

**Floyd County Board of Commissioners  
Ordinance Pertaining to Establishment of Adult Business and Adult Business  
Employee Licensing Ordinance**

Whereas, the Floyd County Board of Commissioners met on June 19, 2007, in this matter pursuant to the establishment of an Adult Business and Adult Business Employee Licensing Ordinance

Whereas, the Board received from the Floyd County Planner's Office an informational packet describing the current conditions and current range of adult businesses in the county and an information based on studies of the negative impacts associated with adult businesses:

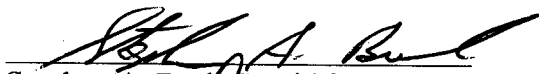
Whereas, the County Commissioners desire to offer the highest degree of protection for the public against the impacts of adult businesses in the community and offer an means for the proper operation of adult businesses within the unincorporated areas of Floyd County,

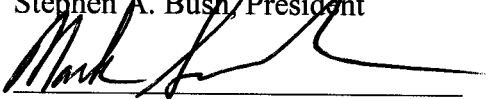
NOW, THEREFORE,

BE IT RESOLVED that Floyd County Adult Business Licensing Ordinance is adopted.

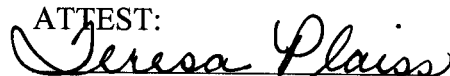
SO RESOLVED this 19<sup>th</sup> day of June 2007.

BOARD OF COMMISSIONERS  
COUNTY OF FLOYD

  
Stephen A. Bush, President

  
Mark Seabrook, Commissioner

  
Charles Freiberger, Commissioner

ATTEST:  
  
Teresa Plaiss, County Auditor

FLOYD COUNTY ORDINANCE NO. 2007-     XI      
SEXUALLY ORIENTED BUSINESSES - LICENSING AND REGULATION

**1.0 Definitions**

**ADULT CABARET** means a nightclub, bar, restaurant, or similar commercial establishment that as a substantial or significant portion of its business regularly features: (1) persons who appear in areas of the establishment open to patrons in a "state of nudity" or "state of semi-nudity" so as to expose to view "specified anatomical areas"; or (2) any live entertainment, exhibition, performance, or dance by persons whose entertainment, exhibition, performance, or dance is characterized by an emphasis on the depiction or description of "specified anatomical areas" or "specified sexual activities";

**ADULT MEDIA** means magazines, books, photographic reproductions, videotapes, movies, slides, compact discs in any format (e.g., CD-ROM, CD-r, CD-rw), digital video discs in any format (e.g., DVD), other devices used to reproduce or record computer images, or other print, video, film, electronic, computer-based, analog, or digital media characterized by an emphasis on matter depicting, describing or related to "specified sexual activities" or "specified anatomical areas."

**ADULT MEDIA STORE** means an establishment that rents and/or sells adult media and that meets any of the following tests: (1) more than 15 percent of the gross public floor area is devoted to adult media; or more than 15 percent of the stock in trade consists of adult media; or (2) a media store which advertises or holds itself out in any forum as a **SEXUALLY ORIENTED BUSINESS** by use of such terms as "X-rated," "XXX," "adult," "sex," "nude," or otherwise advertises or holds itself out as a **SEXUALLY ORIENTED BUSINESS**.

**ADULT MOTION PICTURE THEATER** means a commercial establishment occupying a building or portion of a building (including any portion of a building which contains more than 150 square feet) where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions, or other projected images are regularly shown, if such establishment as a prevailing practice excludes minors by virtue of age, regardless of whether the minor is accompanied by a parent or guardian, or if, as a prevailing practice, the films, motion pictures, video cassettes, slides or similar photographic reproductions, or other projected images presented are characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.

**ADULT NOVELTY STORE** means a business offering goods for sale or rent and that meets any of the following tests: (1) more than 5 percent of the stock in trade of the business consists of "sexually-oriented novelties or toys" and more than 5 percent of the gross public floor area of the business is devoted to the display of "sexually-oriented novelties or toys"; or (2) it offers for sale items from any 2 of the following categories: "adult media," "sexually-oriented novelties or toys," apparel or other items marketed or presented in a context to suggest their use for sadomasochistic practices, and the combination of such items constitutes more than 10 percent of the stock in trade of the

business and occupies more than 10 percent of the gross public floor area of the business; or (3) which advertises or holds itself out in any forum as a **SEXUALLY ORIENTED BUSINESS** by use of such terms as “sex toys, “marital aids,” “X-rated,” “XXX,” “adult,” “sex,” “nude,” or otherwise advertises or holds itself out as a **SEXUALLY ORIENTED BUSINESS**. **ADULT NOVELTY STORE** shall not include any establishment which, as a substantial portion of its business, offers for sale or rental to persons employed in the medical, legal or education professions anatomical models, including representations of human genital organs or female breasts, or other models, displays, and exhibits produced and marketed primarily for use in the practice of medicine or law or for use by an educational institution.

**ADULT THEATER** means a theater, concert hall, auditorium, or similar commercial establishment that as a substantial or significant portion of its business regularly features persons who appear in a state of nudity or semi-nudity, live performances which are characterized by an emphasis on the depiction or description of “specified anatomical areas,” “specified sexual activities,” or live entertainment of an erotic nature that is characterized by an emphasis on the depiction or description of “specified anatomical areas,” or “specified sexual activities”.

**EMPLOYEE** means a person who performs any service or work on the premises of a Sexually Oriented Business, including but not limited to providing entertainment, performing work of a management or supervisory nature, or performing support functions, 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.

**EMPLOYEE STATION** means an area on the premises of a Sexually Oriented Business designated for occupancy exclusively by one or more employees whose duties include assuring compliance with the provisions of this chapter.

**NUDE or STATE OF NUDITY** means exposing to view the genitals, pubic area, vulva, perineum, anus, anal cleft or cleavage, or pubic hair with less than a fully opaque covering; exposing to view any portion of the areola of the female breast with less than a fully opaque covering; exposing to view male genitals in a discernibly turgid state, even if entirely covered by an opaque covering; or exposing to view any device, costume, or covering that gives the appearance of or simulates any of these anatomical areas.

**SEMI-NUDITY or SEMINUDE CONDITION or SEMI-NUDE** means exposing to view, with less than a fully opaque covering, any portion of the female breast below the top of the areola or any portion of the buttocks. This definition shall include the entire lower portion of the female breast, but shall not include any portion of the cleavage of the female breast exhibited by a dress, blouse, shirt, leotard, bathing suit, or other clothing, provided that the areola is not exposed in whole or in part.

**SEXUAL DEVICE** means any three-dimensional object designed and marketed for stimulation of the male or female human genital organ or anus, or for sadomasochistic use or abuse of oneself or others, and shall include devices such as dildos, vibrators and penis pumps, and shall also include other devices with non-sex related utility, such as leather whips, straps and ligatures, when such devices are marketed in a context suggesting sexual or sadomasochistic purposes. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

**SEXUALLY ORIENTED BUSINESS** means an adult arcade, adult media store, adult novelty store, adult cabaret, adult motion picture theater, adult theater, nude model studio, or sexual encounter center.

**SEXUALLY ORIENTED NOVELTIES OR TOYS** means instruments, devices, or paraphernalia either designed as representations of human genital organs or female breasts, or designed or marketed primarily for use to stimulate human genital organs or for use in connection with "specified sexual activities."

