

**CITY OF KENNESAW
GEORGIA**

ORDINANCE NO. 2010-13, 2010

**AN ORDINANCE AMENDING CHAPTER 6 “ALCOHOLIC BEVERAGES,”
SECTIONS 6-1, 6-3, 6-52, 6-70, 6-88, 6-90, 6-93 and 6-109, ADDING SECTION 6-110 AND
REPEALING ARTICLE IV OF CHAPTER 6 OF THE CODE OF ORDINANCES OF
THE CITY OF KENNESAW**

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

WHEREAS, the Mayor and City Council of the City of Kennesaw are charged with the protection of the public health, safety, and welfare of the citizens of the City of Kennesaw; and,

WHEREAS, the State of Georgia authorizes the City of Kennesaw to exercise its regulations as the Mayor and Council of the City of Kennesaw see fit to protect and maintain the safety and welfare of the citizens; and,

WHEREAS, the City of Kennesaw is concurrently adopting with this Ordinance, a comprehensive licensing ordinance to regulate sexually-oriented businesses; and,

NOW THEREFORE, to accomplish the foregoing, the Mayor and the City Council of the City of Kennesaw while in regular session on May 17, 2010, at 6:30 P.M. pursuant to their authority, do hereby amend the following Sections of Chapter 6, entitled Alcoholic Beverages of the Code of Ordinances of the City of Kennesaw as follows:

6-1 (Definitions);

6-3 (Compliance required);

6-52 (License Fees; Duration);

6-70 (Permit holders of licensees - Applications, issuance and denials);

6-88 (Mingling with Customers; serving customers)

6-90 (Notice, allowing underage person on licensed premises);

6-93 (Hours of Operation);

6-109 (Pricing of Alcoholic Beverages);

(New) 6-110 (Additional Activities Prohibited; Rationale and Findings; Exception)

Repeal Article IV (Erotic Entertainment/Dance Establishment) of Chapter 6 of the City's Alcoholic Beverage Ordinance of the Code of Ordinances of the City of Kennesaw.

Section 1:

Section 6-1 entitled *Definitions* of the Code of Ordinances of the City of Kennesaw, Georgia is hereby amended as follows:

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Agent means an individual who does not have an ownership interest in the licensed premise, who meets the requirements of Section 6-40 of this Chapter, who is employed in a managing capacity and designated by the owner of the licensed premise to be licensee.

Alcohol means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine from whatever source or by whatever process produced.

Alcoholic beverages means and includes all alcohol, distilled spirits, malt beverage, wine or fortified wine.

Amusement park means a place owned and operated permanently and exclusively for the purpose of providing amusement, attraction, and entertainment to the general public through the means of rides, live entertainment and games either on a seasonal or year round basis, which park has at least Twenty-five (25) rides and Fifty (50) games or attractions and the area of the amusement park is comprised of at least Eighty (80) acres exclusive of parking.

Applicant means the person making application for a license under this Chapter for the sale of alcoholic beverages and, if applicable, any individual designated by that person to be licensee.

Bar shall be an establishment that does not meet the definition of a restaurant, nightclub, lounge, farm winery or hotel, and serves alcoholic beverages for consumption on premises. A licensee of a bar shall obtain and keep in force and affect a food service permit.

Bottle house means any place of business open to the public or any private club providing food or entertainment in the normal course of business that allows guest, patrons or members to bring in and to consume alcoholic beverages on the premises.

Business area means any street length between intersections where Fifty Percent (50%) or more of the linear feet of that street length is in use for business purposes.

Business license manager or supervisor means the individual employed by the City of Kennesaw who handles alcoholic beverage licenses, as such position presently exists, or by whatever name the position may be designated in the future.

Church means a permanent building where persons regularly assemble for religious worship and shall be publicly designated as a church.

City means the City of Kennesaw.

Closed function means an event not open to the general public that must have a written, limited guest list prepared at least Forty-eight (48) hours in advance of the date on which the closed function is to occur, and which occurs on property owned and maintained by the City. No pay-at-the-door guest or drop-ins are to be permitted. Alcoholic beverages may be served without charge and consumed at closed functions, but the offer and sale of alcoholic beverages at such functions is prohibited; except that a general admission fee permitting attendance at the closed function may be collected in advance.

College means only such State, County, City, church or other colleges that teach the subjects commonly taught in the common colleges of this State, and shall not include private colleges where only specialized subjects such as law, stenography, business, music, art, medicine, dentistry, vocational occupations and other special subjects are taught.

Convenience store means a retail establishment whose primary business is the sale of pre-packaged or unprepared food and grocery items and which may also sell fuel products, household items, or tobacco products and other goods commonly associated with the same.

Conviction means adjudication of guilt, plea of guilty, plea of nolo contendere or the forfeiture of a bond when charged with a crime, but shall not include a discharge under provisions of what is commonly referred to as the State of Georgia First Offender Act, being O.C.G.A. § 42-8-60, or as may be amended from time to time.

Distilled spirits means any alcoholic beverage obtained by distillation or containing more than Twenty-one Percent (21%) alcohol by volume, including but not limited to, all fortified wines.

Distance means the measurement in linear feet from the center of the primary entrance as designated by the fire marshal for the proposed premises of a licensee in a direct line to the closest point of the applicable structure at issue under Sections 6-42 and 6-43 of this Chapter. A radius shall be measured from the center of any door of customer entry of the proposed premises of any licensee. Should the proposed premises contain Two (2) or more customer entry doors, the distance shall be the shortest measurement in linear feet from the center of any door of customer entry as determined by city officials to the property line or structure at issue.

Drink means any spirituous liquor not in its original package served for consumption on the premises, which may or may not be diluted by any other liquid.

Family means any person related to the holder of an alcoholic beverage license within the first degree of consanguinity or affinity as determined according to civil law.

Farm winery means a domestic manufacturer of wine in quantities of less than One Hundred Thousand (100,000) gallons of wine per calendar year, that is licensed by the State pursuant to O.C.G.A. § 3-6-21.1, or as may be amended from time to time. Provided a license is issued as required by this Chapter, a farm winery is authorized to sell wine by the package, by the drink and operate a wine tasting facility on the premises of the farm winery without additional license requirements, except as is required in the City zoning ordinance.

Food caterer means any person whose primary business is the preparation of food for consumption off the premises.

Fortified wine means any alcoholic beverage containing more than Twenty-one Percent (21%) of alcohol by volume made from fruits, berries, or grapes either by natural fermentation or by natural fermentation with brandy added. The term includes, but is not limited to, brandy.

