

ORDINANCE KOC 440.4

AN ORDINANCE RELATING TO THE REGULATION OF SEXUALLY ORIENTED BUSINESSES AND THEIR EMPLOYEES

BE IT ORDAINED BY THE FISCAL COURT OF THE COUNTY OF HART, COMMONWEALTH OF KENTUCKY:

WHEREAS, the Fiscal Court is concerned about the secondary effects and impacts of sexually oriented businesses; and

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

WHEREAS, the concern over sexually transmitted diseases is a legitimate health concern of Hart County which demands regular regulation of sexually oriented businesses in order to protect the health and well-being of the citizens; and

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

WHEREAS the Fiscal Court desires to minimize and control these adverse effects and thereby protect the health, safety and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of adjacent businesses and neighborhoods; and

WHEREAS, KRS 67.083 grants fiscal courts the authority to enact ordinances regulating establishments or commercial enterprising offering adult entertainment and adult entertainment activities;

SECTION I. PURPOSE AND FINDINGS

(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 Hart County, and to establish reasonable and uniform regulations relating to sexually oriented businesses. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any

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communicative materials, including sexually oriented materials, but to enact a content neutral ordinance which addresses the secondary effects of sexually oriented businesses. 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.

However, neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material and the Fiscal Court recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state law enforcement officials to enforce state obscenity statutes against any such illegal activities in Hart County.

(b) Findings. Based on evidence concerning the adverse secondary effects of adult uses on the community presented in reports made available to the Fiscal Court, and on findings incorporated in the cases of *City of Renton v. Play Time Theaters, Inc.*, 475 U.S. 41 (1986), *Young vs. American Mini Theaters*, 426 U.S. 50 (1976), and *Barnes v. Glen Theater, Inc.*, 501 U.S. 560 (1991), and on studies in other communities including, but not limited to, Phoenix, AZ; Minneapolis, MN; Houston, TX; Indianapolis, IN; Amarillo, TX; Garden Grove, CA; Los Angeles, CA; Whittier, CA; Austin, TA; Seattle, WA; Oklahoma City, OK; Cleveland, OH; and Beaumont, TX; and also on findings from the report of the Attorney General's Working Group on the regulation of sexually oriented businesses, (June 6, 1989, State of Minnesota), the Fiscal Court finds:

1. Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.
2. Certain employees of sexually oriented business defined in this ordinance as adult theaters and cabarets engage in higher incidents of certain types of illicit sexual behavior than employees of other establishments.
3. Sexual acts occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos or live sex shows. Offering and providing such space encourages such activities which creates unhealthy conditions.
4. Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.
5. At least fifty (50) communicable diseases may be spread by activities occurring in sexually oriented businesses, including but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes,

hepatitis B, non-A, non-B amebiasis, salmonella infections, and shigella infections.

6. There has been an increasing cumulative number of reported cases of AIDS caused by the HIV virus in the United States. Through December 31, 1997, there have been 619,690 reported cases of AIDS in the United States. As of December 31, 1997, there have been 2,583 reported cases of AIDS in Kentucky.

7. The United States Surgeon General in his report of October 22, 1986, advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.

8. Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and operators of the facilities to self-regulate those activities and maintain those facilities.

9. Children, the family environment and residential neighborhoods suffer injury from the deleterious effects and harmful consequences resulting from the distribution of, and exposure to, certain sexually explicit materials. This is particularly so when such material is permitted to leave a business's premises and enter the immediate family environment, neighborhood and certain areas where children are likely to be.

10. The findings noted in paragraphs 1 through 9 raise substantial governmental concerns.

11. Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.

12. Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theaters.

13. The general welfare, health and safety of the citizens of Hart County will be promoted by the enactment of this ordinance.

SECTION II. DEFINITIONS

For purposes of this ordinance, certain terms and words are defined as follows, unless the context clearly indicates or requires a different meaning:

"Adult Amusement Arcade" means any place to which the public is permitted or invited wherein coin operated, slug operated, or for any form of consideration, electronically, electrically, or mechanically controlled still or motion

picture machines, projectors, video or laser disk players, 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 distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas".

"Adult Book Store", "Adult Novelty Store", or "Adult Video Store", means a commercial establishment which, as one of its regular features, 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 which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or

(b) Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities".

"Adult Cabaret" means a night club, bar, restaurant, or similar commercial establishment which regularly features:

(a) Persons who appear in a state of nudity or semi-nude; or

(b) Live performance which are characterized by the exposure of specified anatomical areas" or by "specified sexual activities"; or

(c) Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

"Adult Motel" means hotel, motel, or like commercial establishment which:

(a) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right-of-way which advertises the availability of this adult-type photographic reproductions; 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 subrent the room for a period of time that is less than ten (10) hours.

“Adult Motion Theater” means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the dominant depiction or description of “specified sexual activities” or “specified anatomical areas”.

“Adult Stage Show Theater” means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities”.

