

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

WBY, Inc. d/b/a Follies,	*	
	*	CIVIL ACTION FILE
Plaintiff,	*	
	*	No. _____
-vs-	*	
	*	
CITY OF CHAMBLEE, GEORGIA,	*	
	*	
	*	JURY TRIAL DEMANDED
Defendant.	*	

**COMPLAINT FOR DAMAGES AND REQUEST FOR
DECLARATORY, INJUNCTIVE AND EQUITABLE RELIEF**

NATURE OF THE CASE

1.

This civil rights case challenges the City of Chamblee’s recently adopted ordinances regulating adult entertainment and the type of expression allowed in alcohol-licensed establishments. With this complaint, Follies seeks an order enjoining the City from enforcing the new ordinances which have the purpose and effect of eliminating adult entertainment in the City of Chamblee.

PARTIES

2.

Plaintiff WBY, INC. d/b/a Follies (“Follies”) is a Georgia corporation which possesses a 2018 City of Chamblee license to sell liquor, beer and wine for consumption on premises at 4075 Buford Highway, NE, Atlanta, DeKalb County,

Georgia 30345. Follies is located in a CC zoning district.

3.

Defendant CITY OF CHAMBLEE ("the City") is a political subdivision of the State of Georgia, which has the capacity to sue and be sued.

VENUE

4.

All acts or omissions alleged in this complaint have occurred, or likely will occur, and all parties are situated, in the Northern District of Georgia and therefore venue is properly within this district under 28 U.S.C. § 1391(b) (2).

JURISDICTION

5.

Jurisdiction for this suit is conferred in part by 42 U.S.C. § 1983, which provides in part:

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

6.

Declaratory and injunctive relief are authorized by 28

U.S.C. §§ 2201 & 2202.

7.

Under 28 U.S.C. §§ 1331 and 1343(a)(3)&(4), the Court can entertain an action to redress a deprivation of rights guaranteed by the United States Constitution, and the Court has jurisdiction under 28 U.S.C. § 1367 to hear an action to redress a deprivation of rights guaranteed by the laws and Constitution of the State of Georgia.

FACTS

Background of Follies

8.

In 1992, Follies began operating an adult entertainment establishment featuring nude dancing and serving alcoholic beverages at its current location in unincorporated DeKalb County; at the time it held whatever licenses and permits were required by DeKalb County to operate in this format.

9.

Over the next decade, Follies (and other adult establishments) and DeKalb County litigated the validity of certain ordinances that would harm Follies's concept, including an ordinance which banned the sale of alcohol when combined with adult entertainment.

10.

In June 2001, DeKalb County and its existing adult

entertainment establishments, including Follies, entered into a Settlement and Release Agreement ("the Agreement"). The adult entertainment establishments released and dismissed pending damages actions against DeKalb County in exchange for the right to operate with on-premises consumption of alcoholic beverages and adult entertainment for a term of eight (8) years. The establishments also agreed to pay a graduated licensing fee as consideration for the Agreement.

11.

In May 2007, Follies and the other DeKalb County adult entertainment establishments amended the Agreement.

12.

Under the Agreement, the establishments were granted non-conforming status, which meant they would be permitted to sell alcohol and present nude dancing at their premises for a term of years. The Agreement created no other rights, and the establishments were subject to all other laws and regulations governing the sale of alcohol. The Agreement also exempts the establishments from County ordinances prohibiting public nudity for the duration of the Agreement, which is set to expire in 2022, but can be renewed. Under the Agreement, the establishments each have paid \$100,000 annually during its first ten years, and are required to pay

\$150,000 for the last five.

13.

The Agreement allows the County to adopt, amend, and otherwise regulate all matters relating to the operation of the adult clubs, except the specific exclusion concerning nude dancing and serving alcohol.

14.

The Agreement is "binding upon DeKalb County, its successors, transferees, assigns for the terms specified herein. . .[including] any governmental body to which the County transfers regulatory control over the matters herein, expressly including any municipality which obtains jurisdiction by incorporation or annexation."

The City of Chamblee annexes Follies

15.

Following a vote on November 5, 2013, the City annexed Follies's property. Follies remains the City's only nude dance establishment.

16.

On April 15, 2014, the City passed a resolution recognizing the Agreement and allowing Follies to operate under it, i.e., Follies has continued to feature nude dancing and serve alcoholic beverages.

17.

