

**HART COUNT**  
**ORDINANCE NO. 440.6**

**AN ORDINANCE RELATING TO THE LICENSING AND REGULATION OF  
SEXUALLY ORIENTED BUSINESSES WITHIN HART COUNTY, KENTUCKY**

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

Section

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**WHEREAS**, sexually oriented businesses require special supervision from the public safety agencies of Hart 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 Hart County Fiscal Court finds 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 Fiscal Court desires to 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., Heideman v. South Salt Lake City*, 348 F.3d 1182, 1195 (10th Cir. 2003) (“On its face, the Ordinance applies to all ‘sexually oriented businesses,’ which include establishments such as ‘adult motels’ and ‘adult novelty stores,’ which are not engaged in expressive activity.”); *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); 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., 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 retail adult store’s “argument that it is not an adult entertainment establishment” to be “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 adult retail store was suspect, and that testimony was “less than candid” and “suggested an intention to obscure the actual amount of sexually explicit material sold”); *City of New York v. Hommes*, 724 N.E.2d 368 (N.Y. 1999) (documenting manipulation of inventory to avoid adult classification); *Taylor v. State*, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002) (noting that “the nonadult video selections appeared old and several of its display cases were covered with cobwebs”); *HH-Indianapolis, LLC v. Consol. City of Indianapolis/Marion County*, 889 F.3d 432 (7th Cir. 2018); *HH-Indianapolis, LLC v. Consol. City of Indianapolis/Marion County*, 265 F. Supp. 3d 873 (S.D. Ind. 2017); and

**WHEREAS**, the manner in which an establishment holds itself out to the public is a reasonable consideration in determining whether the establishment is a sexually oriented business, *see, e.g., East Brooks Books, Inc. v. Shelby County*, 588 F.3d 360, 365 (6th Cir. 2009) (“A prominent display advertising an establishment as an ‘adult store,’ moreover, is a more objective indicator that the store is of the kind the Act aims to regulate, than the mere share of its stock or trade comprised of adult materials.”); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 261 (1991) (Scalia, J., concurring in part and dissenting in part) (“[I]t is most implausible that any enterprise which has as its constant intentional objective the sale of such [sexual] material does not advertise or promote it as such.”); *see also Johnson v. California State Bd. of Accountancy*, 72 F.3d 1427 (9th Cir. 1995) (rejecting First Amendment challenge to statute which used the phrase “holding out” to identify conduct indicative of the practice of public accountancy, but did not ban any speech); *Spencer v. World Vision, Inc.*, 633 F.3d 723 (9th Cir. 2010) (O’Scannlain, J., concurring) (concluding that whether an entity “holds itself out” as religious is a neutral factor and that factor helps to ensure that the entity is a *bona fide* religious entity); and

**WHEREAS**, the County intends to regulate such businesses as sexually oriented businesses through a narrowly tailored ordinance designed to serve its substantial government interest in protecting the health, safety, and welfare of the community, including by preventing the negative secondary effects of sexually oriented businesses; and

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

**WHEREAS**, with the passage of any ordinance, the County and the Fiscal Court 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 Kentucky Constitutions, Kentucky Code, and the Kentucky 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 Kentucky 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; and

**WHEREAS**, K.R.S. § 67.083 recognizes that the Fiscal Court may enact ordinances, issue regulations, and take other steps in the regulation of establishments and commercial enterprises that offer adult entertainment; and

**WHEREAS**, Hart County has regulated such establishments since at least 2004 through Ordinance 440.4 and its amendments; and

**WHEREAS**, Section IV of Ordinance No. 440.4 regulates viewing rooms where sexually explicit videos are shown, requiring that 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 very 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.”; and

**WHEREAS**, Section IV of that ordinance also requires that viewing rooms also have minimum interior illumination, single occupancy, no “glory holes” or other openings between viewing booths, and management observation of activities in the establishment; and

**WHEREAS**, the Hart County Fiscal Court desires to continue its longstanding regulations of sexually oriented businesses, including those detailed above, by replacing the provisions in Ordinance No. 440.4, as amended, with the updated and revised provisions adopted in this Ordinance as follows:

**Section 1. - 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 Fiscal Court, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); *Sewell v. Georgia*, 435 U.S. 982 (1978); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *City of Dallas v. Stanglin*, 490 U.S. 19 (1989); and

*Blue Movies, Inc. v. Louisville/Jefferson County Metro Government*, 317 S.W.3d 23 (Ky. 2010); *LM Entm't, Inc. v. City of Mt. Sterling*, 2009 WL 1974549 (Ky. Ct. App. July 10, 2009); *Commonwealth v. Jameson*, 215 S.W.3d 9 (Ky. 2006); *600 Marshall Entm't Concepts, LLC v. City of Memphis*, 705 F.3d 576 (6th Cir. 2013); *Entm't Prods., Inc. v. Shelby County*, 721 F.3d 729 (6th Cir. 2013); *Big Dipper Entm't, LLC v. City of Warren*, 641 F.3d 715 (6th Cir. 2011); *84 Video/Newsstand, Inc. v. Sartini*, 2011 WL 3904097 (6th Cir. Sept. 7, 2011); *East Brooks Books, Inc. v. Shelby County*, 588 F.3d 360 (6th Cir. 2009); *Entm't Prods., Inc. v. Shelby County*, 588 F.3d 372 (6th Cir. 2009); *Richland Bookmart, Inc. v. Knox County*, 555 F.3d 512 (6th Cir. 2009); *Sensations, Inc. v. City of Grand Rapids*, 526 F.3d 291 (6th Cir. 2008); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Bamon Corp. v. City of Dayton*, 923 F.2d 470 (6th Cir. 1991); *Triplett Grille, Inc. v. City of Akron*, 40 F.3d 129 (6th Cir. 1994); *Kentucky Restaurant Concepts, Inc. v. City of Louisville and Jefferson County*, 209 F. Supp. 2d 672 (W.D. Ky. 2002); *Restaurant Ventures, LLC v. Lexington-Fayette Urban County Gov't*, 60 S.W. 3d 572 (Ky. Ct. App. 2001); *Envy, Ltd. v. City of Louisville*, 734 F. Supp. 785, 788 (W.D. Ky. 1990); *Mr. B's Bar & Lounge, Inc. v. Louisville*, 630 S.W.2d 564 (Ct. App. Ky. 1981); *Lund v. City of Fall River*, 714 F.3d 65 (1st Cir. 2013); *Imaginary Images, Inc. v. Evans*, 612 F.3d 736 (4th Cir. 2010); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); *Ocello v. Koster*, 354 S.W.3d 187 (Mo. 2011); *Plaza Group Properties, LLC v. Spencer County Plan Commission*, 877 N.E.2d 877 (Ind. Ct. App. 2007); *Flanigan's Enters., Inc. v. Fulton County*, 596 F.3d 1265 (11th Cir. 2010); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Peek-a-Boo Lounge v. Manatee County*, 630 F.3d 1346 (11th Cir. 2011); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *Heideman v. South Salt Lake City*, 348 F.3d 1182 (10th Cir. 2003); *Williams v. Morgan*, 478 F.3d 1316 (11th Cir. 2007); *Jacksonville Property Rights Ass'n, Inc. v. City of Jacksonville*, 635 F.3d 1266 (11th Cir. 2011); *H&A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006); *Illinois One News, Inc. v. City of Marshall*, 477 F.3d 461 (7th Cir. 2007); *G.M. Enterprises, Inc. v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003); *Bigg Wolf Discount Video Movie Sales, Inc. v. Montgomery County*, 256 F. Supp. 2d 385 (D. Md. 2003); *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996); *DCR, Inc. v. Pierce County*, 964 P.2d 380 (Wash. Ct. App. 1998); *City of New York v. Hommes*, 724 N.E.2d 368 (N.Y. 1999); *Taylor v. State*, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002); *Fantasyland Video, Inc. v. County of San Diego*, 505 F.3d 996 (9th Cir. 2007); *U.S. v. Baston*, 818 F.3d 651 (11th Cir. 2016); *HH-Indianapolis, LLC v. Consol. City of Indianapolis/Marion County*, 889 F.3d 432 (7th Cir. 2018); *HH-*

