

ORDINANCE NO. 2012- 09

**AN ORDINANCE FOR SEXUALLY ORIENTED BUSINESSES,
ESTABLISHING LICENSING REQUIREMENTS AND
REGULATIONS FOR SEXUALLY ORIENTED
BUSINESSES WITHIN LAPORTE COUNTY, INDIANA**

WHEREAS, sexually oriented businesses require special supervision from the public safety agencies of the County in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the County; and,

WHEREAS, the LaPorte County Commissioners find that sexually oriented businesses, as a category of establishments, are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and,

WHEREAS, there is convincing documented evidence that sexually oriented businesses, as a category of establishments, have deleterious secondary effects and are often associated with crime and adverse effects on surrounding properties; and,

WHEREAS, the County Commissioners desire to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from crime; preserve the quality of life; preserve the character of surrounding neighborhoods and deter the spread of urban blight; and,

WHEREAS, certain sexually oriented products and services offered to the public are recognized as not inherently expressive and not protected by the First Amendment, *see, e.g., Sewell v. Georgia*, 233 S.E. 2d 187 (Ga. 1977), *dismissed for want of a substantial federal question*, 435 U.S. 982 (1978) (sexual devices); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 224 (1990) (escort services and sexual encounter services); *Williams v. Morgan*, 478 F. 3d 1316 (11th Cir. 2007) (upholding ban on sexual novelty devices); and,

WHEREAS, there is documented evidence of sexually oriented businesses, including adult bookstores and adult video stores, manipulating their inventory and/or business practices to avoid regulation while retaining their essentially "adult" nature, *see, e.g., City of New York v. Hommes*, 724 N.E. 2d 368 (N.Y. 1999); *For the People Theatres of N.Y., Inc. v. City of New York*, 793 N.Y.S. 2d 356 (N.Y. App. Div. 2005); *Taylor v. State*, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002) (noting that "the non-adult video selections appeared old and several of its display cases were covered with cobwebs"); *Z.J. Gifts D-4, L.L.C. v. City of Littleton*, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001) (finding "plaintiff's argument that it is not an adult entertainment establishment frivolous at best"); *People ex. Rel. Deters v. The Lion's Den, Inc.*, Case No. 04-CH-26, Modified Permanent Injunction

Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005) (noting that “the accuracy and credibility” of the evidence on inventory in a Lion’s Den was suspect, and that testimony was “less than candid” and “suggested an intention to obscure the actual amount of sexually explicit material sold”); and,

WHEREAS, the County intends to regulate such businesses as sexually oriented businesses through a narrowly tailored ordinance designed to serve the substantial government interest in preventing the negative secondary effects of sexually oriented businesses; and,

WHEREAS, the County’s regulations shall be narrowly construed to accomplish this end; and,

WHEREAS, the County recognizes its constitutional duty to interpret, construe, and amend its laws to comply with constitutional requirements as they are announced; and,

WHEREAS, with the passage of any ordinance, the LaPorte County Commissioners accept as binding the applicability of general principles of criminal and civil law and procedure and the rights and obligations under the United States and Indiana Constitutions, Indiana Code, and the Indiana Rules of Civil and Criminal Procedure; and,

WHEREAS, it is not the intent of this Ordinance to suppress any speech activities protected by the U.S. Constitution or the Indiana Constitution, but to enact legislation to further the content-neutral governmental interests of the County, to-wit, the controlling of secondary effects of sexually oriented businesses.

NOW THEREFORE, BE IT ORDAINED by the Commissioners of the County of LaPorte, State of Indiana:

SEXUALLY ORIENTED BUSINESSES

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§ 100.01 Purpose; Findings and Rationale.

- (a) *Purpose.* It is the purpose of this Ordinance 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 Ordinance 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 intent nor effect of this Ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Ordinance to condone or legitimize the distribution of obscene material.
- (b) *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 Faloan 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.

The LaPorte County Commissioners now finds:

- (1) 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, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.
- (2) Each of the foregoing negative secondary effects constitutes a harm which the County has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the County's rationale for this Ordinance, 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 preventing future secondary effects of either current or future sexually oriented businesses that may locate in the County. The County finds that the cases and documentation relied on in this Chapter are reasonably believed to be relevant to said secondary effects.