The City issued an alcoholic beverage license to Follies in 2014.

18.

Follies renewed its alcohol license with the City for the years 2015, 2016, 2017, and 2018, and it operated in its nude-dance format without incident during those years.

19.

In 2015, Follies began making its \$100,000 annual payment (under the Agreement) to the City. Follies paid this amount to the City during each of the years 2016 and 2017.

20.

In 2018, Follies paid the increased amount due of \$150,000 under the Agreement to the City.

21.

Since June 2016, in addition to tendering payments under the Agreement, Follies has ensured that its employees and contractors have all paid the City for and obtained annually issued adult entertainment work permits.

The City conducts an
unreasonable search of Follies

22.

On or shortly before February 17, 2018, the City planned a comprehensive search and seizure of Follies and

its patrons. This search would enlist multiple officers from multiple agencies, including the City police department, DeKalb County's fire marshal's office, and the Georgia Department of Revenue.

23.

At around 12:45 a.m. on February 17 (which are peak hours), the City executed the search at Follies.

24.

Officers blocked the front and back exits, causing fear and confusion among patrons and employees, especially those customers who wanted or needed to leave.

25.

The City's police cars were stationed outside Follies with blue lights activated. Five or more masked officers entered the club wearing tactical gear including body armor and with holstered weapons.

26.

In addition to the masked officers, there were a number of plain-clothed officers. They checked whether Follies had an alcohol license, a business license, and a tobacco certificate (for the cigarette vending machine).

27.

Officers with the County's Fire Marshal's department scoured the premises, even though this department had been

in Follies a number of times in the preceding months.

28.

After confirming that all employees and contractors had valid adult entertainment work permits, the defendants and other agencies left Follies at around 2:00 a.m. Before that time, no customers could enter or leave the premises.

29.

The City had no objectively reasonable basis to believe that its officers (who were leading the multi-agency group) would need an overwhelming police presence to conduct an administrative search at Follies. The validity of this search is being challenged in DeKalb Events Center, Inc. v. City of Chamblee, et al., No. 1:18-CV-02739-WMR (N.D. Ga. filed June 4, 2018).

The City tickets Follies's manager
based on the search

30.

During the search, an officer discovered a fire extinguisher that was not working properly. A citation was issued.

31.

Also during the search, an officer alleged that Follies was selling liquor by the bottle. A citation was issued. Follies was not selling liquor by the bottle.

The City suspends Follies's alcohol license

32.

By letter dated March 9, 2018, the City Clerk, Emmie Niethammer, notified Follies that a hearing would be conducted "to give you the opportunity to show case why your alcohol license should not be suspended or revoked" for allegedly violating:

- Chamblee Code § 6-148 which provides:

Persons holding a license to sell distilled spirits for consumption on the premises shall not be permitted to sell liquor by the package or bottle

- Chamblee Code § 38-3 which provides:

The minimum fire safety standards of the state and the fire prevention ordinances of the county, and any future amendments or additions thereto, are hereby incorporated by reference in this section and adopted as the ordinances of this city. The county is hereby requested to extend the services of the fire prevention bureau to the citizens of the city, and the personnel of the bureau are authorized to enforce such ordinances within the limits of the city, and are hereby made deputy marshals thereof.

33.

On June 6, Follies appeared before hearing officer Robert E. Wilson ("the Hearing Officer"). On that date, the Hearing Officer determined that a Follies manager "knew the [fire] extinguisher was empty" and therefore a "violation of the fire extinguisher had occurred." Nothing in Code § 38-3

makes it illegal or otherwise a violation of city law for a fire extinguisher to be empty.

34.

Also on that date, the Hearing Officer found that "pouring a bottle into craft [sic] and walking away with empty bottle constitutes bottle sale" and therefore a violation § 6-148 occurred.

35.

The Hearing Officer treated these alleged violations as a first offense under the Alcohol Code and ordered Follies' "license to sell alcohol in the City of Chamblee is hereby suspended for the following period of time: 12:01 am June 22 until 12:01 am on June 25, 2018." No evidence was adduced in the hearing that this was a "second" violation for Follies.

The City retaliates against Follies

for pursuing appeal of alcohol license suspension

36.

By letter dated June 18, Follies timely appealed the Hearing Officer's decision to the Board. The City did not cross appeal the administrative penalty.

37.

On August 21, Follies, through its attorney, appeared before the Board and demonstrated how and why the suspension

was impermissible.

