

ARTICLE 14

SEXUALLY ORIENTED BUSINESSES

SECTION – 1400 Purpose and Intent

It is the purpose and intent of this Article to regulate sexually oriented businesses to promote the health, safety, morals, and general welfare of the citizens of the County and to establish reasonable and uniform regulations to allow sexually oriented businesses in locations where their presence will cause no deleterious or adverse secondary effects. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent or effect of this ordinance 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 or effect of the ordinance to condone or legitimize the distribution of obscene material.

SECTION 1405 - Definitions

For the purpose of this Article, certain terms and words are defined as follows:

A. **Sexually Oriented Businesses** are those businesses defined as follows:

1. **Adult Arcade:** an establishment where pictures or images are shown by any medium or technology for viewing by five or fewer persons each, which are characterized by the depiction or descriptions of specified sexual activities or genital areas.
2. **Adult Novelty, Video or Bookstore:** a commercial establishment which has as a significant or substantial portion of its stock-in-trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising to the sale, rental for any form of consideration, of any one or more of the following:
 - a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, or other visual representations which are characterized by the depiction or description of specified sexual activities or specified anatomical areas;
 - b. Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or sexual abuse of themselves or others.
 - c. An establishment may have other principal business purposes that do not involve the offering for sale rental or viewing of materials depicting or describing specified sexual activities or specified anatomical areas, and still be categorized as adult bookstore, adult novelty store, or adult video store. Such

other business purposes will not serve to exempt such establishments from being categorized as an adult bookstore, adult novelty store or adult video store so long as one of its principal business purposes is offering for sale or rental, for some form of consideration, the specified materials which depict or describe specified anatomical areas or specified sexual activities.

3. **Adult Cabaret:** a nightclub, bar, restaurant, "bottle club", or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features: (a) persons who appear nude, semi-nude or in a state of nudity; (b) live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities", or (c) films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.
4. **Adult Motel:** a motel, hotel or similar commercial establishment which: (a) offers public accommodations, for any form of consideration, which provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" and which advertises the availability of this sexually oriented type of material by means of a sign visible from the public right-of way, or by means of any off-premises advertising including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television, or (b) offers a sleeping room for rent for a period of time less than ten (10) hours; or (c) allows a tenant or occupant to sub rent the sleeping room for a time period of less than ten (10) hours.
5. **Adult Motion Picture Theater:** a commercial establishment where films, motion pictures, video cassettes, slides or similar photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas are regularly shown for any form of consideration.
6. **Adult Theater:** a theater, concert hall, auditorium, or similar commercial establishment which, for any form of consideration, regularly features persons who appear in a state of nudity or live performances which are characterized by exposure of "specified anatomical areas" or by "specified sexual activities."
7. **Escort:** a person who, for any form of consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
8. **Escort Agency:** a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purpose for a fee, tip, or other consideration.
9. **Massage Parlor:** any place where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatments, or any other treatment manipulation of the human body which occurs as a part of, or in connection with "specified sexual activities", or where any person providing such treatment, manipulation, or service related thereto, exposes his or her "specified anatomical areas". The definition of sexually oriented business shall not include the

practice of massage in any licensed hospital, nor by a licensed hospital, nor by a licensed physician, surgeon, chiropractor or osteopath or therapist, nor by any nurse or technician working under the supervision of a licensed physician, surgeon, chiropractor or osteopath, nor by trainers for any amateur, semiprofessional or professional athlete or athletic team or school athletic program.

10. **Nude Model Studio:** any place where a person, who regularly appears in a state of nudity or displays "specified anatomical areas" is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.
 11. **Sexual Encounter Establishment:** a business or commercial establishment, that as one of its primary business purposes, offers for any form of consideration, a place where two or more persons may congregate, associate, or consort for the purpose of "specified sexual activities" or the exposure of "specified anatomical areas" or activities when one or more of the persons is in a state of nudity or semi-nude. The definition of sexually oriented businesses shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.
- B. **Employee** means a person who works or performs in and/or for a sexually oriented business, regardless of whether or not said person is paid a salary, wage or other compensation by the operator of said business.
- C. **Establishment** means and includes any of the following:
1. The opening or commencement of any such business as a new business;
 2. The conversion of an existing business, whether or not a sexually oriented business, to any of the sexually oriented businesses defined in this chapter;
 3. The addition of any of the sexually oriented businesses defined in this chapter to any other existing sexually oriented business; or
 4. The relocation of any such sexually oriented business.
- D. **Nudity or State of Nudity** means: (a) the appearance of human bare buttock, anus, male genitals, female genitals, or the areola or nipple of the female breast; or (b) a state of dress which fails to opaquely and fully cover a human buttocks, anus, male or female genitals, pubic region or areola or nipple of the female breast.
- E. **Operator** means and includes the owner, permit holder, custodian, manager, operator or person in charge of any permitted or licensed premises.
- F. **Permitted or Licensed Premises** means any premises that requires a license and/or permit and that is classified as a sexually oriented business.
- G. **Permittee and/or Licensee** means a person in whose name a permit and/or license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.
- H. **Person** means an individual, proprietorship, partnership, corporation, association, or other legal entity.

