#6

2164

**12-O-1600**

(Do Not Write Above This Line) 2-12-41

**AN ORDINANCE**

**BY COUNCILMEMBER ALEX WAN**

**AN ORDINANCE TO AMEND CHAPTER 32D (NC-5 CHESHIRE BRIDGE ROAD SOUTH NEIGHBORHOOD COMMERCIAL DISTRICT) OF THE 1982 ATLANTA ZONING ORDINANCE, AS AMENDED, FOR THE PURPOSE OF ADDING SPECIFIC REGULATIONS REGARDING THE AMORTIZATION AND DISCONTINUANCE OF LEGAL, NONCONFORMING USES WITHIN SAID DISTRICT; AND FOR OTHER PURPOSES.**

JUN 03 2013

FILED BY Council

☐ CONSENT REFER
☐ REGULAR REPORT REFER
☐ ADVERTISE & REFER
☐ 1ST ADOPT 2ND READ & REFER
☑ PERSONAL PAPER REFER

Date Referred 11/5/12

Referred To: ZRB+ Zoning

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee

Date

Chair

Referred To

| Committee | Committee |
|---|---|
| Zoning | |
| Date 5/29/13 | Date |
| Chair | Chair |
| Action Fav, Adv, Hold (See rev.side) | Action Fav, Adv, Hold (See rev.side) |
| Other | Other |
| Members | Members |
| Carla Smith | |
| Joyce M. Sheperd | |
| Alex Wan | |
| Howard Shook (NA) | |
| Clay Smith (NAH) | |
| Refer To | Refer To |

| Committee | Committee |
|---|---|
| Date | Date |
| Chair | Chair |
| Action Fav, Adv, Hold (See rev.side) | Action Fav, Adv, Hold (See rev.side) |
| Other | Other |
| Members | Members |
| Refer To | Refer To |

FINAL COUNCIL ACTION

☐ 2ND ☐ 1ST & 2ND ☐ 3RD

Readings

☐ Consent ☐ V Vote ☑ RC Vote

CERTIFIED

CERTIFIED JUN 03 2013 ATLANTA CITY COUNCIL PRESIDENT

CERTIFIED JUN 3 2013 Rhonda Dauphin Johnson MUNICIPAL CLERK

MAYOR'S ACTION

470187-1

Failed by RC Vote full Council

RCS# 2765
6/03/13
4:24 PM

Atlanta City Council

MULTIPLE 12-O-1599:Z-12-40 AND 12-O-1600:Z-12-41

ADOPT SUB

Motion to Adopt
FAILED
9 Nays - 6 Yeas

| | |
|---|---|
| YEAS: | 6 |
| NAYS: | 9 |
| ABSTENTIONS: | 0 |
| NOT VOTING: | 1 |
| EXCUSED: | 0 |
| ABSENT | 0 |

| | | | |
|---|---|---|---|
| Y Smith | N Archibong | N Moore | Y Bond |
| N Hall | Y Wan | N Martin | Y Watson |
| N Young | N Shook | Y Bottoms | Y Willis |
| N Winslow | N Adrean | N Sheperd | NV Mitchell |

MULTIPLE

**12-O-1600**

**AN ORDINANCE**
**BY COUNCILMEMBER ALEX WAN**
**AS SUBSTITUTED BY ZONING COMMITTEE**

**AN ORDINANCE TO AMEND CHAPTER 32E (NC-5 CHESHIRE BRIDGE ROAD SOUTH NEIGHBORHOOD COMMERCIAL DISTRICT) OF THE 1982 ATLANTA ZONING ORDINANCE, AS AMENDED, FOR THE PURPOSE OF ADDING SPECIFIC REGULATIONS REGARDING THE AMORTIZATION AND DISCONTINUANCE OF NONCONFORMING ADULT BUSINESS USES WITHIN SAID DISTRICT; AND FOR OTHER PURPOSES.**

**WHEREAS,** the NC-5 Cheshire Bridge Road South Neighborhood Commercial District was created by Ordinance 04-O-1822, adopted January 3, 2005 to implement recommendations from the Cheshire Bridge Road Study adopted by City Council on September 21, 1999, and approved by the Mayor on September 30, 1999; and

**WHEREAS**, the purposes and intent of Neighborhood Commercial (NC) zoning districts are set forth in Chapter 32 of the Atlanta Zoning Ordinance, specifically protecting the public health, safety and welfare, including the need to:

(i) Protect existing neighborhood-oriented commercial areas from uses and building forms from the incompatible uses resulting from intense highway-oriented development such as adult businesses; and

(ii) Preserve and restore existing, traditional and pedestrian scale buildings in established, historic neighborhood commercial districts; and

(iii) Place reasonable controls on the development of larger scale highway-oriented retail, service, office and dining uses which are intended to serve larger areas of the city than a single neighborhood or a small group of neighborhoods; and