**SEXUAL ENCOUNTER PLACE** means a commercial enterprise that, as one (1) of its principal business purposes, offers for any form of consideration: for purposes of sexual stimulation or gratification, physical contact in any form between persons of the opposite sex; or (2) activities between male and female persons and/or persons of the same sex when one (1) or more of the persons is semi-nude.

**SPECIFIED ANATOMICAL AREAS** means less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the top of the areola; or human male genitals in a discernibly turgid state, even if completely and opaquely covered.

**SPECIFIED CRIMINAL ACTIVITY** means any of the following offenses: prostitution or promoting prostitution; soliciting; loitering to engage in solicitation; sexual performance by a child; public lewdness; indecent exposure; indecency with a child; sexual assault; molestation of a child; or any similar offenses to those described above under the criminal or penal code of any local jurisdiction, state or country; (2) For which: (1) less than two years have elapsed since the date of the 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; or (2) less than five years have elapsed since the date of the conviction or date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense. (3) the fact that a conviction is being appealed shall not prevent such conviction from constituting a specified criminal activity as defined in this section.

**SPECIFIED SEXUAL ACTIVITIES** means any of the following: (1) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts; (2) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or (3) excretory functions as part of or in connection with any of the activities set forth in (1) and (2) above.

### **1.01 Sexually Oriented Business License Required**

No person shall operate a Sexually Oriented Business without a valid Sexually Oriented Business license issued by the County pursuant to this Ordinance.

### **1.02 Sexually Oriented Business Employee License Required**

No person shall in connection with operating a Sexually Oriented Business, retain the services of a person as employee, as defined in this ordinance, who is not licensed as a Sexually Oriented Business employee by the County pursuant to this Ordinance.

### **1.03 Sexually Oriented Business License Application**

An application for a Sexually Oriented Business license shall be submitted to the Building Commissioner on a form provided by the Building Commissioner. The application may request and the applicant shall provide such information as reasonably necessary (including fingerprints) to enable the County to determine whether the applicant meets the qualifications established in this chapter.

An application for a Sexually Oriented Business license shall identify and be signed by the following persons:

- (1) If the business entity is a proprietorship, owned by one or more individuals then one of the individuals owners.
- (2) If the business entity is owned by a corporation, each Officer or Director of the corporation, any individual owning or controlling more than fifty (50) percent of the voting shares of the corporation, and any person with an ownership interest in the corporation who will be principally responsible for the operation of the proposed Sexually Oriented Business or greater ownership interest in the corporation.
- (3) If the business entity is owned by a partnership (general or limited), a joint venture, or any other type of organization where two or more persons share in the profits and liabilities of the organization, each partner (other than limited partners); and any other person entitled to share in the profits of the organization, whether or not such person is also obligated to share in the liabilities of the organization, and any person who will be principally responsible for the operation of the proposed Sexually Oriented Business.
- (4) An application for a Sexually Oriented Business license must designate one (1) or more individuals who are to be principally responsible for the operation of the proposed Sexually Oriented Business, if a license is granted, which individual must be a licensed Sexually Oriented Business Employee. At least one (1) person so designated must be involved in the day to day operation of the proposed Sexually Oriented Business on a regular basis. Each person so designated as well as the business entity itself, shall be considered a license applicant, must qualify as a licensee under this chapter, and shall be considered a licensee and shall be

considered a licensee if a license is granted.

An application for a Sexually Oriented Business license shall be completed according to the instructions of the application form, which shall require the following:

- (1) An applicant shall identify if the applicant is:
  - a. An individual shall state the legal name and any aliases of such individual
  - b. A partnership shall state the complete name of the partnership and all of its partners and whether the partnership is general or limited, and provide a copy of the partnership agreement, if any or
  - c. A joint venture, or any other type of organization where two or more persons share in the profits and the liabilities of the organization shall state the complete name of the organization and provide a legal document establishing the organization, if any or:
  - d. A corporation shall state the complete name of the corporation and the date of its incorporation, provide evidence that the corporation is in good standing under the laws of its state of incorporation, and state the names and capacity of all officers and directors, the name of registered corporate agent, and the address of the registered office of the service of process.
  - e. If the applicant intends to operate a Sexually Oriented Business under a name other than that of the applicant, state the fictitious name to be used and submit copies of the documentation evidencing the registration of the business name under applicable laws.
  - f. State whether any applicant, or any individuals identified in the application has been convicted of a specified criminal activity as defined within this ordinance, and if so, the specified criminal activity involved and the date, place, and jurisdiction of each such conviction.
  - g. State whether any applicant, or any of the individuals identified in the application has had a previous license under this ordinance or similar regulation of another jurisdiction 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 state whether the applicant has been a partner in a partnership or an officer, director or ten (10) percent or greater owner of a corporation licensed under this chapter whose license has been previously been denied, suspended or revoked, including the name of the location of the business for which the permit was denied, suspended or revoked as well as the date of the denial, suspension, or revocation.
  - h. State whether any applicant or any of the individuals identified in the application holds any other licenses under this ordinance or other similar

regulation from this or any other jurisdiction and, if so, the names and locations of such other licensed businesses.

- i. State the classification of license for which the applicant is filing;
- j. State the location of the proposed Sexually Oriented Business including a legal description of the property, street address, telephone number(s), if any.
- k. State the mailing address and residential address of each applicant and each person signing the application.
- l. Submit a recent photograph of each person who is a natural person, taken by the Floyd County Sheriff Department which clearly shows the applicant's face
- m. Submit the fingerprints of each applicant who is a natural person, taken by the Floyd County Sheriff Department
- n. For any applicant who is natural person, describe and identify the location of any tattoos on such person's face, arms, legs, or hands, or any other anatomical area that normally would be visible when such person is on the premises of the proposed Sexually Oriented Business
- o. State the driver's license number and social security number of each applicant who is natural person and each person signing the application, or for an applicant that is not a natural person, the applicant's shall provide a federally issued tax identification number
- p. Submit proof that each applicant who is a natural person is at least eighteen (18) years old. A birth certificate and/or valid driver's license will only be considered as proof of age.
- q. Submit a sketch or diagram showing the configuration of the premises of the Sexually Oriented Business including the location of all stages and customer seating and a statement of total floor space occupied by the business. The diagram shall also designate the place at which the adult business license will be conspicuously posted, if granted. The sketch or diagram need not be professionally prepared, but it 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.

#### **1.04 Issuance of Sexually Oriented Business License**

Within ten (10) days of receipt of an application for a Sexually Oriented Business license, the Building Commissioner shall notify the Floyd County Sheriff's Department, the appropriate township Fire Department, and the Floyd County Health Department of such

application. In making notification, the Building Commissioner shall request the Sheriff's Department to promptly investigate the information provided in the application concerning criminal background of the applicant(s) and shall request the Fire Department and the Health Department promptly inspect the premises for which the Sexually Oriented Business license is sought to assess compliance with the regulations under their respective jurisdictions.

The Sheriff Department, the Fire Department and the Health Department shall begin their respective investigation and inspection process promptly upon receipt of notice of an application from the Building Commissioner. The Sheriff's Department shall provide the results of his investigation to the Building Commissioner, in writing, within twenty (20) days of receipt of notice of the application. The Fire Department and the Health Department shall provide to the Building Commissioner a written certification of whether the premises are in compliance with the laws and regulations under their respective jurisdictions within twenty (20) days of receipt of notice of the application.

