

# REGULATIONS GOVERNING SEXUALLY ORIENTED BUSINESSES IN THE TOWN OF MOORES HILL

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## 1. PURPOSE

### 1.1. The several purposes of these regulations include:

- 1.1.1. Regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the Town;
- 1.1.2. Establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the Town. 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 nor 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 this Ordinance to condone or legitimize the distribution of obscene material.

## 2. FINDINGS

- 2.1. The findings that follow are based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports, and on findings incorporated in the case of *Town of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991), and all other relevant Court decisions related to and concerning the adverse

secondary effects of adult uses on the community. Also taken into account in the findings are the results of land usage studies performed in other communities including, but not limited to Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; and also the findings contained in the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses, dated June 6, 1989, State of Minnesota. The findings of the Plan Commission and the Town Council are:

- 2.1.1. Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments.
- 2.1.2. There is at present no satisfactory system mechanism to make the owners of these establishments responsible for the activities that occur on their premises.
- 2.1.3. Certain employees of sexually oriented businesses defined in this Ordinance as "adult theaters" and "cabarets" engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.
- 2.1.4. Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows. Offering and providing such space encourages such activities, creating unhealthy conditions.
- 2.1.5. Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.
- 2.1.6. At least fifty (50) communicable diseases may be spread by activities occurring in sexually oriented businesses, including but not limited to: syphilis; gonorrhea; human immunodeficiency virus infection (HIV); acquired immunodeficiency syndrome (AIDS); genital herpes; hepatitis-B; Non-A, Non-B amebiasis; salmonella infections; and shigella infections.
- 2.1.7. Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by HIV in the United States.
- 2.1.8. The surgeon general of the United States in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.
- 2.1.9. According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, can be transmitted, among other ways, by sexual acts.
- 2.1.10. The number of cases of early (less than one year) syphilis in the United States reported annually has risen.
- 2.1.11. The number of cases of gonorrhea in the United States reported annually remains at a high level, with over one-half million cases reported in 1990.
- 2.1.12. Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.
- 2.1.13. Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where people view "adult" oriented films.
- 2.1.14. The findings noted in the preceding paragraphs raise substantial governmental concerns and a substantial governmental interest.
- 2.1.15. Sexually oriented businesses have operational characteristics, which should be reasonably regulated in order to protect those substantial governmental concerns and or interests.
- 2.1.16. A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Furthermore, such a licensing procedure will place a heretofore nonexistent incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety and welfare of its patrons and



employees, as well as the citizens of the Town. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.

- 2.1.17. Removal of doors on adult booths and requiring sufficient lighting on any premises that has adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in such areas.
- 2.1.18. Requiring licensees of sexually oriented businesses to maintain information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.
- 2.1.19. The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest and or concern in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.
- 2.1.20. It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct which this Ordinance is designed to prevent or who are likely to be witnesses to such activity.
- 2.1.21. The fact that an applicant for an adult use license has been convicted of a sexually or violent related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this Ordinance.
- 2.1.22. The barring of such individuals from the management of adult uses for a period of years serves as a deterrent to and prevents conduct, which leads to the transmission of sexually transmitted diseases.
- 2.1.23. The general welfare, health, morals and safety of the citizens of the Town will be promoted by the enactment of this Ordinance.

### 3. CLASSIFICATION

3.1. Sexually oriented businesses are classified as follows:

- 3.1.1. Adult arcades;
- 3.1.2. Adult bookstores, adult novelty stores, or adult video stores;
- 3.1.3. Adult cabarets;
- 3.1.4. Adult motels;
- 3.1.5. Adult motion picture theaters;
- 3.1.6. Adult theaters;
- 3.1.7. Escort agencies;
- 3.1.8. Nude model studios; and
- 3.1.9. Sexual encounter centers.