38.

To defend the Hearing Officer's order, the City hired a private attorney to appear before the Board. That private attorney also represents the City in the related federal case, DeKalb Events Center. See ¶ 29 supra. In his role representing the City in the federal litigation, upon information and belief, that private attorney was hired by the City Manager with the approval of the Mayor and City Council, and he has advised these officials in executive session(s) on how to handle the federal case and defend against the claims brought by Follies in that forum.

39.

In the appeal hearing before the Board, the City's private attorney urged the Board to ignore Follies's points of error. But that private attorney did not simply ask the Board to affirm the Hearing Officer's order. Instead he encouraged the Board to "modify" its order to impose an additional 27 days of alcohol license suspension for having an empty fire extinguisher and pouring distilled spirits into a carafe. The Board began publically deliberating whether to follow the private attorney's advice or sustain Follies's objections on appeal. After some discussion, the Board asked if it could hear from "our attorney" to answer

some questions. At that point, the City's private attorney went to the lectern and fielded questions from the Board.

40.

Though voicing its statutory and constitutional objections (including a claim that the private attorney's defense of the Hearing Officer's order before the Board presented a conflict of interest / procedural due process violation and a free-speech retaliation violation), Follies expressly reserved its right to pursue those claims in court.

41.

At the conclusion of the hearing, the Board voted to "modify" the order of the hearing examiner by increasing the suspension from 3 days to 30 days.

42.

Follies has filed a petition for writ of certiorari seeking review of the Board's decision to impose a 30-day suspension of Follies's alcohol license. WBY, Inc. v. City of Chamblee, et al., Case No. 18CV9358 (DeKalb Cty. Sup. Ct. filed Sept. 20, 2018).

The City's Adult Regulations

43.

On October 16, 2018, the City deleted its Adult Entertainment Code by adopting Ordinance No. 752. See

Chapter 22, Article VI (the "New Adult Code").

44.

The New Adult Code defines "Nudity or Nude Conduct" as:

the showing of the human male or female genitals, pubic area, vulva, or anus with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola. For purposes of this article, a 'fully opaque covering' must be non-flesh colored, shall not consist of any substance that can be washed off the skin, such as paint or make-up, and shall not simulate the appearance of the anatomical area that it covers.

§ 22-101.

45.

The New Adult Code defines "Semi-Nude or Semi-Nudity"

as:

the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

§ 22-101

46.

The New Adult Code defines a "Semi-Nude Lounge" as

a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment that regularly offers live semi-nude conduct. No establishment shall avoid classification as a

semi-nude lounge by offering nude conduct.

§ 22-101.

47.

Any person or business who desires to operate an adult establishment in the City must first apply for and obtain an adult establishment license. § 22-102(a).

48.

Under the New Adult Code, existing adult establishments are "granted a De Facto Temporary License to continue operation or employment for a period of one hundred twenty (120) days following" its adoption, and, "interior configurations or stages" must meet new requirements with 90 days, although Follies is permitted to sell alcoholic beverages for the remainder of the year. § 22-114.

49.

Under the New Adult Code, "No adult establishment shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day." § 22-118.

50.

The New Adult Code directly restricts nude dance performances by providing, for instance, that:

- (a) No patron, employee, or any other person shall knowingly or intentionally, in an adult establishment, appear in a state of nudity or engage in a specified sexual activity.

- (b) No person shall knowingly or intentionally, in an adult establishment, appear in a seminude condition unless the person is an employee who, while semi-nude, remains at least six (6) feet from all patrons and on a stage at least eighteen (18) inches from the floor in a room of at least six hundred (600) square feet.
- (c) No employee who appears semi-nude in an adult establishment shall knowingly or intentionally touch a customer or the clothing of a customer on the premises of an adult establishment. No customer shall knowingly or intentionally touch such an employee or the clothing of such an employee on the premises of an adult establishment.
- (d) After December 31, 2018, no person shall possess, use, or consume alcoholic beverages on the premises of an adult establishment.

...
- (f) No operator of an adult establishment shall knowingly or recklessly allow a room in the adult establishment to be simultaneously occupied by any patron and any other employee who is semi-nude or who appears semi-nude on the premises of the adult establishment, unless an operator of the adult establishment is present in the same room.
- (g) No operator or licensee of an adult establishment shall violate the regulations in this section or knowingly or recklessly allow an employee or any other person to violate the regulations in this section....

