

ORDINANCE NO. 920.64

**AN ORDINANCE RELATING TO THE AMENDMENT OF THE ORDINANCE ADOPTING THE ZONING REGULATIONS OF CITY OF FRANKLIN AND SIMPSON COUNTY, KENTUCKY TO INCLUDE STANDARDS FOR ADULT ORIENTED USES**

**WHEREAS:** Previously, the Simpson Fiscal Court approved an Ordinance adopting the Zoning Regulations of the City of Franklin and Simpson County, and said Regulations do not have a provision for Adult Oriented Uses and Entertainment and/or Sexually Oriented Businesses;

**WHEREAS:** KRS 67.083 (1) authorizes Simpson County to enact ordinances and issue regulations in performance of the following public functions:

- (k) Planning, zoning, and subdivision control according to the provisions of KRS Chapter 100;
- AND
- (z) Regulation of establishments or commercial enterprises offering adult entertainment and adult entertainment activities.

**SECTION ONE: NEW PROVISIONS.**

A. The following new definitions are created. These definitions shall be codified in the ZONING ORDINANCE also known as the Zoning Regulations of the City of Franklin and Simpson County, Kentucky:

**ARTICLE 2, DEFINITIONS:**

1. Adult Oriented Use(s). Uses which intend to provide sexual stimulation or gratification including, but not limited to all of the following:

a. Adult Bookstore/Video Store. An establishment whose primary business includes the sale or rent of materials (including books, periodicals, magazines, films, videotapes, CD-ROMs, DVDs, audio tapes, or other printed or pictorial material) whether for on-premise or off-premise viewing, that are intended to provide sexual stimulation or gratification, and characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas (see definition below); and who devotes more than 15 percent of their total floor area to the items listed above.

b. Adult Theater. An establishment, whether open or enclosed, used for presenting material, for viewing, that is distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas. This definition includes, but is not limited to the following: adult arcade, adult mini-motion picture theater, adult booth(s), and adult drive-in theaters.

c. Adult Booth. A small enclosed or partitioned area inside an adult oriented establishment which is: (1) designed or used for the viewing of adult material by one (1) or more persons and, (2) is accessible to any person, regardless of whether a fee is charged for access. The term "Adult Booth" includes, but is not limited to a "peep show" booth, or other booth used to view adult material (including, but not limited to videotapes, audiotapes, films, CD-ROMs, and DVDs).

d. Adult Dancing. Any dancing which exposes to view by patrons or spectators on the premises at any time the specified anatomical areas and/or specified sexual activities, defined in this Ordinance.

e. Adult Dancing Establishments. An establishment, including but not limited to any restaurant (eating and/or drinking establishment), lounge, dance hall, night club or other such place whose business includes the offering to customers of live entertainment wherein employees, agents, servants, or independent contractors perform dance routines and/or display or expose specified anatomical areas, offered as adult oriented entertainment for viewing by patrons and spectators on the premises and characterized by the

emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas.

f. Adult Cabaret. See "Adult Dancing Establishments"

g. Adult Motel. A motel or similar establishment with the word "adult" or otherwise that advertises the presentation of adult material, offering public accommodations for any form of consideration which provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions for the primary purpose of sexual gratification or as related to specified sexual activities.

h. Sexual Encounter Center. An establishment whose primary business is the provision on premises where customers either congregate, associate, or consort with employees, agents, servants, or independent contractors; who engage in specified sexual activities in the presence of such customers, or who display specified anatomical areas in the presence of such customers, with the intent of providing sexual stimulation or sexual gratification appealing to adult sexual interests.

i. Massage Parlor. An establishment providing massages, for hire, by persons other than a licensed health care professional, including those activities that rub, stroke, knead, or tap the body with the hand or an instrument or both for the purpose of or engaging in sexual gratification or as related to specified sexual activities. This definition also includes those activities listed within "Sexual Encounter Center". This does not include any licensed or sanctioned athletic activity that generally employs or uses the services of a physical trainer and/or those listed in the definition of Licensed Massage Therapist.