**WHEREAS,** the NC-5 Cheshire Bridge Road South Neighborhood Commercial District purpose includes the creation of pedestrian oriented commercial nodes that supports the public health, safety and welfare of the adjacent neighborhoods; and

**WHEREAS**, the NC-5 Cheshire Bridge Road South Neighborhood Commercial District recognizes that the area, where commercial uses are largely surrounded by adjacent residential neighborhoods, continues to fail to reach its potential as the private sector is hesitant to invest in the area occupied by several nonconforming adult business uses contrary to the positive development of the area; and

**WHEREAS**, adult businesses draw patrons from a wide area and require special supervision from the public safety agencies of the City in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as residents in surrounding areas; and

**WHEREAS**, the City Council finds that adult businesses, as a category of establishments, are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

**WHEREAS**, there is convincing documented evidence that adult businesses, as a category of establishments, have deleterious secondary effects and are often associated with crime and adverse effects on surrounding properties; and

**WHEREAS**, the City Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from crime; preserve the quality of life; preserve the character of surrounding neighborhoods and deter the spread of urban blight; and

**WHEREAS**, adult businesses, as defined in Sec. 16-29.001(3) include adult bookstores, adult motion picture theaters, adult mini-motion picture theaters, and adult entertainment establishments, including adult cabarets; and

**WHEREAS**, adult businesses have been prohibited in the NC-5 District from its inception,

**WHEREAS**, Sec. 16-28.016 provides that, in all districts in which adult businesses are permitted, they may not be located within 1,000 feet of any two (2) other adult businesses, or located within 500 feet of the boundaries of any residential district, R-1 (Residential) to R-G (Residential-General), or within 1000 feet of any public park which exceeds three (3) acres in size, or within 1000 feet of any public or private elementary or secondary school, or within 1000 feet of any church, temple, mosque, synagogue or other religious establishment used primarily for worship purposes; and

**WHEREAS**, the City Council finds that the City provides adequate alternative avenues of communication for adult businesses in certain commercial and industrial districts, outside of the NC-5 district;

**WHEREAS**, Georgia law establishes that legal, nonconforming uses run with the land and benefit subsequent purchasers (*See* Henry v. Cherokee County, 290 Ga.App 355 (2008)) but also recognizes the right of local governments to require cessation of legal, nonconforming uses over a reasonable period of time, said practice being referred to as "amortization". (*See* Flippen Alliance for Community Empowerment v. Brannan, 267 Ga.App. (2004); B.B.C. Land & Dev., Inc. v. Butts County, 281 Ga. 472 (2007) ("A nonconforming use, however, is not so indefeasible since '[a] governing authority can require a nonconforming use to be terminated in a reasonable time. [Cits.]'"); and High Five Investments, L.L.C. v. Floyd County, No. 4:06-CV-1090 (N.D. Ga. Mar. 14, 2008)); and

**WHEREAS**, the U.S. Court of Appeals for the Eleventh Circuit has held that the U.S. Constitution "does not require either the waiver provision or the 'grandfathering' clause for existing non-conforming businesses." *See* David Vincent, Inc. v. Broward County, 200 F.3d 1325 1332 & n.11 (11th Cir. 2000) ("Courts have frequently upheld the application of new zoning regulations to existing adult businesses with an amortization period. [citing cases]"); and

**WHEREAS**, the City intends to regulate adult, sexually-oriented businesses through a narrowly tailored ordinance designed to serve the substantial government interest in preventing and controlling the negative secondary effects of adult businesses; and

**WHEREAS**, the City's definitions and regulations shall be narrowly construed to accomplish this end; and

**WHEREAS**, the enactment of an amortization period for nonconforming adult business uses in the NC-5 District will further the intent and purpose of the NC districts generally and the NC-5 district specifically; and

**WHEREAS**, the City recognizes its constitutional duty to interpret and construe its laws to comply with constitutional requirements as they are announced; and

**WHEREAS**, with the passage of any ordinance, the City and the City Council accept as binding the applicability of general principles of criminal and civil law and procedure and the rights and obligations under the United States and Georgia Constitutions, Georgia Code, and the Georgia Rules of Civil and Criminal Procedure; and

**WHEREAS**, it is not the intent of this ordinance to suppress any speech activities protected by the U.S. Constitution or the Georgia Constitution, but to enact legislation to further the content-neutral governmental interests of the City, to wit, the controlling of secondary effects of adult businesses.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY ORDAINS:**

**Section 1:** The 1982 Zoning Ordinance of the City of Atlanta, as amended, is hereby amended by adding Section 16-32E.003-.004 regulating uses in the NC-5 Cheshire Bridge Road South Neighborhood Commercial District and which shall read as follows:

**Section 16–32E.003. – Amortization of Nonconforming Adult Businesses**

1. Purpose. Nonconforming adult businesses are recognized as incompatible with permitted uses in the NC-5 District. The purpose of this section is to promote the public health, safety and welfare by providing for the discontinuance of nonconforming adult business uses in the NC-5 District through amortization within a reasonable period of time. The provisions of this section 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 section 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 section to condone or legitimize the distribution of obscene material.