The Building Commissioner shall commence the inspection of the premises for which a Sexually Oriented Business license is sought promptly upon receipt of notice of the application, and shall complete a written certification of whether the premises are in compliance with the Indiana Basic Building Code, the Floyd County Zoning Code, and the provisions of this chapter related to physical characteristics of the premises within thirty (30) days after receipt of the application.

Within thirty (30) days after receipt of a completed Sexually Oriented Business license application, the Building Commissioner shall approve or deny the issuance of a license. The Building Commissioner shall approve the issuance of a license to an applicant unless he determines that one (1) or more of the following findings is true:

- (1) An applicant who is a natural person is under eighteen (18) years of age.
- (2) An applicant has failed to provide information reasonably necessary for issuance of the license as requested on the application form, or has falsely answered a question or request for information on the application form.
- (3) A person identified in the application pursuant to this ordinance has been denied an adult business license or has had a license to operate a Sexually Oriented Business revoked within the preceding twelve (12) months by any jurisdiction.
- (4) A person identified in the application has been convicted of a specified criminal activity as defined in this ordinance.
- (5) The proposed Sexually Oriented Business would violate or fail to be in compliance with any provision of the Floyd County Zoning Ordinance, or any State Statute or regulation.
- (6) The application and investigation fee required by this ordinance has not been paid.
- (7) An applicant is in violation of or not in compliance with any provisions of this chapter, except as provided in the ordinance.

If the Building Commissioner determines that one (1) or both of the following findings is true, the license issued pursuant to this section shall contain a requirement that the licensee correct all deficiencies specified within 120 days of the date the license is issued:



- (1) The results of inspections of the premises by the Fire Chief, the Health Commissioner, and/or the Building Commissioner indicate that the premises are not in compliance with applicable laws and regulations under their respective jurisdictions, including the provisions of this chapter related to characteristics of the physical premises.
- (2) An applicant is overdue in payment to the County of taxes, fees, fines, or penalties assessed against or imposed upon him or her in relation to any business, which are not the subject of a pending appeal or other legal challenge.

If the Building Commissioner determines that no other grounds for denial of a license exist under this subsection hereof, the Building Commissioner shall not delay approval of the application past the end of the sixty (60) day period provided in this section solely because the Fire Department or the Health Department has not provided the Building Commissioner with the results of his inspection of the premises; the results of the Building Commissioner's inspection of the premises are not available; and/or the Sheriff's Department has not completed his investigation of the criminal background of the applicant(s). If, after approving the issuance of a license, the Building Commissioner receives information from his investigation which he determines constitutes grounds for denial of a license under subsection (d) hereof, then the Sexually Oriented Business license issued pursuant to this subsection (f) hereof shall be immediately revoked. If after approving the issuance of a license, the Building Commissioner receives information concerning the results of inspections of the premises by the Sheriff's Department or the Fire Chief, or the Health Department inspection, which the Building Commissioner determines constitutes grounds for the issuance of a license subject to a requirement to correct deficiencies under this subsection hereof, then a requirement shall be added to the terms of the Sexually Oriented Business licenses issued pursuant to this subsection hereof to correct all deficiencies noted within 120 days of the date such requirement is added.

A Sexually Oriented Business license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the licensed Sexually Oriented Business. All Sexually Oriented Business licenses shall be posted in a conspicuous place at or near the entrance to the business so that they may be easily read at any time.

The Building Commissioner shall advise the applicant in writing of the reasons for any license denial.

#### **1.05 Sexually Oriented Business Employee License Application and Renewal**

An application for a sexually oriented employee license shall be submitted to the Building Commissioner on a form provided by the Building Commissioner. The application may request and the applicant shall provide such information as reasonably necessary (including fingerprints) to enable the County to determine whether the applicant meets the qualifications established in this chapter.

An application for a Sexually Oriented Business employee license shall be completed

according to the instructions of the application form, which shall require the following:

- (1) State the applicant's name and any other names (including "stage" names) or aliases used by the applicant.
- (2) State the applicant's date and place of birth
- (3) State the applicant's height, weight, and hair and eye color
- (4) Submit a recent photograph of the applicant, taken by the Floyd County Sheriff's Department, which clearly shows the applicant's face.
- (5) Submit the applicant's fingerprints, recorded by the Floyd County Sheriff's Department
- (6) Describe and identify the location of any tattoos on the applicant's face, arms, legs, or hands, or any other anatomical area that normally would be visible when the applicant is on the premises of the proposed Sexually Oriented Business.
- (7) State the applicant's present residence address and telephone number
- (8) State the applicant's present or intended business address and telephone number.
- (9) State the applicant's driver's license number and Social Security number.
- (10) Submit proof that the applicant is at least eighteen (18) years old.
- (11) Provide a statement detailing the Sexually Oriented Business related 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 a Sexually Oriented Business, in this or any other jurisdiction, and whether the applicant has ever had a Sexually Oriented Business, in this or any other jurisdiction, and whether the applicant has ever had a Sexually Oriented Business related license, permit or authorization to do business denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name of the issuing or denying jurisdiction and describe in full the reason for the denial, revocation, or suspension. Attach a copy of any order of denial, revocation, or suspension.
- (12) State whether the applicant has been convicted of a specified criminal activity as defined in this ordinance and, if so, the specified criminal activity involved and the date, place, and jurisdiction of each such conviction.

#### **1.06 Issuance of Sexually Oriented Business Employee License**

Upon the filing of a completed application for a Sexually Oriented Business employee license, the Building Commissioner shall issue a temporary license to said applicant immediately.

Within ten (10) days of receipt of a completed application for a Sexually Oriented Business employee license, the Building Commissioner shall notify the Sheriff's Department of such application. In making such notification, the Building Commissioner shall request that the Sheriff's Department promptly investigate the information provided in the application concerning the criminal background of the applicant. The Sheriff's Department shall begin his investigation promptly upon receipt of notice of an application from the Building Commissioner, and shall provide the results of this investigation to the Building Commissioner, in writing, within twenty (20) days of receipt of notice of the application. Within ten (10) days after completion of the Sheriff's investigation of the criminal background of the applicant, the Building Commissioner shall approve or deny the issuance of the license at which time the temporary license shall expire. The Building Commissioner shall approve the issuance of a license to an applicant unless he determines that one or more of the following findings are true:

- (1) The applicant has failed to provide information reasonably necessary for issuance of the license as requested on the application form, or has falsely answered a question or request for information on the application form.
- (2) The applicant is under eighteen (18) years of age.
- (3) The applicant has been convicted of a specified criminal activity as defined in this ordinance.
- (4) The Sexually Oriented Business employee license is to be used for employment in a business prohibited by local, state, or federal law, statute, rule or regulation.
- (5) The applicant has been denied a Sexually Oriented Business employee license or has had a Sexually Oriented Business employee license revoked within the preceding twelve (12) months by any jurisdiction.

#### **1.07 Fees**

Every application for a new Sexually Oriented Business license shall be accompanied by a seven fifty hundred dollar (\$750.00) non-refundable application and investigation fee per year.

Every application for a new Sexually Oriented Business Employee license shall be accompanied by a one hundred dollar (\$100.00) non-refundable application and investigation fee.

Every application for a renewal of a Sexually Oriented Business license shall be accompanied by an annual, nonrefundable application, investigation, and license fee of two hundred fifty dollars (\$250.00).

Every application for renewal of a Sexually Oriented Business employee license shall be accompanied by an annual, nonrefundable application, investigation, and license fee of

fifty dollars (\$50.00).

