

**CITY OF KENNESAW
GEORGIA**

ORDINANCE NO. 2021-04, 2021

**AN ORDINANCE TO MAKE FINDINGS OF FACT BASED ON EVIDENCE OF
ADVERSE SECONDARY EFFECTS OF ADULT USES AND SEXUALLY ORIENTED
BUSINESSES IN REPORTS AND CASES MADE AVAILABLE TO THE MAYOR AND
CITY COUNCIL; TO ADOPT A NEW DEFINITION FOR SEXUAL DEVICE AND
SEXUAL DEVICE SHOP; TO DELETE THE DEFINITION OF AN ENCOUNTER
CENTER AND TO PROMOTE THE HEALTH, SAFETY, MORAL AND GENERAL
WELFARE OF THE CITIZENS OF THE CITY OF KENNESAW**

WHEREAS, it is the purpose of this Ordinance to regulate sexually oriented businesses in order to promote the health, safety, moral, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the city. The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this Ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Ordinance to condone or legitimize the distribution of obscene material.

WHEREAS, there is documented evidence of sexually oriented businesses manipulating their inventory and/or business practices to avoid regulation while retaining their essentially "adult" nature. Taylor v. State, No. 01-01-00505, 2002 Tex. App. LEXIS 5381, 2002 WL 1722154, at *1-*4 (Tex. Ct. App. July 25, 2002); Stardust, 3007 LLC v. City of Brookhaven, 899 F.3d 1164, 2018 U.S. App, LEXIS 22241, 27 Fla. L. Weekly Fed. C. 1140.

WHEREAS, based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the mayor and city council, including the following documents and reports and transcripts and minutes from public hearings from other jurisdictions detailing first-hand accounts of secondary effects occurring in and around sexually oriented businesses, including, but not limited to: A Digest of Research: The Evidence of Relationships Between Adult-Oriented Businesses and Community Crime and Disorder prepared for The Mayor and Council of the City of St. Mary's, Georgia July 1996; Adams County, Colorado Nude Entertainment Study 1987; Adult Entertainment Businesses in Indianapolis 1984; Adult Entertainment Business Study for Manatee County 1987; Adult Entertainment Zoning in New York City; An Analysis of the Effects of SOBs on the surrounding neighborhoods in Dallas, Texas prepared for Assistant City of Dallas, April 1987; Community Protection Committee's Final Report on Vice in Hamilton County with Recommendations to Hamilton County Executive Board of Commissioners, the Mayor and Members of the Chattanooga City Council, May 1997; *Do "Off-Site" Adult Businesses Have Secondary Effects? Legal Doctrine, Social Theory, and Empirical Evidence*, Richard McCleary and Alan C. Weinstein, 218 Law and Policy, April