*Indianapolis, LLC v. Consol. City of Indianapolis/Marion County*, 265 F. Supp. 3d 873 (S.D. Ind. 2017); *Johnson v. California State Bd. of Accountancy*, 72 F.3d 1427 (9th Cir. 1995); *Spencer v. World Vision, Inc.*, 633 F.3d 723 (9th Cir. 2010); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *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); *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); *Reliable Consultants, Inc. v. City of Kennedale*, No. 4:05-CV-166-A, Findings of Fact and Conclusions of Law (N.D. Tex. May 26, 2005);

and based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, "Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD," *Journal of Urban Health* (2011); "Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime?" *Crime & Delinquency* (2012) (Louisville, KY); Metropolis, Illinois – 2011-12; Manatee County, Florida – 2007; Hillsborough County, Florida – 2006; Clarksville, Indiana – 2009, 2013-2019; El Paso, Texas – 2008; Memphis, Tennessee – 2006; New Albany, Indiana – 2009; Louisville, Kentucky – 2004; Fulton County, GA – 2001; Chattanooga, Tennessee – 1999-2003; Jackson County, Missouri – 2008; Ft. Worth, Texas – 2004; Kennedale, Texas – 2005; Greensboro, North Carolina – 2003; Dallas, Texas – 1997; Houston, Texas – 1997, 1983; Phoenix, Arizona – 1995-98, 1979; Tucson, Arizona – 1990; Spokane, Washington – 2001; St. Cloud, Minnesota – 1994; Austin, Texas – 1986; Indianapolis, Indiana – 1984; Garden Grove, California – 1991; Los Angeles, California – 1977; Whittier, California – 1978; Oklahoma City, Oklahoma – 1986; New York, New York Times Square – 1994; the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota); Dallas, Texas – 2007; "Rural Hotspots: The Case of Adult Businesses," 19 *Criminal Justice Policy Review* 153 (2008); "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; Sex Store Statistics and Articles; Indianapolis / Marion County Board of Zoning Appeals Documents; Law Enforcement and Private Investigator Affidavits (Adult Cabarets in Forest Park, GA and Sandy Springs, GA); Strip Club-Trafficking Documents; and Hart County, KY Records re: Horse Cave Adult Book Store – 2019-2020,

the Fiscal Court 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, human trafficking, 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. Alcohol consumption impairs judgment and lowers inhibitions, thereby increasing the risk of adverse secondary effects.
- (2) Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other

sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.

- (3) Each of the foregoing negative secondary effects constitutes a harm which the County has a substantial government interest in preventing and/or abating. 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 ordinance 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.

## **Section 2. - Definitions.**

For 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.

*"Administrator"* means the Hart County Occupational Tax Administrator or his or her designee.

*"Adult Arcade"* means a commercial establishment to which the public is permitted or invited that maintains booths or rooms smaller than 100 square feet, wherein image-producing devices are regularly maintained to show images characterized by their emphasis upon matter exhibiting "specified sexual activities" or "specified anatomical areas."

*"Adult Bookstore"* 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 establishment's revenues derive from the sale or rental, for any form of consideration, of said items, or
- (c) 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, as well as cashier stations where said items are rented or sold, shall be included in "floor space" maintained for the display, sale, or rental of said items); or
- (d) 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, as well as cashier stations where said items are rented or sold, shall

be included in “floor space” maintained for the display, sale, or rental of said items);  
or

- (e) The establishment regularly offers for sale or rental at least five hundred (500) of said items; or
- (f) The establishment regularly makes said items available for sale or rental and holds itself out, in any medium, as an establishment that caters to adult sexual interests.

“*Adult Cabaret*” means a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment that regularly offers live semi-nude conduct. No establishment shall avoid classification as an adult cabaret by offering nude conduct.

“*Adult Motion Picture Theater*” means a commercial establishment to which the public is permitted or invited that maintains viewing rooms that are 100 square feet or larger wherein films or videos characterized by their emphasis upon “specified sexual activities” or “specified anatomical areas” are regularly shown.

“*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 Hart County, Kentucky.

“*Employ, Employee, and Employment*” describe and pertain to any person who works or engages in activity for pay on the premises of a sexually oriented business, on a full time, part time, temporary, 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, or an attorney, accountant, or similar state-licensed professional performing professional services for the business.

“*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 an establishment that is visible or accessible to patrons for any reason, excluding restrooms.