The County hereby adopts and incorporates herein its stated findings and legislative record related to the adverse secondary effects of sexually oriented businesses, including the judicial opinions and reports related to such secondary effects.

§ 101.01 Definitions.

For the purposes of this Ordinance, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

"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:

- a. At least 35% of the establishment's displayed merchandise consists of said items;
or,
- b. At least 35% of the wholesale value of the establishment's displayed merchandise consists of said items; or,
- c. 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,
- d. At least 35% of the establishment's revenues derive from the sale or rental, for any form of consideration, of said items; or,
- e. 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,
- f. 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,
- g. The establishment regularly offers for sale or rental at least two thousand (2,000) of said items; or,
- h. 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,
- i. 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."

"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.

"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.

"Bath House, Sexually Oriented" means an enterprise where a portion of its business is offering baths with other persons present who are nude or displaying specified anatomical areas.

"Body Painting Studio, Sexually Oriented" 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 or the patrons view of specified anatomical areas.

"Characterized by" means describing the essential character or quality of an item. As applied in this Ordinance, no business shall be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

"County" means the County of LaPorte, Indiana.

"Employ, Employee, and Employment" describe and pertain to any person who performs any service on the premises of a sexually oriented business, on a full time, part time, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, lessee, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

"Establish or Establishment" means and includes any of the following:

- a. The opening or commencement of any sexually oriented business as a new business;
- b. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or,
- c. The addition of any sexually oriented business to any other existing sexually oriented business.

"Floor Space" means the floor area inside a sexually oriented business that is visible or accessible to patrons for any reason, excluding restrooms.

"Hearing Officer" means an attorney, not otherwise employed by the County, who is licensed to practice law in Indiana, and retained to serve as an independent tribunal to conduct hearings under this Ordinance.

"Influential Interest" means any of the following: (1) the actual power to operate the sexually oriented business or control the operation, management or policies of the sexually oriented business or legal entity which operates the sexually oriented business; (2) ownership of a financial interest of thirty percent (30%) or more of a business or of any class of voting securities of a business; or, (3) holding an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the sexually oriented business.

"Licensee" means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In the case of an "employee," it shall mean the person in whose name the sexually oriented business employee license has been issued.

"Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering; the showing of the female breast with less than a fully opaque covering of any part of the nipple; or, the depiction of covered male genitals in a discernibly turgid state.

"Operator" means any person on the premises of a sexually oriented business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated a sexually oriented business regardless of whether that person is an owner, part owner, or licensee of the business.

"Person" means an individual, proprietorship, partnership, corporation, association, or other legal entity.

"Premises" means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a sexually oriented business license.

"Regularly" means the consistent and repeated doing of an act on an ongoing basis.

"Reviewing Room" means the room, booth, or area where a patron of a sexually oriented business would ordinarily be positioned while watching a film, videocassette, digital video disc, or other video reproduction.

"Semi-Nude or Semi-Nudity" means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

"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:

- a. By a college, junior college, or university supported entirely or partly by taxation;
- b. 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,
- c. In a structure:
 - a. 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,
 - b. Where, in order to participate in a class a student must enroll at least three days in advance of the class.

"Sexual Device" means any three (3) dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representation of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

"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.

"Sexually Oriented Business" means an "adult bookstore or adult video store," an "adult cabaret," an "adult motion picture theater," a "semi-nude model studio," a "sexual device shop," a "sexually oriented bath house," a "sexually oriented body painting studio," or a "sexually oriented encounter center."

"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 is 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.