### **1.08 Inspection**

The Sheriff's Department shall, from time to time inspect that portion of each Sexually Oriented Business licensed under the provisions of this ordinance that is open to the public in order to assess compliance with this ordinance.

The Building Commissioner shall, from time to time and at least four (4) times a year, request that the Health Commissioner inspect that portion of each Sexually Oriented Business licensed under the provisions of this ordinance that is open to the public in order to assess compliance with the provisions of this ordinance

An applicant or licensee shall permit the Floyd County Building Commissioner and representatives of the Floyd County Police Department, Fire Department, or other County departments or agencies, or the Health Commissioner, to inspect that portion of the premises of a Sexually Oriented Business that is open to the public for the purpose of insuring compliance with the law, at any time that it is occupied or open for business.

### **1.09 Expiration and Renewal of License**

Each license issued pursuant to this ordinance shall expire one (1) year from the date of issuance and may be renewed by making application as provided in this section. Application for renewal shall be made no more than ninety (90) days and no less than thirty (30) days before the expiration date. If application is made less than thirty (30) days before the expiration date, the license will not be extended pending a decision on the application, but will expire on its normal expiration date.

An application for renewal of a Sexually Oriented Business license shall be submitted to the Building Commissioner on a form provided by the Building Commissioner. The renewal application may request and the applicant shall provide such information as reasonably necessary to enable the County to determine whether the applicant meets the qualifications established in this chapter. The completed renewal application shall describe any changes or additions to, or deletions from, the information provided in the applicant's initial license application. The completed renewal application shall be accompanied by copies of any document or material submitted in connection with the initial license application that has been revised or requires revision to reflect any change in circumstances or conditions.

Sketches or diagrams submitted with an initial Sexually Oriented Business license application may be resubmitted with subsequent renewal applications, provided that the applicant certifies in writing that the sketch or diagram still depicts the premises accurately.

The Building Commissioner shall make determinations concerning the approval of

license renewals based on the same criteria used to evaluate applications for new licenses under this ordinance.

The Building Commissioner shall advise the applicant in writing of the reason(s) for any denial of a license renewal.

When the County denies an application for renewal of a license, the applicant shall not be issued another license for one (1) year from the date of denial. If the County finds, subsequent to denial, that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the denial was issued.

### **1.10 License Suspension**

The County shall suspend a Sexually Oriented Business license for a period not to exceed thirty (30) days if it determines that a licensee:

- (1) Has violated or is not in compliance with any section of this chapter; or
- (2) Has authorized or approved an employee's violation of or failure to comply with any section of this ordinance, or as a result of the licensee's negligent failure to supervise either the premises of the Sexually Oriented Business or a Sexually Oriented Business Employee has allowed an employee to violate or fail to comply with any section of this Ordinance.

The County shall suspend a Sexually Oriented Business license for a period not to exceed thirty (30) days if it determines that a licensee or his employee or agent has refused to allow an inspection of the licensed Sexually Oriented Business as authorized by this chapter.

The County shall suspend a Sexually Oriented Business employee license for a period not to exceed thirty (30) days if it determines that a licensee has violated or is not in compliance with any section of this chapter.

The Building Commissioner shall advise the licensee in writing of the reason(s) for any suspension.

### **1.11 License Revocation**

The County shall revoke a Sexually Oriented Business license or Sexually Oriented Business employee license if a cause of suspension under this ordinance occurs and the license has been suspended two (2) times within the preceding twelve (12) months.

The County shall revoke a Sexually Oriented Business license if it determines that:

- (1) A licensee gave false or misleading information in the material submitted during the application process
- (2) The licensee(s) failed to comply with any requirement stated in the license, pursuant to this ordinance, to correct specified deficiencies within 120 days. Each separate violation of any section of this ordinance constitutes a separate offense.
- (3) A licensee has knowingly allowed or as a result of the licensee's negligent failure to supervise either the premises of the Sexually Oriented Business or a Sexually Oriented Business Employee has allowed the possession, use, or sale of controlled substances on the premises;
- (4) A licensee has knowingly allowed, or as a result of the licensee's negligent failure to supervise either the premises of the Sexually Oriented Business or a Sexually Oriented Business Employee has allowed prostitution, solicitation, or the commission of a felony on the premises;
- (5) A licensee operated the Sexually Oriented Business during the a period of time when the licensee knew or reasonably should have known that the licensee's license was suspended;
- (6) A licensee has knowingly allowed, or as a result of the licensee's negligent failure to supervise either the premises of the Sexually Oriented Business or a Sexually Oriented Business Employee has allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises.
- (7) A licensee has been convicted of a specified criminal activity as defined in this ordinance, during the term of the license; or
- (8) A licensee is delinquent in payment to the County, County, or State for any taxes or fees past due that were assessed or imposed in relation to any business.

The County shall revoke a Sexually Oriented Business employee license if it determines that:

- 1) The licensee gave false or misleading information in the material submitted during the application process;
- 2) The licensee has acted as an employee on the premises of a Sexually Oriented Business during a period of time when the licensee knew or reasonably should have known that either the employee's own license, or the business's license, was suspended; or
- 3) The licensee has been convicted of a specified criminal activity, as defined in this ordinance, during the terms of the license.

The Building Commissioner shall advise the licensee in writing of the reason(s) for any revocation. When the County revokes a license, the licensee shall not be issued another

license for one (1) year from the date the revocation became effective. If the County finds, subsequent to revocation, that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective.

### **1.12 Appeal Rights**

Any denial, suspension, or revocation of a new or renewal license under this chapter may be appealed to the Floyd County Board of Zoning Appeals by written notice within ten (10) days of such denial, suspension, or revocation. Unless the applicant requests a longer period, the Board of Zoning Appeals must hold a hearing on the appeal within thirty (30) days and must issue a decision affirming or reversing the denial, suspension, or revocation within five (5) days after the hearing.

Any decision by the Board of Zoning Appeals shall be a final appealable order and the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction.

In the event that an applicant or licensee seeks judicial review of a decision issued pursuant to this chapter, the applicant or licensee shall provide written notice of such appeal to the Board of Zoning Appeals in advance of or at the time of the filing of the appeal. Within ten (10) days of receiving such written notice of appeal, or within such shorter time as may be ordered by the court, the Board of Zoning Appeals shall transmit to the court in which appeal was sought a copy of the full administrative record for the matter, including a complete transcript of all the original papers, testimony and evidence offered, heard, and taken into consideration in issuing the final order. The Board of Zoning Appeals and all other departments or agencies of the County shall provide any further information, assistance, or cooperation requested by the reviewing court without delay.

Subject to the provisions of this ordinance hereof, any licensee lawfully operating a Sexually Oriented Business prior to the denial of a license renewal application, or the suspension or revocation of a license, may continue to operate said business during an appeal of a decision rendered under this ordinance to the Board of Zoning Appeals or to a court.

Subject to the provisions of this ordinance hereof, any licensee lawfully acting as an employee in a Sexually Oriented Business prior to the denial of a license renewal application, or the suspension or revocation of a license, may continue to serve in such capacity during an appeal of a decision rendered under this ordinance to the Board of Zoning Appeals or to a court.