“*Hearing Officer*” means an attorney, not an employee of the County, who is licensed to practice law in Kentucky, and retained to serve as an independent tribunal to conduct hearings under this ordinance.

*“Influential Interest”* means the actual power to influence or control the operation, management, or policies of the sexually oriented business or legal entity which operates the sexually oriented business. An individual is deemed to have an “influential interest” if he or she (1) is the on-site general manager of the sexually oriented business, (2) owns a financial interest of thirty percent (30%) or more of a business or of any class of voting securities of a business, or (3) holds 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 or Nude Conduct”* means the showing of the human male or female genitals, pubic area, vulva, or anus with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola. For purposes of this ordinance, a “fully opaque covering” must not consist of any substance that can be washed or peeled off the skin (such as paint, make-up, or latex).

*“Operate”* means to cause to function or to put or keep in a state of doing business.

*“Operator”* means any person who manages, supervises, or controls the sexually oriented business or a portion thereof. A person may be found to be an operator regardless of whether such 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.

*“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, with less than a fully opaque covering. 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. For purposes of this ordinance, a “fully opaque covering” must not consist of any substance that can be washed or peeled off the skin (such as paint, make-up, or latex).

*“Sexual Device”* means any three (3) dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, nipple, 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 representations of the human genital organs.



Nothing in this definition shall be construed to include devices primarily designed for protection against sexually transmitted diseases or for preventing pregnancy.

“*Sexual Device Shop*” means a commercial establishment:

- (a) where more than 100 sexual devices are regularly made available for sale or rental; or
- (b) where sexual devices are regularly made available for sale or rental and the establishment regularly gives special prominence to sexual devices (e.g., by using lighted display cases for sexual devices, having a room or discrete area of the establishment significantly devoted to sexual devices, positioning sexual devices near cash registers or similar points of sale, hosting events focused on sexual devices, or holding itself out to the public as a place that focuses on sexual devices).

This definition shall not be construed to include an establishment containing a pharmacy that employs a licensed pharmacist to fill prescriptions on the premises, or an establishment that is enrolled in Medicare as a durable medical equipment, prosthetics, and supplies (DMEPOS) supplier.

“*Sexually Oriented Business*” means an “adult arcade,” an “adult bookstore,” an “adult cabaret,” an “adult motion picture theater,” or a “sexual device shop.”

“*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 offenses:

- (a) K.R.S. §§ 510.040, 510.050, or 510.060 (rape in the first, second, or third degree); K.R.S. §§ 510.070, 510.080, or 510.090 (sodomy in the first, second, or third degree); K.R.S. §§ 510.110, 510.120, or 510.130 (sexual abuse in the first, second, or third degree); K.R.S. § 510.140 (sexual misconduct); §§ 510.148 or 510.150 (indecent exposure); K.R.S. § 517.050 (falsifying business records); K.R.S. §§ 529.020 or 529.040 (prostitution, promoting prostitution); K.R.S. § 529.070, (permitting prostitution); K.R.A. § 217.900, et seq. (offenses relating to volatile substances); K.R.S. § 218A.140, et seq. (offenses relating to controlled substances); any offense listed in K.R.S. § 531.300 through § 531.370 (sexual exploitation of minors offenses); engaging in organized crime (K.R.S. § 506.120) relating to a sexually oriented business; criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses or offenses in other jurisdictions that, if the acts would have constituted any of the foregoing offenses if the acts had been committed in Kentucky; for which:
  - (1) less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

- (2) less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
  - (3) less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.
- (b) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

“*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;
- (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.

“*Viewing Room*” means the room or booth where a patron of a sexually oriented business would ordinarily be positioned while watching a film, videocassette, digital video disc, or other video on an image-producing device.

### **Section 3. - License required.**

- (a) *Sexually Oriented 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. It shall be unlawful for any person who operates a sexually oriented business to employ a person at the establishment who does not have a valid 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 Administrator a completed application made on a form provided by the Administrator. 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 (d) 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, along with a list of the business's employees and a list identifying each of the business's operators, as defined by Section 2.
- (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 found by a court to have been operating unlawfully;
  - (ii) been enjoined by a court from engaging in conduct prohibited by law;
  - (iii) been held in contempt of court for operating contrary to a court order;
  - (iv) been declared by a court to be a nuisance; or
  - (v) been subject to a court order requiring closure of the business or affirming revocation of any license required to operate the business.

- (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 marked 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. See Sections 13 and 17.
- (9) If the application is for a sexually oriented business license, a statement whether the applicant is the owner of the premises wherein the establishment will be operated or holds a lease thereon for the period to be covered by the license. If the applicant is a lease holder, a copy of the lease shall be submitted with the license application.
- (10) If the application is for a sexually oriented business employee license, the name and address of the establishment where the applicant intends to use the employee license.

The information provided pursuant to this subsection (c) shall be supplemented in writing by certified mail, return receipt requested, to the Administrator 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.
- (e) The information provided by an applicant in connection with an application for a license under this ordinance will not be disclosed by the office of the Administrator under public records laws except 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.

#### **Section 4. - Issuance of license.**

- (a) *Sexually Oriented Business License.* Upon the filing of a completed application for a sexually oriented business license, the Administrator shall issue a Temporary License to the applicant within five (5) business days if the completed application is from a preexisting sexually oriented business that is, in all respects, lawfully operating in the County and the completed application, on its face, shows that the applicant is entitled to an annual sexually oriented business license. The Temporary License shall expire upon the final decision to deny or grant an annual license. Within thirty (30) days of the filing of a completed

sexually oriented business license application, the Administrator shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The Administrator 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.
- (5) An applicant has repeatedly engaged in unlawful conduct on the premises of the sexually oriented business for which the license is sought, or has repeatedly knowingly allowed unlawful conduct on the premises of the sexually oriented business for which the license is sought. For purposes of this subparagraph, unlawful conduct has occurred repeatedly if it has occurred three (3) or more times in the previous twelve (12) months, or ten (10) or more times in the previous thirty-six (36) months. For purposes of this subparagraph, unlawful conduct shall not include any act of advertising or distributing obscene matter or matter harmful to minors.
- (6) 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 found by a court to have been operating unlawfully;
  - (ii) been enjoined by a court from engaging in conduct prohibited by law;
  - (iii) been held in contempt of court for operating contrary to a court order;
  - (iv) been declared by a court to be a nuisance; or
  - (v) been subject to a court order requiring closure of the business or affirming revocation of any license required to operate the business.
- (7) An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this ordinance.
- (8) An applicant has, in the previous five (5) years and in conjunction with seeking a license or any approval necessary to operate the sexually oriented business or occupy the business premises, engaged in any misrepresentation of fact, or omission of material fact, concerning the nature of the business.
- (9) The applicant is neither the owner of the premises wherein the establishment will be operated, nor the holder of a lease thereon for the period to be covered by the license.