"Specified Anatomical Areas" means and includes:

- a. Less than completely and opaquely covered: human genitals; pubic region; buttock; and female breast below a point immediately above the top of the areola; and,
- b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

"Specified Criminal Activity" means any of the following specified crimes for which less than five years has elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:

- a. Rape, Sexual Assault, Public Indecency, Statutory Rape, Rape Of A Child, Sexual Exploitation of a Minor, Indecent Exposure, or any offense that requires the offender to register with the State Of Indiana as a Convicted Sex Offender;
- b. Prostitution, Patronizing Prostitution, Promoting Prostitution;
- c. Obscenity;
- d. Manufacturing, Delivering, or Possession with intent to deliver any Controlled Substances or Cannabis;
- e. Racketeering, Tax Evasion, Money Laundering;
- f. any attempt, Solicitation, or Conspiracy to Commit one of the foregoing offenses;
- g. Human And Sexual Trafficking; Or,

- h. Any Offense in another Jurisdiction that, had the predicate act(s) been committed in Indiana, would have constituted any of the foregoing Offenses.

"Specified Sexual Activity" means any of the following:

- a. Intercourse, oral copulation, masturbation or sodomy; or,
- b. Excretory functions as a part of or in connection with any of the activities described in (a) above.

"Transfer of Ownership or Control" of a sexually oriented business means any of the following:

- a. The sale, lease, or sublease of the business; or,
- b. The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or,
- c. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

§ 102.01 License required.

- (a) *Business License.* It shall be unlawful for any person to operate a sexually oriented business in the County without a valid sexually oriented business license.
- (b) *Employee License.* It shall be unlawful for any person to be an "employee," as defined in this Ordinance, of a sexually oriented business in the County without a valid sexually oriented business employee license, except that a person who is a licensee under a valid sexually oriented business license shall not be required to also obtain a sexually oriented business employee license.
- (c) *Application.* An applicant for a sexually oriented business license or a sexually oriented business employee license shall file in person at the office of the County Administrator or his/her assigns a completed application made on a form provided by the County Administrator or his/her assigns. A sexually oriented business may designate an individual with an influential interest in the business to file its application for a sexually oriented business license in person on behalf of the business. The application shall be signed as required by subsection (3) herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in this subsection (c), accompanied by the appropriate licensing fee:

- (1) The applicant's full legal name and any other names used by the applicant in the preceding five (5) years.
- (2) Current business address or another mailing address for the applicant.
- (3) Written proof of age, in the form of a driver's license, a picture identification document containing the applicant's date of birth issued by a governmental agency, or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.
- (4) If the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number of the sexually oriented business.
- (5) If the application is for a sexually oriented business license, the name and business address of the statutory agent or other agent authorized to receive service of process.
- (6) A statement of whether an applicant has been convicted of or has pled guilty or *nolo contendere* to a specified criminal activity as defined in this Ordinance, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.
- (7) A statement of whether any sexually oriented business in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
 - i. been declared by a court of law to be a nuisance; or,
 - ii. been subject to a court order of closure or padlocking.
- (8) An application for a sexually oriented business license shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor area occupied by the business and a statement of floor area visible or accessible to patrons for any reason, excluding restrooms. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with market dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Applicants who are required to comply with the stage, booth, and/or room configuration requirements of this Ordinance shall submit a diagram indicating that the setup and configuration of the premises meets the requirements of the applicable regulations. The County Administrator or his/her assigns may waive the requirements of this subsection (8) for a

renewal application if the applicant adopts a legal description and a sketch or diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

The information provided pursuant to this subsection (c) shall be supplemented in writing by certified mail, return receipt requested, to the County Administrator or his/her assigns within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

- (d) *Signature.* A person who seeks a sexually oriented business employee license under this section shall sign the application for a license. If a person who seeks a sexually oriented business license under this section is an individual, he shall sign the application for a license as applicant. If a person who seeks a sexually oriented business license is other than an individual, each person with an influential interest in the sexually oriented business or in a legal entity that controls the sexually oriented business shall sign the application for a license as applicant. Each applicant must be qualified under this Ordinance and each applicant shall be considered a licensee if a license is granted. Each person who files in person either an application for a sexually oriented business license or an application for a sexually oriented business employee license shall also submit, with the application, a set of fingerprints taken by the LaPorte County Sheriff's Department on a form provided by the Sheriff's Department. The LaPorte County Sheriff's Department shall take fingerprints, during normal business hours, within four (4) business hours of receiving a request for such service.
- (e) The information provided by an applicant in connection with an application for a license under this Ordinance shall be maintained by the office of the County Administrator or his/her assigns on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by governing law or court order. Any information protected by the right to privacy as recognized by state or federal law shall be redacted prior to such disclosure.