2009; Survey of Appraisers Fort Worth and Dallas, Effects of Land Uses on Surrounding Property Values prepared for City of Fort Worth, Texas, September 2004; Final Report to the City of Garden Grove, The Relationship Between Crime and Adult Business Operations on Garden Grove Boulevard, October 23, 1991; December 20, 2005 Transcript of the Regular City Council meeting, City of Sandy Springs, Georgia; December 27, 2005 Transcript of the Regular City Council meeting, City of Sandy Springs, Georgia; National Law Center Summaries of "SOB Land Use" Studies, Crime Impact Studies by Municipal and State Governments on Harmful Secondary Effects of Sexually Oriented Businesses, March 31, 1996; Adult Entertainment Businesses in Oklahoma City, A Survey of Real Estate Appraisers, March 3, 1986; Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses, June 6, 1989; Report on the Secondary Effects of the Concentration of Adult Use Establishments in the Times Square Area, April 1994; Report on Adult Oriented Businesses in Austin, Texas prepared for the Mayor and City Council of Austin, May 19, 1986; March 6, 1985 meeting minutes of the Rome City Commission; Sexually Oriented Business Ordinance Revision Committee Legislative Report to the Houston City Council, January 7, 1997; Staff Report amendments to Zoning Regulations Adult Businesses in C-2 zone with conditional use permit, January 9, 1978; Study of the Effects of the Concentration of Adult Entertainment Establishments in the City of Los Angeles, Department of City Planning City of Los Angeles, June 1977; Summary of Review and Conclusions Regarding the City of St. Cloud's Regulation of Adult Businesses, December 1994; August 7, 2001 Transcript of the Gwinnett County Board of Commissioners meeting; August 3, 2011 Deposition of Robert J. Stevens, Flanigan's Enterprises v. City of Sandy Springs, Georgia, Civil Action File No. 1:09-CV-2747, U.S. District Court for the Northern District of Georgia, Atlanta Division; August 3, 2011 Deposition of Terry Sult, Flanigan's Enterprises v. City of Sandy Springs, Georgia, Civil Action File No. 1:09-CV-2747, U.S. District Court for the Northern District of Georgia, Atlanta Division; Deposition of Corazalla, Flanigan's Enterprises v. City of Sandy Springs, Georgia, Civil Action File No. 1:09-CV-2747, U.S. District Court for the Northern District of Georgia, Atlanta Division; Quality of Life: A Look at Successful Abatement of Adult Oriented Businesses in Oklahoma City, Oklahoma, 1984-1989; City of Littleton, Colorado v. Z.J. Gifts D-4, LLC, 541 U.S. 774, 124 S.Ct. 2219, 159 L.Ed. 84 (2004); California v. LaRue, 410 U.S. 948, 93 S.Ct. 1351 (1973); City of Renton v. Playtime Theatres, Inc., 475 U.S. 1132, 106 S.Ct. 1663 (1986); New York State Liquor Authority v. Bellanca, No. 80-813, Supreme Court of the United States, June 22, 1981; City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425 (2002); City of Erie v. Pap's A.M., 529 U.S. 277 (2000); Young v. American Mini Theatres, 427 U.S. 50 (1976); Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991); Artistic Entertainment, Inc. v. City of Warner Robins, 331 F.3d 1196 (11th Cir. 2003); Artistic Entertainment, Inc. v. City of Warner Robins, 223 F.3d 1306 (11th Cir. 2000); Williams v. Pryor, 240 F.3d 944 (11th Cir. 2001); Daytona Grand, Inc. v. City of Daytona Beach, Florida, 490 F. 3d 860 (11th Cir. 2007); Flanigan's Enterprises, Inc. of Georgia v. City of Sandy Springs, Georgia, 703 Fed. Appx. 929 (11th Cir. 2017); Peek-A-Boo Lounge of Bradenton, Inc. v. Manatee County, Florida, 630 F. 3d 1346 (11th Cir. 2011); Sammys of Mobile, LTD v. City of Mobile, 140 F. 3d 993 (11th Cir. 1998); Wise Interprises, Inc. v. Unified Government of Athens-Clarke County, Georgia, 217 F. 3d 1360 (11th Cir. 2000); Zibtluda, LLC v. Gwinnett County, Georgia, 411 F. 3d 1278 (11th Cir. 2005); Flanigan's Enterprises, Inc. of

