

ORDINANCE NO. 440.4

**AN ORDINANCE PROVIDING REGULATION OF
SEXUALLY ORIENTED BUSINESSES AND THEIR EMPLOYEES**

BE IT ORDAINED BY THE COUNTY OF SIMPSON, KENTUCKY:

WHEREAS, the Fiscal Court of the County of Simpson is concerned about the secondary effects and impacts of sexually oriented businesses such as adult amusement arcades, adult book stores, adult cabarets, adult motels, adult motion picture theaters, adult stage theaters, commercial sexual entertainment centers and escort agencies; 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 the County; and

WHEREAS, the concern over sexually transmitted diseases is a legitimate health concern of the 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 the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the down-grading of property 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 surrounding

neighborhoods; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance which addresses the secondary effects of sexually oriented businesses; and

WHEREAS, it is not the intent of the Fiscal Court 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 the County; and

WHEREAS, KRS 67.083 grants Fiscal Courts the authority to enact ordinances regulating establishments or commercial enterprises offering adult entertainment and adult entertainment activities.

SECTION I. PURPOSE AND FINDINGS

I (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 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 communicative materials, including sexually oriented materials. Similarly, it is not 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.

I (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, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; 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 cubicals for viewing films, videos or live sex shows.
4. Offering and providing such space encourages such activities which creates unhealthy conditions.

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5. 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.

6. 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.

7. Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States. Through December 31, 1997, there have been 619,690 reported cases of AIDS in the United States.

8. As of December 31, 1997, there have been 2,583 reported cases of AIDS in the Commonwealth of Kentucky.

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

10. According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.

11. 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.

12. Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view adult oriented films.

13. The findings noted in paragraphs 1 through 12 raise substantial governmental concerns.

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

15. 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.

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

SECTION II. DEFINITIONS

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

1. "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".

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2. "Adult Book Store", "Adult Novelty Store", or "Adult Video Store", means a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following:

(a) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations 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".

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be characterized as "Adult Book Store", "Adult Novelty Store", or "Adult Video Store". Such other business purposes will not serve to exempt such commercial establishments from being categorized as an "Adult Book Store", "Adult Novelty Store", or "Adult Video Store" so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

3. "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

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(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".

4. "Adult Motel" means a hotel, motel, or similar 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.

5. "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".

6. "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".

7. "County" shall mean the County of Simpson, Kentucky.

8. "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.

9. "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.

10. "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.

11. "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.

12. "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.

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

14. "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 fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

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

16. "Regularly" means a consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing businesses of the sexually oriented business.

17. "Semi-nude" or in a "semi-nude condition" means the showing of the female breast below a horizontal line across the top of the areolae 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, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areolae is not exposed in whole or in part.

18. "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.

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19. "Sexual Encounter Center" means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

(a) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

(b) 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.

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

21. "Specified Anatomical Areas" means:

(a) The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or

(b) 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.

22. "Specified Sexual Activities" means any of the following:

(a) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breast;

(b) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or

(c) Excretory functions as part of or in connection with any of the activities set forth in (a) through (b) above.

SECTION III. CLASSIFICATION

III. Sexually Oriented Businesses are classified as follows:

- (a) Adult amusement arcades;
- (b) Adult book stores, adult novelty stores, or adult video stores;
- (c) Adult cabarets;
- (d) Adult motels;
- (e) Adult motion picture theaters;
- (f) Adult stage theaters;
- (g) Escort agencies; and
- (h) Sexual encounter centers;

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

IV. All sexually oriented businesses classified under Section III of this ordinance shall comply with the following requirements:

(a) 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.

(b) 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/her age. All Persons under the age of eighteen (18) discovered in the establishment shall be immediately escorted out of the

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premises.

(c) No establishment, except for an adult motel, shall remain open at any time between the hours of one o'clock (1:00) a.m. and six o'clock (6:00) a.m.