§ 103.01 Issuance of License.

- (a) *Business License.* Upon the filing of a completed application for a sexually oriented business license, the County Administrator or his/her assigns shall immediately issue a Temporary License to the applicant if the completed application is from a preexisting sexually oriented business that is lawfully operating in the County and the completed application, on its face, indicates that the applicant is entitled to an annual sexually oriented business license. The Temporary License shall expire upon the final decision of the County to deny or grant an annual license. Within thirty (30) days of the filing of a completed

sexually oriented business license application, the County Administrator or his/her assigns shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The County Administrator or his/her assigns shall issue a license unless:

- (1) An applicant is less than eighteen (18) years of age.
 - (2) An applicant has failed to provide information required by this Ordinance for issuance of a license or has falsely answered a question or request for information on the application form.
 - (3) The license application fee required by this Ordinance has not been paid.
 - (4) The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this Ordinance or is not in compliance with locational requirements of the Ordinances of LaPorte County.
 - (5) Any sexually oriented business in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
 - i. Been declared by a court of law to be a nuisance; or,
 - ii. Been subject to an order of closure or padlocking.
 - (6) An applicant has been convicted of or pled guilty or *nolo contendere* to a specified criminal activity, as defined in this Ordinance.
- (b) *Employee License.* Upon the filing of a completed application for a sexually oriented business employee license, the County Administrator or his/her assigns shall immediately issue a Temporary License to the applicant if the applicant seeks licensure to work in a licensed sexually oriented business and the complete application, on its face, indicates that the applicant is entitled to an annual sexually oriented business employee license. The Temporary License shall expire upon the final decision of the County to deny or grant an annual license. Within thirty (30) days of the filing of a completed sexually oriented business employee license application, the County Administrator or his/her assigns shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The County Administrator or his/her assigns shall issue a license unless:
- (1) The applicant is less than eighteen (18) years of age.

- (2) The applicant has failed to provide information as required by this Ordinance for issuance of a license or has falsely answered a question or request for information on the application form.
 - (3) The license application fee required by this Ordinance has not been paid.
 - (4) Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
 - i. been declared by a court of law to be a nuisance; or,
 - ii. been subject to an order of closure or padlocking.
 - (5) The applicant has been convicted of or pled guilty or *nolo contendere* to a specified criminal activity, as defined in this Ordinance.
- (c) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the licenses issued to the licensee(s), the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time that the business is occupied by patrons or is open to the public. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing.

§ 104.01 Fees.

The initial license and annual renewal fees for sexually oriented business licenses and sexually oriented business employee licenses shall be as follows: One Thousand Dollars (\$1,000.00) for the initial and annual renewal fee for a sexually oriented business license; One Hundred Dollars (\$100.00) for the initial and annual renewal fee for a sexually oriented business employee license.

§ 105.01 Inspection and License on Premises.

Sexually oriented businesses and sexually oriented business employees shall permit the County Administrator or his/her assigns to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this Ordinance, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed by the County to

authorize reasonable inspections of the licensed premises pursuant to this Ordinance, but not to authorize a harassing or excessive pattern of inspection.

§ 105.02 Business License.

The business license for a sexually oriented business shall be displayed prominently at the main entrance of the establishment.

§ 105.03 Manager on Duty.

The name of the manager on duty shall be prominently displayed at the main entrance of the establishment.

§ 105.04 Employee Licenses.

Licenses of all individual employees shall be maintained on file on the premises for inspection by the Authorities, upon request.

§ 106.01 Expiration and Renewal of License.

- (a) Each license shall remain valid for a period of one calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in this Ordinance.
- (b) Application for renewal of an annual license shall be made at least ninety (90) days before the expiration date of the current annual license. If an application for renewal is made in less than ninety (90) days prior to the expiration date of the current annual license, then the applicant risks the sole responsibility of the annual license expiring. There shall be no extension of an annual license as a result of application for renewal less than ninety (90) days before license expiration.

§ 107.01 Suspension.