Georgia v. Fulton County, 2010 WL 520542 (11th Cir.); Flanigan's Enterprises, Inc. of Georgia v. Fulton County, 242 F. 3d 976 (11th Cir. 2001); 5634 East Hillsborough Avenue, Inc. v. Hillsborough County, Florida, 2008 WL 4276370 (C.A. 11 Fla.); Williams v. A.G. of Alabama, 378 F.3d 1232 (11th Cir. 2004); Gary v. City of Warner Robins, 311 F.3d 1334 (11th Cir. 2002); Ward v. County of Orange, 217 F.3d 1350 (11th Cir. 2002); David Vincent, Inc. v. Broward County, 200 F.3d 1325 (11th Cir. 2000); Sammy's of Mobile, Ltd. v. City of Mobile, 140 F.3d 993 (11th Cir. 1998); Lady J. Lingerie, Inc. v. City of Jacksonville, 176 F.3d 1358 (11th Cir. 1999); This That And The Other Gift and Tobacco, Inc. v. Cobb County, 285 F.3d 1319 (11th Cir. 2002); Grand Faloon Tavern, Inc. v. Wicker, 670 F.2d 943 (11th Cir. 1982); DLS, Inc. v. City of Chattanooga, 107 F.3d 403 (6th Cir. 1997); International Food & Beverage Systems v. Ft. Lauderdale, 794 F.2d 1520 (11th Cir. 1986); Gammoh v. City of La Habra, 395 F.3d 1114 (9th Cir. 2005); World Wide Video of Washington, Inc. v. City of Spokane, 368 F.3d 1186 (9th Cir. 2004); Ben's Bar, Inc. v. Village of Somerset, 316 F.3d 702 (7th Cir. 2003); Sensations, Inc. v. City of Grand Rapids, 526 F. 3d 291 (6th Cir. 2008); Richland Bookmart, Inc. et al. v. Knox County, Tennessee, 555 F. 3d 512 (6th Cir. 2009); 10950 Retail, LLC, d/b/a Love Shack v. City of Johns Creek, A09A0374, July 9, 2009; Fairfax MKI, Inc. v. City of Clarkston, 274 Ga. 520 (2001); Morrison v. State, 272 Ga. 129 (2000); Sewell v. Georgia, 233 S.E.2d 187 (Ga. 1977), dismissed for want of a substantial federal question, 435 U.S. 982 (1978) (sexual devices); Flippen Alliance for Community Empowerment, Inc. v. Brannan, 601 S.E.2d 106 (Ga. Ct. App. 2004); Oasis Goodtime Emporium I, Inc. v. DeKalb County, 272 Ga. 887 (2000); Chamblee Visuals, LLC v. City of Chamblee, 270 Ga. 33 (1998); World Famous Dudley's Food & Spirits, Inc. v. City of College Park, 265 Ga. 618 (1995); Airport Bookstore, Inc. v. Jackson, 242 Ga. 214 (1978); Maxim Cabaret, Inc. v. City of Sandy Springs, Georgia, 816 S.E. 2d 31 (Ga. 2018); Modified Permanent Injunction Order, People of the State of Illinois et al. v. The Lion's Den, Inc., Civil Action File No. 04-CH-26, Fourth Judicial Circuit Effingham County, Illinois, July 13, 2005; Order Upholding Constitutionality of Chapter 807 of the Revised Code of the Consolidated City and County of Indianapolis, Annex Books, Inc. et al. v. City of Indianapolis, Civil Action File No. 1:03-cv-00918, U. S. District Court Southern District of Indiana, Indianapolis Division; Blue Movies, Inc. v. Louisville/Jefferson County Metro Government, 317 S.W. 3d 23 (Ky. 2010); Cami, Inc. et al. v. Louisville/Jefferson County Metro Government, 2007 WL 2893435 (Ky. App.); Foster v. City of El Paso, 2013 WL 632962 (2013); Peek-A-Boo Lounge of Bradenton, Inc. v. Manatee County, Florida, 2009 WL 4349319 (M.D. Fla.); Plaza Group Properties, LLC v. Spencer County Plan Commission, 877 N.E.2d 877 (Indiana Court of Appeals 2007); Plaza Group Properties, LLC v. Spencer County Plan Commission, 911 N.E. 2d 1264 (Indiana Court of Appeals 2009); Order granting motion for judgment on the pleadings, Enlightened Reading, Inc. v. Jackson County, Missouri, Civil Action File No. 08-0209-CV-W, U.S. District Court for the Western District of Missouri Western Division; Order granting summary judgment, High Five Investments, LLC et al v. Floyd County, Georgia, Civil Action File No. 4:06-CV-0190, U.S. District Court Northern District of Georgia, Rome Division; Richland Bookmart, Inc. et al. v. Knox County, Tennessee, 2007 WL 4480138 (E.D. Tenn); Sensations, Inc. v. City of Grand Rapids, 2006 WL 5779504 (W.D. Mich.); 5634 East Hillsborough Avenue, Inc. v. Hillsborough County, Florida, 2007 WL 2936211 (M.D. Fla.), the Mayor and City Council find:

(1) Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.