- I. **Public Building** means any building owned, leased or held by the United States, the state, the county, the city, any special district, school district, or any other agency or political subdivision of the state or the United States, which building is used for governmental purposes.
- J. **Public Park or Recreational Area** means public land which has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, open space, wilderness areas, or similar public land within the County which is under the control, operation, or management of the County park and recreation authorities.
- K. **Religious Institution** means any church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities.
- L. **Residential District or Use** means a single family, duplex, townhouse, multiple family, or mobile park or subdivision and campground as defined in the Decatur County Zoning Ordinance.
- M. **School** means any public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, primary schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities. "School" includes the school grounds, but does not include the facilities used primarily for another purpose and only incidentally as a school.
- N. **Semi-Nude** means a state of dress in which clothing covers no more than the genitals, pubic region, and areolae of the female breast, as well as portions of the body covered by supporting straps or devices.
- O. **Sexually Oriented Business** means an adult arcade, adult bookstore, adult novelty shop, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, massage parlor, sexual encounter establishment, escort agency or nude model studio.
- P. **Specified Anatomical Areas**, as used in this division, means and includes any of the following:
1. Human genitals, pubic region, buttocks, anus, or female breast below a point immediately above the top of the areolae; or
 2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- Q. **Specified Sexual Activities** as used in this division, means and includes any of the following:
1. The fondling or other intentional touching of human genitals, pubic region, buttocks, anus, or female breasts;
 2. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
 3. Masturbation, actual or simulated;
 4. Human genitals in a state of sexual stimulation, arousal or tumescence;
 5. Excretory functions as part of or in connection with any of the activities set forth in subdivisions (1) through (4) of this subsection.

- R. **Substantial Enlargement of a Sexually Oriented Business** means increase in the floor areas occupied by the business by more than 15%, as the floor areas exist on the effective date of establishment.
- S. **Transfer of Ownership or Control of a Sexually Oriented Business** means and includes any of the following:
1. The sale, lease or sublease of the business;
 2. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means;
 3. The establishment of a trust, gift or other similar legal device which transfers ownership or control of the business, except for transfer by bequest or other operation of law upon the death of a person possessing the ownership or control.

SECTION – 1410 Regulations for Sexually Oriented Businesses

The establishment of a sexually oriented business shall be permitted only in the specified B-3 zone as a Permanent Special Exception, and shall be subject to the following restrictions: No person shall cause or permit the establishment of any of the following sexually oriented businesses, as defined above and listed below, within 1,000 feet of another such Sexually Oriented Business or within 1,000 feet of any religious institution, school, boys club, girls club, or similar existing youth organization, or public park or public building, or within 1,000 feet of any property zoned for residential use or used for residential purposes. The Sexually Oriented Businesses are as follows:

1. Adult arcade
2. Adult bookstore, adult novelty store or adult video store
3. Adult cabaret
4. Adult motel
5. Adult motion picture theater
6. Adult theater
7. Massage parlor
8. Sexual encounter establishment
9. Escort agency, or
10. Nude model studio.

Nothing in this Section prohibits the location of sexually oriented business within retail shopping centers in all B-3 zones and within B-3 zones wherein such activities will have their only frontage upon enclosed malls or malls isolated from direct view from public streets, parks, schools, religious institutions, boys clubs, girls clubs, or similar existing youth organization, public buildings or residential districts or uses without regard to the distance requirements listed above.

SECTION – 1415 Measurement of Distance

The distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of each business. The distance between any sexually oriented business and any religious institution, public or private elementary or secondary school, boys club, girls club, or similar existing youth organization, or public park or public building or any properties zoned for residential use or used for residential purposes shall also be measured from the nearest portion of the building or structure used as part of the premises where the sexually oriented business is conducted, to the nearest property line of the premises of a religious institution, public or private elementary or secondary school, boys club, girls club, or similar existing youth organization or public park or public building or any properties zoned for residential use or used for residential purposes.

SECTION – 1420 Location of Sexually Oriented Businesses

Sexually Oriented Businesses shall be permitted only as provided in this section in which such use is listed as permissible. Permits for sexually oriented businesses shall be required and governed by the procedures and policies specified by this Ordinance. In addition, any sexually oriented business shall be subject to the following restrictions:

- A. No person shall operate or cause to be operated a sexually oriented business except as provided in this Article.
- B. No person shall operate or cause to be operated a sexually oriented business within 1,000 feet of: (a) any religious institution; (b) any school; (c) the boundary of any residential district; (d) a public park adjacent to any residential district; (e) a property line of a lot devoted to residential use; or (f) a boys club, girls club, or similar existing youth organization, except as provided in Article.
- C. No person shall operate or cause to be operated a sexually oriented business within 1,000 feet of another such business, which will include, any adult arcade, adult book store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, massage parlor or any sexual encounter establishment, except as provided in Article.
- D. No person shall cause or permit the operation, establishment, or maintenance of more than one sexually oriented business within the same building, structure, or portion thereof, except as provided in this Article, or cause the substantial enlargement of any sexually oriented business in any building, structure or portion thereof containing another sexually oriented business.
- E. A person appearing in a state of nudity for a modeling or painting class shall not be considered a Sexually Oriented Business if operated by a:
 1. Proprietary school, licensed by the State of Indiana; a college; junior college; or university supported entirely or partly by taxation;
 2. A private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
 3. In a structure in which the following apply:

- a. Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
- b. Where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and
- c. Where no more than one nude model is on the premises at any one time.

SECTION – 1425 Regulations Governing Existing Sexually Oriented Businesses

Any sexually oriented businesses lawfully operating prior to the effective date of this ordinance, that is in violation of this Article, shall be deemed a non-conforming use and subject to the requirements in Article 4 of this Ordinance.