§ 22-115.

51.

The New Adult Code also imposes location restrictions on adult establishments under § 22-117, which provides, in

part:

(a) It shall be unlawful to establish, operate, or cause to be operated an adult establishment:

(1) Within 1,000 feet of any parcel of land which is zoned NR-1, NR-2, NR-3, CR, or VR;

(2) Within 1,000 feet of any parcel of land upon which a church, public or private elementary or secondary school, public library, or public park is located; or

(3) Within 500 feet of any parcel of land upon which an adult establishment or an establishment licensed to sell alcoholic beverages is located.

...

(d) Notwithstanding any provision in the Chamblee Code of Ordinances to the contrary, an adult establishment in a location that satisfies the standards in this section 22-117 shall not be deemed noncompliant with this section by virtue of the subsequent establishment or expansion of a land use or zoning district specified in subsection (a).

52.

Any violation of the New Adult Code is subject to criminal punishment. § 22-113(a).

The Alcohol Code

53.

The City regulates the sale or service of alcoholic beverages in a commercial setting under City of Chamblee

Code, Chapter 6, §§ 6-1 through 6-320 ("the Alcohol Code").

54.

Any person who desires to operate an establishment serving alcoholic beverages on premises must obtain an alcoholic beverage license under the Alcohol Code. See § 6-41.

55.

Once issued, an alcoholic beverage license cannot be suspended or revoked by the City except for due cause after a hearing and upon written notice to the license holder stating the time, place and purpose of the hearing, as well as a statement of the charge or charges upon which the hearing shall be held. See §§ 6-51 & 6-53.

56.

Under the Alcohol Code, the City and the alcohol licensee expect that the annually issued alcohol license will be timely renewed as a matter of course absent due cause for denial. See §§ 6-50(a), 6-51(b), 6-52; see also § 6-46(e) ("No license in effect as of the enactment of the ordinance from which this chapter is derived shall be revoked before its date of expiration, or its renewal denied, by reason of the method of measurement set out in this section, if the license was granted in reliance on another method of measurement. No application for a license

or renewal shall be denied by reason of the method of measurement set out in this section, if such application is pending on the enactment date of the ordinance from which this section derives) (emphasis added).

57.

On February 20, 2018, the City amended the Alcohol Code by adopting Ordinance No. 745. With that ordinance, the City shortened the hours of operation for alcohol-licensed venues requiring them to stop serving alcohol at 2:00 a.m. and clear their premises of patrons by 2:30 a.m. The validity of Ordinance No. 745 and its enforcement are being challenged in DeKalb Events Center. See ¶ 29, supra.

58.

Upon information and belief, the City shortened the hours (¶ 57) to avoid an influx of African-Americans and other minorities to its restaurants and bars. Nearby jurisdictions had shortened the operating hours.

59.

On October 16, 2018, at the same city council hearing when the City adopted the New Adult Code, the City amended the Alcohol Code in a few material ways.

60.

First, the City amended the Alcohol Code to prohibit any employee from knowingly touching "the breast, buttocks,

lap, pubic region, or genitals of a patron, whether directly or through clothing or other covering, on the licensed premises," and it likewise prohibits any patron from touching (in the same ways) any employee. Second, the alcohol code prohibits any person from exposing "his or her genitals, pubic hair, buttocks, perineum, anus, vulva, or the female breast ... to a patron" with certain exceptions, including that this nudity ban does not apply to performances ... in a performing arts facility.¹ Ord. No. 754, Part VII (amending § 6-14); see also id., Part X (amending by adding § 6-45(j) to provide "no adult establishment, as defined in chapter 22, article VI of this Code, is eligible for a license to sell alcoholic beverages or to allow the consumption of alcoholic beverages on its premises. No license under this chapter shall be granted or renewed for any adult establishment.").

61.

Under the Alcohol Code, alcoholic beverages may be sold

¹ "Performing arts facility" means an establishment that: (1) is located in the TOD, VC, or MU-BC zoning district; (2) is a theater, concert hall, art center, museum, or similar establishment that is primarily devoted to the arts or theatrical performances; (3) derives less than 33 percent of its total monthly sales from the sale of alcoholic beverages; (4) limits the sale of alcoholic beverages on its premises to less than five hours per day; and (5) Does not remain open beyond 12:00 midnight. § 6-1.