- (10) An employee or operator of the applicant operated a sexually oriented business that, in the previous five (5) years (and due to conduct occurring when the person was an operator of the sexually oriented business), has:
  - (i) been found by a court to have been operating unlawfully;
  - (ii) been enjoined by a court from engaging in conduct prohibited by law;
  - (iii) been held in contempt of court for operating contrary to a court order;
  - (iv) been declared by a court to be a nuisance; or
  - (v) been subject to a court order requiring closure of the business or affirming revocation of any license required to operate the business.
  
- (b) *Employee License.* Upon the filing of a completed application for a sexually oriented business employee license, the Administrator shall issue a Temporary License to the applicant within five (5) business days if the applicant seeks licensure to work in a licensed sexually oriented business and the completed 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 to deny or grant an annual license. Within thirty (30) days of the filing of a completed sexually oriented business employee license application, the Administrator shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The Administrator 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 found by a court to have been operating unlawfully;
    - (ii) been enjoined by a court from engaging in conduct prohibited by law;
    - (iii) been held in contempt of court for operating contrary to a court order;
    - (iv) been declared by a court to be a nuisance; or
    - (v) been subject to a court order requiring closure of the business or affirming revocation of any license required to operate the business.

- (5) The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this ordinance.
  - (6) The applicant has expressed the intent to use the sexually oriented business employee license at an establishment that is not licensed by the County to operate a sexually oriented business.
- (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 license 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 kept on the premises of the sexually oriented business so that it may be inspected by the Administrator and his or her agents 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.

**Section 5. - Fees.**

The initial license and annual renewal fees for sexually oriented business licenses and sexually oriented business employee licenses shall be as follows: two hundred dollars (\$200) for the initial fee for a sexually oriented business license and one hundred dollars (\$100) for annual renewal; fifty dollars (\$50) for the initial sexually oriented business employee license and twenty-five dollars (\$25) for annual renewal.

**Section 6. - Inspection.**

Sexually oriented businesses and sexually oriented business employees shall permit the Administrator and his or her agents 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 to authorize only reasonable inspections of the licensed premises pursuant to this ordinance.

**Section 7. - 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. When a renewal license is issued, it shall become effective the day after the previous license expires and shall remain valid for a period of one calendar year from its effective date unless otherwise suspended or revoked.
- (b) Application for renewal of an annual license should be made at least ninety (90) days before the expiration date of the current annual license, and when made less than ninety (90) days before the expiration date, the expiration of the current license will not be affected.

**Section 8. - Suspension.**

- (a) The Administrator 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 Administrator 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.

**Section 9. - Revocation.**

- (a) The 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-month (12-mo.) period.
- (b) The 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:
  - (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 specified 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;
  - (7) The licensee has knowingly or recklessly allowed a person under the age of eighteen (18) years to appear in a semi-nude condition or in a state of nudity on the premises of the sexually oriented business; or
  - (8) The licensee has knowingly or recklessly allowed three (3) or more violations of this ordinance within a twelve-month period.



- (9) The licensee has failed to meet or maintain the qualifications to be issued or to hold the license.
- (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 revocation becomes effective.

**Section 10. - Hearing; license denial, suspension, revocation; appeal.**

- (a) When the Administrator issues a written notice of intent to deny, suspend, or revoke a license, the Administrator shall immediately send such notice, which shall state the grounds under this ordinance for such action, to the applicant or licensee by personal delivery or certified mail or email. The notice shall be directed to the most current business address or other mailing address or email address on file with the Administrator for the applicant or licensee. The notice shall also set forth the following: The applicant or licensee shall have ten (10) business days after the issuance of the written notice to deliver, at the office of the Administrator, a written request for a hearing. If the applicant or licensee does not request a hearing within said ten (10) business days, the Administrator's written notice shall become a final denial, suspension, or revocation, as the case may be, on the fifteenth (15th) business day after it is issued.
- (b) If the applicant or licensee (hereafter, "petitioner") does make a written request for a hearing within said ten (10) business days, then the Administrator shall, within ten (10) days after receiving the request, send a notice to the petitioner indicating the date, time, and place of the hearing. The hearing shall be conducted not less than ten (10) days nor more than thirty (30) days after the date that the hearing notice is issued. The hearing may be transcribed by either party.
- (c) At the hearing, the petitioner shall have the opportunity to present all relevant arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the Administrator's witnesses. The Administrator may also be represented by counsel, present evidence and witnesses, and cross-examine any of the petitioner's witnesses. The hearing shall take no longer than one (1) day, unless extended at the request of the petitioner to meet the requirements of due process and proper administration of justice. The petitioner shall have the burden of proving by a preponderance of the evidence that there is no substantial evidence to support the Administrator's licensing decision. The Hearing Officer shall affirm the Administrator's licensing decision if any substantial evidence in the record at the hearing supports any of the grounds set forth in the written notice of intent to deny, suspend, or revoke. The Hearing Officer shall issue a final written decision, including specific reasons for the decision pursuant to this ordinance, to the petitioner and the County within five (5) days after the hearing.

