

**ORDINANCE NO. 08-4184**

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AN ORDINANCE OF THE MAYOR AND BOARD OF ALDERPERSONS OF THE CITY OF BASTROP, LOUISIANA, PROVIDING FOR TRANSITIONARY REGULATIONS FOR THE ZONING OF SEXUALLY ORIENTED BUSINESSES, AND OTHERWISE PROVIDING WITH RESPECT THERETO.

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*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 illicit sexual activities, increased vice crime, and the downgrading of property values; and

*WHEREAS*, it is recognized that sexually oriented businesses, due to their nature, have serious objectionable operational characteristics, particularly when they are located in close proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area; and

*WHEREAS*, the City Council 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 deter the spread of urban blight; and

*WHEREAS*, it is not the intent of the City Council to condone or legitimize the distribution of obscene material, and the Council 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 City; and

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

*WHEREAS*, with the passage of any ordinance, the City and the City Council 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 Louisiana Constitutions, Louisiana Code, and the Louisiana Rules of Civil and Criminal Procedure; and

*WHEREAS*, it is not the intent of this ordinance to suppress any speech activities protected by the First Amendment of the U.S. Constitution or Article I, § 7 of the Louisiana Constitution, but to enact a content neutral ordinance which addresses the secondary effects of sexually oriented businesses.

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Board of Alderpersons of the City of Bastrop, Louisiana, that Chapter 16.5 of the Code of Ordinances is hereby enacted to read as follows:

## **Chapter 16.5**

### **Section 1. Sexually oriented businesses. Purpose and findings.**

(a) Purpose and findings.

(1) Purpose. It is the purpose of this section to regulate the location of sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the City, and to preserve and enhance the value and enjoyment of property in the neighborhoods of the City, including the central business district of the City. The provisions of this section 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 section to restrict or deny access by adults to sexually oriented materials protected by the First Amendment of the United States Constitution or the corresponding provisions of the Louisiana Constitution, 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.

(2) Findings. Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Council, and on findings, interpretations, and narrowing constructions incorporated in the cases of *Pap's AM. v. City of Erie*, 529 U.S. 277 (2000); *City of Los Angeles v. Alameda Books, Inc.*, 122 S. Ct. 1728 (2002); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *California v. LaRue*, 409 U.S. 109 (1972); *Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 2002 U.S. App. LEXIS 12202 (5<sup>th</sup> Cir., June 20, 2002); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5<sup>th</sup> Cir. 2002); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5<sup>th</sup> Cir. 1995); *Woodall v. City of El Paso*, 49 F.3d 1120 (5<sup>th</sup> Cir. 1995); *J&B Entertainment, Inc. v. City of Jackson*, 152 F.3d 362 (5<sup>th</sup> Cir. 1998); *SDJ, Inc. v. City of Houston*, 837 F.2d 1268 (5<sup>th</sup> Cir. 1988); *TK's Video, Inc. v. Denton County*, 24 F.3d 705 (5<sup>th</sup> Cir. 1994); *Lagrange Trading Co. v. Nicolosi*, 1991 U.S. Dist. LEXIS 3551 (E.D. La. 1991); *Vonderhaar v. Parish of St. Tammany*, 633 So. 2d 217 (La. Ct. App. 1993); *Liberto v. Rapides Parish Police Jury*, 667 So. 2d 552 (La. Ct. App. 1995); *City of Gretna v. RusslandEnterprises, Inc.*, 564 So. 2d 367 (La. Ct. App. 1990); and other cases; and on testimony to Congress in 136 Cong. Rec. S 8987; 135 Cong. Rec. S. 14519; 135 Cong. Rec. S 5636; 134 Cong. Rec. E 3750; and reports of secondary effects occurring in and around sexually oriented

businesses, including, but not limited to, Phoenix, Arizona - 1984; Minneapolis, Minnesota-1980; Houston, Texas - 1997; Indianapolis, Indiana - 1984; Amarillo, Texas - 1977; Garden Grove, California -1991; Los Angeles, California -1977; Whittier, California -1978; Austin, Texas -1986; Seattle, Washington -1989; Oklahoma City, Oklahoma -1986; Cleveland, Ohio -1977; and Dallas, Texas -1997; St. Croix County, Wisconsin -1993; Bellevue, Washington, -1998; Newport News, Virginia - 1996; New York Times Square study - 1994; Phoenix, Arizona -1995-98; and also on findings of physical abuse from the paper entitled "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota, and from "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000, and the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6,1989, State of Minnesota), the Council finds that providing specific zoning standards for sexually oriented businesses is necessary to advance the health, safety, and welfare of the community.