Monday through Saturday from 9:00 a.m. until 2:00 a.m. the following day, and on Sunday from 12:30 p.m. until 11:59 p.m. See § 6-152.'

62.

Follies qualifies as a restaurant under the Alcohol Code.

63.

Any person who violates any provision of the Alcohol Code may, upon conviction, be punished with up to six months in jail and a \$1,000 fine. See § 6-2.

Purpose and Findings

64.

In 2018 the City hired a private attorney to consult on and design a new adult entertainment code.

65.

When the City began the process of adopting its content-based ordinances in 2018, it knew at least three things: (1) an ordinance separating alcoholic service from nude dance entertainment would eliminate not only Follies, but all live adult entertainment in the City; (2) an ordinance requiring nude dancing establishments to close at midnight would eliminate not only Follies, but all live adult entertainment in the City; and (3) an ordinance eliminating nude dancing and requiring that "semi-nude"

dancers remain "at least six feet from all patrons" would eliminate not only Follies, but all live adult entertainment in the City.

66.

The City drafted an ordinance (or amended existing ordinances) to eliminate adult entertainment within its borders.

67.

The City knew that there were a number of published state and federal court decisions involving instances where the government had adopted ordinances targeting adult entertainment which were later held unconstitutional. Yet, when drafting the "Purpose; findings and rationale" provision of the New Adult Code and citing dozens of published decisions from state and federal courts, the City did not review or include cases where the adult business prevailed on their claims that the ordinances were unconstitutional.

68.

The City also knew that there were a number of reports concerning secondary effects occurring less frequently or at proportionately lower rates in or around adult establishments as compared to other types of establishments. Yet, when drafting the "Purpose; findings and rationale"

provision of the New Adult Code and citing dozens of reports, the City did not review or include those reports.

69.

In the Alcohol Code, the City pasted boilerplate findings like "conduct by bikini-clad persons" coupled with alcohol "in public places begets negative secondary effects," and that such conduct "even when said employees are technically not nude or semi-nude ... is substantially similar to and presents similar concerns as conduct by nude and semi-nude performers in adult establishments." No credible evidence supports these findings.

70.

The City knew that similar or identical alcohol-nudity separation ordinances implemented in nearby (and even adjacent) jurisdictions have either eliminated or prevented live adult entertainment in those jurisdictions, including the following: Cobb County, Fulton County, Gwinnett County, Macon-Bibb County, Spalding County, and the Cities of Johns Creek, Marietta, Sandy Springs, and Warner Robins. The City knows that existing adult establishments in the adjacent cities of Brookhaven and Doraville are facing nearly identical ordinances but are able to stay open because of injunctions or temporary remedial legislation.

71.

Although it was clear to the City that Follies would be uniquely and adversely affected by the new ordinances regulating adult entertainment and alcoholic beverages, the City did not attempt to provide notice to Follies of the proposed new ordinances. Nor did the City seek input from Follies about how key provisions in the new ordinances might affect the business.

Count 1

First and Fourteenth Amendment Violations

72.

Follies realleges the allegations contained in paragraphs 1 through 71 above as if fully restated herein.

73.

The Alcohol Code and the New Adult Code have deprived, and threaten to deprive Plaintiff of its rights secured by the First and Fourteenth Amendments to the United States Constitution, for each of the following reasons:

- a. the laws are unconstitutional content-based restrictions of protected expression;
- b. the laws are unconstitutionally overbroad;
- c. the laws are unconstitutionally vague;
- d. the laws do not further any governmental interest, compelling, substantial or otherwise, and thus, are unconstitutional under either strict or intermediate scrutiny;
- e. the laws are not the least restrictive means, nor

are they narrowly tailored, to further any governmental interest, and thus, are unconstitutional under either strict or intermediate scrutiny;

- f. the laws unconstitutionally abridge freedom of speech and expression and impose an impermissible restraint on constitutionally protected expression;
- g. the laws were adopted without relevant empirical information to support them;
- h. the laws were adopted without any valid evidence upon which the City could rely to show sexually oriented businesses in general and Follies's business in particular cause adverse secondary effects;
- i. the laws disproportionately reduce constitutionally protected expression;
- j. the purpose and effect of the laws is to shut down Follies and thus eliminate constitutionally protected adult entertainment in the City;
- k. the laws deprive Follies of the equal protection of the law; and,
- l. the laws retaliate against Follies for exercising its rights under the First and Fourteenth Amendments.