### 4. LICENSE REQUIRED

4.1. License Required. It is a violation of this Ordinance:

- 4.1.1. For any person to operate a sexually oriented business without a valid license to operate a sexually oriented business issued by the Town pursuant to this Ordinance.
- 4.1.2. For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the Town pursuant to this Ordinance.
- 4.1.3. For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this Ordinance.

- 4.2. An application for a license must be made in the form provided by the Town.
- 4.3. All applicants must be qualified according to the provisions of this Ordinance. The application may request and the applicant shall provide such information (including fingerprints) as to enable the Town to determine whether the applicant meets the qualifications established in this Ordinance.
- 4.4. If a person who wishes to operate a sexually oriented business is an individual, the person must sign the application for a license as an applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a 20 percent or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under the terms of this Ordinance and each applicant shall be considered a licensee if a license is granted.
- 4.5. Administrative Authority. The Town Council of the Town of Moores Hill shall be charged with processing the licensing requirements and issuing the license under this Ordinance, and with delegating authority and assigning responsibilities in order to carry out the functions and procedures under this Ordinance.
- 4.6. Where Permitted. A sexually oriented business shall be permitted to operate only in the zoning districts and in accordance with the Zoning Regulations of the Town of Moores Hill and other applicable County, State and Federal regulations and laws.
- 4.7. License to Operate a Sexually Oriented Business. The completed application for a sexually oriented business license shall contain the following information and shall be accompanied by the following documents:
  - 4.7.1. If the applicant is:
    - 4.7.1.1. An individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is 18 years of age;
    - 4.7.1.2. A partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any;
    - 4.7.1.3. A corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of its state of incorporation, the names and capacities of all officers, directors and principal stockholders, and the name of the registered corporate agent and the address of the registered office for service of process.
    - 4.7.1.4. A limited liability company (LLC), the LLC shall state its complete name, and the names of all managers and or members, evidence that the LLC is in good standing under the laws of its state of organization, the names and capacities of all officers, directors and principal members, and the name of the registered company agent and the address of the registered office for service of process.
    - 4.7.1.5. Any other business entity recognized or able to be operated in the State of Indiana, the name of all individuals with an ownership interest therein, evidence that said business is in good standing under the law, the names and capacities of all officers, members, directors, owners, partners, or any other individual who has decision making power within said business and the registered agent of said business for service of process.



- 4.7.2. If the applicant intends to operate the sexually oriented business under a name other than that of the applicant; he or she must state:
- 4.7.2.1. The sexually oriented business's trade name; and
  - 4.7.2.2. Submit the required registration documents.
- 4.7.3. Whether the applicant, or a person residing with the applicant, has been convicted of a specified criminal activity as defined in this Ordinance and if so, the specified criminal activity involved, the date, place, and jurisdiction of each.
- 4.7.4. Whether the applicant, or a person residing with the applicant, has had a previous license under this Ordinance or other similar sexually oriented business Ordinances from another Town or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or a person residing with the applicant has been a partner in a partnership or an officer, director or principal stockholder of a corporation, member manager or member of an LLC or any other person with a private business interest that is licensed under this Ordinance whose license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.
- 4.7.5. Whether the applicant or a person residing with the applicant holds any other licenses under this Ordinance or other similar sexually oriented business Ordinance from another Town or county and if so, the names and location of such other licensed businesses.
- 4.7.6. The single classification of license for which the applicant is filing.
- 4.7.7. The location of the proposed sexually oriented business, including a legal description of the property, a current physical survey of the property prepared by a licensed surveyor in the State of Indiana, evidence of clear title by way of title insurance, and the street address and telephone number(s), if any of said business.
- 4.7.8. The applicant's mailing address and residential address and the applicant's home and business phone numbers.
- 4.7.9. A recent photograph of the applicant(s) and any individual who is involved with the business including all professionals involved with the development of the business at the time of application.
- 4.7.10. The applicant's driver's license number, Social Security number, and/or his/her state or federally issued tax identification number.
- 4.7.11. A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram should be professionally prepared, and must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.
- 4.7.12. A current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within one-thousand (1,000) feet of the property to be certified; the property lines of any established religious institution/synagogue, residential zone, school or public park or recreation

area, institutions licensed to sell alcohol, and family oriented businesses within one-thousand (1,000) feet of the property to be certified. For purposes of this Ordinance, a use of land shall be considered existing or established if it is in existence at the time an application is submitted.