(d) No act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact shall be permitted in or on the licensed premises of any sexually oriented business, except legal sexual activity permitted by the laws of the Commonwealth of Kentucky in an adult motel. No owner, operator, licensee, or employee of a sexually oriented business shall knowingly permit these activities to occur on the licensed premises.

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

V (a). A person who operates or causes to be operated a sexually oriented business, 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 area", shall comply with the following requirements:

1. Any wall or partition which is situated so as to create a viewing area in 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

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this section must be by direct line of sight from the manager's or cashier's station. No manager's or cashier's station shall exceed a size or area of thirty-two (32) square feet.

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, operator or employee to ensure that the illumination described above is maintained at all times that any patron or customer is present in the premises.

8. No owner, operator 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, operator and/or employees shall, during each business day, cause the walls between the viewing booths to be regularly inspected to determine if any openings or holes exist.

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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.

V (b). All sexually oriented businesses in operation in the County on the effective date of this ordinance shall comply with the terms and conditions hereof within one hundred and twenty (120) days after the effective date of this ordinance.

SECTION VI. INSPECTION

VI. All sexually oriented businesses shall, upon initial licensure or renewal of licensure, permit representatives of the County, including representatives of the Sheriff's Department, Fire Department, or other County departments or agencies to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law.

SECTION VII. REGULATIONS PERTAINING TO LIVE PERFORMANCES

VII (a). It shall be a violation of this Ordinance for a patron, employee, or any other person to knowingly or intentionally, in a sexually oriented business, appear in a state of nudity, regardless of whether such public nudity is expressive in nature.

VII (b). It shall be a violation of this Ordinance for a person to knowingly or intentionally in a sexually oriented business 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.

VII (c). It shall be a violation of this Ordinance for any employee, while semi-nude in a sexually oriented business, to knowingly or intentionally receive any pay or gratuity directly from any patron or customer or for any patron or 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.

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

VII (e). It shall be a violation of this Ordinance for any manager of a sexually oriented business to knowingly or negligently allow an employee of the business to violate these regulations. It shall be a defense to prosecution that the manager was powerless to prevent the violation.

VII (f). Notwithstanding anything to the contrary, for the purposes of this Ordinance, an act by an employee shall be imputed to the sexually oriented business manager for purposes of finding a violation of this Ordinance only if the manager knowingly or negligently allowed such act to occur on the premises. It shall be a defense to prosecution that the manager was powerless to prevent the act.

A sign in a form to be prescribed by the Fiscal Court and summarizing the provisions of Paragraphs (a), (b), (c), and (d) of this Section, shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry.

SECTION VIII. RECORD KEEPING REQUIREMENTS

VIII. Each sexually oriented business shall maintain and retain for a period of two (2)

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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 person employed by the sexually oriented business.

SECTION X. SEVERABILITY

X. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof. All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

SECTION XI. PENALTIES

XI. Any person who violates any provision of this ordinance shall be guilty of a misdemeanor and subject to a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), or be imprisoned in the county jail for not more than twelve (12) months, or both.

March 2, 2004 FIRST READING

March 16, 2004 SECOND READING

At a meeting of the Fiscal Court of the County of Simpson, Commonwealth of Kentucky held March 16, 2004, on motion made by Honorable Charles McCutchen Sr., and seconded by Honorable Kelly Banton, the foregoing ordinance was adopted, after full discussion, by the following vote:

Aye LARRY RANDOLPH

Aye KELLY BANTON

Aye KENNETH UTLEY

Aye CHARLES McCUTCHEN

APPROVED:

BY: [Signature]
JIM HENDERSON, COUNTY JUDGE EXECUTIVE
COUNTY OF SIMPSON, COMMONWEALTH OF KENTUCKY

ATTEST:

Ashley Kines
~~JULIE FREEMAN~~, Fiscal Court Clerk,
County of Simpson, Commonwealth of Kentucky

(COURT ORDINANCE Sexually oriented businesses.2)