(b) *Definitions.*

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

*"Adult Bookstore, Adult Novelty Store, or Adult Video Store"* means a commercial establishment which has significant or substantial portion of its stock-in trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space to the sale or rental, for any form of consideration, of any one or more of the following:

(1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, slides, or other visual representations which are characterized by their emphasis upon the exhibition or description of "specified sexual activities" or "specified anatomical areas";

(2) Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others.

The term *"Adult Bookstore, Adult Novelty Store, or Adult Video Store"* shall also include a commercial establishment which regularly maintains one or more "Adult Arcades." "Adult Arcade" means any place to which the public is permitted or invited wherein coin-operated or slug-operated

or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by their emphasis upon matter exhibiting or describing "specified sexual activities" or specified "anatomical areas."

*"Adult Cabaret"* means a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features persons who appear semi-nude.

*"Adult Hotel"* means a motel, hotel, or similar commercial establishment which:

(1) offers public accommodations, for any form of consideration, and which regularly provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by their emphasis upon the exhibition or description of "specified sexual activities" or "specified anatomical areas" and which regularly advertises the availability of such material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising, including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television, and

(2) offers a sleeping room for rent for a period of time less than ten (10) hours.

*"Adult Motion Picture Theater"* means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the exhibition or description of "specified sexual activities" or "specified anatomical areas" are regularly shown for any form of consideration.

*"Distinguished or Characterized by an Emphasis Upon"* means the dominant or principal theme of the object described by such phrase. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas," the films so described are those whose dominant or principal character and theme are the exhibition or description "specified anatomical areas" or "specified sexual activities."

*"Establish or Establishment"* shall mean and include any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business;
- (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or

(3) The addition of any sexually oriented business to any other existing sexually oriented business.

*"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, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

*"Regularly Features or Regularly Shows"* 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 business of the sexually oriented business.

*"Semi-Nude or State of Semi-Nudity"* shall mean a state of dress in which opaque clothing covers no more than the genitals, anus, anal cleft or cleavage, pubic area, vulva, and nipple and areola of the female breast, as well as portions of the body covered by supporting straps or devices. This definition 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 that the areola and nipple are not exposed in whole or in part.

*"Semi-Nude Model Studio"* means any place where a person, who regularly appears in a state of semi-nudity is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

It is a defense to prosecution for any violation of this ordinance that a person appearing in a state of semi-nudity or semi-nudity did so in a modeling class operated:

(1) By a college, junior college, or university supported entirely or partly by taxation;

(2) By a private college or university which maintains and operates educational programs in which credits are transferable to college, junior college, or university supported entirely or partly by taxation; or:

(3) In a structure:

(i) Which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; and

(ii) Where, in order to participate in a class a student must enroll at least three days in advance of the class.

*"Sexually Oriented Business"* means any establishment that is an adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater or semi-nude model studio as defined in this section, as well as any other establishment that regularly features or regularly shows any sexually oriented entertainment activity.

*"Sexually Oriented Entertainment Activity"* means the sale, rental, or exhibition for any form of consideration, of books, films, video cassettes, magazines, periodicals, or live performances which are characterized by an emphasis on the exposure or display of specific sexual activity.

*"Specified Anatomical Area"* shall mean human genitals, anus, cleft of the buttocks, or the female breast.

*"Specified Sexual Activity"* means any of the following:

- (1) sex acts, normal or perverted, including intercourse, oral copulation, masturbation or sodomy; or
- (2) excretory functions as a part of or in connection with any of the activities described in (1) above.
- (c) *Locational Requirements.*

(1) No sexually oriented business shall be located as follows:

- (i) Within 1000 feet of the property line of a residential zoning district;
- (ii) Within 1000 feet of the property line of any public library, public park, or public museum;
- (iii) Within 1000 feet of the property line of any church, shrine, chapel, mortuary, or any other place used regularly for religious services.
- (iv) Within 1000 feet of the property line of any school, kindergarten or day care center. "School" shall include only such public, private, or church-sponsored schools as regularly teach the subjects commonly taught in the primary and secondary schools of Louisiana;
- (v) Within 1000 feet of another sexually oriented business; or

(vi) In the same building as another sexually oriented business; or upon the same parcel as another sexually oriented business, provided that, if the single parcel is large enough to maintain both sexually oriented businesses with at least one thousand (1,000) feet between them, simultaneous existence of both businesses shall be allowed under this section.

Measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the structure where a sexually oriented business is located or conducted to the nearest property line of the premises of a church, public park, public or private elementary or secondary school, day care or kindergarten, residential district, or building site dedicated or devoted to a residential district. Measurement between any two sexually oriented businesses shall be made in a straight line, without regard to intervening structures or objects, from the closest exterior wall of one establishment to the exterior wall of the other establishment.

(2) Sexually oriented businesses shall be allowed only in the B-3 Community Business District, and the B-4 Central Business District.

(d) Nonconforming Sexually Oriented Business Uses.

(i) A nonconforming sexually oriented business, existing prior November 13, 2008, may continue to operate for three (3) years following that date in order to make a reasonable recoupment of its investment in its current location. On November 14, 2011, the use will no longer be recognized as a legal non-conforming use, provided that a nonconforming sexually oriented business may apply for up to two (2) six-month extensions of the original two-year period upon a showing financial hardship. An application for an initial extension based upon financial hardship ("hardship exception") shall be made at least sixty (60) days before November 14, 2011. If a hardship extension is granted, subsequent applications for a hardship extension shall be made at least sixty (60) days before the conclusion of the non-conforming business's then-current extension period.

(ii) An application for a hardship extension shall be filed in writing with the City Clerk, and shall include evidence of purchase and improvement costs, income earned and lost, depreciation, and costs of relocation. Within ten (10) days after receiving the application, the Mayor and Board of Alderpersons shall schedule a public hearing on the application, which public hearing shall be conducted within sixty (60) days after the receipt of the application. Notice of the time and place of such public hearing shall be published for the same time and in the same manner as a meeting of the Mayor and Board of Alderpersons.

(ii) The Mayor and Board of Alderpersons] shall issue a written decision within ten (10) days after the public hearing on the application for a hardship extension. The hardship extension shall be granted upon a showing that the nonconforming adult use is unable to recoup its

investments, made prior to November 13, 2008, in its current location unless the hardship extension is granted.

(iv) Notwithstanding the foregoing provisions, should any nonconforming sexually oriented business cease to operate or be discontinued for any period of time, it shall not thereafter be reestablished without being in full compliance with all provisions of this chapter and other applicable codes and ordinances. The terms "cease to operate" or "discontinued for any period of time" shall mean the voluntary or intentional termination, cessation or discontinuance of the business by the owner or other party in interest or an involuntary termination of the business resulting from a violation of any applicable rule, regulation, ordinance, statute or law. The nonconforming use shall not be deemed to terminate if the cessation, termination or discontinuance of the business operations are caused by an act of God, or other catastrophic occurrence or event not caused by or under the control of the business owner or other party in interest. The holder of the certificate of occupancy or operator of the business shall be responsible for providing documentation, acceptable to the zoning administrator, that a nonconforming sexually oriented business has not ceased to operate or been discontinued. A nonconforming sexually oriented business shall not be enlarged, increased or altered, as provided in Code of Ordinances. Any change in use shall require full compliance with all provisions of this chapter and other applicable codes.

### **Section 2. Repeal of Inconsistent Ordinances.**

Any section of the code of ordinances containing any provision in conflict with any provision of this Ordinance is hereby repealed.

### **Section 3. Severability.**

Each section, subsection and provision of this Ordinance is hereby declared to be an independent division and subdivision and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of this 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 are severable and would have been passed independently of such section or provision so known to be invalid.

**BE IT FURTHER RESOLVED** this Chapter is transitional and shall remain in effect until supplanted or amended by adoption of a comprehensive zoning code that regulates land use within the City.

**BE IT FURTHER RESOLVED**, that all ordinances and resolutions in conflict herewith



are hereby repealed.

**BE IT FINALLY RESOLVED** that this ordinance shall become effective following its adoption and publication, in accordance with law.

**THUS DONE AND READ IN FULL, AND CONSIDERED SECTION BY SECTION THEN ADOPTED** at a regular meeting of the Mayor and Board of Alderpersons of the City of Bastrop, Louisiana on this \_\_\_\_\_ day of \_\_\_\_\_ 2008, by the following vote:

**YEAS:**

**NAYS:**

**ABSENT:**

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

\_\_\_\_\_  
Hon. Clarence W. Hawkins, Mayor

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Sandra Goleman, City Clerk