- 4.7.13. If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty (150) square feet of floor space, films, video cassettes, other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth in the chapter of this Ordinance concerning Regulations Pertaining to Exhibition of Sexually Explicit Films, Videos or Live Entertainment in Viewing Rooms.
- 4.8. License for an Employee of a Sexually Oriented Business. Before any applicant may be issued a sexually oriented business employee license, the applicant shall submit on a form to be provided by the Town the following information:
  - 4.8.1. The applicant's name or any other name (including "stage" names) or aliases used by the individual;
  - 4.8.2. Age, date, and place of birth;
  - 4.8.3. Height, weight, hair and eye color;
  - 4.8.4. Present residence address and telephone number;
  - 4.8.5. Present business address and telephone number;
  - 4.8.6. Date, issuing state and number of driver's permit or other identification card information;
  - 4.8.7. Social Security number;
  - 4.8.8. Proof that the individual is at least eighteen (18) years of age;
  - 4.8.9. Address for the last ten (10) years; and
  - 4.8.10. Any denial of a sexually oriented business application in any other municipality, county or state for the last ten (10) years by the business or any individual acting on behalf of the company.
  - 4.8.11. The following shall be attached to the application for a sexually oriented business employee license:
    - 4.8.11.1. A color photograph of the applicant clearly showing the applicant's face and the applicant's fingerprints on a form provided by the police department. The applicant shall pay any fees for the photographs and fingerprints.
    - 4.8.11.2. A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate, in this or any other county, town or state has ever had a license, permit or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked or suspended. In the event of any such denial, revocation, or suspension, state the name, the name of the



issuing or denying jurisdiction, and describe in full the reason for the denial, revocation, or suspension shall be attached to the application.

- 4.8.11.3. A statement whether the applicant has been convicted of a specified criminal activity as defined in this Ordinance and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.

## 5. APPLICATION FOR AND ISSUANCE OF LICENSE

- 5.1. Health and Safety Regulations. The applicant under this Ordinance must be in compliance with all regulations and laws promulgated by the Town and by any county, state or federal agency that has jurisdiction over the land or the business. The Town Plan Commission, County Health Department, Fire Department, Town Police Department and the County Building Official, and/or any like kind department, shall complete their certification that the premises is or is not in compliance with all applicable regulations within seventy-five (75) days of receipt of the application by the Town. An extension of this time may be made by the Town Council upon good cause shown. The applicant must have written confirmation from the Dearborn County Health Department that the business applied for will comply with all health and safety provisions under the guidance and authority of the County Health Department.

- 5.2. Business License. Within ninety (90) days after receipt of a completed sexually oriented business application, the Town shall approve or deny the issuance of a license to an applicant. The Town may extend this period for a time of up to sixty (60) days upon good cause shown. The

- 52.1. Town shall approve the issuance of a license to an applicant unless by a preponderance of the evidence any one or more of the following conditions is determined to exist:

52.1.1. An applicant is under eighteen (18) years of age;

52.1.2. An applicant or a person with whom applicant is residing is overdue in payment of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business;

52.1.3. An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;

52.1.4. An applicant or a person with whom the applicant is residing has been denied a license by the Town to operate a sexually oriented business within the preceding twelve (12) months or whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months.

52.1.5. An applicant or a person with whom the applicant is residing has been convicted of a specified criminal activity as defined in this Ordinance.

52.1.6. The premises to be used for the sexually oriented business has not been approved by the Town Plan Commission, County Health Department, Fire Department, or the County Building Official as being in compliance with applicable laws and Ordinances.