Grocery store means a retail establishment whose primary function is the sale of packaged or unprepared food and grocery items for consumption off the premises and whose annual gross sales of alcoholic beverages do not exceed Five Percent (5%) of its total gross sales.

Hotel means a building or other structure kept, used, maintained, advertised and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent or residential, in which Fifty (50) or more rooms are used for the sleeping accommodations of such guests and having one or more public dining rooms, with adequate and sanitary kitchen and a seating capacity of at least Forty (40) people, where meals are regularly served to such guests, such sleeping accommodations and dining rooms being conducted in the same building or in separate buildings or structures used in connection therewith that are on the same premises and are a part of the hotel operation. Motels meeting the qualifications set out in this definition for hotels shall be classified in the same category as hotels. Hotels shall have the privilege of granting franchises for the operation of a bar, lounge, restaurant or nightclub on their premises; and the holder of such franchise shall be included in the definition of hotel.

Indoor entertainment hall means a publicly or privately owned commercial establishment that satisfies all of the following requirements:

- (i) Provides, professional, live musical entertainment or concerts, performed on-site indoors, at least Three (3) nights a week on average over the course of a calendar year;
- (ii) Regularly serves prepared food, with a full service kitchen, consisting of a three-compartment pot sink, a stove or grill permanently installed, and refrigerator, all of which must be approved by the health and fire departments;
- (iii) Is prepared to serve food every hour it is open;
- (iv) Derives at least Twenty-five Percent (25%) of its total annual gross sales from the sale of prepared meals or foods, admission charges, ticket sales, sale of merchandise, vending sales, attendance fees, or other recreational, promotional, or operational activities;
- (v) Does not provide any sexually related adult entertainment at any time;
- (vi) Has at least Forty Thousand (40,000) square feet of enclosed heated space;
- (vii) Has an occupant capacity of at least Three Thousand Five Hundred (3,500);
- (viii) Is located on a major thoroughfare;
- (ix) Does not provide the sale of alcohol on Sundays, unless such establishment qualifies for Sunday sales under State law and the provisions of this Chapter of the Kennesaw Code of Ordinances; and,
- (x) Does not allow the admission of any natural person who is under the age of Twenty-one (21) years of age during hours when alcohol is served, except in accordance with the provisions of Section 6-90 of this Chapter. Indoor entertainment halls shall be allowed to sell alcoholic beverages through concession sales.

License means the authorization by the Mayor and City Council of the City of Kennesaw to engage in the sale of alcoholic beverages either by the package or consumption on the premises.

License review board means the board created under Section 2-115 of these Ordinances of the City of Kennesaw.

Licensee means a person holding any class of license issued under the terms of this Chapter.

Lounge means a separate room in which alcoholic beverages are sold, connected with a part of and adjacent to a restaurant or located in a hotel as defined in this Section with all booths, stools and tables being unobstructed and open to view. All lounges shall be air conditioned and have a seating capacity of at least Fifty (50) people. A lounge, as defined in this Section, which is operated on a different floor in the premises, or in a separate building, or is not connected to or adjacent to a restaurant, shall be considered a separate establishment and shall pay an additional license fee therefor.

Malt beverage means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination of such products in water, containing not more than Six Percent (6%) alcohol by volume and including ale, porter, brown, stout, lager, beer, small beer, and strong beer. The term "beer" and "malt beverage" are interchangeable throughout this Chapter. The term does not include sake, known as Japanese rice wine.

Managing capacity means the president or chief executive officer of a corporation, or the managing member of a limited liability company, or the general partner of a limited partnership, or a person who has responsibility for management of the operations, including sale of alcoholic beverages, or who is authorized to act on behalf of the licensee in any capacity at the location to be licensed or supervision of management of the operation, including sale of alcoholic beverages, at the location to be licensed, whether or not such person is an employee of the licensee.

Manufacturer means any maker, producer, or bottler of an alcoholic beverage. The term also means:

- (1) In the case of distilled spirits, any person engaged in distilling, rectifying, or blending any distilled spirits;
- (2) In the case of malt beverages, any brewer; and,
- (3) In the case of wine, any vintner.

Minor means any natural person less than Eighteen (18) years of age.

Nightclub means an establishment having a seating capacity of at least One Hundred (100) people with all booths and tables being unobstructed and open to view, deriving its primary income from the sales of alcoholic beverages, and providing to its patrons a band and/or other professional live entertainment performed onsite, including, but not limited to, music, comedy, readings, dancing or acting. All nightclubs shall be equipped with air conditioning and shall maintain an adequate kitchen with a sufficient number of servants and employees for cooking, preparing and serving food and meals for their patrons, provided that nightclubs located in hotels having dining room and kitchen facilities may be excluded from the requirement of maintaining a kitchen in connection with such nightclub. The principal business of such nightclubs shall be entertainment, and the serving of food and spirituous liquors shall be incidental thereto.

Package means a bottle, can, keg, barrel, or other original consumer container.

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

Permit holder means that person authorized with a server permit and designated by the licensee to sell alcoholic beverages at the licensed premise.

Person means any individual, sole proprietor, firm, partnership, cooperative, nonprofit membership corporation, joint venture, association, company, corporation, agency, syndicate, estate, trust, business trust, receiver, fiduciary, limited liability company, limited partnership, limited liability partnership, general partnership or other group or combination acting as a unit, whether public, private or quasi-public. In the case of a general partnership, it includes all partners. In the case of a limited partnership, it includes the general partner. In the case of a corporation, it includes all principal shareholders. In the case of a limited liability company, it includes all members who are deemed to be principal shareholders under the definition of that term contained in this Section.

Pouring license means a license that authorizes on-premises consumption of alcoholic beverages.

Principal shareholder means a person who owns any shares of a corporation with less than Thirty-five (35) shareholders; or, if the corporation has more than Thirty-five (35) shareholders, a person who owns more than Five Percent (5%) of the shares of the corporation, except that a person who owns shares which are publicly traded shall not be deemed to be a principal shareholder or to have a beneficial interest in the corporation based solely on the fact of stock ownership. Principal shareholder shall also include a person who owns any membership interests in a limited liability company with less than Thirty-five (35) members; or, if the limited liability company has more than Thirty-five (35) members, a person who owns more than Five Percent (5%) of the outstanding membership interests in the limited liability company.