In the event that an applicant for a new Sexually Oriented Business license or a new Sexually Oriented Business employee license seeks judicial review of the denial of a new license, and such review does not result in a final judicial decision within thirty (30) days of the date the appeal was filed, the County will issue such applicant a provisional

sexually oriented business license or Sexually Oriented Business employee license upon request of the applicant. The provisional license:

- (1) Will allow an applicant for a Sexually Oriented Business license to operate the Sexually Oriented Business named in the license application under the same terms as a normal Sexually Oriented Business issued pursuant to the provisions of this ordinance for the period of time specified in this subsection hereof; and
- (2) Will allow an applicant for a Sexually Oriented Business employee license to act as an employee on the premises of a Sexually Oriented Business under the same terms as a normal Sexually Oriented Business employee license issued pursuant to the provisions of this ordinance for the period of time specified in this ordinance) hereof; and
- (3) Will be subject to the same requirements as a normal Sexually Oriented Business license or Sexually Oriented Business employee license issued under the provisions of this ordinance.

A provisional license will expire on whichever of the following three dates is earliest:

- (1) The date that a judicial decision is issued upholding the license denial;
- (2) The date on which a non-provisional Sexually Oriented Business license or Sexually Oriented Business employee license is issued to the applicant pursuant to a judicial decision overturning the license denial; or
- (3) The date one (1) year from the issuance of the provisional license.

In the event that judicial review of the denial of a new license application is still pending thirty (30) days before the expiration date of a provisional license, the provisional licensee may file a renewal license application with the Building Commissioner pursuant to the provisions of this ordinance. The Building Commissioner shall grant an application for renewal of a provisional license unless he determines that new grounds exist for denial of a license application pursuant to this ordinance, which did not exist at the time of the original license application. In the event that an application for renewal of a provisional license is denied and the applicant seeks judicial review of that denial; the County has the right to consolidate such review with the pending judicial appeal of the previous license denial.

### **1.13 Transfer of License**

A Sexually Oriented Business license is not transferable from one (1) licensee to another or from one (1) location to another. Any purported transfer of a Sexually Oriented Business license shall automatically and immediately revoke that license.



A Sexually Oriented Business employee license is not transferable from one (1) licensee to another, but the use of the license by the individual to whom it was issued may be transferred from one (1) licensed sexually oriented business to another such licensed establishment during the term of the license, provided that the licensee gives written notice of such transfer to the Sheriff's Department within fifteen (15) days of such transfer.

#### **1.14 Additional Regulations Concerning the Operation of Sexually Oriented Businesses**

Nudity, Sexual Activity, Live Entertainment and Performances.

- (1) No employee on the premises of a Sexually Oriented Business may appear in a state of "nudity" as defined in this ordinance, or engage in "specified sexual activities" in a state of "nudity" as defined in this ordinance.
- (2) Any employee appearing on the premises of a Sexually Oriented Business in a state of semi-nudity as defined in the ordinance, must be on a stage that is at least eighteen (18) inches from the floor, and at a distance at least sixty (72) inches from all parts of a clearly designated area in which patrons will be present.
- (3) All live entertainment and performance in a Sexually Oriented Business must take place on a stage that is at least eighteen (18) inches from the floor and a distance of at least sixty (72) inches from all parts of a clear designated area in which patrons will be present.
- (4) No employee as defined in the ordinance, appearing on the premises of a Sexually Oriented Business in a state of semi-nudity, may intentionally or knowingly touch a customer or a customer's clothing or permit him/herself to be touched by a customer or a customer's clothing.
- (5) Any live entertainment that is provided on the premises of a Sexually Oriented Business, in a private or semi-private room, to five (5) or fewer persons at any one (1) time, must take place in the direct, unobstructed line of sight of an employee's station at which at least one (1) employee is on duty and stationed at all times during which such entertainment takes place, with all doors to such room completely open and ajar, if such room is not considered a "viewing booth" as defined in ordinance.
- (6) The provisions of this subsection (a) shall not apply to an employee's use of any restroom or any single-sex dressing room that is accessible only to entertainers.

#### **1.15 Dressing Rooms.**

All Sexually Oriented Businesses that offer live entertainment must provide separate dressing room facilities for female and male entertainers. No Sexually Oriented Business

patron shall be permitted at any time to enter any dressing room provided for the use of Sexually Oriented Business Employees. A Sexually Oriented Business Employee, other than an entertainer, shall be permitted to enter into and remain in a dressing room for the purpose of delivering goods and materials, food or beverages, or performing maintenance or repairs to the dressing room, or assisting an entertainer with the application or removal of hairdressing, makeup or costuming; provided, however, that any such Employee shall remain in the dressing room only for the purposes and to the extent necessary to perform their job duties.

#### **Restrooms.**

All Sexually Oriented Businesses shall provide male and female restrooms equipped with standard toilets, sinks and other traditional lavatory facilities provided for and used by patrons. No live performances shall be provided or allowed at any time in the restrooms of a Sexually Oriented Business. Male and female restrooms shall be provided for and used by Sexually Oriented Business employees separate from the male and female restrooms provided for and used by the patrons.

#### **Minors Prohibited.**

No person under the age of eighteen (18) years shall be permitted on the premises of a Sexually Oriented Business.

#### **Hours of Operation.**

No Sexually Oriented Business shall be open for business at any time between the hours of twelve (12) midnight and twelve (12) noon on any weekday or Saturday, nor shall any entertainment, service, or product be provided to a customer on the premises of a Sexually Oriented Business during those hours. No Sexually Oriented Business shall be open for business at any time on Sunday or on any legal State of Indiana or federal holiday, nor shall any entertainment, service, or product be provided to a customer on the premises of a Sexually Oriented Business during those days.

#### **1.16 Minimum Lighting Level**

- (1) The premises of every Sexually Oriented Business shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access, including restrooms, at an illumination level not less than five (5.0) foot-candles as measured at floor level.
- (2) The illumination described in this ordinance shall be maintained at all times that any patron is present in the premises. In the event of a power failure, the business shall stop operating immediately and all patrons shall be cleared from the premises. The premises shall not be re-opened until the minimum illumination level can be assured.

### **1.17 Exterior Display**

No Sexually Oriented Business shall be operated in any manner that permits the observation from outside the premises of any material or entertainment depicting or describing "specified sexual activities" or "specified anatomical areas," as defined in this ordinance, or any person in a state of nudity or semi-nudity, whether by means of display, decoration, sign, window or any other means.

### **1.18 Loitering and Exterior Lighting and Monitoring Requirements**

It shall be the duty of the operator of a Sexually Oriented Business to:

- (1) Initiate and enforce a no loitering policy within the external boundaries of the real property upon which the Sexually Oriented Business is located.
- (2) Post conspicuous signs that no loitering is permitted on such property;
- (3) Designate one (1) or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every thirty (30) minutes or inspecting such property by use video cameras and monitors; and
- (4) Provide adequate lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. The video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within a manager's station.
- (5) It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

### **1.19 Injunction**

Any person who operates or causes to be operated a Sexually Oriented Business in violation of this chapter is subject to a suit for injunction as well as prosecution for criminal violations under the appropriate and applicable Statutes of the State of Indiana.

Judicial proceedings shall be brought by the Floyd County Attorney or his designee.

Fines, judgments, and injunctive relief against violation of this ordinance may be sought in any such judicial proceeding, and any other remedies available to Floyd County in law or equity.

### **1.20 Savings Clause**

This ordinance and the various parts, sections, sentences, phrases, and clauses hereof, are hereby declared to be severable. If any part, section, sentence, phrase, or clause is judged unconstitutional or invalid, it is hereby provided that the remainder of this ordinance shall not be affected thereby.