- (a) The County Administrator or his/her assigns shall issue a written notice of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if the sexually oriented business licensee has knowingly or recklessly violated this Ordinance or has knowingly or recklessly allowed an employee or any other person to violate this Ordinance.
- (b) The County Administrator or his/her assigns shall issue a written notice of intent to suspend a sexually oriented business employee license for a period not to

exceed thirty (30) days if the employee licensee has knowingly or recklessly violated this Ordinance.

§ 108.01 Revocation.

- (a) The County Administrator shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if the licensee knowingly or recklessly violates this Ordinance or has knowingly or recklessly allowed an employee or any other person to violate this Ordinance and a suspension of the licensee's license has become effective within the previous twelve (12) month period.
- (b) The County Administrator shall issue a written intent to revoke a sexually oriented business license or a sexually oriented employee license, as applicable, if:
 - (1) The licensee has knowingly given false information in the application for the sexually oriented business license or the sexually oriented business employee license;
 - (2) The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises of the sexually oriented business;
 - (3) The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises of the sexually oriented business;
 - (4) The licensee knowingly or recklessly operated the sexually oriented business during a period of time when the license was finally suspended or revoked;
 - (5) The licensee has knowingly or recklessly engaged in or allowed any specific sexual activity or specified criminal activity to occur in or on the premises of the sexually oriented business;
 - (6) The licensee has knowingly or recklessly allowed a person under the age of twenty-one (21) years to consume alcohol on the premises of the sexually oriented business; or,
 - (7) The licensee has knowingly or recklessly allowed a person under the age of eighteen (18) years to appear in a state of semi-nudity or nudity on the premises of the sexually oriented business.

- (c) The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.
- (d) When, after the notice and hearing procedure described in this Ordinance, the County revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for one (1) year from the date the revocation becomes effective.
- (e) A sexually oriented business license or a sexually oriented business employee license, as applicable, shall not be revoked except for a reason set forth in subsection (a) or (b), above. The County shall not enforce a revocation of a sexually oriented business license or a sexually oriented business employee license, as applicable, unless the revocation is accomplished in accordance with § 108.01 and § 109.01 of this Ordinance.

§ 109.01 Hearing; License Denial, Suspension, Revocation; Appeal

- (a) When the County Administrator or his/her assigns issues a written notice of intent to deny, suspend, or revoke a license, the County Administrator or his/her assigns shall immediately send such notice, which shall include the specific grounds under this Ordinance for such action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the County Administrator for the respondent. The notice shall also set forth the following: The respondent shall have ten (10) days after the delivery of the written notice to submit, at the office of the County Administrator or his/her assigns a written request for a hearing. If the respondent does not request a hearing within said ten (10) days, the County Administrator's written notice shall become a final denial, suspension, or revocation, as the case may be, on the thirtieth (30th) day after it is issued, and shall be subject to the provisions of subsection (b) of this section.

If the respondent does make a written request for a hearing within said ten (10) days, then the County Administrator or his/her assigns shall, within ten (10) days after the submission of the request, send a notice to the respondent indicating the date, time, and place of the hearing. The hearing shall be conducted not less than ten (10) days nor more than twenty (20) days after the date that the hearing notice is issued. The County shall provide for the hearing to be transcribed.

At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the County

Administrator's witnesses. The County Administrator or his/her assigns shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two (2) days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The Hearing Officer shall issue a final written decision, including specific reasons for the decision pursuant to this Ordinance, to the respondent within five (5) days after the hearing.

If the decision is to deny, suspend, or revoke the license, the decision shall advise the respondent of the right to appeal such decision to a court of competent jurisdiction, and the decision shall not become effective until the thirtieth (30th) day after it is rendered. If the Hearing Officer's decision finds that no grounds exist for denial, suspension, or revocation of the license, the Hearing Officer shall, contemporaneously with the issuance of the decision, order the County Administrator or his/her assigns to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the County Administrator or his/her assigns shall contemporaneously therewith issue the license to the applicant.

