

FLOYD COUNTY RESOLUTION 2004- IX
A RESOLUTION PERTAINING TO CERTAIN AMENDMENTS TO
FLOYD COUNTY ORDINANCE A67-4

WHEREAS, on the 5th day of September, 1967, the Floyd County Zoning Ordinance, being Floyd County Ordinance A67-4, was duly adopted by the Board of Commissioners of the County of Floyd (Board), which said ordinance has been modified and amended from time to time; and

WHEREAS, on the 16th day of March, 2004, the Floyd County Plan Commission (Commission), pursuant to the provisions of IC 36-7-4-605, certified to the Board certain amendments to Floyd County Ordinance A67-4, the same creating a moratorium on the approval of sexually oriented businesses, with the Commission having conducted a public hearing thereon, pursuant to notice, on the 15th day of March, 2004; and

WHEREAS, the Board published notice of its intention to consider the proposed amendments as required by the provisions of IC 36-7-4-607, with a copy of such notice being incorporated herein be reference and made a part hereof; and

WHEREAS, following consideration of the proposed amendments, it was the pleasure of the Board that the amendments as certified be approved.

NOW THEREFORE,

BE IT RESOLVED, that the recitals set forth above be, and they hereby are, incorporated herein and made a part of this resolution.

BE IT FURTHER RESOLVED, that the changes and amendments to Floyd County Ordinance A67-4, as recommended and certified to the Board of Commissioners of the County of Floyd by the Floyd County Plan Commission on the 16th day of March, 2004, be, and they are hereby approved.

SO RESOLVED THIS 16th day of March, 2004.

BOARD OF COMMISSIONERS
OF THE COUNTY OF FLOYD

[Signature]
MEMBER

[Signature]
MEMBER

[Signature]
MEMBER

ATTEST:

[Signature]
FLOYD COUNTY AUDITOR

FLOYD COUNTY PLAN COMMISSION
RESOLUTION PERTAINING TO A PROPOSED MORATORIUM
ON SEXUALLY ORIENTED BUSINESS

WHEREAS, the Floyd County Plan Commission desires to have proper regulations concerning sexually oriented business(es); and

WHEREAS, the Floyd County Plan Commission desires to have public input to address the concerns of the citizens, businesses and other on how they will be affected; and

WHEREAS, there is convincing documented evidence that sexually oriented businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values; and

WHEREAS, it is recognized that sexually oriented businesses, due to their nature, have serious objectionable operational characteristics, particularly when they are located in proximity to each other, thereby contributing to urban plight and downgrading the quality of life in the adjacent area; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance that addresses the secondary effects of sexually oriented businesses as well as the health problems associated with such businesses; and

WHEREAS, there is no ordinance in effect at this time that address such business(es) to properly regulate said business(es); and

WHEREAS, the County needs time to consider the proper regulation of said business(es), to allow sufficient time to study and consider the regulation of said business(es); and

WHEREAS, the Floyd County Plan Commission met on March 15, 2004 and conducted a public hearing on this matter; and

WHEREAS, the Plan Commission heard from both proponents and opponents of a proposed MORATORIUM;

NOW, THEREFORE,

BE IT RESOLVED that Section 2.05 of the Floyd County Ordinance 67-4 be amended to insert the following as Subsection 5:

A. The County hereby institutes a moratorium to temporarily prohibit sexually oriented business(es) as defined herein from opening or locating in Floyd County. This moratorium will take affect immediately upon passage by the Plan Commission. The proposed moratorium will be in place March 15, 2004 through February 29, 2005, to allow the County time to draft a sexually oriented business ordinance.

B. Be It Further Resolved that: the Floyd County Plan Commission and its Executive Director, Zoning Officer and other staff is further directed to withhold any and all Occupancy and/or Improvement Location Permits for said business(es).

C. SEXUALLY ORIENTED BUSINESS SHALL BE DEFINED AS: An adult arcade, adult bookstore or adult video store, adult cabaret, adult massage parlor, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, sexual encounter center, or any combination of the foregoing. As used in this Ordinance, the following definitions shall apply:

1. ADULT ARCADE (also known as "peep show"). Any place to which the public is permitted or invited wherein coin-operated or token-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to persons in booths or viewing rooms where the images so displayed depict or describe specified sexual activities and/or specified anatomical areas.

2. ADULT BOOKSTORE OR ADULT VIDEO STORE. A commercial establishment which as one of its principal business purposes offers for sale or rental, for any form of consideration, any one or more of the following:

- a. books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations that depict or describe specified sexual activities and/or specified sexual activities.
- b. instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities.

3. ADULT CABARET. A nightclub, bar, restaurant, or other commercial establishment that regularly features, exhibits, or displays as one of its principal business purposes:

- a. persons who appear nude or semi-nude; or
- b. live performances which are characterized by the exposure of specified anatomical areas and/or by specified sexual activities; or
- c. films, motion pictures, video cassettes, slides, or other photographic reproductions which depict or describe specified sexual activities and or specified anatomical areas.

4. ADULT MASSAGE PARLOR. A commercial establishment where, for any form of consideration, massage, alcohol rub, fomentation, electric or magnetic treatment, or similar treatment or manipulation of the human body is administered, unless such treatment or manipulation is administered by a medical practitioner, chiropractor, acupuncturist, physical therapist, or similar professional person licensed by the State. This definition does not include an athletic club, physical fitness center, school, gymnasium, reducing salon, or similar establishment where massage or similar manipulation of the human body is offered as an incidental or accessory service.

5. ADULT MOTEL. A hotel, motel, or similar commercial establishment that:

a. offers accommodations to the public, for any form of consideration, and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that depict or describe specified sexual activities and/or specified anatomical areas as one of its principal business purposes; or

b. offers a sleeping room for rent for a period of time that is less than ten (10) hours; or

c. allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

6. ADULT MOTION PICTURE THEATER. A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown as one of its primary business purposes that depict or describe specified sexual activities and/or specified anatomical areas.

7. ADULT THEATER. A theater, concert hall, auditorium, or similar commercial establishment which regularly features, exhibits, or displays, as one of its principal business purposes, persons who appear in a state of nudity or semi-nude, or live performances that expose or depict specified anatomical areas and/or specified sexual activities.

8. ESCORT. A person who, for tips or any other form of consideration, agrees or offers to act as a date for another person, or who agrees to offers to privately model lingerie or to privately perform a striptease for another person.

9. ESCORT AGENCY. A person or business that furnishes, offers to furnish, or advertises to furnish escorts as one of its principal business purposes, for a fee, tip, or any other form of consideration.

10. NUDE MODEL STUDIO. Any place where a person who appears nude or semi-nude, or who displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other person who pay money or any

other form of consideration. Nude Model Studio shall not include a proprietary school licensed by the State of Indiana or a college, junior college, or university supported entirely or in part by public taxation; 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 in a structure:

- a. that has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and
- b. where in order to participate in a class a student must enroll at least three (3) days in advance of the class; and
- c. where no more than one (1) nude or semi-nude model is on the premises at any one time.

BE IT FURTHER RESOLVED that the staff of the Floyd County Plan Commission shall forward a certified copy of this resolution to the Floyd County Commissioners for any further action which they may desire.

SO RESOLVED this 15th day of March, 2004.


FLOYD COUNTY PLAN COMMISSION
Paul Riggs

Attest


Floyd County Plan Commission Staff

3-15-04
Date