74.

Follies is therefore entitled to a declaration that the Alcohol Code and the Adult Code are unconstitutional, both on their face and as applied, under the First and Fourteenth Amendments to the United States Constitution.

Count 2

Injunctive Relief for

Federal Constitutional Free Speech Violations

75.

Follies realleges the allegations contained in paragraphs 1 through 71 above as if fully restated herein.

76.

By reason of the enactment, adoption and threatened enforcement of the Alcohol Code and the New Adult Code, the City has deprived and threatens to deprive Follies of its rights secured by the First and Fourteenth Amendments to the Constitution to engage in protected expressive activity, to be free from prior restraint, to be free from vague, irrational and arbitrary laws and to the equal protection of the laws, all of which has caused and threatens to cause irreparable harm to Follies for which there is no adequate remedy at law.

77.

By reason of the adoption and threat of enforcement of the Alcohol Code and the New Adult Code, and the irreparable harm Follies will suffer, Follies is entitled to a preliminary injunction and, after final hearing, a permanent injunction demanded hereunder.

Count 3

Georgia Free Speech Claim

78.

Follies realleges the allegations contained in paragraphs 1 through 71 above as if fully restated herein.

79.

The Alcohol Code and the New Adult Code have deprived, and threaten to deprive Follies of its rights secured by Art. I, § 1, ¶¶ 1,2 and 5 of the Georgia Constitution for each of the following reasons:

- a. the laws are unconstitutional content-based restrictions of protected expression;
- b. the laws are unconstitutionally overbroad;
- c. the laws are unconstitutionally vague;
- d. the laws do not further any governmental interest, compelling, substantial or otherwise, and thus, are unconstitutional under either strict or intermediate scrutiny;
- e. the laws are not the least restrictive means, nor are they narrowly tailored, to further any governmental interest, and thus, are unconstitutional under either strict or intermediate scrutiny;
- f. the laws unconstitutionally abridge freedom of speech and expression and impose an impermissible restraint on constitutionally protected expression;
- g. the laws were adopted without relevant empirical information to support them;
- h. the laws were adopted without any valid evidence upon which the City could rely to show sexually oriented businesses in general and Follies's business in particular cause adverse secondary effects;
- i. the laws disproportionately reduce

constitutionally protected expression;

- j. the purpose and effect of the laws is to shut down Follies and thus eliminate constitutionally protected adult entertainment in the City;
- k. the laws deprive Follies of the equal protection of the law; and,
- l. the laws retaliate against Follies for exercising its rights under Art. I, § 1, ¶¶ 1, 2 and 5 of the Georgia Constitution.

80.

Follies is therefore entitled to a declaration that the Alcohol Code and the Adult Code are unconstitutional, both on their face and as applied, under Art. I, § 1, ¶¶ 1, 2 and 5 of the Georgia Constitution.

Count 4

Injunctive relief for Georgia Free Speech Violation

81.

Follies realleges the allegations contained in paragraphs 1 through 71 above as if fully restated herein.

82.

By reason of the enactment, adoption and threatened enforcement of the Alcohol Code and the New Adult Code, the City has deprived and threatens to deprive Follies of its rights secured by Art. I, § 1, ¶¶ 1,2 and 5 of the Georgia Constitution to engage in protected expressive activity, to be free from prior restraint, to be free from vague,

irrational and arbitrary laws and to the equal protection of the laws, all of which has caused and threatens to cause irreparable harm to Follies for which there is no adequate remedy at law.

83.

By reason of the adoption and threat of enforcement of the Alcohol Code and the New Adult Code, and the irreparable harm Follies will suffer, Follies is entitled to a preliminary injunction and, after final hearing, a permanent injunction demanded hereunder.

Count 5

Impairment of Contract, United States Constitution

84.

Follies realleges the allegations contained in paragraphs 1 through 71 above as if fully restated herein.

85.

The Agreement conferred non-conforming use status on Follies and authorized Follies, during the term of the Agreement, to present nude dancing and to sell and serve alcoholic beverages.

86.

The Alcohol Law and New Adult Code substantially impairs the Agreement entered into by Follies and DeKalb County, and later adopted by the City, in violation of the

Contract Clause, Art. I, § 10 of the United States Constitution, by prohibiting Follies from continuing to do so.

87.

Follies is therefore entitled to a declaration that the Alcohol Code and the Adult Code are unconstitutional, both on their face and as applied, under Art. I, § 10 of the United States Constitution.