2. Applicability. This section applies to legal, nonconforming adult businesses within the NC-5 District. *Legal, nonconforming adult business*, as used in the preceding sentence, shall mean an adult business in the NC-5 District that is in lawful existence at the effective date of this section.

3. Findings and Rationale. *Findings and Rationale*. Based on evidence of the adverse secondary effects of adult business uses presented in hearings and in reports made available to the City Council, and on findings, interpretations, and narrowing constructions incorporated in the cases listed in exhibit "A" attached hereto and incorporated herein by reference; and based upon reports concerning secondary effects occurring in and around adult businesses, including, but not limited to, those listed in exhibit "B" attached hereto and incorporated herein by reference, the City Council finds:

    a. Adult 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. Alcohol consumption impairs judgment and lowers inhibitions, thereby increasing the risk of adverse secondary effects.
    b. Nonconforming adult businesses should be separated from residential uses and pedestrian-oriented commercial land uses in the NC-5 district to minimize and/or prevent the impact of their secondary effects upon such uses.
    c. 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 in the NC-5 district, which is the City's rationale for this section, exists independent of any comparative analysis between adult and non-adult businesses. The City finds that the cases and documentation relied on and incorporated into this section are reasonably believed to be relevant to said secondary effects.

4. Registration of legal, nonconforming adult businesses; notification of failure to register. The owner(s) of the real property upon which exists a claimed legal, nonconforming adult business within the NC-5 District, or the operator of said business, shall register such use with the director of the office of buildings, on a form provided by the director, no later than sixty (60) days after the effective date of this section, whichever is later, and shall renew this registration on or before January 31 of each subsequent calendar year of the amortization period.

    Any nonconforming adult business use that does not comply with the registration requirements herein shall thereafter forfeit the right to claim legal, nonconforming use status and shall be deemed to be an illegal use and shall be subject to the regulations applicable to illegal uses and all other enforcement provisions specified in section 16-30.001.

5. Amortization Period. All legal, nonconforming adult businesses shall cease operation as adult businesses in the NC-5 District no later than June 30, 2018.

**Section 16–32E.004. – Severability**

Should any section or provision of this chapter 16-32E, or the application thereof to any person or circumstance, be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of this chapter as a whole or any section thereof other than the section or provision, or application thereof, specifically declared to be invalid.

**Exhibit "A"**

City of Littleton v. Z.J. Gifts D-4, L.L.C., 541 U.S. 774 (2004); 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); City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986); Young v. American Mini Theatres, 427 U.S. 50 (1976); Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991); California v. LaRue, 409 U.S. 109 (1972); N.Y. State Liquor Authority v. Bellanca, 452 U.S. 714 (1981); Sewell v. Georgia, 435 U.S. 982 (1978); FW/PBS, Inc. v. City of Dallas, 493 U.S. 215 (1990); City of Dallas v. Stanglin, 490 U.S. 19 (1989); and