“Employee” shall mean any person who performs any service on the premises of a sexually oriented business on a full time, part time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. “Employee” does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods on the premises.

“Entertainer” means any person who provides sexually oriented entertainment in a sexually oriented business whether or not an employee of the business and whether or not a fee is charged or accepted for such entertainment.

“Escort” means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

“Escort Agency” means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

“Establishment” means any sexually oriented business, whether existing or opening of such business; the conversion of an existing business, whether or not a sexually oriented business to any sexually oriented business; the additions of any sexually oriented businesses to any other sexually oriented business; or the relocation of any sexually oriented business.

“Manager” means any person who manages, directs, administers, or is in charge of the affairs and/or the conduct of a sexually oriented business.

“Nude”, “Nudity” or a **“state of nudity”** means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a frilly opaque covering, the showing of the female breast with less than a frilly opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

“Owner” means any individual, proprietorship, partnership, corporation, association, or other legal entity who has legal title to real estate, with or without actual possession thereof, or has all or part of the beneficial ownership of any real estate and a right to present use or enjoyment thereof, including a mortgage in possession.

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

“Regularly Featured or Regularly Shown” means a substantial or significant use, but not necessarily a majority of the business activity or stock in trade. The fact that a business may have one or more other principal uses unrelated to sexually oriented business shall not relieve the business from the provisions of this ordinance if the business dedicates at least twenty-five (25%) percent of the utilized square footage of its premises for sexually oriented business or at least twenty-five (25%) percent of the gross receipts of a business, excluding food and beverage receipts, result from sexually oriented business

“Mental States” required to prove violations. Notwithstanding anything to the contrary, for the purpose of this ordinance, an act by an employee or any person shall be imputed to the sexually oriented business owner or manager for the purposes of finding a violation if the owner or manager knowingly or negligently allowed such act to occur on the premises of the establishment.

“Semi-nude” or in a **“semi-nude condition”** means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, or other wearing apparel provided the areola is not exposed in whole or in part.

“Sexual Activities” shall mean depiction of human genitals in a state of sexual stimulation, acts of human masturbation, sexual intercourse or sodomy, holding or erotic touching of human genitals, pubic region, buttocks or breasts.

“Sexual Encounter Center” means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration physical contact in the form of wrestling or tumbling between persons of the opposite sex; or activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

“Sexually Oriented Business” means an adult amusement arcade, adult book store, adult motel, adult novelty store, adult video store, adult cabaret, adult motion picture theater, adult stage theater, escort agency, or sexual encounter center.

“Specified Anatomical Areas” means the human male genitals in a discernibly turgid state, even if completely and opaquely covered; or less than completely and opaquely covered human genitals, pubic region, buttocks, or a female breast below a point immediately above the top of the areola.

“Specified Sexual Activities” means the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breast; or other sexual acts, including but not limited to actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or excretory functions as part of or in connection with any of the foregoing activities.

SECTION III. GENERAL RESTRICTIONS, REQUIREMENTS AND CONDITIONS FOR SEXUALLY ORIENTED BUSINESSES

All sexually oriented businesses defined under Section II of this ordinance shall comply with the following requirements:

(a) An establishment shall not exhibit any lettering, wording, pictorial or representational matter which is distinguished or characterized by a depiction of sexual activities on any sign subject to public view from outside the establishment.

(b) An establishment shall not display its stock in trade, inventory, or merchandise which depicts, describes or relates to sexual activities in such a manner as to be subject to public view from outside the establishment.

(c) Except as otherwise provided by laws which may be more restrictive, no owner or operator of an establishment shall knowingly permit a person under eighteen (18) years of age to be employed by or enter the establishment. Each establishment shall maintain and retain for a period of two (2) years beyond the last date of employment, the full name, date of birth, last known address, date of termination, and social security number of all persons employed by the sexually oriented business.

(d) An establishment must have an employee on duty at all times in which the business is open and must be positioned at a station in the premises which is located in such a manner that the entrance can be monitored at all times. Any person who reasonably appears to be under the age of eighteen (18) shall be requested to verify his or her age. All persons under the age of eighteen (18) discovered in the establishment shall be immediately escorted out of the premises.

(e) No specified sexual activity, including but not limited to sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact shall be permitted in or on the premises of any establishment, except for an adult motel. No owner, operator, or employee of an establishment shall knowingly permit these activities to occur on the licensed premises.

SECTION IV. REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS, VIDEOS OR LIVE ENTERTAINMENT IN VIEWING ROOMS.

(a) A person who operates or causes to be operated an establishment, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, live entertainment, or other video reproduction which depicts "specified sexual activities" or "specified anatomical areas", shall comply with the following requirements:

1. Any wall or partition which is situated so as to create a viewing area which any amusement device or viewing screen is located shall be constructed of not less than one hour fire restrictive material and shall contain no hole or other perforation.

2. The interior of the premises shall be configured in such a manner that there shall be an unobstructed view from a manager's or cashier's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. The view required in this section must be by direct line of sight from the manager's or cashier's station.