(2) Each of the foregoing negative secondary effects constitutes a harm which the city has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the city's rationale for this ordinance, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the city's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the city. The city finds that the cases and documentation relied on in this article are reasonably believed to be relevant to the secondary effects.

(3) The city adopts and incorporates herein its stated findings and legislative record related to the adverse secondary effects of sexually oriented businesses, including the judicial opinions and reports related to such secondary effects.

WHEREAS, following a review of the above referenced information and balancing the respective interests of First Amendment freedoms of protected speech and expression and the protection of the public's interest in the health, safety and welfare, the City of Kennesaw hereby finds that the Ordinance and the amendments herein strike an appropriate balance of these interests;

WHEREAS, the City would like to amend the definition of certain terms in Chapter 1 of the Unified Development Code and in the City's licensing ordinance regulating Sexually Oriented Businesses (Article XIV);

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF KENNESAW, COBB COUNTY, GEORGIA, AS FOLLOWS:

SECTION 1

THAT SECTION 1.09.01 of the Unified Development Code of the Code of Ordinances, Kennesaw, Georgia, is hereby amended to read as follows: by adding the text that is underlined as more fully set forth on **"EXHIBIT A"**, a copy of which is attached hereto and incorporated herein by reference.

SECTION 2

THAT SECTION 22-393 of Article XIV of the Code of Ordinances, Kennesaw, Georgia, is hereby amended to read as follows: by adding the text that is underlined as more fully set forth on **"EXHIBIT B"**, a copy of which is attached hereto and incorporated herein by reference.

SECTION 3

This Ordinance shall be codified in a manner consistent with the laws of the State of Georgia


SECTION 4

This Ordinance shall become effective immediately upon its adoption by the Mayor and Council of the City of Kennesaw.


SO ORDAINED this 15th day of February, 2021.

CITY OF KENNESAW

By:


Derek Easterling, Mayor

ATTEST:


James Friedrich, Deputy City Clerk

(SEAL)



EXHIBIT A

~~Encounter Center or Rap Establishment: Any business, agency or person who, for any form of consideration of 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.~~

Regular or regularly means and refers to the consistent and repeated doing of the act so described.

Sexual device means any three-dimensional (3) object designed ~~and marketed~~ for stimulation of the male or female human genitals, anus, buttocks, nipple, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, cock rings, anal beads, nipple clamps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

~~Sexual device shop means a commercial establishment that regularly features sexual devices. Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing medical or healthcare products or services, nor shall this definition be construed to include commercial establishments which do not restrict access to their premises by reason of age.~~

Sexual device shop means a commercial establishment:

(a) where more than 100 sexual devices are regularly made available for sale or rental; or

(b) where sexual devices are regularly made available for sale or rental and the establishment regularly gives special prominence to sexual devices (e.g., by using lighted display cases for sexual devices, having a room or discrete area of the establishment significantly devoted to sexual devices, positioning sexual devices near cash registers or similar points of sale, hosting events focused on sexual devices, or holding itself out to the public as a place that focuses on sexual devices).

This definition shall not be construed to include an establishment containing a pharmacy that employs a licensed pharmacist to fill prescriptions on the premises or an establishment primarily dedicated to providing durable medical equipment.

EXHIBIT B

Sexual device means any three-dimensional (3) object designed ~~and marketed~~ for stimulation of the male or female human genitals, anus, buttocks, nipple, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, cock rings, anal beads, nipple clamps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

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