**1.21 Change in Information**

During the processing of any application for, or during the term of, any Sexually Oriented Business license, the applicant or licensee shall promptly notify the Building Commissioner in writing of any change in any material information given by the applicant or licensee in the application for such license, including specifically, but without limitation, any change in managers of the Sexually Oriented Business establishment or in the individuals identified in the application pursuant to this chapter; or if any of the events constituting grounds for suspension or revocation pursuant to this chapter occur.

**SO ORDAINED** this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

BOARD OF COMMISSIONERS  
OF THE COUNTY OF FLOYD

BY:

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

Attest:

\_\_\_\_\_  
Floyd County Auditor

\\RICKSDELL\Shares\STEVE\floyd county\Floyd County Adult Business Ordinance License 6.13.doc

**FLOYD COUNTY, INDIANA**  
**County Planner**

311 West First Street City-County Municipal Building Suite 214-A  
New Albany, Indiana 47150  
Phone (812) 948.4110 Fax (812) 948.4744

To: Floyd County Commissioners and Floyd County Attorney

From: Don Lopp

Date: April 9, 2007

RE: Adult Business Licensing Ordinance and Adult Business Audit

---

The Floyd County Planning Office has conducted an Adult Business audit of commercial businesses in the unincorporated areas of the county under the jurisdiction of the Floyd County Plan Commission. Using the American Planning Association Planning Advisory Service (PAS) documentation and guide regarding regulation of Adult Oriented Businesses, the audit's findings are the basis for the suggested implementation of an Adult Oriented Business Licensing Ordinance to work with the recent adoption of the new Floyd County zoning regulations regarding Adult Oriented Businesses.

Prohibition of adult businesses has been determined to be unconstitutional by the United States Supreme Court. However, local governments can regulate these uses through its zoning and business licensing powers. In the Floyd County, the zoning law requires that adult oriented business be included as a permitted use in at least one land use zone. Currently adult oriented business are a permitted use on property zoned Highway Service (HS) and General Industrial (GI) in unincorporated Floyd County. Adult Businesses are prohibited within the County's two gateway districts, Highlander Point and Edwardsville. The entire text of the Floyd County Zoning Ordinance regarding Adult Oriented Businesses has been attached as Appendix A of this report.

The Highway Service (HS) district is intended to provide a land use category for commercial uses that are appropriate for location along highways. The provisions that regulate this land use district should make the district compatible with adjacent agriculture and residential districts. This district should be used at areas near major state highways and interchanges.

The General Industrial (GI) district is intended to provide a land use category for a medium intensity industrial operations and uses. The provisions that regulate this land use district should make the district compatible with the General Commercial (GC), Highway Service (HS) and Office-Business (OB) districts. This district should be used in combination with the (OB) district in areas with convenient access to major transportation routes.

# FLOYD COUNTY, INDIANA

## County Planner

311 West First Street City-County Municipal Building Suite 214-A  
 New Albany, Indiana 47150  
 Phone (812) 948.4110 Fax (812) 948.4744

A field survey of businesses was performed by the Floyd County Planning staff. The purposed of the survey was to inventory all sites in unincorporated Floyd County that either sells or rents adult oriented material or provides live entertainment. The inventory began with a windshield survey and was followed by personal interviews of merchants that could potentially sell adult oriented material. Gas stations, grocery stores, video rental establishments and pharmacies were retail uses that were chosen for the interviews. Primary commercial areas along US 150, Grant Line Road, Charlestown Road and Corydon Ridge Road were all examined. Results of this survey will inform the Floyd County government when making decisions regarding adult oriented business.

Of the 114 commercial sites in Floyd County's business inventory, 22 or 19.2% have an NAISC classification for retail services. The intent of the survey was to target those retail businesses that would most likely sell or rent adult materials. In order to determine the type of retail locations to be targeted for the survey, the list of 22 businesses was condensed to 16. Businesses listed as auto sales, hardware stores, specialty stores, and shipping were omitted from the study (highlighted in red below).

**Total            Retail**  
**Establishments**

NAISC code	Business Name	Address
446	Rite Aid	810 Highlander Point Drive, Floyd Knobs, 47119
446	The Drug Store	1042 North Luther Road, Georgetown, IN 47122
446	Walgreen's	5190 Charlestown Road, New Albany, IN 47150
446	Walgreen's	Highlander Point Drive, Floyd Knobs, 47119
447	Circle K	1038 West Knable Road, Georgetown, IN 47122
447	Citgo	Grantline Road, New Albany, 47150
447	Gas & Stuff	1046 North Luther Road, Georgetown, IN 47122
447	Jacobi's Food Mart/ Car Wash	Highway 150
447	Jacobi's Food Mart/ Car Wash	State Road 64, Georgetown, IN 47122
447	Marathon Gas Station	3708 Paoli Pike, Floyd Knobs, IN 47119
447	Marathon Gas Station	Highway 150/ Buck Creek Rd
447	Marathon Gas Station	917 East Knable, Georgetown, IN 47122
447	Patriot Fuel	Duffy Road, Floyd Knobs, 47119
452	Floyd Central Thriftaway Supermarket	1042 North Luther Road, Georgetown, IN 47122
452	JC Store	Highlander Point Drive, Floyd Knobs, 47119
452	Save-a-step	4770 Duffy Road, Floyd Knobs, 47119
453	Movie Gallery	709 Highlander Point Drive, Floyd Knobs, 47119
453	Movie Gallery	Copperfield Drive, Georgetown, IN 47122

# FLOYD COUNTY, INDIANA County Planner

311 West First Street City-County Municipal Building Suite 214-A  
New Albany, Indiana 47150  
Phone (812) 948.4110 Fax (812) 948.4744

Of the 16 businesses, 75% were surveyed for adult materials. The chart below lists each business that was surveyed, whether the business has books or magazines, DVDs or VHS, and finally whether these contents for sale are containing adult content.

## Survey of Businesses and Adult Materials for Sale

NAISC code	Business Name	Address	Books or Magazines	Adult	DVDs or VHS	Adult	Live Entertainment
446	Rite Aid	810 Highlander Point Drive, Floyd Knobs, 47119	X		X		
446	Walgreen's	Highlander Point Drive, Floyd Knobs, 47119	X		X		
447	Citgo (Vacant)	Grantline Road, New Albany, 47150					
447	Gas & Stuff	1046 North Luther Road, Georgetown, IN 47122					
447	Jacobi's Food Mart/ Car Wash	Highway 150	X		X		
447	Jacobi's Food Mart/ Car Wash	State Road 64, Georgetown, IN 47122					
447	Marathon Gas Station	Highway 150/ Buck Creek Rd	X				
447	Marathon Gas Station	Highlander Point Drive, Floyd Knobs, 47119	X		X		
452	Floyd Central Thriftway Supermarket	1042 North Luther Road, Georgetown, IN 47122	X		X		
452	JC Store	Highlander Point Drive, Floyd Knobs, 47119	X		X		
453	Movie Gallery	709 Highlander Point Drive, Floyd Knobs, 47119	X	X	X	X	
453	Movie Gallery	Copperfield Drive, Georgetown, IN 47122			X	X	

**Results:** Only the following site was found to have had any sexually oriented material.

### Movie Gallery (Highlander Point) –

A room approximately 100 square feet located in the rear of the store contains shelved with a variety of hardcore and soft core DVD movies for rent. There is an additional free standing magazine rack which contains multiple publications of sexually oriented material. The Movie Gallery located in Copperfield Commons is within the jurisdiction of the Town of Georgetown.