3. No viewing room or booth shall be obstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials. No patron shall be permitted access to any area of the premises which has been designated as an area to which patrons are not permitted.

4. No viewing room or booth shall be occupied by more than one person at any time. No owner, operator, or employee shall knowingly permit any viewing room or booth to be occupied by more than one person at any time.

5. No restroom shall contain any video reproduction devices or equipment.

6. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than ten (10) foot candles as measured at floor level.

7. It shall be the duty of the owner, manager or employee to ensure that the illumination described above is maintained at all times that any customer is present in the premises.

8. No owner, manager or employee shall allow openings of any kind to exist between viewing rooms or booths.

9. No person shall make or attempt to make an opening of any kind between

viewing booths or rooms.

10. The owner, manager or employees shall, during each business day, cause the wall between the viewing booths to be regularly inspected to determine if any openings or holes exist.

11. All floor coverings in viewing rooms or booths shall be non-porous, easily cleanable surfaces, with no rugs or carpeting.

12. There must be at least one employee on duty and situated at the manager's station at all times that any patron is present inside the premises. The manager or cashier's station shall be a maximum of 32 square feet and if multiple managers or cashier's stations are needed then an employee shall be present at each such station when any patron is present in the area which is monitored by that particular station.

(b) All establishments in operation in Hart County on the effective date of this ordinance shall comply with the terms and conditions hereof within ninety (90) days after the effective date of this ordinance.

SECTION V. INSPECTION

All establishments shall permit representatives of Hart County, including representatives of the Sheriffs Department, Fire Department, or other County departments or agencies to inspect the premises for the purpose of ensuring compliance with the law, at any time it is occupied or open for business. Upon observing any violation of this ordinance, by the owner, manager or employee, such duly authorized representative shall make arrests without warrants for violations committed within their presence.

SECTION VI. REGULATIONS PERTAINING TO LIVE PERFORMANCES OR OTHER ENTERTAINMENT

(a) It shall be a violation for a patron, employee, or any other person to knowingly or intentionally, in an establishment, appear in a state of nudity, regardless of whether such public nudity is expressive in nature.

(b) It shall be a violation for any person to knowingly or intentionally in an establishment appear in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least six (6) feet from any patron or customer and on a stage at least eighteen (18) inches from the floor.

(c) It shall be a violation for any employee, while semi-nude in a sexually oriented business, to knowingly or intentionally receive any pay or gratuity directly from any customer or for any customer to knowingly or intentionally pay or give any gratuity directly to any employee, while said employee is semi-nude in a sexually

oriented business.

(d) It shall be a violation for any employee, while semi-nude, to knowingly or intentionally touch a customer the clothing of a customer.

(e) No employee, while semi-nude, shall be visible from any public place outside the premises during any performance.

SECTION VII. LOCATION RESTRICTIONS.

(a) The public entrance to a sexually oriented business shall not be located within 1000 feet of any building containing a public or private elementary, middle or secondary school, institution of higher education or business college, or any park-like area of open space under the control of a governmental agency, or any building used for a place of religious worship, or any building used for a governmental function or public library. Such distance shall be measured along a straight line from the nearest property line of the property on which the building or park-like area is located to the entrance to such establishment engaging in a sexually oriented business.

(b) The public entrance to an establishment engaging in a sexually oriented business shall not be located within 1,000 feet of the public entrance of another sexually oriented business.

SECTION VIII. ENTERTAINMENT PERMIT

Notwithstanding anything in this ordinance to the contrary, nothing in this ordinance is intended to supersede or abrogate the requirement for any establishment providing entertainment as defined in KRS 231.010 to obtain a permit to operate a place of entertainment pursuant to KRS Chapter 231.

SECTION IX. SEVERABILITY.

If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected.

SECTION X. PENALTIES.

Any person who violates any provision of this ordinance shall be guilty of a misdemeanor and subject to a fine of not more than five hundred dollars (\$500.00), or be imprisoned in the county jail for not more than twelve (12) months, or both, fine and imprisonment, for each offense. Any person cited under this ordinance may be cited again for the same violation one or more days after a prior citation and each citation shall constitute a separate offense.

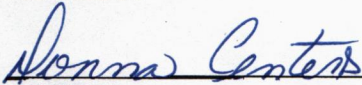
SECTION XI. EFFECTIVE DATE.

This ordinance shall take effect upon its passage and approval.



**TERRY SHELTON
HART COUNTY JUDGE/EXECUTIVE**

ATTEST:


CLERK

HART COUNTY NEWS-HERALD
FEBRUARY 5, 2004

PUBLIC NOTICE

ORDINANCE KOC 440.4

January 15, 2004, during a special called meeting, Hart County Fiscal Court approved the second reading of ordinance KOC 440.4; an ordinance relating to the regulations of sexually oriented businesses and their employees in Hart County. A full copy of this ordinance may be obtained Monday-Friday from the office of the Judge Executive.