- (b) If any court action challenging a licensing decision is initiated, the County shall prepare and transmit to the court a transcript of the hearing within thirty (30) days after receiving written notice of the filing of the court action. The County shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any sexually oriented business that is lawfully operating as a sexually oriented business, or any sexually oriented business employee that is lawfully employed as a sexually oriented business employee, on the date on which the completed business or employee application, as applicable, is filed with the County Administrator or his/her assigns: Upon the enforcement of any denial, suspension, or revocation of a Temporary License or annual license, the County Administrator or his/her assigns shall immediately issue the respondent a Provisional License. The Provisional License shall allow the respondent to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the County's enforcement.

§ 110.01 Transfer of License.

A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application.

§ 111.01 Hours of Operation.

No sexually oriented business shall be or remain open for business between 2:00 a.m. and 6:00 a.m. on any day.

§ 112.01 Regulations Pertaining to Exhibit of Sexually Explicit Films on Premises.

(a) A person who operates or causes to be operated a sexually oriented business which exhibits in a booth or viewing room on the premises, through any mechanical or electronic image-producing device, a film, video cassette, digital video disc, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements:

(1) Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all operator's stations, booths or viewing rooms, overhead lighting fixtures, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain equipment for displaying films, video cassettes, digital video discs, or other video reproductions. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. The County Administrator or his/her assigns may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(2) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.

- (3) The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.
- (4) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no specified sexual activity occurs in or on the licensed premises.
- (5) It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:
- i. That the occupancy of viewing rooms less than one hundred fifty square feet (150 sq. ft.) is limited to one (1) person.
 - ii. That specified sexual activity on the premises is prohibited.
 - iii. That the making of openings between viewing rooms is prohibited.
 - iv. That violators will be required to leave the premises.
 - v. That violations of these regulations are unlawful.
- (6) It shall be the duty of the operator to enforce the regulations articulated in (5)(i) through (iv) above.
- (7) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any person is permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose, excluding restrooms, from at least one of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be

the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

(8) It shall be the duty of the operator to ensure that no porous materials are used for any wall, floor, or seat in any booth or viewing room.

- i. It shall be unlawful for a person having a duty under subsections (a)(1) through (a)(8) to knowingly or recklessly fail to fulfill that duty.
- ii. No patron shall knowingly or recklessly enter or remain in a viewing room less than one hundred fifty square feet (150 sq. ft.) in area that is occupied by any other patron.
- iii. No patron shall knowingly or recklessly be or remain within one (1) foot of any other patron while in a viewing room that is one hundred fifty square feet (150 sq. ft.) or larger in area.
- iv. No person shall knowingly or recklessly make any hole or opening between viewing rooms.

§ 113.01 Loitering, Exterior Lighting and Monitoring, and Interior Lighting Requirements.

- (a) It shall be the duty of the operator of a sexually oriented business to: (i) ensure that at least two conspicuous signs stating that no loitering is permitted on the premises are posted on the premises; (ii) designate one or more employees to monitor the activities of persons on the premises by visually inspecting the premises at least once every ninety (90) minutes or inspecting the premises by use of video cameras and monitors; and (iii) provide lighting to the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. Said lighting shall be of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than one (1.0) foot candle as measured at the floor level. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.
- (b) It shall be the duty of the operator of a sexually oriented business to ensure that the interior premises shall be equipped with overhead lighting of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than five (5.0) foot candles as measured at floor level and the

illumination must be maintained at all times that any customer is present in or on the premises.

- (c) No sexually oriented business shall erect a fence, wall, or similar barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right of way.
- (d) It shall be unlawful for a person having a duty under this section to knowingly or recklessly fail to fulfill that duty.

§ 114.01 Penalties and Enforcement.

- (a) A person who violates any of the provisions subject to this Ordinance may be fined no more than Seven Hundred Fifty Dollars (\$750.00) plus court costs. Each day a violation is committed, or permitted to continue, shall constitute a separate offense and may be fined as such, subject to the discretion of the County Administrator or his/her assigns.
- (b) Any premises, building, dwelling, or other structure in which a sexually oriented business is repeatedly operated or maintained in violation of this Ordinance shall constitute a nuisance and shall be subject to civil abatement proceedings in a court of competent jurisdiction.
- (c) The County's legal counsel is hereby authorized to institute civil proceedings necessary for the enforcement of this Ordinance to enjoin, prosecute, restrain, or correct violations hereof. Such proceedings shall be brought in the name of the County, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this Ordinance, or any of the laws in force in the County or to exempt anyone violating this code or any part of the said laws from penalty which may be incurred.