2. Specified Anatomical Areas are anatomical areas including less than completely and opaquely covered: i. human genitals or pubic region; ii. the cleavage of the human buttock; iii. any portion of the human female breast below a horizontal line across the top of the areola at its highest point, the entire lower portion of the female breast, not including cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit, or other wearing apparel provided that the areola is not exposed in whole or in part; and iv. human male genitals in a discernible turgid state, even if completely and opaquely covered.

3. Specified Sexual Activities are such activities including, but are not necessarily limited to, human genitals in a state of sexual stimulation, arousal or tumescence; acts of human masturbation, sexual intercourse or sodomy; fondling or other erotic touching of human genitals, pubic region or pubic hair, buttock or female breast(s); acts of human anilingus, bestiality, buggery, cunnilingus, coprophagy, coprophilia, fellation, flagellation, masochism, necrophilia, pederasty, pedophilia, sadism, sadomasochism; excretory functions as part of or in connection with any of the activities listed herein.

4. Licensed Massage Therapist (Licensed Health Care Professional) is any person who has graduated from a 500 hour Massage Therapy School, accredited by a State Licensure Board or its equivalent and who possess a valid state license in massage therapy from any state which regulates the same by means of a written examination; or may include a physician, nurse, occupational therapist, physical therapist, podiatrist, or chiropractor.

5. Protected Uses are any use or area identified in this Ordinance that are influenced by or are susceptible to the secondary effects of adult oriented uses including: any residentially zoned area, any area platted or developed for cluster residential development, any area containing three (3) or more residential and rural residential lots as shown on an approved and recorded plat, public or private school, college or university, church or other place of worship, library, type I day care facility, public park or playground.

6. Sexually Oriented Businesses are those businesses as are defined in any and all ordinances adopted by the City of Franklin and/or County of Simpson. Said definitions are hereby incorporated herein by reference. These include, but are not limited to adult amusement arcades, adult book stores, adult novelty stores, adult video stores, adult cabarets, adult entertainment centers, adult motels, adult motion picture theaters, adult stage show theaters, escort agencies, massage parlors (except as provided herein), or sexual encounter centers.

B. A new section of the ZONING ORDINANCE, ARTICLE 9, Section 9.7, Adult Oriented Uses, is created as follows: with the following performance standards,

1. Purpose This Ordinance: The purpose of this section is to establish appropriate requirements under which adult oriented uses and/or sexually oriented businesses may locate within the City of Franklin and Simpson County. It has been demonstrated statistically through verifiable studies in numerous communities that adult oriented uses and/or sexually oriented businesses have harmful secondary effects on the communities in which they locate, particularly when near residential or other areas in which residential, educational, religious and/or recreational uses are permitted.

2. Findings Upon Which This Ordinance Is Based: The harmful secondary effects which adult oriented uses and/or sexually oriented businesses have on communities in which they locate include inappropriate exposure of children and teenagers to graphic sexual images, increased incidence in crime, diminished property values, discouragement of other types of commercial activities, discouragement of residential, educational, religious and recreational uses, hereafter referred to as protected uses. The cumulative effect of the location of adult oriented uses and/or sexually oriented businesses, especially in concentration, is a change in the perceived community character and the diminishment of the quality of life or business for the other uses in the neighborhood in which the adult oriented uses are located. Regulation of adult oriented uses is necessary to reduce the secondary harmful effects of these uses, including but not limited to, the decline of community health and safety and the blighting of surrounding neighborhoods and uses. Regulation of adult oriented uses and sexually oriented businesses is also necessary for the integrity of residential areas, schools, churches or other places of worship, libraries, child care centers, parks and playgrounds, all of which are areas in which minors congregate, a segment of the community particularly at risk when in proximity to adult oriented uses and sexually oriented businesses. Further, the findings of the City and County governments, in adopting adult business ordinances are incorporated by reference in the Ordinance.

3. Exclusions From Operation of This Ordinance: Excluded from this Ordinance are activities which are not for the purpose of sexual stimulation or gratification, including but, not limited to the following: Licensed Massage Therapist, as defined in this Ordinance; other persons engaged in massage, e.g. sports massage administered by a team trainer; and artistic studios, photographic or otherwise, utilizing the nude body as a model.