- (d) If the decision is to deny, suspend, or revoke the license, the decision shall advise the petitioner of the right to appeal such decision to a court of competent jurisdiction, and the decision shall not become effective until the tenth (10th) day after it is rendered. If the Hearing Officer's decision finds that there is no substantial evidence to support the Administrator's licensing decision, the Hearing Officer shall, contemporaneously with the issuance of the decision, order the Administrator to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the petitioner in writing by certified mail of such action. If the petitioner is not yet licensed, the Administrator shall contemporaneously therewith issue the license to the applicant.
- (e) If any court action challenging a licensing decision is initiated, 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, in all respects, 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 Administrator: Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the County's enforcement of any denial, suspension, or revocation of a license, the Administrator shall immediately issue the petitioner a Provisional License. The Provisional License shall allow the petitioner 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 petitioner's appeal or other action to restrain or otherwise enjoin the County's enforcement, unless the Provisional License is suspended or revoked prior to entry of said judgment. While a Provisional License is in effect, the provisional licensee shall comply with the regulations set forth in Sections 6, 12, 13, 14, and 17, and any violations thereof shall be subject to the provisions of Section 15. A Provisional License may be suspended under Section 8 or revoked under Section 9, and if an appeal is taken from that suspension or revocation decision, the County will issue no further Provisional License or stay of enforcement.

**Section 11. - 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.

**Section 12. - Hours of operation.**

No sexually oriented business shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day.

**Section 13. - Regulations pertaining to operation of adult arcade or adult motion picture theater.**

- (a) A person who operates or causes to be operated an adult arcade or adult motion picture theater 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. 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 inches. The Administrator 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 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 100 square feet is limited to one 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) though (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 patron 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.
- (b) 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.
- (c) No patron shall knowingly or recklessly enter or remain in a viewing room less than 100 square feet in area that is occupied by any other patron.
- (d) No patron shall knowingly or recklessly be or remain within one foot of any other patron while in a viewing room that is 100 square feet or larger in area.
- (e) No person shall knowingly or recklessly make any hole or opening between viewing rooms.

**Section 14. - 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 the 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.

**Section 15. - Penalties and enforcement.**

- (a) A person who violates any of the provisions of this ordinance shall be subject to a citation and a civil fine, not to exceed \$500, upon proper adjudication in a court of competent jurisdiction. Each day a violation is committed, or permitted to continue, shall constitute a separate offense and shall be fined as such.
- (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 any penalty which may be incurred.

**Section 16. - Applicability of ordinance to existing businesses.**

- (a) *Licensing Requirements.* Preexisting sexually oriented businesses that are, in all respects, lawfully operating in Hart County in compliance with all state and local laws on the effective date of this ordinance, and all sexually oriented business employees that are, in all respects, lawfully working in a lawfully operating sexually oriented business in Hart County on the effective date of this ordinance, may continue operation or employment for a period of thirty-five (35) days following the effective date of this ordinance. Such businesses and employees must file a completed application for an annual license under this ordinance within twenty (20) days of the effective date of this ordinance.
- (b) *Other Requirements.* Except as provided for in subsection (a), sexually oriented businesses and employees shall comply with this ordinance on the date that it takes effect.

**Section 17. - 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 appears semi-nude in a sexually oriented business shall knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually

oriented business. No customer shall knowingly or intentionally touch such an employee or the clothing of such an employee on the premises of a sexually oriented business.

- (d) No person shall possess, use, or consume alcoholic beverages on the premises of a sexually oriented business.
- (e) 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.
- (f) No operator of a sexually oriented business shall knowingly or recklessly allow a room in the sexually oriented business to be simultaneously occupied by any patron and any other employee who is semi-nude or who appears semi-nude on the premises of the sexually oriented business, unless an operator of the sexually oriented business is present in the same room.
- (g) No operator or licensee of a sexually oriented business shall violate the regulations in this section or knowingly or recklessly allow an employee or any other person to violate the regulations in this section. Without limiting the scope of the preceding sentence, an operator shall be deemed to have recklessly allowed another person to violate a regulation if, at the time of the violation, the operator failed to have an employee on duty and situated in at least one operator's station having a direct line of sight to the area of the establishment where the violation occurred.
- (h) A sign in a form to be prescribed by the Administrator, 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.

#### **Section 18. - Scienter 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 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.

#### **Section 19. - 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 such 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.

**Section 20. - Conflicting ordinance provisions repealed.**

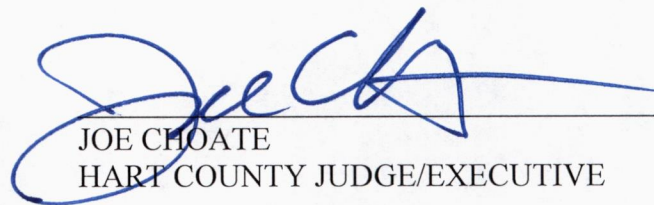
Any provision(s) in the ordinances of Hart County specifically in conflict with any provision in this ordinance is hereby deemed inoperative and repealed.

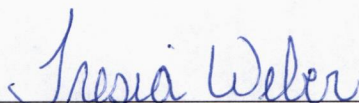
**Section 21. - Effective date.**

This ordinance shall become effective as provided by law.

First reading conducted on the 19<sup>th</sup> day of May, 2022.

Second reading conducted and passage by roll call vote this 2<sup>nd</sup> day of June, 2022.

  
\_\_\_\_\_  
JOE CHOATE  
HART COUNTY JUDGE/EXECUTIVE

  
\_\_\_\_\_  
TRESIA WEBER  
HART COUNTY FISCAL COURT CLERK



Law Office of Scott D. Bergthold, P.L.L.C.

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May 11, 2022

Justin Baird  
Hart County Attorney  
113 E. South Street  
Munfordville, KY 42765

**RE: *Sexually Oriented Business Ordinance Development Project / Litigation***

Dear Mr. Baird,

This letter of Agreement confirms the retention of the Law Office of Scott D. Bergthold, P.L.L.C., a Tennessee professional limited liability company (the "Firm"), to provide services to Hart County (the "County") regarding the regulation of sexually oriented businesses. The Firm's attorneys will provide services to the County subject to the direction and supervision of the County Attorney. This agreement is predicated upon the County's belief that the Firm is particularly qualified to provide such services and that the services are professional and noncompetitive in nature. Our agreement therefore is as follows:

**SCOPE OF SERVICES**

The Firm will provide consulting and litigation services related to the regulation of sexually oriented businesses. The Firm will review the provisions of the County Code relating to the zoning, permitting, and regulation of such establishments (the "Legislation"). The Firm will advise the County Attorney as to any provisions of the Legislation for which amendments or additions should be considered in order to enhance the County's ability to defend the Legislation, or in order to enhance the County's health, safety, and welfare goals. Under the direction of the County Attorney, the Firm's services hereunder may include, but are not limited to, legal research, text review, ordinance drafting, travel to the County for the purpose of meeting with or making presentations to public bodies, memoranda, litigation services, and/or general consulting services related to the matters set forth in this Scope of Services.