52.1.7. The application, investigation and license fee required by this Ordinance has not been paid.

- 52.1.8. An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this Ordinance.
- 52.2. The license if granted shall state on its face the name of the person or persons to whom it is issued, the expiration date, the address of the sexually oriented business, and the classification as specified in this Ordinance for which the license is issued.
- 52.3. A sexually oriented business license shall issue for only one classification as found in this Ordinance.
- 5.3. Employee License. Upon the filing of said application for a sexually oriented business employee license, the Town shall issue a temporary license to said applicant. The application shall then be referred to the appropriate Town departments for an investigation to be made on such information as is contained on the application. The application process shall be completed within ninety (90) days from the date the completed application is filed.
- 5.3.1. After the investigation, the Town shall issue a license unless by a preponderance of the evidence any one or more of the following conditions is determined to exist:
- 5.3.1.1. The applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
- 5.3.1.2. The applicant is under the age of eighteen (18) years;
- 5.3.1.3. The applicant has been convicted of a "specified criminal activity" as defined in this Ordinance;
- 5.3.1.4. The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this Ordinance; or
- 5.3.1.5. The applicant has had a sexually oriented business employee license revoked by any governmental body within four (4) years of the date of the current application. If the sexually oriented business employee license is denied, any temporary license previously issued is immediately deemed null and void. Denial, suspension, or revocation of a license issued pursuant to this section shall be subject to appeal as set forth in this Ordinance.
- 5.3.2. The license if granted shall state on its face the name of the person to whom it is issued and the expiration date.
- 5.4. Annual Renewal. A license issued pursuant to this Ordinance shall be subject to annual renewal upon the written application of the applicant and a finding by the Town that the applicant has not been convicted of any specified criminal activity as defined in this Ordinance or committed any act during the existence of the previous license, which would be grounds to deny the initial license application, and subject to satisfaction of all other requirements for issuance of a license pursuant to this Ordinance. The renewal of the license shall also be subject to the payment of the fee as set forth in this Ordinance.
- 5.5. Posting of Licenses. All licenses shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that they may be easily read at any time.
- 5.6. License Transfer. A licensee shall not transfer his/her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.



## **6. LICENSE FEES**

### **6.1. License to Operate a Sexually Oriented Business.**

- 6.1.1. Every application for a sexually oriented business license, whether for a new license or for renewal of an existing license, shall be accompanied by a non-refundable application and investigation fee of seven hundred and fifty dollars (\$750).
- 6.1.2. In addition to the application and investigation fee required above, at the time of issuance of a license to a sexually oriented business, whether for a new license or for renewal of an existing license, the applicant therefor shall pay a non-refundable license fee of two-hundred and fifty dollars (\$250).

### **6.2. License for an Employee of a Sexually Oriented Business.**

- 6.2.1. Every application for a sexually oriented business employee license, whether for a new license or for renewal of an existing license, shall be accompanied by a non-refundable application, investigation, and license fee of two hundred and fifty dollars (\$250).

6.3. All license fees shall be paid to the Clerk-Treasurer of the Town.

6.4. The above referenced fees shall be used for investigative and administrative purposes. The purpose of the fee is not to limit or prohibit the ability to establish such businesses under this Ordinance in any way.

## **7. EXPIRATION AND RENEWAL OF LICENSE**

- 7.1. Expiration. Each license shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in this Ordinance. Application for renewal shall be made at least thirty (30) days before the expiration date. The expiration of the license will not be affected by the application.
- 7.2. Renewal not Approved. If the Town Council denies renewal of a license the applicant shall not again make application for a license for at least one (1) year from the date of denial.

## **8. LICENSE SUSPENSION**

- 8.1. The Town shall suspend a license for a period not to exceed thirty (30) days if it determines that a license or an employee of a licensee has:
  - 8.1.1. Violated or is not in compliance with any provision of this Ordinance; or
  - 8.1.2. Refused to allow an inspection of the sexually oriented business premises as authorized by this Ordinance.

