)

Sec. 23-323. City commission hearing.

Whenever the city clerk has scheduled an appeal before the city commission, at the time and date set therefor, the commission shall receive all relevant testimony and evidence from the licensee, from interested parties and from city staff. The city commission may sustain, overrule or modify the action complained of. The action of the city commission shall be final.

(Ord. No. 93-12-2, § I, 12-6-93; Ord. No. 95-3-3, § I, 3-6-95)

Sec. 23-324. Powers of hearing officer.

The hearing officer appointed pursuant to the procedure set out in this article may receive and rule on admissibility of evidence, hear testimony under oath and call witnesses as he may deem advisable with respect to the conduct of the hearing.

(Ord. No. 93-12-2, § I, 12-6-93; Ord. No. 95-3-3, § I, 3-6-95)

Sec. 23-325. Rules of evidence inapplicable.

The city commission and the hearing officer shall not be bound by the traditional rules of evidence in hearings conducted under this article. Rules of evidence as applied in an administrative hearing shall apply.

(Ord. No. 93-12-2, § I, 12-6-93; Ord. No. 95-3-3, § I, 3-6-95)

Sec. 23-326. Hearing officer--Report.

The hearing officer shall, within a reasonable time not to exceed 30 days from the date a hearing before the hearing officer is terminated, submit a written report to the commission. Such report shall contain a brief summary of the evidence considered and state findings, conclusions and recommendations. All such reports shall be filed with the city clerk and shall be considered public records. A copy of such report shall be forwarded by certified mail to the licensee/appellant the same day it is filed with the city clerk, with additional copies furnished the city manager and chief of police. The city clerk shall place the hearing officer's report on the agenda of the next regular commission meeting occurring not less than ten days after the report is filed and shall notify the licensee/appellant of the date of such meeting at least ten days prior to the meeting unless the licensee/appellant stipulates to a shorter notice period.

(Ord. No. 93-12-2, § I, 12-6-93; Ord. No. 95-3-3, § I, 3-6-95)

Sec. 23-327. Same--Action by commission.

The commission may adopt or reject the hearing officer's decision in its entirety or may modify the proposed recommendation. If the commission does not adopt the hearing officer's recommendation, it may:

- (1) Refer the matter to the same or another hearing officer for a completely new hearing or for the taking of additional evidence on specific points; in either of such cases, the hearing officer shall proceed as provided in this article;
- (2) Decide the case upon a review of the entire record before the hearing officer with or without taking additional evidence.

(Ord. No. 93-12-2, § I, 12-6-93; Ord. No. 95-3-3, § I, 3-6-95)

Sec. 23-328. Violations; penalty.

Any person violating the provisions of this article shall be guilty of a misdemeanor, punishable by a fine not to exceed \$1,000.00 per violation or by imprisonment for a period not to exceed six months, or by both such fine and imprisonment. In addition to such fine or imprisonment, violation of this article shall also be grounds for immediate suspension or revocation of the license issued hereunder.

(Ord. No. 93-12-2, § I, 12-6-93; Ord. No. 95-3-3, § I, 3-6-95)

Sec. 23-329. Unlawful operation declared nuisance.

Any **adult entertainment** establishment operated, conducted or maintained contrary to the provisions of this article shall be and the same is hereby declared to be unlawful and a public nuisance. The city may, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings for abatement, removal or enjoinder thereof in the manner provided by law. It shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such **adult entertainment** establishment and restrain and enjoin any person from operating, conducting or maintaining an **adult entertainment** establishment contrary to the provisions of this article. In addition, violation of the provisions of this article shall be per se grounds for suspension or revocation of a license granted hereunder.

(Ord. No. 93-12-2, § I, 12-6-93; Ord. No. 95-3-3, § I, 3-6-95)

Sec. 23-330. Cleaning of licensed premises.

Each licensed premises shall be maintained in a clean and sanitary condition and shall be cleaned at least once daily and more frequently when necessary. This activity shall be supervised by the person in charge of the licensed premises. There shall be provided adequate facilities, equipment and supplies on the licensed premises to meet this requirement, and adequate ventilation and illumination shall be provided to permit thorough, complete cleaning of the entire licensed premises. Trash and garbage shall not be permitted to accumulate or to become a nuisance on

or in the immediate vicinity of the licensed premises but shall be disposed of daily or as often as collections permit.

(Ord. No. 93-12-2, § I, 12-6-93; Ord. No. 95-3-3, § I, 3-6-95)

Sec. 23-331. Self-inspection of licensed premises.

The licensee of a licensed premises or his designated representative shall make sanitary inspections of the licensed premises at least once a month and shall record his findings on a form supplied by the licensing officer. Each licensed premises shall post and maintain in a readily accessible place a schedule for maintaining the sanitation of the premises.

(Ord. No. 93-12-2, § I, 12-6-93; Ord. No. 95-3-3, § I, 3-6-95)

Sec. 23-332. Sealing for unsanitary or unsafe conditions.

A licensed premises or any part thereof may be sealed by order of the licensing officer on his finding of a violation of this article resulting in an unsanitary or unsafe condition. Prior to sealing, the licensing officer shall serve on the licensee, by personal service on him or by posting in a conspicuous place on the licensed premises, a notice of the violation and an order to correct it within 24 hours after service. If the violation is not so corrected, the licensing officer may physically seal that portion of the licensed premises causing the violation and order the discontinuance of use thereof until the violation has been corrected and the seal removed by the licensing officer. The licensing officer shall affix to the sealed premises a conspicuous sign labeled "unclean" or "unsafe" as the case may be.

(Ord. No. 93-12-2, § I, 12-6-93; Ord. No. 95-3-3, § I, 3-6-95)

Sec. 23-333. Abatement as sanitary nuisance.

A licensed premises or any part thereof may be abated as a sanitary nuisance.

(Ord. No. 93-12-2, § I, 12-6-93; Ord. No. 95-3-3, § I, 3-6-95)

Secs. 23-334--23-349. Reserved.