It is agreed that the Firm reserves the right to represent existing or new clients, except that the Firm shall not represent any other client, private or public, that would conflict with its duties to the County. It is agreed that the Firm does not guarantee any priority in servicing requests for assistance, but will perform its obligations in good faith and with due diligence.



It is further agreed and understood that the Firm does not serve in the capacity of general counsel on behalf of the County or any division thereof and acceptance of this engagement does not involve representation of, or consultation with, the County or any division or agent thereof in any civil or criminal lawsuit other than those involving the subject matter set forth herein. It is agreed that since the result of any lawsuit is subject to the vagaries and risks inherent in judicial review, the Firm makes no promises or representations concerning the outcome of any suit.

#### **COMPENSATION AND METHOD OF PAYMENT**

The County agrees to pay to the Firm fees at a rate of two hundred fifty dollars per hour (\$250/hr.), plus actual expenses, as full and complete compensation for the Firm's consulting services identified in Scope of Services above. In discharging its responsibilities to the County, it may be necessary for the Firm charge expenses for various items such as postage, travel, copies, research, and delivery services. Expenses of third party vendors (court reporters, copy shops, etc.) may be forwarded directly to the County Attorney. If paid by the firm, expenses from third party vendors will be charged at the actual cost to the Firm and shall be separately itemized on our statements.

The County will make periodic payments to the Firm upon submission of an invoice in a manner approved by the County Attorney. The Firm's invoices will be forwarded directly to the County Attorney on a monthly basis.

#### **REPORTS, INFORMATION, AND CONFIDENTIALITY**

The Firm, at such times and in such form as the County may require, shall furnish the County such reports as may be requested pertaining to the services undertaken per this Agreement. The Firm shall retain all financial and administrative records for a period of three years after the expiration or termination of this Agreement, and shall permit the County or any of its representatives or auditors access to such records.

The Firm and its agents and employees will keep and retain any and all information, reports, and records generated under this Agreement in confidence, regarding all such matters as subject to all applicable privileges provided by law, and will neither use such information nor disclose such information to anyone without the permission of the County.

#### **KENTUCKY LAW TO GOVERN**

In the performance of services, the Firm shall comply with all applicable statutes, ordinances, and laws of the State of Kentucky and Hart County. The law of the Commonwealth of Kentucky shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

**TERM AND TERMINATION**

The term of this Agreement shall commence on the day executed by the last executing party and will continue for one year thereafter. Either party may terminate this Agreement at any time by giving notice in writing to the other party. If this Agreement is terminated by the County other than for default by the Firm, the Firm will be paid for services performed and expenses incurred up to the effective date of termination.

If you have any questions concerning this letter of Agreement, please feel free to call me at 423-899-3025. Otherwise, please sign the original below and return a copy to me for my file.

Sincerely,

SCOTT D. BERGTHOLD, P.L.L.C.



Scott D. Bergthold

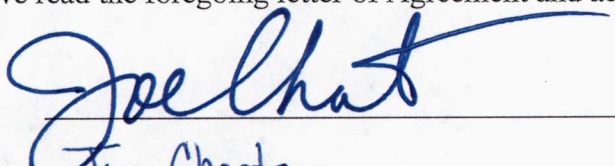
I have read the foregoing letter of Agreement and accept its terms on behalf of the County.

By:

Name:

Title:

Date:



Joe Choate

Judge/Executive

May 19, 2022

**Legal Presentation on Regulating  
Negative Secondary Effects of  
Sexually Oriented Businesses**

**Hart County Fiscal Court**

**June 2, 2022**

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***Renton v. Playtime Theatres,  
Inc., 475 U.S. 41, 51-52 (1986)***

**"Renton was entitled to rely on the experiences of Seattle and other cities, and in particular on the 'detailed findings' summarized in [prior case].**

***The First Amendment does not require a city, before enacting such an ordinance, to conduct new studies or produce evidence independent of that already generated by other cities, so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses."***

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**Courts Have Recognized  
Many Types of Secondary  
Effects**

- 1. Negative impacts on surrounding properties**
- 2. Personal and property crimes, public safety risks, confrontations**
- 3. Lewdness, public indecency, illicit sexual activity and potential spread of disease**
- 4. Illicit drug use and trafficking**
- 5. Litter, aesthetic impacts, traffic, noise, blight**

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## **Courts Have Recognized a Wide Variety of Sources of Secondary Effects Evidence**

- 1. Land Use Reports**
- 2. Crime Impact Reports**
- 3. Judicial Opinions**
- 4. Expert Reports**
- 5. Anecdotal Data**

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## **Negative Secondary Effects Documented in Hart County**

- 1. Two deaths at adult bookstore in two months – patrons found unconscious**
- 2. Illegal “poppers” inhalants sold there**
- 3. Anonymous sex acts in booths and theaters**
- 4. Glory holes and couches to facilitate sex acts**
- 5. Store took steps to warn patrons in booths and theater areas when police were coming**
- 6. Years-long violations of direct line-of-sight rule**

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## **Legal Rationale and Findings re: Legislative Secondary Effects**

**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, human trafficking, 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.**

**Alcohol consumption impairs judgment and lowers inhibitions, thereby increasing the risk of adverse secondary effects.**

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**Secondary Effects Justify Alcohol and Conduct Rules**

1. *Blue Movies, Inc. v. Louisville-Jefferson County Metro. Gov't*, 317 S.W.3d 23 (Ky. 2010) (upholding prohibition on alcohol in sexually oriented businesses and conduct regulations)
2. *Commonwealth v. Jameson*, 215 S.W.3d 9 (Ky. 2006) (reversing Court of Appeals decision and concluding that strip club operator did not cast direct doubt on legislative predicate)
3. *Restaurant Ventures, LLC v. Lexington-Fayette Urban County Gov't*, 60 S.W.3d 572 (Ky. App. 2001) (upholding licensing, hours of operation, and conduct regulations)

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***New York State Liquor Authority v. Bellanca*, 452 U.S. 714, 718 (1981)**

**“Common sense indicates that any form of nudity coupled with alcohol in a public place begets undesirable behavior.”**

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***Ocello v. Koster*, 354 S.W.3d 187, 210 (Mo. 2011)**

**“The government also relied on expert testimony from Dr. McCleary, who found that criminological theory predicted alcohol would increase crime at sexually oriented businesses by lowering patrons’ inhibitions, thereby making them more susceptible to predatory criminals.”**

“Alcohol aggravates an SOB’s already-high ambient crime risk by lowering the inhibitions and clouding the judgments of the SOB’s patrons. In effect, alcohol makes the soft targets found at the SOB site considerably softer. The available data corroborate this theoretical expectation in all respects.”