## **9. LICENSE REVOCATION**

- 9.1. Cause for Revocation. The Town Council shall revoke a license if it determines that:
  - 9.1.1. A cause for suspension has occurred as provided in this Ordinance and the offender's license has been suspended within the proceeding twelve (12) months;
  - 9.1.2. A licensee gave false or misleading information in the material submitted during the application process;

- 9.1.3. A licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;
  - 9.1.4. A licensee has knowingly allowed prostitution on the premises;
  - 9.1.5. A licensee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended or revoked;
  - 9.1.6. A licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises; or
  - 9.1.7. A licensee is delinquent in the payment of any taxes or fees to any unit of government.
92. Duration of Revocation. Revocation shall begin on the date that the license was revoked by the Town Council, and the licensee shall not be issued a sexually oriented business license for one (1) year from the date the revocation became effective. If subsequent to revocation the Town Council finds that the basis for the revocation has been corrected or abated, the applicant may be granted a new license if at least ninety (90) days have elapsed since the date the revocation became effective. The new license shall be subject to payment of all application and other fees required by this Ordinance as for a new license.
93. Appeals. After denial of an application for a new or renewal license, or suspension or revocation of any license, the applicant or owner of the license may request an administrative hearing before the Town Council. The Town Council shall provide notice of the hearing in accordance with IC 5-3-1 and the applicant shall pay all costs of such notice. The Council shall conduct an administrative hearing in which evidence will be presented and findings will be made, after which the Council will either affirm the revocation, modify the revocation in some manner, or overturn the revocation. The decision of the Town Council shall be final, subject only to the determination of a court of competent jurisdiction.

## 10. HOURS OF OPERATION

- 10.1. Businesses operating under this Ordinance shall not open before 12:00 noon each day, shall close by 10:00 p.m. each day, and shall not be open on Sunday. All times in this provision are local times.

## 11. INSPECTIONS

- 11.1. An applicant or licensee shall permit representatives of the Police Department, County Health Department, Fire Department, Plan Commission or County Building Department or other authorized departments or agencies to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law at any time that it is occupied or open for business.
- 11.2. A person who operates a sexually oriented business or his agent or employee violates this Ordinance if he refuses to permit such lawful inspection of the premises at any time it is open for business.

## 12. ADULT MOTELS

- 12.1. Evidence that a sleeping room in a hotel, motel, or a similar commercial establishments has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttal presumption that the establishment is an adult motel as that term is defined in this Ordinance.



122. A person commits a violation of this Ordinance if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented license, he rents or sub-rents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or sub-rents the same sleeping room again.
123. For purposes of the preceding section of this Ordinance, the terms "rent" or "sub-rent" mean the act of permitting a room to be occupied for any form of consideration.

### **13. SEXUALLY EXPLICIT FILMS, VIDEOS OR LIVE ENTERTAINMENT IN VIEWING ROOMS**

- 13.1. A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, live entertainment or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:
- 13.1.1. Upon application for a sexually oriented license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6") inches. The Town Council may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
- 13.1.2. The application shall be sworn to be true and correct by the applicant.
- 13.1.3. No alteration in the configuration or location of a manager's station may be made without the prior approval of the Town Council.
- 13.1.4. It is the duty of the licensee of the premises to ensure that at least one licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
- 13.1.5. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this provision must be by direct line of sight from the manager's station.
- 13.1.6. It shall be the duty of the licensee to ensure that the view area specified in the preceding paragraph remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as

an area in which patrons will not be permitted in the application filed pursuant to this chapter.

- 13.1.7. No viewing room may be occupied by more than one person at any time.
- 13.1.8. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot-candles as measured at the floor level.
- 13.1.9. It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
- 13.1.10. No licensee shall allow openings of any kind to exist between viewing rooms or booths.
- 13.1.11. No person shall make or attempt to make an opening of any kind between viewing booths or rooms.
- 13.1.12. The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.
- 13.1.13. The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces with no rugs or carpeting.
- 13.1.14. The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily-cleaned material. No wood, plywood, composition board or other porous material shall be used within forty eight (48") inches of the floor.
- 13.1.15. A person having a duty under the preceding paragraphs 12.1.1 through 12.1.14 of this chapter is in violation of this Ordinance if he knowingly fails to fulfill that duty.

