



FOR IMMEDIATE RELEASE

Brookhaven temporarily halts ordinance enforcement against Pink Pony until legal ruling

Brookhaven, GA June 13, 2013 – Brookhaven will not enforce certain sexually oriented business regulations against the Pink Pony until a ruling from DeKalb County Superior Court.

On Thursday, the city notified the Buford Highway area adult establishment that it would temporarily refrain from enforcing the following regulations:

- prohibition on nudity on the premises of a sexually oriented business;
- restriction on the hours of operation of a sexually oriented business and
- prohibition on nudity or semi-nudity in conjunction with the service or consumption of alcoholic beverages.

“The city believes that this offer will facilitate an orderly judicial resolution of plaintiff’s claims and thereby conserve the resources of all parties,” City Attorney William F. Riley Jr. wrote in a letter delivered to Pink Pony attorneys on Thursday.

In May, the Pink Pony filed suit against the city, mayor, city council and city clerk, in response to the city’s sexually oriented business and alcohol ordinances, which are modeled after others that have been upheld in Georgia. The city is currently drafting a response to the suit, and anticipates asking the court for a hearing on the validity of its ordinances in the near future.

“Courts in Georgia and throughout the nation have upheld similar ordinances and we believe that the city’s ordinances are constitutional as well,” Riley said.

The city’s ordinances mirror those in DeKalb County, Fulton County, Doraville, Sandy Springs, Johns Creek and other nearby jurisdictions. Prior to the city’s incorporation, DeKalb County had agreed to waive enforcement of its ordinances against several adult establishments in exchange for a fee. Brookhaven has refused to take money from this industry in exchange for letting the industry ignore these regulations.

“Brookhaven adopted this ordinance using the same litmus test we use for every action we take – to protect the health, safety and welfare of Brookhaven’s residents and businesses, and to make the city a great community in which to live,” Mayor J. Max Davis said.

Since the city’s inception, another sexually oriented business has opened in Brookhaven and has recently been cited for violating the city’s ordinances. Stardust adult store on Buford Highway has been cited on multiple violations and is scheduled to be in Brookhaven Municipal Court July 12.

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Brookhaven, GA, June, 13, 2013 – The following are answers to some of the questions frequently asked by residents regarding the city’s sexually oriented business ordinance. The answers are from the Brookhaven city attorney’s office.

Why did Brookhaven pass a new sexually oriented business ordinance?

The city initially adopted DeKalb County’s ordinance which prohibits alcohol in erotic dancing establishments. The mayor and city council were advised that the existing DeKalb ordinance was outdated, potentially unenforceable and could be declared unconstitutional based on recent court rulings. Not passing an updated, constitutionally sound ordinance would leave the door open for additional adult businesses to locate in Brookhaven – next to churches, schools and neighborhoods. The city passed an ordinance that is substantively the same as the older ordinance currently on the books in DeKalb County — except that the city’s ordinance uses updated language based on recent court decisions. While the city has technically passed a “new,” updated ordinance, the alcohol regulation at the center of the controversy has been on the books in DeKalb County and other nearby municipalities for many years.

Why has Brookhaven not grandfathered the existing strip club in the city?

The existing strip club operated under a consent agreement with DeKalb County to allow the business to ignore the existing DeKalb ordinance, which prohibits the sale of alcohol in establishments that feature nude dancing. That ordinance was upheld several years ago by the Georgia Supreme Court. Nevertheless, DeKalb County agreed that it would not enforce its own ordinance if the adult businesses in the county would each pay the county \$100,000 a year in exchange for dropping their lawsuits. Under Georgia law, one government cannot legally bind another government. More importantly, another strip club or adult bookstore could then enter the city and demand the same treatment (the right to ignore Brookhaven laws) or sue the city. Obviously, the city cannot offer a pass to one club and refuse it to another club that tries to open.

Why is the new city trying to legislate morality?

This ordinance has nothing to do with morality. Indeed, the sexually oriented business ordinance recognizes that erotic dancing has been declared a form of free expression protected under the First Amendment. For that reason, the ordinance specifically allows establishments that specialize in erotic entertainment to be licensed as such. However, the courts have made it clear that the First Amendment does not provide a constitutional right to serve alcohol or receive sexual stimulation in public places. Cities across Georgia and the nation have documented the negative effects associated with similar establishments, including crime and adverse impacts on nearby properties. In response, municipalities have passed—and appellate courts in Georgia and elsewhere—have upheld ordinances regulating the location and operation of sexually oriented businesses to prevent these negative effects.

Brookhaven adopted sexually oriented business ordinances modeled after those already upheld in prior appellate decisions and that are consistent with ordinances already on the books in DeKalb County, Fulton County, Doraville, Sandy Springs, Johns Creek and other cities. The residents and businesses of Brookhaven should have the same protections as those provided in surrounding communities. Brookhaven will defend its ordinances, which are designed to protect the public safety, health and welfare of the city's residents and businesses.

Why is the city wasting money on costly litigation?

The city has no control over who files suit. If the city had left the old DeKalb County ordinance in place, it still would have been sued because it refused to take money in exchange for ignoring regulations contained in that ordinance. Moreover, once a city makes a deal to ignore its laws with one business, it opens itself up to lawsuits from other businesses seeking the same deal. This has been documented in sexually oriented business cases in various communities across the country, such as El Paso, Sandy Springs and Myrtle Beach.

While litigation is a fact of life for governments, the actual cost of the litigation is expected to be minimized by the fact that most of the decisions in these kinds of cases are decided before trial. A decision upholding the city's sexually oriented business ordinance can help prevent negative secondary effects of such establishments and is in the city's long-term best interest. Finally, the city has insurance to cover damages that might occur from any lawsuit.

What's really the harm of letting a strip club continue to operate as it has for some years?

As part of its legislative record, the city of Brookhaven incorporated some 3,000 pages of evidence from studies, undercover operations, land use reports and previous court rulings to document the negative secondary effects of sexually oriented businesses. These include the documented evidence of blight, prostitution, drug activity and other crime associated with strip clubs. The evidence presented by undercover police in metro area adult clubs document prohibited activities by erotic dancers in these businesses, including paid sexual contact, masturbation for hire and prostitution. In a 2011 undercover police investigation in Sandy Springs, a drug and prostitution bust was made involving six erotic dancers.