-Richard McCleary, Ph.D., Expert Report for Jackson County Missouri, May 9, 2008

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***Richland Bookmart v. Knox County*,  
555 F.3d 512, 532 (6th Cir. 2009)**

**"[The alcohol] prohibition is 'a reasonable restriction narrowly tailored to limit the secondary effects of crime.' . . . [T]he County reasonably relied on a number of prior judicial decisions finding sufficient evidence to support the connection between adverse effects and adult entertainment when combined with alcohol consumption."**

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**Negative Secondary Effects  
Justify Licensing, Conduct Regs**

1. *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000) (upholding prohibition on total nudity in sexually oriented businesses)
2. *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004) (upholding sexually oriented business licensing ordinance as applied to retail-only adult bookstore)
3. *H & A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007) (holding that Indianapolis and Oklahoma City studies justify regulation of retail adult bookstore)

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**Supporting Cases (cont'd)**

4. *Sensations, Inc. v. City of Grand Rapids*, 526 F.3d 291 (6th Cir. 2008) (upholding nudity prohibition, 6-ft. rule, no-touch rule, etc.)
5. *Peek-A-Boo Lounge v. Manatee County*, 630 F.3d 1346 (11th Cir. 2011) (nudity prohibition, interior configuration, alcohol ban, licensing)
6. *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007) (zoning, nudity prohibition, and alcohol prohibition)
7. *Artistic Entm't, Inc. v. City of Warner Robins*, 331 F.3d 1196 (11th Cir. 2002) (licensing and alcohol ban)

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**Supporting Cases (cont'd)**

- 8. *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004) (upholding regulation of retail-only adult stores)
- 9. *Richland Bookmart, Inc. v. Knox County*, 555 F.3d 512 (6th Cir. 2009) (upholding secondary-effects regulation of retail adult bookstore)
- 10. *High Five Investments, LLC v. Floyd County*, No. 4:06-CV-190, R. 128 (N.D. Ga. Mar. 14, 2008) (upholding regulation of retail-only store through licensing with set-back provision)

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**Sexual Devices Not Protected by First Amendment**

- 1. *Sewell v. Georgia*, 435 U.S. 982 (1978); *id.* at 985 (Brennan, J., dissenting from certiorari denial) (noting that First Amendment does not protect sexual devices)
- 2. *Heideman v. South Salt Lake City*, 348 F.3d 1182, 1195 (10th Cir. 2003) (“On its face, the Ordinance applies to all ‘sexually oriented businesses,’ which include establishments such as ‘adult motels’ and ‘adult novelty stores,’ which are not engaged in expressive activity.”)

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**Some Court-Approved Secondary Effects Evidence**

- 1. Tucson, Arizona (illicit sexual behavior in adult bookstore)
- 2. New York, New York (adverse impacts on surrounding properties)
- 3. Garden Grove, California (ambient crime risk)
- 4. Houston, Texas (illicit sex acts)
- 5. McCleary Expert Report (2008 Jackson County, MO report) (refuting industry experts)
- 6. Oklahoma City, Oklahoma (adverse impacts on surrounding properties)

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**Some Court-Approved Secondary Effects Evidence (cont'd)**

- 7. Summaries of Key Secondary Effects Documents
- 8. Criminal Justice Policy Review Article re: Secondary Effects of Retail Adult Stores
- 9. Excerpts from Sex Store Statistics and Article (retail sex shops as hot-spots for crime)
- 10. Spokane, Washington (secondary effects of retail adult bookstores)
- 11. Hillsborough County, Florida; Metropolis, Illinois (investigator affidavits)
- 12. Indianapolis-Marion County BZA Documents

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**Court-Approved Expert Findings**

- 1. Finding of secondary effects from sexually oriented businesses is confirmed in wide variety of sources.
- 2. Industry "studies" flawed: Reliance on police calls-for-service (CFS) is flawed because most vice crimes never result in a CFS. *See Daytona Grand*, 490 F.3d 860, 881-883 (11th Cir. 2007).
- 3. All subclasses of sexually oriented businesses, including retail-only stores, have secondary effects. *H&A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007).

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**Cases rejecting industry's experts' secondary effects attacks:**

- 1. *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000) (Linz)
- 2. *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007) (Linz, Fisher)
- 3. *SOB, Inc. v. County of Benton*, 317 F.3d 856 (8th Cir. 2003) (Linz)
- 4. *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005) (Linz)
- 5. *G.M. Enterprises, Inc. v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003) (Linz)

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**Cases rejecting industry's experts' secondary effects attacks (cont'd):**

6. *World Wide Video of Washington v. Spokane*, 368 F.3d 1186 (9th Cir. 2004) (McLaughlin)

7. *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006) (Morris)

8. *Fantasyland Video, Inc. v. County of San Diego*, 505 F.3d 996 (9th Cir. 2007) (Linz, Goldenring)

9. *High Five Investments, LLC v. Floyd County*, No. 4:06-CV-190, R. 128 (N.D. Ga. Mar. 14, 2008) (McLaughlin)

10. *Peek-A-Boo Lounge v. Manatee County*, 630 F.3d 1346 (11th Cir. 2011) (Fisher, Danner)

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**The Voluminous Secondary Effects Materials are Made A Part of the Official Record and/or Minutes for this Public Meeting.**

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**HART COUNTY, KENTUCKY**  
**SEXUALLY ORIENTED BUSINESS REGULATIONS**  
**INDEX TO LEGISLATIVE SECONDARY EFFECTS DOCUMENTATION**

