

Section 14.09 Entertainment and Recreation

The following requirements shall be complied with for the specified use of a Sexually Oriented Business:

a) **Sexually Oriented Businesses**

- (1) *Purpose.* It is the purpose of this section to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the County, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the County. The provisions of this section have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the purpose nor effect of this section to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the purpose nor effect of this section to condone or legitimize the distribution of obscene material.
- (2) *Findings and Rationale.* Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Board of County Commissioners, and on findings, interpretations, and narrowing constructions incorporated in numerous cases, including, but not limited to, *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *Pap's A.M. v. City of Erie*, 529 U.S. 277 (2000); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *California v. LaRue*, 409 U.S. 109 (1972); as well as in the cases of *Artistic Entertainment, Inc. v. City of Warner Robins*, 223 F.3d 1306 (11th Cir. 2000); *Peek-A-Boo Lounge of Bradenton, Inc. v. Manatee County*, 337 F.3d 1251 (11th Cir. 2003); *Peek-A-Boo Lounge of Bradenton, Inc. v. Manatee County*, 630 F.3d 1346 (11th Cir. 2011); *Gary v. City of Warner Robins*, 311 F.3d 1334 (11th Cir. 2002); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Wise Enters. v. Unified Gov't of Athens-Clarke County*, 217 F.3d 1360 (11th Cir. 2000); *BZAPs, Inc. v. City of Mankato*, 268 F.3d 603 (8th Cir. 2001); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 U.S. 1186 (9th Cir. 2004); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *Ward v. County of Orange*, 217 F.3d 1350 (11th Cir. 2000); *Boss Capital, Inc. v. City of Casselberry*, 187 F.3d 1251 (11th Cir. 1999); *David Vincent, Inc. v. Broward County*, 200 F.3d 1325 (11th Cir. 2000); *Sammy's of Mobile, Ltd. v. City of Mobile*, 140 F.3d 993 (11th Cir. 1998); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (11th Cir. 1999); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 973 F.Supp. 1428 (M.D. Fla. 1997); *Grand Faloon Tavern, Inc. v. Wicker*, 670 F.2d 943 (11th Cir. 1982); *Board of County Commissioners v. Dexterhouse*, 348 So.2d 916 (Ct. App. Fla. 1977); *International Food & Beverage Systems v. Ft. Lauderdale*, 794 F.2d 1520 (11th Cir. 1986); and other cases; and on reports of secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Planning Department of Phoenix, Arizona (1979) "Adult Business Study"; "Report of the Attorney General's Working group on the Regulation of Sexually Oriented Businesses" State of Minnesota (1989); Houston City Council (1997) "Sexually Oriented Business Ordinance Revision Committee Legislative Report"; Department of Metropolitan Development of Indianapolis, Indiana (1984) "Adult Entertainment Businesses in Indianapolis"; Planning Department, City of Amarillo, Texas (1977) "A Report of Zoning and Other Methods of Regulating Adult Entertainment in Amarillo"; Garden Grove, California (1991) "Negative Secondary Effects of Sexually Oriented Businesses: Summaries of Key Reports"; Department of City Planning, Los Angeles, California (1977) "Study of the Effects of the Concentration of Adult Entertainment Establishments"; Staff Report, Whittier, California (1978) "Amendment to Zoning Regulations"; City Council of Austin, Texas (1986) "Report on

Adult Oriented Businesses in Austin”; Community Development Department, Oklahoma City, Oklahoma (1986) “Adult Entertainment Businesses in Oklahoma City”; Peter Malin, Dallas, Texas (1997) “An Analysis of the Effects of SOBs on Surrounding Neighborhoods”; Insight Associates, New York Times Square Study (1994) “Report on the Secondary Effects of the Concentration of Adult Use Establishments in the Times Square Area”; Phoenix, Arizona (1995-98) “Adult Cabarets Factual Record”; Richard McCleary, Ph.D., Greensboro, North Carolina (2003) “A Methodological Critique of the Linz-Yao Report: Report to the Greensboro City Attorney”; and, based upon reports concerning secondary effects occurring in and around sexually oriented businesses in and around LaPorte County: A Study of Sexually Oriented Businesses, Final Report, LaPorte County, Indiana, by Duncan Associates, dated August, 2012.

(3) The LaPorte County Board of Commissioners now finds:

- a. Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, public safety risks, prostitution, potential spread of disease, lewdness, public indecency, illicit sexual activity, illicit drug use and drug trafficking, negative impacts on surrounding properties, litter, and sexual assault and exploitation.
- b. Each of the foregoing negative secondary effects constitutes a harm which the County has a substantial government interest in preventing and/or abating in the future. This substantial government interest in preventing secondary effects, which is the County's rationale for this section, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the County's interest in regulating sexually oriented businesses extends to future secondary effects that could occur in the County related to current sexually oriented businesses as well as sexually oriented businesses that may locate in the County in the future. The County finds that the cases and secondary effects documentation relied on in this section are reasonably believed to be relevant to said secondary effects.