4. Permitted Districts: Adult oriented uses are permitted in I-1, Light Industrial Districts, subject to the general provisions of the Zoning Regulations of the City of Franklin and Simpson County, Kentucky.

5. Locational Standards:

a. Distance from residential use: No lot occupied, or to be occupied, by an adult oriented use or sexually oriented business shall be located closer than a seven hundred fifty (750) feet radius of any residential zoning district.

b. Distance from educational, religious and child related use: No lot occupied, or to be occupied, by an adult oriented use or sexually oriented business shall be located closer than a seven hundred fifty (750) feet radius of any school, public or private, college, university, church or other place of worship, library, type I day care facility, or any public park or playground.

c. Distance from rural village district: No lot occupied, or to be occupied, by an adult oriented use or sexually oriented business shall be located closer than a seven hundred fifty (750) feet radius of any rural village district.

d. Distance from other adult oriented use: No lot occupied, or to be occupied, by an adult oriented use or sexually oriented business shall be located closer than a seven hundred fifty (750) feet radius of any other adult oriented use or sexually oriented business as defined above.

e. Method of measurement of distances: The distances required by this section shall be measured from the closest property line occupied, or to be occupied, by an adult oriented use or sexually oriented business to the closest property line occupied by a protected use, zone district in which an adult oriented use or sexually oriented business is not permitted, or another adult oriented use or sexually oriented business.

f. Landscape requirements: All newly constructed or renovated structures that are used for, or proposed for use as, adult oriented uses or sexually oriented business shall meet any and all landscaping requirements set out in the Zoning Regulations of the City of Franklin and Simpson County, Kentucky.

g. Effect of establishment of protected use: The establishment of any protected use, zone district in which an adult oriented use or sexually oriented business is not permitted, or another adult oriented use or sexually oriented business, subsequent to the lawful commencement of an adult oriented use or sexually oriented business shall not render the adult oriented use or sexually oriented business non-conforming.

h. Amortization of existing adult oriented uses or sexually oriented business: An existing adult oriented use or sexually oriented business established prior to the passage of this ordinance shall be deemed a non-conforming use for a period of two years or for the remaining term of the adult oriented use's or sexually oriented business' lease which is in force at the time of the effective date of this Ordinance, whichever occurs first. For the purpose of this provision, the term of the adult oriented use's or sexually oriented business' lease shall not include extensions. At the expiration of the period established in this subsection, the existing adult oriented use or sexually oriented business established prior to the passage of this ordinance shall comply with the requirements of this Ordinance.

i. Extension of time for the amortization of existing adult oriented uses or sexually oriented business: Applications for an extension of the time for compliance established by Section 1, B., h., above, may be granted for good cause shown and must be received by the Office of the Building Inspector, with copy to the Planning and Zoning Commission Office, not less than 90 days prior to the termination date. The application shall be heard by the Board of Adjustments.

j. Miscellaneous adult dancing performance standards: Any adult oriented establishment and/or sexually oriented business that features, in whole or in part, adult dancing shall comply with the following requirements:

- i. No person shall display or expose specified anatomical areas.
- ii. No person, except an employee, agent, servant or independent contractor in any adult dancing establishment, or similar type use described herein, shall simulate any form of specified sexual activity, except while positioned in or occupying an entertainment area defined as:

"a platform or other similar structure raised not less than eighteen (18) inches above the immediately surrounding main floor area, encompassing an area of at least one hundred (100) square feet and positioned not less than ten (10) feet from any patron or spectator."

- iii. No person maintaining, managing, owning or operating an adult dancing establishment, or similar type use described herein, shall suffer, allow, or permit the construction, maintenance, or use of areas

partitioned or screened from public view that are to be occupied, alone or together by any person or persons on the premises of such establishments for performances, private or otherwise, involving the display of or exhibition of specified anatomical areas or specified sexual activities or permit any employee, agent, servant or independent contractor to violate any provision of this ordinance.

iv. No person on the premises of an adult dancing establishment, or similar type use described herein, shall be permitted to use or be present in areas partitioned or screened from public view that are designed to be occupied, together or alone, by any person or persons on the premises of such establishment for the display of or exhibition of specified anatomical areas or specified sexual activities.