1. Legal Presentation on Regulating Negative Secondary Effects of Sexually Oriented Businesses (PowerPoint Slides)
2. Summaries of Key Reports Concerning the Negative Secondary Effects of Sexually Oriented Businesses
3. *Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD*, Journal of Urban Health: Bulletin of the New York Academy of Medicine (15 February 2011)
4. *Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime? An Examination Using Spatial Analyses*, Crime & Delinquency (29 November 2012) (Louisville, KY)
5. Metropolis, Illinois, Investigator Affidavits Documenting Paid Sexual Conduct in Adult Entertainment Club, 2011-2012
6. Manatee County, Florida Investigator Affidavits and News Articles re: Secondary Effects of Sexually Oriented Businesses, 2007
7. Hillsborough County, Florida Investigator Affidavits re: Secondary Effects of Sexually Oriented Businesses, 2006
8. Clarksville, Indiana, Police Reports, Testimony, and Investigator Report re: Live Sexual Conduct in Adult Establishment Theater & Booth Areas, 2009, 2013-2019
9. El Paso, Texas, Affidavits re: Illicit Sex Acts and Unsanitary Conditions in Adult Cabarets and Adult Bookstores, 2008
10. Memphis Articles re: Crime at Strip Clubs and Strip Club Owner Guilty Plea, 2006
11. New Albany, Indiana, Investigator Report re: Illicit Sexual Conduct at Gentlemen's Club, 2009
12. Louisville, Kentucky Police Reports, Investigator Affidavits, and Citizen Affidavits re: Secondary Effects of Sexually Oriented Businesses, 2004
13. Report on Fulton County Adult Entertainment Businesses, July 2001, and minutes of public hearing
14. Chattanooga Police Records re: Public Masturbation and Public Nuisance Activities at Cinema One Theatre, 1999-2003

15. Crime-Related Secondary Effects of Sexually-Oriented Businesses: Report to the Jackson County Legislature, May 9, 2008
16. Survey of Appraisers, Fort Worth & Dallas, Effects of Land Uses on Surrounding Property Values, September 2004
17. Report to the City Attorney on Crime-Related Secondary Effects, Kennedale, Texas, 2005
18. A Methodological Critique of the Linz-Yao Report: Report to the Greensboro City Attorney, December 15, 2003
19. An Analysis of the Effects of SOBs on the Surrounding Neighborhoods in Dallas, Texas, April 1997
20. Sexually Oriented Business Ordinance Revision Committee Legislative Report, Houston City Council, January 7, 1997
21. Legislative Report on an Ordinance Amending Section 28-73 of the Code of Ordinances of the City of Houston, Texas, November 1983
22. Adult Cabarets, Factual Record, Phoenix, Arizona, 1995-1998  
Incall Escort Bureaus/Nude Modeling Studios (Private Room Nude Dancing) Factual Record, Phoenix, Arizona, 1995-1998  
Sex Clubs Factual Record, Phoenix, Arizona, 1997-1998
23. Adult Business Study, Planning Department, City of Phoenix, May 25, 1979
24. Tucson, Arizona Police Memorandum dated May 1, 1990
25. Declaration in Support of City of Spokane's Motion for Summary Judgment re: Secondary Effects Evidence Concerning Retail Adult Bookstores, July 24, 2002; and other Spokane, Washington documents
26. Summary of Review and Conclusions Regarding the City of St. Cloud's Regulation of Adult Use Businesses, December, 1994
27. Report on Adult Oriented Businesses in Austin, prepared by Office of Land Development Services, Austin, Texas, May 19, 1986
28. Adult Entertainment Businesses in Indianapolis, An Analysis, Department of Metropolitan Development, Division of Planning, February 1984
29. The Relationship Between Crime and Adult Business Operations on Garden Grove Boulevard, October 23, 1991

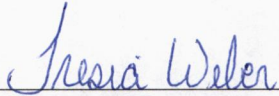
30. Study of the Effects of the Concentration of Adult Entertainment Establishments in the City of Los Angeles, Department of City Planning, City of Los Angeles, June 1977
31. Staff Report, Amendment to Zoning Regulations, Adult Businesses in C-2 Zone with Conditional Use Permit, City of Whittier, California, January 9, 1978
32. Adult Entertainment Businesses in Oklahoma City: A Survey of Real Estate Appraisers, March 3, 1986
33. Report on Secondary Effects of the Concentration of Adult Use Establishments in the Times Square Area, April 1994
34. Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses, State of Minnesota, June 6, 1989
35. Expert Report in *Illusions-Dallas Private Club, Inc. v. Steen*, N.D. Tex. no. 3:04-CV-201, October 5, 2007
36. *Rural Hotspots: The Case of Adult Businesses*, 19 Criminal Justice Policy Review 153 (2008)
37. Stripclubs According to Strippers: Exposing Workplace Sexual Violence, by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota
38. David Sherman, Sexually Oriented Businesses: An Insider's View, Testimony before Michigan House Committee—Ethics and Constitutional Law, January 12, 2000
39. Sex Store Statistics and Articles
40. Indianapolis / Marion County Board of Zoning Appeals Documents — 2017
41. Law Enforcement and Private Investigator Affidavits (Adult Cabarets in Forest Park, GA and Sandy Springs, GA)
42. Strip Club – Trafficking Documents
43. Cases Discussing the Negative Secondary Effects of Sexually Oriented Businesses and/or the Constitutionality of Regulations Pertaining to Same
44. Hart County, KY Records re: Horse Cave Adult Book Store — 2019-2020

## CERTIFICATION

Tresia Weber hereby certifies that:

1. My name is Tresia Weber. I am over 18 years of age, and competent to give this affidavit.
2. It is my duty to collect and maintain copies of ordinances passed by the Hart County Fiscal Court as well as all materials that are part of the legislative record for those ordinances, and to serve as the custodian of those records.
3. On June 2, 2022, the Hart County Fiscal Court adopted Ordinance #440.6, Regulation of Sexually Oriented Businesses. I certify that a true and correct copy of Ordinance #440.6 is attached to this certification.
4. I certify that the legislative record of documents and materials submitted to the Hart County Fiscal Court during its consideration of Ordinance #440.6 includes all of the items, numbered 1 through 44, on the attached Index to Legislative Secondary Effects Documentation. The pages of those documents, beginning with the Index, have been consecutively numbered (Bates stamped) from 000001 through 003305.

Further affiant sayeth naught.

  
\_\_\_\_\_  
Tresia Weber, Hart County Fiscal Court Clerk