(4) Definitions:

- a. “*Adult Bookstore or Adult Video Store*” means a commercial establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides or other visual representations which are characterized by their emphasis upon the display of “specified sexual activities” or “specified anatomical areas.” A “principal business activity” exists where the commercial establishment meets any one or more of the following criteria:
 - (i) At least 35% of the establishment’s displayed merchandise consists of said items; or,
 - (ii) At least 35% of the wholesale value of the establishment’s displayed merchandise consists of said items; or,
 - (iii) At least 35% of the retail value (defined as the price charged to customers) of the establishment’s displayed merchandise consists of said items; or,
 - (iv) At least 35% of the establishment’s revenues derive from the sale or rental, for any form of consideration, of said items; or,

- (v) The establishment maintains at least 35% of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items shall be included in "floor space" maintained for the display, sale, or rental of said items); or,
- (vi) The establishment maintains at least five hundred square feet (500 sq. ft.) of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items shall be included in "floor space" maintained for the display, sale, or rental of said items); or,
- (vii) The establishment regularly offers for sale or rental at least two thousand (2,000) of said items; or,
- (viii) The establishment regularly features said items and regularly advertises itself or holds itself out, by using "adult," "adults-only," "XXX," "sex," "erotic," "novelties," or substantially similar language, as an establishment that caters to adult sexual interests; or,
- (ix) The establishment maintains an "adult arcade," which means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting "specified sexual activities" or "specified anatomical areas."
- b. "*Adult Cabaret*" means a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment, regardless of whether alcoholic beverages are served, which regularly features live conduct characterized by semi-nudity. No establishment shall avoid classification as an adult cabaret by offering or featuring nudity.
- c. "*Adult Motion Picture Theater*" means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas" are regularly shown to more than five people for any form of consideration.
- d. "*Semi-Nude Model Studio*" means a place where persons regularly appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. This definition does not apply to any place where persons appearing in a state of semi-nudity did so in a class operated:
- (i) By a college, junior college, or university supported entirely or partly by taxation;
- (ii) By 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,
- (iii) In a structure:
- (1) Which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; and,
- (2) Where, in order to participate in a class a student must enroll at least three days in advance of the class.

- e. *“Sexual Device Shop”* means a commercial establishment that regularly features sexual devices. This definition shall not be construed to include any pharmacy, drug store, medical clinic, any establishment primarily dedicated to providing medical or healthcare products or services, or any establishment that does not limit access to its premises or a portion of its premises to adults only.
- f. *“Sexually Oriented Bath House”* means an enterprise where a portion of its business is offering baths and/or showers with other persons present who are nude or displaying specified anatomical areas.
- g. *“Sexually Oriented Body Painting Studio”* means an establishment where a portion of its business is the application of paint or other substance to or on the human body by any means of application, technique, or process when the subject’s body displays for the patron’s view specified anatomical areas.
- h. *“Sexually Oriented Business”* means an “adult bookstore or adult video store,” an “adult cabaret,” an “adults motion picture theater,” a “semi-nude model studio,” or a “sexual device shop,” sexually oriented bath house,” “sexually oriented body painting studio,” or a “sexually oriented encounter center.”
- i. *“Sexually Oriented Encounter Center”* means a business or enterprise that offers physical contact between two or more persons when one or more of the persons are in a statue of nudity or semi-nudity, for the purpose of engaging in specified sexual activity or touching specified anatomical areas, but not including a sexually oriented cabaret or nightclub.

(5) *Locational Requirements for Sexually Oriented Businesses.*

- a. No sexually oriented businesses shall be located within five hundred (500) feet of any unincorporated area in LaPorte County zoned Residential.
- b. No sexually oriented business may be located within One Thousand (1,000) feet from the following:
 - i. Public, private or parochial school;
 - ii. Library;
 - iii. Park, playground or other recreation facility which admits minors;
 - iv. Day care center or nursery schools;
 - v. Church, temple or other similar place of worship;
 - vi. Any establishment having a liquor license;
 - vii. Dance clubs catering primarily to teenagers, ice or roller skating rinks, movie theaters and other similar uses which typically cater to children and teenagers.
- c. *Locational Restrictions in Relation to Other Sexually Oriented Businesses.* It shall be unlawful to locate any sexually oriented business within one thousand (1,000) feet of any other sexually oriented business.
- d. *Method of Measuring Distances.* Distances shall be measured from property line to property line along the shortest distance between property lines, without regard to the route of normal travel.

(6) *Nonconforming Sexually Oriented Businesses.* Sexually oriented businesses which have been established at their existing locations as of the effective date of this Amendment, which have become nonconforming as a result of the adoption of this Amendment may be continued or maintained only in conformance with Article 29 of this Ordinance regarding nonconformities.

(7) *Prohibited Uses:*

The following sexually oriented businesses are prohibited:

- a. Massage studio business not operated by or under the supervisions of a medical professional, or by a person licensed to practice massage therapy in the State of Indiana;
- b. Sexually oriented bathhouse;
- c. Sexually oriented encounter center;
- d. Any other sexually oriented business not included under the permitted sexually oriented uses, except for in this Chapter.

(8) *Permitted Sexually Oriented Uses:*

The following sexually oriented businesses are permitted uses, subject to the provisions of this Article, and the Joint Zoning Ordinance of LaPorte County.

- a. Adult bookstore;
- b. Adult video store;
- c. Adult cabaret;
- d. Adult motion picture theater;
- e. Sexual device shop;
- f. Sexually oriented body painting studio;
- g. Semi-nude model studio.

(9) *Effect on Other Ordinances.*

Nothing in this Article shall be construed to supersede any other Ordinance which affects sexually oriented businesses under the LaPorte County Ordinances. In the event of a conflict with any other LaPorte County Ordinance, the more stringent interpretation shall apply.