COUNT 6

Injunctive relief for Impairment of Contract

88.

Follies realleges the allegations contained in paragraphs 1 through 71 above as if fully restated herein.

89.

By reason of the enactment, adoption and threatened enforcement of the Alcohol Code and the New Adult Code, the City has deprived and threatens to deprive Follies of its rights secured by Art. I, § 10 of the United States Constitution for which there is no adequate remedy at law.

90.

By reason of the adoption and threat of enforcement of the Alcohol Code and the New Adult Code, and the irreparable harm Follies will suffer, Follies is entitled to a preliminary injunction and, after final hearing, a permanent

injunction demanded hereunder.

Count 7

Impairment of Contract under Georgia Constitution

91.

Follies realleges the allegations contained in paragraphs 1 through 71 above as if fully restated herein.

92.

The Agreement conferred non-conforming use status on Follies and authorized it, during its terms, to present nude dancing and to sell and serve alcoholic beverages.

93.

The Alcohol Law and New Adult Code substantially impairs the Agreement entered into by Follies and DeKalb County, and later adopted by the City, in violation of the Contract Clause, Art. I, § 1, ¶ X of the Georgia Constitution.

94.

Follies is therefore entitled to a declaration that the Alcohol Code and the Adult Code are unconstitutional, both on their face and as applied, under Clause, Art. I, § 1, ¶ X of the Georgia Constitution.

Count 8

Injunctive relief for
Impairment of Contract, Georgia Constitution

95.

Follies realleges the allegations contained in paragraphs 1 through 71 above as if fully restated herein.

96.

By reason of the enactment, adoption and threatened enforcement of the Alcohol Code and the New Adult Code, the City has deprived and threatens to deprive Follies of its rights secured by Art. I, § 1, ¶ X of the Georgia Constitution for which there is no adequate remedy at law.

97.

By reason of the adoption and threat of enforcement of the Alcohol Code and the New Adult Code, and the irreparable harm Follies will suffer, Follies is entitled to a preliminary injunction and, after final hearing, a permanent injunction demanded hereunder.

Count 9

Damages for Constitutional Violations

98.

Follies realleges the allegations contained in paragraphs 1 through 71 above as if fully restated herein.

99.

In the event that City enforces the Alcohol Code and New Adult Code against Follies, Follies will be deprived of the rights secured by the First and Fourteenth Amendments;

it will be unable to occupy and use its real property for a lawful use as it has been doing for nearly 20 years; it will be unable to continue to present constitutionally protected dance performances at its premises, and will suffer the loss of business revenues and profit, the loss of the economic use of their property; and, the loss of the value of its investment and good will, for all of which it is entitled to recover compensatory damages.

WHEREFORE, Follies demands upon Count 1 of its complaint a declaration that the Alcohol Code and the New Adult Code are unconstitutional under the First and Fourteenth Amendments to the United States Constitution, both on their face and as applied; and,

Upon Count 3 of its complaint, a declaration that the Alcohol Code and the New Adult Code are unconstitutional under the Art. I, § 1, ¶¶ 1, 2 and 5 of the Georgia Constitution, both on their face and as applied; and,

Upon Count 5 of the Complaint, a declaration that the Alcohol Code and the New Adult Code violate Art. I, § 10 of the United States Constitution; and,

Upon Count 7 of the Complaint, a declaration that the Alcohol Code and the Adult Code violate Art. I, § 1, ¶ X of the Georgia Constitution; and,

Upon Counts 2, 4, 6 and 8 of its Complaint, a

preliminary injunction and after final hearing, a permanent injunction, enjoining the City, its officers, agents, servants, attorneys and all those acting in concert and participation with them from enforcing the Alcohol Code or the New Adult Code against Follies; and

Upon Count 9 of its Complaint, compensatory damages in an amount to be determined at trial; and,

Upon all counts of its complaint, any other relief, whether legal or equitable, to which the Follies may be entitled, including its costs and reasonable attorney's fees.

Respectfully submitted,

WIGGINS LAW GROUP

BY: /s/ Cary S. Wiggins
Cary S. Wiggins
Ga. Bar No. 757657

Suite 401
260 Peachtree Street, NW
Atlanta, GA 30303
Telephone: (404) 659-2880
Facsimile: (404) 659-3274
www.wigginslawgroup.com