In addition to conducted a field survey, the Section 14.02 Findings reveals other substantial evidence concerning the association of negative secondary effects with sexually oriented businesses. These United States Supreme Court landmark cases are listed in the appendix for reference. Other relevant studies and their findings regarding the establishment of adult oriented businesses are also listed in the appendix.

# FLOYD COUNTY, INDIANA

## County Planner

311 West First Street City-County Municipal Building Suite 214-A  
New Albany, Indiana 47150  
Phone (812) 948.4110 Fax (812) 948.4744

### APPENDIX A

#### **Section 14.01 Sexually Oriented Businesses Purpose**

It is the purpose of this section of the Floyd County Zoning Ordinance to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of Floyd County and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the County. The provisions of this section do not have the purpose or effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Further, it is not the intent 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 nor effect of this Chapter to condone or legitimize the distribution of obscene material.

#### **Section 14.02 Findings**

The Floyd County Plan Commission and Floyd County Commissioners has received substantial evidence concerning the association of negative secondary effects with sexually oriented businesses in the cases of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), and *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991), and on studies in other communities including, but not limited to, Phoenix, Arizona; Tucson, Arizona; Los Angeles, California; Whittier, California; Indianapolis, Indiana; Minneapolis, Minnesota; St. Paul, Minnesota; New York, New York; Cleveland, Ohio; Oklahoma City, Oklahoma; Amarillo, Texas; Austin, Texas; Beaumont, Texas; Houston, Texas; and Seattle, Washington.

#### **Section 14.03 Sexually Oriented Business Classifications**

A. Sexually Oriented Businesses are classified as follows and/or any combination of classifications set forth in subsection (1) through (5) above:

1. adult cabarets;
2. adult media stores;
3. adult novelty stores;
4. adult motion picture theaters;
5. adult theaters;

B. The following Sexually Oriented Businesses are prohibited.

1. adult arcades;
2. adult motels;
3. sexual encounter places;



**FLOYD COUNTY, INDIANA**  
**County Planner**

311 West First Street City-County Municipal Building Suite 214-A  
New Albany, Indiana 47150  
Phone (812) 948.4110 Fax (812) 948.4744

**Section 14.04 Permitted Zoning District(s)**

Sexually Oriented Business shall be permitted in the following zoning districts: (HS) Highway Service and (GI) – General Industrial. All sexually oriented businesses shall comply with the restrictions contained within this Ordinance.

A. No sexually oriented business may be established or operated within 1500 feet of:

1. A church, synagogue, mosque, temple or other houses of worship building(s) which is used primarily for religious worship and related religious activities.
2. A public or private educational facility that serves persons younger than 18 years of age, including but not limited to nursery schools, preschools, kindergartens, elementary schools, private 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 facilities used primarily for another purpose and only incidentally as a school.
3. Any property containing a day-care facility as defined in Indiana Code.
4. Any private property containing a community/recreation center that regularly serves persons younger than 18 years of age;
5. A public park or recreational area which has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas, or other similar public land within the County which is under the control, operation, or management of the County Parks Department, the Board of Education, or another public entity;

B. No sexually oriented businesses may be established or operated on any lot within the defined boundaries of the County's Gateway Overlay Districts as set forth in this Ordinance.

C. No sexually oriented businesses may be established or operated within 200 feet of a boundary of a residential district as defined in this Ordinance and any structure that contains a permitted or conditionally permitted residential use or a legally non-conforming residential use as defined in the Ordinance. For the purpose of this subsection, measurement shall be made from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of any sexually oriented businesses defined in 14.03 and following the routes of property lines along public rights-of-way (to approximate pedestrian distances).

**FLOYD COUNTY, INDIANA**  
**County Planner**

311 West First Street City-County Municipal Building Suite 214-A  
New Albany, Indiana 47150  
Phone (812) 948.4110 Fax (812) 948.4744

- D. No sexually oriented businesses may be established, operated or enlarged within 1,500 feet of other sexually oriented businesses. For the purpose of this subsection, measurement shall be made from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of any sexually oriented businesses defined in 14.03 and following the routes of property lines along public rights-of-way (to approximate pedestrian distances).
- E. Not more than 1 sexually oriented business shall be established or operated in the same building, structure, or portion thereof and the floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business may not be increased. For purposes of this subsection of this Section, the distance between any 2 sexually oriented businesses shall be measured from the closest exterior wall of the structure in which each business is located, following the routes of property lines along public rights-of-way (to approximate pedestrian distances).

**Section 14.05 Site Design Guidelines for Sexually Oriented Businesses**

- A. Parking for a sexually oriented business (es) shall be configured so as to prevent vehicular headlights from shining into adjacent residentially zoned and/or used property. Parking areas configured such that vehicular headlights are directed toward public rights-of-way across from residentially zoned and/or used property shall provide continuous screening and shall conform to the design requirements Landscaping and screening shall be continuously maintained and promptly restored, if necessary, pursuant to the landscaping requirement set out in this Ordinance.
- B. Ingress and egress drives and primary circulation lanes shall be located away from residential areas where practical; to minimize vehicular traffic and noise which may become a nuisance to adjacent residential areas.
- C. All building entrances intended to be utilized by patrons shall be located on the side(s) of the building which does not abut residentially zoned and/or used property, whenever possible, to minimize the potential for patrons to congregate and create noise which may become a nuisance to adjacent residential areas.
- D. All exterior site and building lighting shall comply with the lighting standards as set forth in this Ordinance.
- E. No person(s) shall perform live entertainment for patrons of an sexually oriented business (es) except upon a stage at least 18 inches above the floor which is separated by a distance of at least 6 feet from the nearest area occupied by patrons, and no patron shall be permitted within 6 feet of the stage while the stage is occupied by an entertainer.
- F. Separate dressing room facilities for entertainers which are exclusively dedicated to the entertainers' use.
- G. A separate entrance shall be provided for entertainers which can not be used by patrons.

**FLOYD COUNTY, INDIANA**  
**County Planner**

**311 West First Street City-County Municipal Building Suite 214-A**  
**New Albany, Indiana 47150**  
**Phone (812) 948.4110 Fax (812) 948.4744**

- H. Delivery trucks shall only be permitted between the hours of 8:00 a.m. and 9:00 p.m.
- I. No merchandise or pictures of the products or entertainment on the premises of a sexually oriented business shall be displayed on signs and/or in window areas.
- J. Window areas of a sexually oriented business shall not be covered or made opaque in any way. No signs shall be placed in any window. A 1 square foot sign shall be placed on the door to state hours of operation and admittance to adults only.
- K. All restrooms in sexually oriented businesses shall be equipped with standard toilets, sinks and other traditional lavatory facilities. No live performances shall be provided or allowed at any time in the restrooms of a sexually oriented business. Separate male and female restrooms shall be provided. (*Amended November 8, 2006*)
- L. The premises of every sexually oriented business shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access, including restrooms, at an illumination level not less than five (5.0) foot-candles as measured at floor level. The illumination described in this ordinance shall be maintained at all times that any patron is present in the premises. (*Amended November 8, 2006*)

**Section 14.06 Licensing Sexually Oriented Businesses**

Sexually oriented businesses as described in the Ordinance herein shall be licensed pursuant to the Floyd County Licensing Ordinance.