**k. Locational restriction on display or exposure of specified anatomical areas or simulation of specified sexual activities:**

i. No person shall display or expose specified anatomical areas or simulate specified sexual activities, except in accordance with all applicable laws, regulations and/or ordinances and while on the premises of an approved adult oriented use and/or sexually oriented business.

l. **Operating hours:** No adult oriented use and/or sexually oriented business shall be open for business between the hours of 9:00 p.m. and 9:00 a.m. Further, no adult oriented use and/or sexually oriented business shall be open on any Sunday or holiday legally recognized by the Commonwealth of Kentucky.

m. **Prohibition of physical contact:** While on the premises of an adult oriented use and/or sexually oriented business, no employee, agent, servant or independent contractor shall be permitted to have any physical contact with any other adult entertainment employee, other employee, patron or spectator while the employee, agent, servant or independent contractor is entertaining, dancing or otherwise involved in the display of or exhibition of specified anatomical areas or specified sexual activities.

n. **No act is authorized if not otherwise permitted by law:** Nothing in this ordinance pertaining to adult dancing establishments, adult oriented use(s) or similar type use, shall be construed to permit or authorize any act or activities that are prohibited by federal, state or local law. These sections are meant to be in addition to any acts or activities that are so prohibited.

**SECTION TWO: AMENDED PROVISIONS.** The following sections of the Zoning Regulations of the City of Franklin and Simpson County, Kentucky, ARTICLE 8, are amended to include Adult Oriented Uses as permitted uses in the I-1 Light Industrial districts.

8.15.3 B. is amended to read as follows:

**B. SALES, CONSTRUCTION AND SERVICE ESTABLISHMENTS**

Sales lots, display and stocking areas for the following types of businesses:

Agricultural services (SIC code 07);

Forest services (SIC code 085);

Building Construction, general contractors and special trade contractors (SIC codes 15 and 17);

Motor vehicles and motor vehicle parts and supplies (SIC code 501); farm implements (SIC code

5083); lumber and building materials (SIC code 503); and adult oriented use(s) and/or sexually

oriented businesses.

8.15.5 A. is amended to read as follows:

- A. Manufactured Ice (SIC code 2097), machine shops, jobbing and repair (SIC 3599); welding (SIC 3599); welding (SIC Code 7692), and special dies and tools, die sets, jigs and fixtures, and industrial molds (SIC 3544); fabrication and processing plants of articles to be sold at retail on the premises; photocopying and duplicating services (SIC code 7334); general contractors and special trade contractors (SIC codes 17 and 15) and partitions, shelving, lockers, and office and store fixtures including cabinet shops (SIC code 254), adult oriented use(s) and/or sexually oriented businesses and child care facility when developed in conjunction with a planned industrial park or is exclusively for the benefit of employees of the manufacturing plant. Two or more adjoining manufacturing plants may jointly operate a child care facility.

There shall be created a new section 8.15.6 I. which shall read as follows:

- I. For Adult Oriented Use(s) and/or Sexually Oriented Businesses, any and all businesses shall comply with the provisions of Article 9, Section 9.7 of these Regulations specifically including, but not limited to Section 9.7.5 entitled "Locational Standards."

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.

October 19 FIRST READING

November 1 SECOND READING

At a meeting of the Fiscal Court of the County of Simpson, Commonwealth of Kentucky held November 1, 2004, on motion made by Honorable Kelly Banton, and seconded by Honorable Charles McCutchen the foregoing ordinance was adopted, after full discussion, by the following vote:

Yes LARRY RANDOLPH  
Yes KELLY BANTON  
Yes KENNETH UTLEY  
Yes CHARLES McCUTCHEN

APPROVED:

BY:

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

ATTEST:

Ashley Hines  
ASHLEY HINES, Fiscal Court Clerk,  
County of Simpson, Commonwealth of Kentucky

(COATY) Ordinance relating to zoning for adult oriented uses .New)