#### **14. ESCORT AGENCIES**

- 14.1. An escort agency shall not employ any person under the age of 18 years.
- 14.2. A person commits is in violation of this Ordinance if the person acts as an escort or agrees to act as an escort for any person under the age of 18 years.

#### **15. NUDE MODEL STUDIOS**

- 15.1. A nude model studio shall not employ any person under the age of 18 years.
- 15.2. A person under the age of 18 years commits is in violation of this Ordinance if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio, except in a restroom not open to public view nor visible to any other person.
- 15.3. A person is in violation of this Ordinance if the person appears in a state of nudity or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right of way.
- 15.4. A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.



## **16. PUBLIC NUDITY**

- 16.1. It shall be a violation of this Ordinance for a person who knowingly and intentionally, in a sexually oriented business, appears in a state of nudity or depicts specified sexual activities.
- 16.2. It shall be a violation of this Ordinance for a person who knowingly or intentionally in a sexually oriented business appears in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least ten (10) feet from any patron or customer and on a stage at least two (2) feet from the floor.
- 16.3. It shall be a violation of this Ordinance for an employee, while semi-nude in a sexually oriented business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any employee, while said employee is semi-nude in a sexually oriented business.
- 16.4. It shall be a violation of this Ordinance for an employee, while semi-nude to touch a customer or the clothing of a customer.
- 16.5. A person does not commit an infraction of this provision if that person appearing in a state of nudity did so in a modeling class in a nude model studio as defined in this Ordinance.

## **17. PROHIBITION AGAINST CHILDREN IN SEXUALLY ORIENTED BUSINESSES**

- 17.1. A person violates the provisions of this Ordinance if the person knowingly allows a person under the age of eighteen (18) years on the premises of a sexually oriented business.

## **18. PENALTIES**

- 18.1. Each violation of any term of this Ordinance is punishable by a fine of one hundred dollars (\$100) per violation. Each day that a violation continues is a separate violation and subject to the fine just specified. A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of chapters 11 through 16 inclusive of this Ordinance is subject to a suit for injunction or other applicable court ordered relief.

## **19. SEVERABILITY**

- 19.1. If any chapter, section, provision or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid by a court of competent jurisdiction, the validity of the remaining chapters, sections, provisions and clauses shall not be affected.

## **20. DEFINITIONS**

- 20.1. The definitions in this chapter apply throughout this Ordinance. Terms not defined in this chapter shall have the meanings customarily assigned to them.
- 20.2. Adult Arcade. Any place to which the public is permitted or invited wherein are maintained for any form of consideration, electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas" as defined herein.
- 20.3. Adult Bookstore, Adult Novelty Store or Adult Video Store. A commercial establishment in which twenty percent (20%) or more of the inventory by quantity is offered for sale or rental for any form of consideration, and which inventory includes any one or more of the following:



- 203.1. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas;" or
- 203.2. Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities."
- 203.3. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as an adult bookstore, adult novelty store, or adult video store so long as the provisions in this definition are satisfied.
- 204. Adult Cabaret. A nightclub, bar, restaurant, or similar commercial establishment which regularly features:
  - 204.1. Persons who appear in a state of nudity or semi-nude; or
  - 204.2. Live performances which are characterized by the exposure of "specified anatomical area" or by "specified sexual activities;" or
  - 204.3. 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."
- 205. Adult Motel. A hotel, motel or similar commercial establishment which:
  - 205.1. Offers accommodations to the public for any form of consideration; and
  - 205.2. 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 one of the following:
    - 205.2.1. Has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions; or
    - 205.2.2. Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
    - 205.2.3. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.
- 206. Adult Motion Picture Theater. A commercial establishment where for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical area," which shall include but is not limited to movies rated "NC-17" and/or "X." Movies rated "R" are not included in this definition.
- 207. Adult Theater. A theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities," which shall include but is not limited to movies rated "NC-17" and/or "X." Movies rated "R" are not included in this definition.
- 208. Employee. A person who performs any service on the premises of a sexually oriented business on a full time, part time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. "Employee" does not include a person on the premises exclusively for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.