§ 115.01 Applicability of Ordinance to Existing Businesses.

- (a) *Licensing.* Each preexisting sexually oriented business lawfully operating in the County in compliance with all state and local laws prior to the effective date of this Ordinance, and each sexually oriented business employee lawfully working as such in the County prior to the effective date of this Ordinance, is hereby granted a *De Facto* Temporary License to continue operation or employment for a period of thirty (30) days following the effective date of this Ordinance. By the end of said thirty (30) days, all sexually oriented businesses and sexually oriented business employees must apply for a license under this Ordinance.

- (b) *Interior Configuration and Conduct Requirements.* Any preexisting sexually oriented businesses which are required to, but do not, have interior configurations or stages that meet at least the minimum requirements of Section 112.01 and Section 116.01(b) shall have one hundred eighty (180) days from the effective date of this Ordinance to conform their premises to said requirements. During said one hundred eighty (180) days, any employee who appears within view of any patron in a semi-nude condition shall nevertheless remain, while semi-nude, at least six (6) feet from all patrons.

§ 116.01 Prohibited Conduct.

- (a) No patron, employee, or any other person shall knowingly or intentionally, in a sexually oriented business, appear in a state of nudity or engage in a specified sexual activity.
- (b) No person shall knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six (6) feet from all patrons and on a stage at least eighteen (18) inches from the floor in a room of at least six hundred (600) square feet.
- (c) No employee who regularly appears semi-nude in a sexually oriented business shall knowingly or intentionally touch a patron or the clothing of a patron on the premises of a sexually oriented business.
- (d) No person shall knowingly or recklessly allow a person under the age of eighteen (18) years to be or remain on the premises of a sexually oriented business.
- (e) No operator or licensee of a sexually oriented business shall knowingly violate the regulations in this section or knowingly allow an employee or any other person to violate the regulations in this section.
- (f) A sign in a form to be prescribed by the County Administrator or his/her assigns, and summarizing the provisions of subsections (a), (b), (c), (d), and (e), shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry. No person shall cover, obstruct, or obscure said sign.

§ 117.01 Scierter Required to Prove Violation or Business Licensee Liability.

This Ordinance does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this Ordinance. Notwithstanding anything to the contrary, for the purposes of this Ordinance, an act by an employee that constitutes

grounds for suspension or revocation of that employee's license shall be imputed to the sexually oriented business licensee for purposes of finding a violation of this Ordinance, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

§ 118.01 Failure of County to Meet Deadline Not to Risk Applicant/Licensee Rights.

In the event that a County official is required to act or to do a thing pursuant to this Ordinance within a prescribed time, and fails to act or to do such thing within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the County official under this Ordinance, and not completed in the time prescribed, includes approval of condition(s) necessary for approval by the County of an applicant or licensee's application for a sexually oriented business license or a sexually oriented business employee's license (including a renewal), the license shall be deemed granted and the business or employee allowed to commence operations or employment the day after the deadline for the County's action has passed.

§ 119.01 Severability.

This Ordinance and each section and provision of said Ordinance hereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said Ordinance, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of said sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid. Should any procedural aspect of this Ordinance be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this Ordinance.

§ 120.01 Conflicting Provisions Repealed.


Any provision(s) in the Ordinances for the County of LaPorte specifically in conflict with any provisions in this Ordinance is hereby deemed inoperative and repealed.

§ 121.01 Effective Date.

This Ordinance shall take effect at the earliest date provided by law.

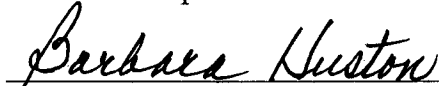
PASSED AND ADOPTED BY the LaPorte County Commissioners of LaPorte
County, Indiana, this 20th day of November, 2012.

THE LAPORTE COUNTY COMMISSIONERS



Ken Layton, President

Willie Milsap



Barbara Huston