Flanigan's Enters., Inc. v. Fulton County, 596 F.3d 1265 (11th Cir. 2010); Peek-a-Boo Lounge v. Manatee County, 630 F.3d 1346 (11th Cir. 2011); Daytona Grand, Inc. v. City of Daytona Beach, 490 F.3d 860 (11th Cir. 2007); Jacksonville Property Rights Ass'n, Inc. v. City of Jacksonville, 635 F.3d 1266 (11th Cir. 2011); 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); Williams v. A.G. of Alabama, 378 F.3d 1232 (11th Cir. 2004); Williams v. Morgan, 478 F.3d 1316 (11th Cir. 2007); 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); Boss Capital, Inc. v. City of Casselberry, 187 F3d 1251 (11th Cir. 1999); 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); DLS, Inc. v. City of Chattanooga, 107 F.3d 403 (6th Cir. 1997); Grand Faloon Tavern, Inc. v. Wicker, 670 F.2d 943 (11th Cir. 1982); International Food & Beverage Systems v. Ft. Lauderdale, 794 F.2d 1520 (11th Cir. 1986); 5634 E. Hillsborough Ave., Inc. v. Hillsborough County, 2007 WL 2936211 (M.D. Fla. Oct. 4, 2007), *aff'd*, 2008 WL 4276370 (11th Cir. Sept. 18, 2008) (per curiam); Fairfax MK, Inc. v. City of Clarkston, 274 Ga. 520 (2001); Morrison v. State, 272 Ga. 129 (2000); 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); Imaginary Images, Inc. v. Evans, 612 F.3d 736 (4th Cir. 2010); LLEH, Inc. v. Wichita County, 289 F.3d 358 (5th Cir. 2002); Ocello v. Koster, 354 S.W.3d 187 (Mo. 2011); 84 Video/Newsstand, Inc. v. Sartini, 2011 WL 3904097 (6th Cir. Sept. 7, 2011); Plaza Group Properties, LLC v. Spencer County Plan Commission, 877 N.E.2d 877 (Ind. Ct. App. 2007); East Brooks Books, Inc. v. Shelby County, 588 F.3d 360 (6th Cir. 2009); Entm't Prods., Inc. v. Shelby County, 588 F.3d 372 (6th Cir. 2009); Sensations, Inc. v. City of Grand Rapids, 526 F.3d 291 (6th Cir. 2008); 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); H&A Land Corp. v. City of Kennedale, 480 F.3d 336 (5th Cir. 2007); Hang On, Inc. v. City of Arlington, 65 F.3d 1248 (5th Cir. 1995); Fantasy Ranch, Inc. v. City of Arlington, 459 F.3d 546 (5th Cir. 2006); Illinois One News, Inc. v. City of Marshall, 477 F.3d 461 (7th Cir. 2007); G.M. Enterprises, Inc. v. Town of St. Joseph, 350 F.3d 631 (7th Cir. 2003); Richland Bookmart, Inc. v. Knox County, 555 F.3d 512 (6th Cir. 2009); Bigg Wolf Discount Video Movie Sales, Inc. v. Montgomery County, 256 F. Supp. 2d 385 (D. Md. 2003); Richland Bookmart, Inc. v. Nichols, 137 F.3d 435 (6th Cir. 1998); Spokane Arcade, Inc. v. City of Spokane, 75 F.3d 663 (9th Cir. 1996); DCR, Inc. v. Pierce County, 964 P.2d

380 (Wash. Ct. App. 1998); City of New York v. Hommes, 724 N.E.2d 368 (N.Y. 1999); Taylor v. State, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002); Fantasyland Video, Inc. v. County of San Diego, 505 F.3d 996 (9th Cir. 2007); Gammoh v. City of La Habra, 395 F.3d 1114 (9th Cir. 2005); Starship Enters. of Atlanta, Inc. v. Coweta County, No. 3:09-CV-123, R. 41 (N.D. Ga. Feb. 28, 2011); High Five Investments, LLC v. Floyd County, No. 4:06-CV-190, R. 128 (N.D. Ga. Mar. 14, 2008); 10950 Retail, LLC v. Fulton County, No. 1:06-CV-1923, R. 62 Order (N.D. Ga. Dec. 21, 2006); 10950 Retail, LLC v. Fulton County, No. 1:06-CV-1923, R. 84 Contempt Order (N.D. Ga. Jan. 4, 2007); Z.J. Gifts D-4, L.L.C. v. City of Littleton, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001); People ex rel. Deters v. The Lion's Den, Inc., Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005); Reliable Consultants, Inc. v. City of Kennedale, No. 4:05-CV-166-A, Findings of Fact and Conclusions of Law (N.D. Tex. May 26, 2005); Goldrush II v. City of Marietta, 267 Ga. 683 (1997); B.B.C. Land & Dev., Inc. v. Butts County, 281 Ga. 472 (2007).

**Exhibit "B"**

"Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD," Journal of Urban Health (2011); "Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime?" Crime & Delinquency (2012) (Louisville, KY); Metropolis, Illinois – 2011-12; Manatee County, Florida – 2007; Hillsborough County, Florida – 2006; Clarksville, Indiana – 2009; El Paso, Texas – 2008; Memphis, Tennessee – 2006; New Albany, Indiana – 2009; Louisville, Kentucky – 2004; Fulton County, GA – 2001; Chattanooga, Tennessee – 1999-2003; Jackson County, Missouri – 2008; Ft. Worth, Texas – 2004; Kennedale, Texas – 2005; Greensboro, North Carolina – 2003; Dallas, Texas – 1997; Houston, Texas – 1997, 1983; Phoenix, Arizona – 1995-98, 1979; Tucson, Arizona – 1990; Spokane, Washington – 2001; St. Cloud, Minnesota – 1994; Austin, Texas – 1986; Indianapolis, Indiana – 1984; Garden Grove, California – 1991; Los Angeles, California – 1977; Whittier, California – 1978; Oklahoma City, Oklahoma – 1986; New York, New York Times Square – 1994; the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota); Dallas, Texas – 2007; "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; Law Enforcement and Private Investigator Affidavits (Pink Pony South, Forest Park, GA, and Adult Cabarets in Sandy Springs, GA),