**FLOYD COUNTY, INDIANA**  
**County Planner**

311 West First Street City-County Municipal Building Suite 214-A  
New Albany, Indiana 47150  
Phone (812) 948.4110 Fax (812) 948.4744

**APPENDIX B**

**Supreme Court Landmark Cases**

**Young v. American Mini Theatres**

Dispersion ordinance was upheld requiring sexually oriented business to be located at least 1,000 feet from any two other such uses as well as 500 feet from any residential area.

**Schad v. Borough of Mt. Ephraim**

Supreme Court reversed appellants' convictions given by lower courts. Challenged the First Amendment by banning a form of communication (nude dancing). Laid the foundation for the now well accepted requirement that a community must have objective evidence of the negative impacts of sexually oriented businesses, if they choose to regulate those businesses differently.

**Barnes v. Glen Theatre**

Supreme Court upheld Indiana statute (Indiana Code, Section 35-45-4-1) requiring exotic dancers to at least wear pasties and g-strings. This decision squarely concluded that requiring minimum clothing standards was not a violation of the First Amendment.

**City of Renton v. Playtime Theatres**

Supreme Court upheld dispersion ordinance restricting any adult oriented business from locating within 1,000 feet of any residential zone, single-family or multifamily dwelling, church, or park or, within one mile of any school.

*\*This case also allowed studies from another community to be used in the body of evidence.*

**City of Erie v. PAP's A.M. tdba Kandyland**

The court concluded that an ordinance regulating nudity does not violate the First Amendment doctrine if it meets the time, place, and manner test as presented by the Supreme Court in the United States v. O'Brien:

1. The regulation is within the power of the government;
2. It furthers an important government interest;
3. The government interest is unrelated to the suppression of speech; and
4. The incidental restrictions on free speech are no greater than are essential to further the interest;

# FLOYD COUNTY, INDIANA

## County Planner

311 West First Street City-County Municipal Building Suite 214-A  
New Albany, Indiana 47150  
Phone (812) 948.4110 Fax (812) 948.4744

### APPENDIX C STUDIES

Statistics reflect data collected in study areas with Adult Oriented Businesses compared to control areas or average statistics of a given municipality.

#### **Phoenix, Arizona – 1978**

- 40 % more property crimes;
- 506 % more sex offenses;
- Sex crimes such as rape, lewd and lascivious behavior, and child molestation was 132 % greater;
- 4 % more violent crimes;
- Ordinance requires Sexually Oriented Businesses to be located 1,000 feet from another SEXUALLY ORIENTED BUSINESS and a 500 foot radius from a school or residential zone;

#### **Tucson, Arizona – 1990**

- Police reported repeated violations of a variety of laws at some Sexually Oriented Businesses;
- 88.5% of physical samples taken from video booths contained semen residue;

#### **Whittier, California – 1994**

The findings for this study were mixed, showing, for example:

- An increase in owner-occupancy of dwelling units in the area with the Sexually Oriented Businesses;
- A decrease in business vacancies in the area with the Sexually Oriented Businesses;
- A higher rate of turnover of residential units in the area with the Sexually Oriented Businesses than in the control area;
- A significantly higher rate of increase of crime in the area with the Sexually Oriented Businesses than in the city as a whole;

#### **Indianapolis, Indiana - 1984**

“Adult Entertainment Business in Indianapolis”

- Property values were negatively affected by distance to a Sexually Oriented Businesses;
- Overall crime rates 23% greater;
- Sex crimes 20% greater;
- Recommended separation of at least 500 feet from residential areas, schools, churches or established historic places;

**FLOYD COUNTY, INDIANA**  
**County Planner**

311 West First Street City-County Municipal Building Suite 214-A  
New Albany, Indiana 47150  
Phone (812) 948.4110 Fax (812) 948.4744

**St. Paul, Minnesota - 1987**

“Effects on Surrounding Area of Adult Entertainment Business in Saint Paul”

- Sexually Oriented Business uses harmful to surrounding commercial uses;
- All Sexually Oriented Businesses uses need to be treated the same;
- Downtown – 1,320 feet spacing between Sexually Oriented Businesses and 400 feet between Sexually Oriented Businesses and residential zones;
- Outside downtown – 2,640 feet spacing between Sexually Oriented Businesses 800 feet between Sexually Oriented Businesses and residential zones;

**New York, New York – 1994**

- Property values negatively affected;
- Signage of Sexually Oriented Businesses is not compatible with the other businesses in the same area;
- Greater number of criminal complaints;
- Overall negative impact on the quality of life for residents and small businesses of Times Square;

**Cleveland, Ohio - 1977**

- Much higher crime where pornography outlets are located;

**Oklahoma City, Oklahoma - 1986**

- Sexually Oriented Businesses have a negative effect on property values, especially on residential properties;

**Amarillo, Texas – 1992**

- Concentrations of “adult only” businesses had 2 ½ times more street crime;
- Citizens tended to avoid such business areas;
- Recommended adult businesses locate a minimum of 1,000 feet from each other;
- Increased regulations and enforcement of laws restricting minors from sexually oriented material;

**FLOYD COUNTY, INDIANA**  
**County Planner**

311 West First Street City-County Municipal Building Suite 214-A  
New Albany, Indiana 47150  
Phone (812) 948.4110 Fax (812) 948.4744

**Austin, Texas - 1986**

- Sexually related crime ranged from 177 – 482 % higher;
- When two Sexually Oriented Businesses were located together the crime rate was 66 % higher than the area with just one Sexually Oriented Business
- 44 % of patrons were from outside Austin;
- Recommended spatial distribution and requirement of conditional use permits for Sexually Oriented Businesses;

**Houston, Texas – 1983**

- Negative effects were on neighborhood protection, community enhancement, and property values;
- Problems increased when businesses were concentrated;
- Sexually oriented businesses contribute to criminal activity;
- Enforcement of existing statutes was difficult;
- Require permits;
- 750 feet from church or school;
- 1,000 feet radius from area that is 75% residential;
- 6 month amortization period;
- Revocation of permit employing minors or with blighted exterior;

**Seattle, Washington – 1989**

- Study relies heavily on reports from other cities and an increased number of citizen complaints regarding neighborhood deterioration;
- Recommended locating cabarets in the same zones as “adult motion picture theatres;”

**Minneapolis, Minnesota – 1980**

- Concentrations of Sexually Oriented Businesses have a significant relationship to higher crime rates and lower property values;
- Recommended that Sexually Oriented Businesses be a minimum of 500 feet from residential areas;
- Sexually Oriented Businesses should not be located adjacent to each other or any other type of late night business (i.e., 24-hour Laundromat and movie theatres);
- Sexually Oriented Businesses should be located in large commercial areas;
- Policies fostering community development are more likely to have desired impacts than removal or restriction of Sexually Oriented Businesses;

**FLOYD COUNTY, INDIANA**  
**County Planner**

311 West First Street City-County Municipal Building Suite 214-A  
New Albany, Indiana 47150  
Phone (812) 948.4110 Fax (812) 948.4744

**Los Angeles, California - 1977**

Areas with several Sexually Oriented Businesses compared to city-wide statistics:

- 340 % greater pandering;
- 42.3 % greater murder;
- 45.2 % greater aggravated assault;
- 52.6 % greater robbery;
- 17.0 % greater purse snatching;

Recommended distance of 1,000 feet separating sexually oriented business and 500 feet from schools, parks, churches and residential businesses