Private club means a nonprofit association organized and existing under the laws of the State, actively in operation within the City, which has been in existence at least One (1) year prior to the filing of its application for a license to be issued under this Chapter; and which complies with all requirements set forth in this Section: it has at least Seventy-five (75) members who regularly pay monthly, quarterly, or semiannual dues; and, it is organized and operated exclusively for pleasure, recreation and other non-profit purposes; and, no part of its net earnings inure to the benefit of any shareholders or members; and, it owns, hires or leases a building or space therein for the reasonable use to its members with suitable kitchen and dining room space and equipment; and, and, it maintains and uses a sufficient number of servants and employees for cooking, preparing and serving meals for its members and guest; provided, that no member or officer, agent or employee of the club is paid or receives, directly or indirectly, in the form of salary or other compensation, any profits from the sale of spirituous liquors to the club or its members or guests beyond the amount of such salary as may be fixed by its members at any annual meetings or by its governing board out of the general revenue of the club.

Private party function means an event held by an amusement park where alcoholic beverages are provided. The licensee must submit to and have the private party function approved by the supervisor of the City's business license office provided such function does not threaten the health, safety and welfare of the participants or public. In the event the private party function is not approved by the business license supervisor, the licensee may appeal said decision to the Mayor and City Council of the City of Kennesaw. The Mayor and City Council shall have authority to approve the private party function provided the function does not threaten the health, safety and welfare of the participants or public.

Private residence means a house or dwelling wherein not less than One (1) or more than Two (2) families customarily reside and shall not include a mobile home, an apartment house having facilities for housing more than Two (2) families, a boardinghouse or rooming house where there are Five (5) or more boarders or roomers, any residence which has been unoccupied for a period of Six (6) consecutive months immediately prior to the filing of any application for license, or any residence that shall be a nonconforming use in a commercial zone.

Public park means any public lands owned or controlled and operated by this City, any County of this State, any municipality of the State, the State of Georgia, the United States of America or any property owned or managed by a nonprofit organization, in and upon which facilities are provided for the recreation and enjoyment of the general public.

Purchase price means the consideration received for the sale of spirituous liquors by the drink valued in money, whether received in cash or otherwise, including all receipts, cash, credits and property, or services of any kind or nature, and also the amount for which credit is allowed by the licensee or his agent to the purchases, without any deduction there from whatsoever.

Purchaser means any person who orders and gives present or future consideration for any spirituous liquor by the drink.

Restaurant means any public place kept, used, maintained, advertised and held out to the public as a place where meals are served, and where meals are actually and regularly prepared and served, without sleeping accommodations, such place seating a minimum of Fifty (50) or more people, and holding a certificate of approval from the County health department. A restaurant shall maintain a full-service kitchen which consists of, at a minimum, a three-compartment pot sink, a stove or grill permanently installed and a refrigerator. A restaurant serves meals every hour that they are open and the serving of such meals shall be the principal business conducted, with the serving of distilled spirits, beer and/or wine to be consumed on the premises as only incidental thereto. In order to be classified as a restaurant under this Chapter, the licensee must derive a minimum of Fifty Percent (50%) of its total annual gross food and beverage sales, over any Twelve (12) month period of time, from the sale of prepared meals or food. In the case of an audit, the relevant time period shall be the Twelve (12) months immediately preceding the commencement of the audit. If the restaurant being audited has been in operation as a restaurant for less than Twelve (12) months, the audit period shall be the period of time the entity has operated as a restaurant, and the restaurant must derive a minimum of Fifty Percent (50%) of its total annual gross food and beverage sales for that audit period from the sale of prepared meals or food.. If the restaurant previously operated as another type of business, e.g., a bar as that term is defined in this Section, total annual gross food and beverage sales for the time period it has been operated as a restaurant shall be the only data relevant to the audit and the data for the period it operate as another type of business shall not be examined during the audit.

Retail consumption dealer means any person who sells distilled spirits for consumption on the premises at retail only to consumers and not for resale.

Retail sale means selling or offering for sale alcoholic beverages to any member of the public. Such term shall also include, without limitation, the sale to any member of the public of any ticket or license, or the charging of any cover charge or fee, for admission to any event or

premises where alcoholic beverages are available without further charge, as well as the sale of any ticket, stamp, token or similar item which may be redeemed or exchanged for alcoholic beverages.

Retailer or retail dealer means, except as to distilled spirits, any person who sells alcoholic beverages, either in unbroken packages or for consumption on the premises, at retail only to consumers and not for resale. With respect to distilled spirits, the term means any person who sells distilled spirits in unbroken packages at retail only to consumers and not for resale.

School means only such State, County, City, church or other schools as teach the subjects commonly taught in the common schools and colleges of this State and which are public schools or private schools as defined in subsection (b) of O.C.G.A. § 20-2-690, or as may be amended from time to time, including any public or private location that teaches the Georgia Pre-Kindergarten Program and shall not include private schools where only specialized subjects such as law, stenography, business, music, art, medicine, dentistry, vocational occupations and other special subjects are taught and shall not include residences where home study programs are located.

Specified sexual activity means any of the following:

- (1) Intercourse, oral copulation, masturbation, sodomy, bestiality, flagellation or torture in the context of sexual relations, or excretory functions in the context of sexual relations, anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism or zoerasty; or,
- (2) Clearly depicted human genitals in a state of sexual stimulation, arousal or tumescence.

Spirituos or alcoholic liquors means all beverages containing alcohol, obtained by distillation or containing more than Twenty-one Percent (21%) of alcohol by volume, including fortified wines.

Underage person means any person below the age at which alcoholic beverages may be legally purchased in the State of Georgia, as provided by O.C.G.A. § 3-3-23, or as may be amended from time to time.

Wine means any alcoholic beverages containing not more than Twenty-one Percent (21%) of alcohol by volume made from fruits, berries, or grapes either by natural fermentation or by natural fermentation with brandy added. The term includes, but is not limited to, all sparkling wines, champagnes, combinations of such beverages, vermouths, special natural wines, rectified wines, and like products. The term does not include cooking wine mixed with salt or other ingredients so as to render it unfit for human consumption as a beverage. A liquid shall first be deemed to be a wine at that point in the manufacturing process when it conforms to the definition of wine contained in this Section.

Wholesaler means any person engaged in distribution or selling to retailers for the purpose of resale of any alcoholic beverages as defined in this section.

Section 2:

Section 6-3 entitled *Compliance required of the Code of Ordinances of the City of Kennesaw, Georgia* is hereby amended as follows:

(a) It shall be unlawful for any person to sell or offer for sale wholesale or retail any alcoholic beverages without having first complied with the provisions of this Chapter.

(b) The City shall have the authority to conduct an audit of the books and records of any licensee and/or require regular reporting of the books and records of the any licensee to assure licensee's compliance with the provisions of this Chapter. In such event, the City shall notify the licensee of the date, time and place of the audit or reporting requirements. In conducting such audit, the City may require the licensee to provide the books and records in electronic form if such books or records are maintained, in the regular course of business by the licensee, in electronic form.

(c) Some of the business operations described in this Chapter must, to continue operating as that type of business, maintain:

(1) In the case of an indoor entertainment hall, Twenty-five Percent (25%) of its total annual gross sales from the sale of prepared meals or foods, admission charges, ticket sales, sale of merchandise, vending sales, attendance fees, or other recreational, promotional, or operational activities.

(2) In the case of a grocery store, the sales of alcoholic beverages do not exceed Five Percent (5%) of its total gross sales.

(3) In the case of a restaurant, the licensee must derive a minimum of Fifty Percent (50%) of its total annual gross food and beverage sales, over any Twelve (12) month period of time, from the sale of prepared meals or food.

(d) In determining whether these entities have complied with these percentages, the City of Kennesaw shall be entitled to audit the books and records of the entities. The following shall be applicable to such audits:

(1) If the business has operated as that type of entity (e.g., a restaurant) for Twelve (12) months or more prior to the date on which the audit is commenced, the auditor shall consider the annual gross food and beverage sales, or the annual gross sales, or total gross sales, as the case may be, during the Twelve (12) preceding the date on which the audit is commenced to determine whether the entity has maintained the required percentage set forth in the definition of that entity found in this Chapter.

(2) If the business has operated as that type of entity for less than Twelve (12) months prior to the date on which the audit is commenced, the auditor shall consider the annual gross food and beverage sales, or the annual gross sales, or total gross sales, as the case may be, during the time that the business has operated as that type of entity to determine whether the entity has maintained the required percentage set forth in the definition of that entity found in this Chapter.

(3) If the entity operated as one type of entity, e.g., a bar as defined in this Chapter, and changed to another type of entity, e.g., a restaurant as defined in this Chapter, the audit shall consider only the annual gross food and beverage sales, or the annual gross sales, or total gross sales, as the case may be, during the period it operated after the change of the type of entity to determine whether the entity has maintained the required percentage set forth in the definition of that entity found in this Chapter.

(4) If the entity has failed to maintain the percentage required by the definition, the entity shall be placed on probation for a period of Three (3) months from and after the date the entity is notified of its failure to maintain the required percentage. The notification placing the entity on probation shall be in writing and provide the percentages determined as part of the audit. During that probationary time period, the entity can attempt to attain the percentage required by the definition for that entity. At the end of the probationary period, a second audit will be conducted. The second audit will audit only the annual gross food and beverage sales, or annual gross sales, or total gross sales, as the case may be, during the probationary period and whether

the entity attained the percentage required by the definition for that entity during the probationary period. Should the entity fail to attain the required percentage during the second audit, the entity will be informed, in writing, that it can no longer operate as that type of entity, e.g., a restaurant that fails to maintain the percentage required by the definition for that entity will be notified that it can no longer operate as a restaurant and may operate only as a bar. Should the licensee change its entity, for instance from a restaurant to a bar, it shall be the licensee's responsibility to assure that it complies with all the requirements of these Ordinances of the City of Kennesaw, including, but not limited to, any licensing applicable to that entity.

(5) The entity may appeal the audit decision generated by a failure to meet the required percentage during the second audit. Any such decision to appeal must be made, in writing, and filed with the City of Kennesaw no later than Ten (10) calendar days from and after the entity's receipt of the decision appealed. If the results of the second audit are mailed by the auditor to the licensee, that decision of the auditor is deemed received by the licensee Three (3) days from and after the decision is mailed. The notice of appeal shall be filed with license review board and an additional copy filed with the City Clerk. That notice of appeal must specify, in detail, why the entity believes the audit decisions are flawed. It shall be within the discretion of the license review board whether a hearing will be held on the appeal. If a hearing is scheduled by the license review board, the entity shall be provided written notice of such hearing no less than Five (5) calendar days prior to the date scheduled for the hearing. If the license review board upholds the auditor's decision, the entity shall have the right to appeal to the City Council and Mayor of the City of Kennesaw. Any such appeal to the City Council and Mayor of the City of Kennesaw must be in writing and filed with the City Clerk and the Mayor's office no later than Ten (10) calendar days from and after date on which the entity receives the decision of the license review board. If the decision of the license review board is mailed, that decision is deemed received by the licensee Three (3) days from and after the decision is mailed. The appeal to the Mayor and the City Council shall contain the following: a detailed explanation of why the entity believes the audit results and the decision of the license review board is flawed; statistics showing the entity has complied with the percentage contained in the definition for that entity found in this Chapter; a copy of the results of the first and second audits; and, a copy of the decision of the license review board. Failure of the entity to submit all of the appeal documents shall be fatal to the appeal. It shall be within the discretion of the Mayor and City Council whether a hearing will be held on the appeal. If a hearing is scheduled by the Mayor and City Council of the City of Kennesaw, the entity shall be provided written notice of such hearing no less than Five (5) calendar days prior to the date scheduled for the hearing.

(6) The appeals shall consider only evidence of sales during the audit periods and shall not consider evidence of any sales during the appeal periods.

(7) The entity shall be allowed to operate during the time it is appealing the decision of the audit.

Section 3:

Section 6-52 entitled *License Fees; Duration of the Code of Ordinances of the City of Kennesaw, Georgia* is hereby amended as follows:

(a) The annual license fee for each classification of license under this Chapter shall be set by the Mayor and City Council of the City of Kennesaw in the business license schedule.

(b) The schedule of fees for each license classification under this Chapter shall be on file at the Kennesaw City Hall at the business license office.

(c) Any new license issued under this Chapter shall be effective from the date of the license through December 31 of that year. Thereafter, the licensee shall be required to renew the

license annually in January of each year. In the case of revocation or surrender of a license before the expiration date of that license, the holder of the license shall not be entitled to receive any refund whatsoever.

(d) Each person manufacturing or selling distilled spirits in the City shall pay an annual license as follows:

Manufacturers	\$3,000.00
Wholesalers	\$100.00
Retailers, package only	\$2,000.00
Pouring license	\$3,000.00
Bottle house	\$2,000.00
Off premise	\$500.00

(e) On or after July 1 of a calendar year, all initial distilled spirits license and permit fees for that year shall be one-half (1/2) of the basic fees set forth in Subsection (d) of this Section.

(f) Each person selling beer and/or wine in the City shall pay an annual license fee as follows:

Retail package, each location:

Beer	\$300.00
Wine	\$300.00
Beer or wine, wholesale delivery	\$100.00
Beer or wine, pouring, each location	\$550.00
Off premise	\$500.00

(g) Each person selling any alcoholic beverage, including, but not limited to, beer or wine, on Sunday, shall pay a license fee of \$550.00.

(h) The total for off-premise license fees shall not exceed the statutory maximum prescribed in O.C.G.A. § 3-11-2(e), as amended. For retail package licenses, a half year is authorized as in Subsection (e) of this Section.

(i) All license fees required under this Chapter shall be paid in cash or by certified check or by cashier's check.

Section 4:

Section 6-70 entitled *Permit holders of licensees – Applications, issuance, and denials of the Code of Ordinances of the City of Kennesaw, Georgia* is hereby amended as follows:

(a) *For whom required.* The following persons shall be required to apply for and obtain a valid server permit from the City of Kennesaw for each establishment that sells alcoholic beverages at which such person works:

- (1) All employees and independent contractors who sell and/or serve alcoholic beverages at a premise licensed under this Chapter.
- (2) Any person acting in a managerial and/or security capacity, except for law enforcement personnel, at the licensed premise, regardless of whether such person sells and/or serves alcoholic beverages.

(b) *Exemption.* The licensee to whom an alcoholic beverage license has been issued under this Chapter is not required to obtain a server permit.

(c) *Application and issuance.* Except as otherwise provided, no person requiring a server permit may be employed by an establishment holding a license under this Chapter until such person has been issued a server permit from the Kennesaw Police Department indicating the person is eligible for employment. All applications required by this Section shall be investigated by the police department and shall include, among other things, (1) fingerprinting; (2) an

appropriate photo taken by the Kennesaw Police Department that accurately represents the appearance of the applicant; (3) Proof of acceptable identification; (4) a copy of the applicant's Social Security Card to verify that it is unrestricted; and, (5) an investigation of the criminal record, if any, of the applicant. Acceptable identification for purposes of this Subsection shall mean any of the following: (i) a copy of a valid Georgia photo identification issued to the applicant; (ii) a valid Georgia driver's license issued to the applicant; (iii) a valid driver's license or identification card issued by another State to the applicant along with a copy of student identification card from a college or school located in the State of Georgia; or, (iv) a valid passport together with a Resident Alien Card or a Permanent Resident Card issued by the United States government to the applicant. The applicant must pay a reasonable fee as determined by the City for processing and issuance of the server permit; said fee must be paid in cash, by check, or by other method of payment considered acceptable by the City; and, if paid by check the City may place a hold on the issuance of the server permit until the check clears the bank. Failure to provide any of the documentation or information referenced above, or the omission or falsification of any material information in an application for server permit shall be a violation of this Chapter and grounds for the denial, suspension or revocation of any such server permit.

(d) *Time limit.* All persons subject to the provisions of this Section shall report to the Kennesaw Police Department for purposes of being fingerprinted and make application and be approved for a server permit before beginning work at any establishment holding a license for alcoholic beverages.

(e) *Letter of eligibility; term; fee.* Any server permit issued under this Section shall expire Twelve (12) months from and after the date of issue unless earlier suspended or revoked by the Mayor and City Council of the City of Kennesaw. The Kennesaw Police Department may prescribe regulations for certifying the eligibility for continued employment without the necessity of the employee being again fingerprinted. The Kennesaw Police Department may prescribe reasonable fees for certifying the eligibility for a server permit.

(f) *List of employees to be filed.* It shall be the duty of all persons holding any license to sell alcoholic beverages to keep on file on the premises the actual current server permit or a copy of the current server permit for all persons required to have such permit who work at that establishment.

(g) *Possession of permits by employees.* Each and every server permit holder shall, at all times during his or her working hours, have his or her server permit available for inspection at the premises of the licensee.

(h) *Permit holder on premises.* At all times that the business is open, the licensee shall have at least one server permit holder on the premises.

(i) *Other grounds for denial of server permit.* In addition to the other requirements in this Section, the Kennesaw Police Department shall not issue server permit to any applicant:

- (1) Who is not a citizen of the United States or an alien admitted for permanent residence and who has been granted employment authorization to work within the United States by the United States Department of Homeland Security or a person who has otherwise been granted employment authorization by the United States Department of Homeland Security to work within the United States.
- (2) Who has been convicted within Five (5) years immediately prior to the application for server permit of soliciting for prostitution, pandering, letting premises for prostitution, or any charge relating to the sale of alcoholic beverages;
- (3) Who has been convicted or pled guilty to within Five (5) years immediately prior to the application for server permit of:

- a. Any felony under the laws of any State or of the United States of America;
- b. Two (2) or more convictions for any alcohol or drug related offense; or,
- c. For whom there exists any outstanding warrant charging such person with any crime described in this Section, provided that this Section shall not apply to private clubs as defined in this Chapter.

(4) Who is on probation or on parole for any drug or alcohol related conviction.

(j) *Appeal of denial of server permit.* Any applicant who is not issued a server permit for any reason shall have the right to appeal such decision within Ten (10) calendar days from and after the applicant's receipt of that denial. The appeal must be made to the City of Kennesaw's license review board. That appeal shall set forth, in writing, all reasons that the applicant believes he or she should receive a server permit. Failure of the applicant to set forth such reasons shall be fatal to the appeal and the appeal shall be denied and the denial of the server permit upheld. That board shall have the authority to require the City to issue a server permit if the board feels the circumstances justify such an issuance despite the requirements of this Section. If the board upholds the denial of the permit, the applicant may appeal that decision to the Mayor and City Council of the City of Kennesaw within Ten (10) calendar days from and after the applicant's receipt of written notice of the board's decision. The appeal to the Mayor and the City Council shall also set forth all reasons that the applicant believes he or she should receive a server permit. Failure of the applicant to set forth such reasons shall be fatal to the appeal and the appeal shall be denied and the denial of the server permit upheld. The Mayor and City Council shall have the authority to require the City to issue a server permit if they feel the circumstances justify such an issuance. If an applicant is denied a server permit and that denial is upheld on any appeal, the applicant will not be allowed to apply again for a server permit for a period of Six (6) months from and after the date of such denial or, if the applicant appealed, from and after final decision on that appeal.

(k) *Grounds for suspension, revocation, probation.* No server permit that has been issued or which may hereafter be issued under this Section shall be suspended, revoked or placed on probation except for due cause as defined in this Subsection, and after a hearing and upon written notice to the permit holder of the time, place and purpose of such hearing and a statement of the charge or charges upon which such hearing shall be held. Five (5) calendar days' notice shall be deemed reasonable, but shorter or longer periods of notice shall be authorized as the city manager may deem the circumstances to justify so long as the permit holder is provided reasonable notice of the hearing. "Due cause" for the suspension or revocation of the server permit shall consist of the violation of any laws or ordinances regulating the sale of alcoholic beverages or the violation of any State or Federal law or local ordinances set out in this Section; or for the omission or falsification of any material in any application; or for any reason which would authorize the refusal of the issuance of a permit; or any violation of this Chapter. All hearings shall be before the license review board at a specially called meeting and shall be conducted in the manner provided in Section 6-63 of this Chapter. After the hearing, if the license review board determines due cause exists, the license review board may suspend, revoke or place on probation for a maximum of Twelve (12) months, with or without conditions, the server permit. The permit holder whose server permit was suspended, revoked or probated by the license review board may appeal to the Mayor and City Council of the City of Kennesaw pursuant to Section 6-63 of this Chapter.

Section 5:

Section 6-88 entitled *Mingling with Customers; serving customers* of the Code of Ordinances of the City of Kennesaw, Georgia is hereby amended as follows:

Section 6-88 Serving customers

Alcoholic beverages by the drink permitted to be sold under this chapter shall only be served by employees of the licensee.

Section 6:

Section 6-90 entitled *Notice; allowing underage person on licensed premises* of the Code of Ordinances of the City of Kennesaw, Georgia is hereby amended as follows:

(a) Licensees that own, operate or manage a nightclub, indoor entertainment hall, bar, lounge or package store shall not permit underage persons on the licensed premises unless such person is (1) accompanied by a parent or legal guardian or unless such person is (2) an on-duty employee of the licensee and is at least Eighteen (18) years of age. However, an indoor entertainment hall may allow persons of the ages of Eighteen (18) years of age up to Twenty-one (21) years of age to be on the premises without a parent or legal guardian on specially designated days, whether they are designated "special events," "concert nights," or other similar term, not to exceed Two (2) days per calendar week, and only one of which may be a day other than Friday or Saturday, under the following conditions:

- (1) Every patron must be required to present valid identification and proof that the patron is at least Twenty-one (21) years of age at the point of sale within the indoor entertainment hall each time such patron attempts to purchase alcoholic beverages while on the premises. In lieu of checking identification and proof of age at the point of sale within the indoor entertainment hall, the licensee or the licensee's employees may check such identification and proof of age at the entrance to the indoor entertainment hall, provided that any person who is Twenty-one (21) years of age or older who enters the premises be provided with a handstamp, non-removable wrist band, or similar method of confirmation that the patron is legally entitled to purchase alcoholic beverages while on the premises. In such event, no licensee or employee of licensee may sell, serve, or provide any alcoholic beverage on the premises to any patron who does not present such handstamp, non-removable wristband, or similar method of confirmation that the patron is Twenty-one (21) years of age or older each time the patron attempts to purchase alcoholic beverages.
- (2) On days that the indoor entertainment hall allows underage patrons on the premises in accordance with this section, no patron may be sold, served, or provided more than One (1) alcoholic beverage during any single transaction.
- (3) A conspicuous notice must be posted at the entrance to the indoor entertainment hall and at each point of sale within the indoor entertainment hall stating that it is illegal under State and local law for persons under the age of Twenty-one (21) years of age to purchase or consume alcoholic beverages, that it is illegal for any person under the age of Twenty-one (21) years of age to misrepresent his or her age in any manner whatsoever, that it is illegal for anyone to purchase alcohol for or on behalf of any other person under the age of Twenty-one (21) years of age, and that any person found in violation of any such law will be subject to arrest and criminal prosecution. "Conspicuous notice" as used in this Chapter shall mean a sign on

white background with red or black print with the printed message being Twenty-eight (28) point type or larger.

- (4) On days that the indoor entertainment hall allows underage patrons on the premises in accordance with this Section, licensee must employ or otherwise provide at least Two (2) uniformed, off-duty Kennesaw police officers to patrol the exterior of the indoor entertainment hall, including the parking lot. Such officers shall not enter the indoor entertainment hall unless requested by licensee or licensee's employees or unless the officers otherwise have reason to believe that illegal activity has taken or is taking place within the indoor entertainment hall or that the health or safety of the patrons is immediately at risk.
- (5) The indoor entertainment hall must require that each person entering the premises provide valid identification and proof at the entrance to the premises that the person entering the premises is at least Eighteen (18) years of age. No person under the age of Eighteen (18) years of age may be admitted to the indoor entertainment hall without a parent or legal guardian.
- (b) Each licensee shall post in a conspicuous location or locations a notice which shall contain the provisions of the laws of this State which deal with the unlawful sale of alcoholic beverages to underage persons and the penalties for violating such laws.

Section 7:

Section 6-93 entitled *Hours of Operation of the Code of Ordinances of the City of Kennesaw, Georgia* is hereby amended as follows:

(a) *Alcoholic beverages by the package.* Licensees for the sale of distilled spirits by the package shall not engage in the sale of such beverages except between the hours of 8:00 a.m. and 11:55 p.m., Monday through Saturday. Licensees for the sale of malt beverages and wine by the package shall not engage in the sale of malt beverages and wine by the package except between the hours of 8:00 a.m. and 2:55 a.m. Monday through Friday, and 8:00 a.m. and 11:55 p.m. Saturday.

(b) *Alcoholic beverages by the drink.* Sale of distilled spirits, beer and/or wine by the drink for on-premises consumption: licenses for the sale of distilled spirits, beer and/or wine by the drink shall not engage in the sale of distilled spirits, beer and/or wine between the hours of 2:55 a.m. and 8:00 a.m. daily. All alcoholic beverages will be consumed or removed no later than Forty-five (45) minutes after legal sales have been terminated, provided that this Subsection shall not apply to private clubs hereunder; and establishments holding a valid permit may be made in accordance with O.C.G.A. § 3-3-7(1), or as may be amended from time to time.

(c) *Wholesalers.* The business hours of any wholesaler licensed under this Chapter shall be from sunup to sundown, exclusive on Sunday.

(d) *Sundays, holidays.* No licensee for the sale of distilled spirits by the package at retail shall permit his place of business to be open for the sale of alcoholic beverages or to sell alcoholic beverages on Sundays or on Christmas day. Except as provided in this Section, no other licensees shall permit their places of business to be open for the sale of alcoholic beverages on Sundays or on Christmas day.

(e) *Election days.* The sale of alcoholic beverages in the City shall be permitted on election days as provided by O.C.G.A. § 3-3-20, or as may be amended from time to time.

(f) Nothing contained in this Section shall prevent any restaurant that is licensed to sell alcoholic beverages for consumption on the premises to permit a patron to remove one unsealed bottle of wine per patron for consumption off premises, if the patron has purchased a meal and consumed a portion of the bottle of wine which has been purchased on the premises with such

meal on the restaurant's premises. The securing, resealing and transporting of said bottle of wine shall be in accordance with the procedures outlined in O.C.G.A. § 3-6-4.

Section 8:

Section 6-109 entitled *Pricing of Alcoholic Beverages of the Code of Ordinances of the City of Kennesaw, Georgia* is hereby amended as follows:

(a) This Section shall be construed to cover, include and apply to every type of alcoholic beverage licensed to be sold in the City of Kennesaw, including wine, malt beverages and spirituous liquors.

(b) Each licensee under this Chapter shall maintain a daily schedule of the prices to be charged for all alcoholic beverages to be served and consumed on the licensed premises or in any room or part thereof. The licensee shall not vary the prices from hour to hour within a single day. The schedule of prices shall be maintained in a manner so as to be available to the paying public and law enforcement officers or agents of the governmental authority. Such schedule shall be effective for not less than a 24-hour period and shall show thereon the date for which the schedule is effective.

(c) No licensee or holder of any license to sell alcoholic beverages for consumption on the premises or in any part thereof, or employee or agent of a licensee, shall:

- (1) Offer or deliver any free alcoholic beverage to the general public. This Subsection shall not apply to tasting rooms of farm wineries where wine is offered in a quantity to only taste the product.
- (2) Deliver more than Two (2) alcoholic beverages to One (1) person at One (1) time, or allow any patron to possess more than Two (2) alcoholic beverages at One (1) time.
- (3) Sell, offer to sell, or deliver to any person or group of persons any alcoholic beverage at a price less than the price regularly charged for such alcoholic beverage during any 24-hour period during which the price schedule required by this Section is in effect, except at private functions not open to the public.
- (4) Sell, offer to sell, or deliver to any person or group of persons Two (2) or more or an unlimited number of alcoholic beverages during any set period of time at a fixed price, except at private functions not open to the public.
- (5) Sell, offer to sell, or deliver alcoholic beverages, by the pitcher or carafe, except to Two (2) or more persons at any one time.
- (6) Increase the volume of alcohol contained in a drink without increasing proportionately the price regularly charged for such alcoholic beverage during the same 24-hour period for which the price schedule required by this section is in effect.
- (7) Encourage or permit on the licensed premises any game, event, competition, contest, or promotion that involves the drinking of alcoholic beverages or the awarding of alcoholic beverages as a prize.
- (8) Sell Two (2) or more alcoholic beverages for a price per beverage that is less than that charged for the One (1) such alcoholic beverage.
- (9) Require or encourage the purchase of a second or subsequent alcoholic beverage at the same time another alcoholic beverage is purchased.
- (10) Knowingly allow an alcoholic beverage purchased on the premises to be removed from the premises without having been consumed. "Premises," for the purchase of this Section, shall be construed to mean the entire area under the supervision, management or control of the licensee, excluding areas for parking of motor

vehicles; and, in the case of licensees whose licensed location is located on a portion of the premises of a club, organization, establishment or entity offering outdoor recreation (for instance, golf or tennis), the word "premises" shall extend to cover all areas operated as a part of the club or entity excluding areas for parking of motor vehicles.

(11) Sponsor, conduct or allow contests or promotions which have as their primary purpose the increasing of the consumption of alcoholic beverages on the premises.

(d) There shall be no advertisement or promotion in any way, whether within or without the licensed premises, of any of the practices prohibited under this Section.

(e) No provision of this Section shall be construed to prohibit licensees from offering free food or entertainment at any time, or to prohibit licensees from including an alcoholic beverage as a part of a meal package, or to prohibit the sale or delivery of wine by bottle or carafe when sold with meals to more than One (1) person, or to prohibit any hotel or motel from offering room services to registered guests, or to prohibit the sale of more than Two (2) drinks at One (1) time which are to be consumed by the purchaser out-of-doors on the premises of the licensee, as described in this Section, in connection with the purchaser's participation as a player of games of golf or tennis; otherwise, no food and alcoholic beverage package may be offered by any licensee; however, nothing contained in this Section shall be construed to allow a licensee to circumvent the intent of this Section by offering meals which include an alcoholic beverage as a device or scheme to promote drink sales at a price per beverage less than the daily listed price.

Section 9:

A new Section 6-110 of Article III of Chapter 6 is hereby created and entitled *Additional Activities Prohibited; Rationale and Findings; Exception of the Code of Ordinances of the City of Kennesaw, Georgia* to read as follows:

Sec. 6-110. - Additional Activities Prohibited; Rationale and Findings; Exception.

(a) Rationale and Findings.

Whereas, Article III, Section VI, Paragraph VII of the Constitution of the State of Georgia, delegates authority to Counties and municipalities "for the purpose of regulating, restricting, or prohibiting the exhibition of nudity, partial nudity, or depictions of nudity in connection with the sale or consumption of alcoholic beverages;" and,

Whereas, the United States Court of Appeals for the Eleventh Circuit has upheld a municipal ordinance prohibiting the serving or consumption of alcoholic beverages in adult entertainment establishments; and,

Whereas, the Supreme Court of Georgia has upheld a municipal ordinance prohibiting the serving or consumption of alcoholic beverages in adult entertainment establishments; and,

Whereas, among the undesirable community conditions identified with live nude entertainment and alcohol are depression of property values in the surrounding neighborhood, increased expenditure for the allocation of law enforcement personnel to preserve law and order; increased burden on the judicial system as a consequence of the criminal behavior, and acceleration of community blight; ~~and~~ *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *5634 East Hillsborough Ave.*,

Inc. v. Hillsborough County, 2007 WL 2936211 (M.D. Fla. Oct. 4, 2007), *aff'd*, 2008 WL 4279670 (11th Cir. Sept. 18, 2008) (*per curiam*); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); and,

Whereas, the Supreme Court of Georgia, in *Chambers d/b/a Neon Cowboy v. Peach County, Georgia*, 266 Ga. 318, 467 S.E.2d 519 (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 authority 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. The Georgia Supreme Court further held in the same opinion that in passing its regulations, a local government may rely on the experience of other counties and municipalities to demonstrate such a relationship; and,

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

Whereas, Federal and State appellate courts, have previously held that before enacting an ordinance to combat undesirable secondary effects of adult entertainment, a legislative body is required to consider specific evidence of the undesirable secondary effects of adult entertainment establishments that it reasonably believes relevant to the interests it seeks to address by passing the ordinance; and

Whereas, based on the experiences of other municipalities and counties including, but not limited to, Fulton County, Georgia; Adams County, Colorado; New York City, New York; Indianapolis, Indiana; Dallas, Texas; Sandy Springs, Georgia; Oklahoma City, Oklahoma; City of St. Mary's, Georgia; Hamilton County, Tennessee; Amarillo, Texas; Rome, Georgia; Gwinnett County, Georgia; Austin, Texas; Phoenix, Arizona; Manatee County, Florida; City of Garden Grove, California; Forth Worth, Texas; Houston, Texas; St. Cloud, Minnesota; Whittier, California; and the City of Los Angeles, California, which are found to be relevant to the problems faced by the City of Kennesaw, the Mayor and City Council of the City of Kennesaw note the documented negative economic, physical, and social impact adult entertainment businesses have on the community; and,

Whereas, based upon the experience of other urban counties and municipalities, which experiences the Mayor and City Council of the City of Kennesaw find are relevant to the problems faced by the City of Kennesaw, and which do not vary greatly among generally comparable communities within this country, the Mayor and City Council of the City of Kennesaw find that public nudity, under certain circumstances, particularly circumstances related to the sale and consumption of alcoholic beverages in adult entertainment establishments offering adult entertainment, begets criminal behavior and tends to create undesirable community conditions. *Flanigan's Enterprises, Inc. of Georgia et al. v. Fulton County, Georgia*, 596 F.3d 1265, 2010 WL 520542 (11th Cir. 2010); and,

Whereas, the Mayor and City Council of the City of Kennesaw find and declare that nudity and sexual conduct and depiction thereof, coupled with alcohol in public places, encourages undesirable behavior and is not in the interest of public health, safety, and welfare; and,

Whereas, the Mayor and City Council of the City of Kennesaw have chosen to avoid the disturbances associated with mixing alcohol and nude dancing by means of a reasonable restriction upon establishments which sell spirituous or vinous liquors or malt or brewed beverages; and,

Whereas, the ordinance furthers important governmental interests of reducing crime and protecting property values which are unrelated to the suppression of speech; and,

Whereas, it is the intent of the Mayor and City Council of the City of Kennesaw to enact an ordinance, narrowly tailored, sufficient to combat the undesirable secondary effects of the serving and consumption of alcoholic beverages at adult entertainment facilities; and,

Whereas, it is not the intent of the Mayor and City Council of the City of Kennesaw, in enacting this ordinance to deny to any person the right to speech or expression protected by the United States or Georgia Constitutions, nor it is the intent to deny or restrict the rights of any adult to obtain or view any sexually oriented performance or materials protected by the United States or Georgia Constitutions, but to adopt a content neutral ordinance to combat the undesirable secondary effects of adult entertainment where alcoholic beverages are served or consumed; and,

Whereas, this Section is enacted to further the health, safety, and welfare of the citizens of the City of Kennesaw;

Now, Therefore, this Section is hereby enacted to further such health, safety, and welfare of the citizens of the City of Kennesaw.

(b) Activities prohibited; Minimum clothing requirements; Exception.

- (1) No person shall suffer or permit any person to engage in live conduct exposing to public view the person's genitals, pubic area, vulva, anus, anal cleft or cleavage or buttocks or any portion of the female breast below the top of the areola on the licensed premises
- (2) It shall be unlawful for any employee of any licensee to consume alcoholic beverages on the premises of the licensee during such employees working hours.
- (3) No drugs or illegal or controlled substances of any kind shall be allowed, permitted, used, possessed or sold upon the premises of any licensee, and no gambling shall be allowed or permitted therein.
- (4) No licensee shall allow any person to engage in specified sexual activities on the licensed premises.
- (5) No licensee shall use any person, in any capacity, in the sale or service of alcoholic beverages while such person is unclothed or in such attire, costume or clothing, as to expose to view any portion of the female breast below the top of the areola or of any

portion of the male or female pubic hair, anus, cleft of the buttocks, vulva, and or genitals.

- (6) No licensee shall allow the holding, promotion, or sponsoring of any contest, promotion, special night, event, or any other activity where patrons of the licensed establishment are allowed to engage in any of the conduct described in this Section.
- (7) Exception. Nothing contained in Subsection (b) of this Section shall apply to the premises of any theatre, concert hall, art center, museum, or similar establishment primarily devoted to the arts or theatrical performances, where the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value.

Section 10: Article IV entitled *EROTIC ENTERTAINMENT/DANCE ESTABLISHMENT* contained in Chapter 6 is hereby repealed in its entirety as follows:

Section 11: It is the intention of the Mayor and City Council of the City of Kennesaw, and is it hereby ordained, that the provisions of this Ordinance shall become and be made part of the Code of Ordinances, the City of Kennesaw, Georgia. All ordinances or parts of ordinances in conflict herewith are repealed.

Section 12: If any clause, paragraph, phrase, section, sentence, or word of this ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining clauses, paragraphs, phrases, sections, sentences, or words of this ordinance.

This Ordinance is effective as of June 22, 2010 and any fee changes would be effective as of January 1, 2011.

PASSED AND ADOPTED by the Kennesaw City Council on this 21st day of June, 2010.

ATTEST

CITY OF KENNESAW

Debra Taylor, City Clerk

Mark Mathews, Mayor