

**FORSYTH COUNTY, GEORGIA
ORDINANCE NUMBER 85-B**

AN ORDINANCE AMENDING CHAPTER 10 (“AMUSEMENTS AND ENTERTAINMENTS”) OF THE CODE OF FORSYTH COUNTY, GEORGIA BY AMENDING THE DEFINITION OF “ADULT ENTERTAINMENT ESTABLISHMENT” TO INCLUDE COMMERCIAL ESTABLISHMENTS SELLING OR RENTING ADULT NOVELTIES OR DEVICES

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

WHEREAS, The Georgia Supreme Court, in Chambers d/b/a Neon Cowboy v. Peach County, Georgia, 266 Ga. 318 (1996), held that local governments may adopt ordinances designed to combat the undesirable secondary effects of sexually explicit businesses; and

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

WHEREAS, to combat the undesirable secondary effects of sexually explicit businesses, Forsyth County’s current adult entertainment ordinance regulates, among other things, commercial establishments devoting a certain square footage to or deriving more than five percent of their net sales from the sale or rental of adult books, movies, or other publications or reproductions; and

WHEREAS, the Board of Commissioners of Forsyth County, Georgia finds that a need exists to regulate commercial establishments devoting a certain square footage to or deriving more than five percent of their net sales from the sale or rental of adult novelties or devices in the same manner; and

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

WHEREAS, the City of Milton, Georgia regulates commercial establishments selling adult novelties or devices in the same manner as commercial establishments selling adult books, movies, or other publications or reproductions; and

WHEREAS, the Board of Commissioners of Forsyth County, Georgia concludes that regulating commercial establishments selling adult novelties or devices will minimize adverse land use impacts and avoid undesirable secondary effects of such establishments.

NOW THEREFORE, pursuant to its authority under O.C.G.A. § 36-60-3 and Chambers d/b/a Neon Cowboy v. Peach County, Georgia, 266 Ga. 318 (1996), the Board of Commissioners of Forsyth County, Georgia hereby amends the Ordinances of Forsyth County as follows:

Section One.

That Chapter 10 (“Amusements and Entertainments”), Article II, Section 10-32 (“Definitions”) of the Code of Forsyth County, Georgia is hereby amended by striking the definition of “Adult entertainment establishment” in its entirety and replacing it with the following:

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

- (1) Any commercial establishment that employs or uses any person live, in any capacity in the sale or service of beverages or food while such person is unclothed or in such attire, costume or clothing, so as to expose any portion of his or her "specified anatomical areas," as defined herein;
- (2) Any commercial establishment which provides live entertainment where any person appears unclothed or in such attire, costume or clothing as to expose any portion of his or her "specified anatomical areas" as defined herein or where such performances are distinguished or characterized by an emphasis on "specified sexual activities," as defined herein;
- (3) Any commercial establishment which holds, promotes, sponsors or allows any contest, promotion, special night, event or any other activity where live patrons of the establishment are encouraged or allowed to engage in any of the conduct described in subsections (1) and (2) herein;
- (4) Any commercial establishment having a segment or section comprising more than ten square feet of its total floor space, devoted to the sale or display of, or which derives more than five percent of its net sales from the sale or rental of:
 - a. Books, magazines, periodicals, videotapes, movies or other reproductions which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," as defined herein;
 - b. Instruments, devices, novelties, toys, or other paraphernalia that are designed for use in connection with “specified sexual activities,” as defined herein, or otherwise emulate, simulate or represent “specified anatomical areas,” as defined herein;
- (5) Any commercial establishment utilizing an enclosed building with a capacity of fifty (50) or more persons used for cinematographic or videographic presentation of material distinguished by or characterized by an emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas," as defined herein, for observation by patrons therein;

- (6) Any adult motion picture theater, adult motion picture arcade, adult mini-motion picture theater, adult bookstore, adult video store, adult hotel, or adult motel, as defined herein;
- (7) The definition of "adult entertainment establishment" shall not include traditional or live theater (mainstream theater) which means a theater, concert hall, museum, educational institution or similar establishment which regularly features live performances which are not distinguished or characterized by an emphasis on the depiction, display, or description or the featuring of "specified anatomical areas" or "specified sexual activities," as defined herein, in that the depiction, display, description or featuring is incidental to the primary purpose of any performance.
- (8) Any business or commercial establishment where any worker engages in the physical manipulation, washing, scrubbing, stroking or touching, for commercial or pecuniary gain, of another's body, directly or indirectly, using any body part, object, instrument, substance or device. The following are specifically exempted from this paragraph:
 - a. A person licensed as a massage therapist or apprentice massage therapist providing massage services only in a licensed massage establishment;
 - b. A person licensed under state law to practice medicine, surgery, osteopathy, chiropractic, naturopathy, or podiatry, or persons licensed as a physician's assistant, or holding a drugless practitioner's certificate;
 - c. A nurse registered under state law;
 - d. A barber or beautician license under state law;
 - e. A cosmetologist licensed under state law;
 - f. A person performing any services in any hospital, clinic, nursing home or sanitarium licensed under state law;
 - g. A person performing ear-piercing services;
 - h. An instructor, coach or trainer employed by or on behalf of any bona fide professional, Olympic or sanctioned amateur athletic team, governmental entity or any bona fide state, county or private educational institution;
 - i. A physical therapist licensed under state law.

Section Two, Repealer.

All ordinances or resolutions or parts of ordinances or resolutions in conflict with this Ordinance are repealed.

Section Three, Severability.

The sections, paragraphs, sentences, clauses and phrases of this ordinance are severable. Should any section, paragraph, sentence, clause or phrase of this ordinance be rendered invalid by any court of law, the remaining sections, paragraphs, sentences, clauses or phrases shall not be

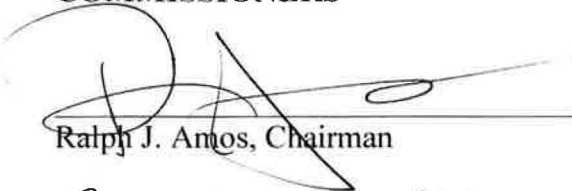
affected but shall continue in effect until amended or repealed by action of the governing authority of Forsyth County.

Section Four, Effective Date.

This ordinance shall go into effect on the date of adoption.

SO RESOLVED this 4th day of September, 2014.

FORSYTH COUNTY BOARD OF COMMISSIONERS



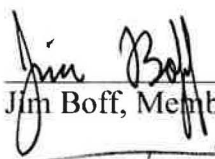
Ralph J. Amos, Chairman



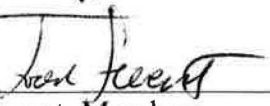
Cindy Jones Mills, Vice Chairman



Brian R. Tam, Secretary



Jim Boff, Member



Todd Levent, Member

Attested to:



County Clerk