- 20.9. Escort. A person who for any form of consideration agrees or offers to act as a sexual companion for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
- 20.10. Escort Agency. A person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip or any other form of consideration.
- 20.11. Establishment. Includes any of the following:
- 20.11.1. The opening or commencement of any sexually oriented business as a new business;
  - 20.11.2. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
  - 20.11.3. The addition of any sexually oriented business to any other existing sexually oriented business; or
  - 20.11.4. The relocation of any sexually oriented business.
- 20.12. Licensee. A "licensee" shall be any of the following:
- 20.12.1. A person in whose name a license has been issued in order to operate a sexually oriented business;
  - 20.12.2. Any person listed as an applicant on the application for a license to operate a sexually oriented business; or
  - 20.12.3. A person in whose name a license has been issued authorizing employment in a sexually oriented business.
- 20.13. Nude Model Studio. Any place where a person who appears semi-nude, in a state of nudity, or who displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. "Nude Model Studio" shall not include:
- 20.13.1. A proprietary school licensed by the State of Indiana or a college, junior college or university supported entirely or in part by public taxation; or
  - 20.13.2. 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
  - 20.13.3. When in a structure:
    - 20.13.3.1. No sign is visible from the exterior of the structure and no other advertising that indicates a nude or semi nude person is available for viewing; and
    - 20.13.3.2. Where in order to participate in a class a student must enroll at least three days in advance of the class; and
    - 20.13.3.3. Where no more than one nude or semi-nude model is on the premises at any one time.
- 20.14. Nudity or a State of Nudity. Shall mean any of the following:
- 20.14.1. The showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering;
  - 20.14.2. The showing of the female breast with less than a fully opaque covering of the nipple; or
  - 20.14.3. The showing of the covered male genitals in a discernibly turgid state.
- 20.15. Person. An individual, proprietorship, partnership, corporation, association, limited liability company or partnership or any other legal entity recognized under local, state, federal or international law.

- 20.16. Semi-Nude or in a Semi-Nude Condition. The showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.
- 20.17. Sexual Encounter Center. A business or commercial enterprise that, as one of its business purposes, offers for any form of consideration:
- 20.17.1. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- 20.17.2. Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.
- 20.18. Sexually Oriented Business. An adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio or sexual encounter center.
- 20.19. Specified Criminal Activity. Shall mean any of the following offenses:
- 20.19.1. Prostitution or promotion of prostitution;
- 20.19.2. Dissemination of obscenity;
- 20.19.3. Sale, distribution or display of harmful material to a minor;
- 20.19.4. Sexual performance by a child;
- 20.19.5. Possession or distribution of child pornography;
- 20.19.6. Public lewdness;
- 20.19.7. Indecent exposure;
- 20.19.8. Indecency with a child;
- 20.19.9. Engaging in organized criminal activity;
- 20.19.10. Sexual assault;
- 20.19.11. Molestation of a child;
- 20.19.12. Gambling;
- 20.19.13. Distribution of a controlled substance; or
- 20.19.14. Any similar offenses to those described above under the criminal or penal code of other states for which:
- 20.19.14.1. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
- 20.19.14.2. Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
- 20.19.14.3. Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.
- 20.19.14.4. The fact that a conviction is being appealed shall have no effect on the disqualification of the application or a person residing with the applicant.
- 20.20. Specified Sexual Activities. Shall mean any of the following:
- 20.20.1. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts; or
- 20.20.2. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy.