

## ORDINANCE 2020 13

### **AN ORDINANCE REPEALING AND REPLACING ORDINANCES NO. 2002-5, 1998-7, ~~1997-11~~, AND 1996-5 AND ESTABLISHING LICENSING REQUIREMENTS AND REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES AND EMPLOYEES WITHIN THE CITY OF OAK GROVE, KENTUCKY.**

WHEREAS, it is recognized by the City Council of the City of Oak Grove that there are some uses which, because of their very nature, have serious deleterious characteristics, particularly when several of them are concentrated in a single area or areas, thereby having a harmful effect upon adjacent properties;

WHEREAS, the City Council finds it has been the experience of other communities that certain sexually oriented business activities, which are located near areas zoned for residential use, near schools and public parks, businesses, and assembly uses that cater to use by family groups and children, adversely affect the viability of such nearby properties for their described purposes;

WHEREAS, The City Council relies on such evidence of the adverse secondary effects of sexually oriented business uses that is within the common knowledge of municipalities and is widely reported in judicial opinions, media reports, land use studies, and crime impact reports made available to the Council, several of which are set forth herein. Additionally, the Council relies on repeated judicial findings validating municipalities' reasonable reliance on this body of secondary effects evidence to support time, place, and manner regulations of sexually oriented businesses. The Council relies upon and incorporates the findings of secondary effects discussed in the following non-exhaustive list of cases:

Young v. American Mini Theatres, 427 U.S. 50 (1976); Mr. B's Bar & Lounge, Inc. v. Louisville, 630 S.W.2d 564 (Ct. App. Ky. 1981); City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986); FW/PBS, Inc. v. City of Dallas, 493 U.S. 215 (1990); O'Connor v. City and County of Denver, 894 F.2d 1210 (10th Cir. 1990); Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991); Bamon Corp. v. City of Dayton, 923 F.2d 470 (6th Cir. 1991); Bright Lights, Inc. v. City of Newport, 830 F. Supp. 378 (E.D. Ky. 1993); ILQ Investments, Inc. v. City of Rochester, 25 F.3d 1413 (8th Cir. 1994); Triplett Grille, Inc. v. City of Akron, 40 F.3d 129 (6th Cir. 1994); DLS, Inc. v. City of Chattanooga, 107 F.3d 403 (6th Cir. 1997); Richland Bookmart v. Nichols, 137 F.3d 435 (6th Cir. 1998); Z.J. Gifts D-2, LLC v. City of Aurora, 136 F.3d 683 (10th Cir. 1998); Threesome Entertainment v. Strittmather, 4 F. Supp. 2d 710 (N.D. Ohio 1998); Déjà vu v. Metro Government, 1999 U.S. App. LEXIS 535 (6th Cir. 1999); Pap's A.M. v. City of Erie, 529 U.S. 277 (2000); Restaurant Ventures v. Lexington-Fayette Urban County Gov't, 60 S.W.3d 572 (Ct. App. Ky. 2001); Déjà vu of Nashville, Inc., et al. v. Metropolitan Government of Nashville and Davidson County, 274 F.3d 377 (6th Cir. 2001); City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425 (2002); Currence v. City of Cincinnati, 2002 U.S. App. LEXIS 1258; World Wide Video of Spokane, Inc. v. City of Spokane, 227 F. Supp. 2d 1143 (E.D. Wash. 2002); Kentucky Restaurant Concepts, Inc. v. City of Louisville and Jefferson County, 209 F. Supp. 2d 672 (W.D. Ky. 2002); Ben's Bar, Inc. v. Village of Somerset, 316 F.3d 702 (7th Cir. 2003); Center for Fair Public Policy v. Maricopa County, 336 F.3d 1153 (9th Cir. 2003); Bigg Wolf Discount Video Sales, Inc. v. Montgomery County, 256 F. Supp. 2d 385 (D. Md. 2003);

WHEREAS, the City Council further relies on reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Amarillo, Texas - 1977; Los Angeles, California - 1977; Whittier, California - 1978; St. Paul, Minnesota - 1978; Phoenix, Arizona - 1979; Indianapolis, Indiana - 1984; Austin, Texas - 1986; Minnesota, State of - 1989; Seattle, Washington - 1989; Tucson, Arizona - 1990; Garden Grove, California - 1991; St. Cloud, Minnesota - 1994; New York Times Square study - 1994; Newport News, Virginia - 1996; Dallas, Texas - 1997; Houston, Texas - 1997; Phoenix, Arizona - 1995-1998; Testimony, Warner-Robins, Georgia - 2000; Littleton, CO - 2004; Dallas, TX - 2007; "Rural Hotspots: The Case of Adult Businesses," 19 Criminal Justice Policy Review (2008); "Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD," Journal of Urban Health (2011); and also on findings of physical abuse from the paper entitled "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program City Clerk, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota.

WHEREAS, based on cases and reports such as these, the Council 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, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on property values, urban blight, pornographic litter, and sexual assault and exploitation.
2. Sexual acts, including masturbation, oral and anal sex, sometimes occur at unregulated sexually oriented businesses, especially those which provide private or semi-private booths, rooms, or cubicles for viewing films, videos, or live sexually explicit shows, which acts constitute a public nuisance and pose a risk to public health through the spread of sexually transmitted diseases.
3. 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 certain uses, such as other sexually oriented businesses and establishments licensed to sell alcoholic beverages, to minimize the secondary effects associated with such uses and to prevent a concentration of sexually oriented businesses and such uses.
4. Sexually oriented business activity tends to attract an undesirable clientele which discourages neighboring residents from undertaking civic improvements, causes residents and businesses to move elsewhere, and frustrates attempts to attract new residents and businesses to come into an area. These factors contribute to a diminution of property values and to a general deterioration of neighborhoods.
5. The concentration of sexually explicit movies and books and sexual paraphernalia in sexually oriented businesses which also house sexually explicit movies, as well as hotel rooms rented by the hour to "couples" afforded free sexually explicit movies in the hotel room, have provided prostitutes an appealing and visible meeting place to ply their trade and have created public nuisances.

6. Children, the family environment, and residential neighborhoods suffer injury from the deleterious effects and harmful consequences resulting from the distribution of, and exposure to, certain sexually explicit items and devices. This is particularly so when such items and devices are permitted to leave a business's premises and litter the immediate family environment, neighborhood, and certain areas where children are likely to be.
7. The noise generated by patrons and the exterior appearance, including signage, of sexually oriented business activities can have an adverse impact on residents and can contribute to the decline of property values.
8. Nationally, there is extensive involvement of organized crime in the business of adult bookstores and the disclosure of persons who own, as well as the names of those persons who operate adult bookstores and other sexually oriented businesses will aid law enforcement officials in the enforcement of the federal Racketeer Influences and Corrupt Organizations Act (RICO) and the enforcement of the laws of the Commonwealth of Kentucky, among others, prohibiting the distribution of obscene matter, the use of minors to distribute obscene matter, the advertising of obscene material, the distribution of obscene material to minors, promoting the sale of obscenity, the use of a minor in a sexual performance, the distribution of material portraying a sexual performance by a minor, the promoting of material portraying a sexual performance by a minor, the advertising of material portraying a sexual performance by a minor, and the use of minors to distribute materials portraying a sexual performance by a minor.

WHEREAS, the City Council finds that Chapter 100 of the Kentucky Revised Statutes authorizes cities to divide their territory into districts and regulate the use of property within the districts for the purposes of promoting the health, safety, and morals of the public, and for the protection of the general welfare of the community;

WHEREAS, the City Council finds that Chapter 82 of the Kentucky Revised Statutes authorizes cities to promulgate and enforce ordinances necessary to protect the health, life, and property of the public, and to preserve good government, order, and security of such cities and their inhabitants;

WHEREAS, the Council declares as a matter of public policy that in order to preserve surrounding neighborhoods, to prevent blight and the deterioration of the neighborhoods of Oak Grove, protect property values, attract and retain residents and businesses, protect children from the deleterious effects of exposure to sexually explicit material, and decrease the incidence of crime and juvenile delinquency, the licensing and regulation of sexually oriented businesses is a public necessity and is required in the interest of public health, safety, and welfare as well as the economic and aesthetic well-being of the people;

WHEREAS, the regulations contained herein neither have the purpose nor effect of imposing any content limitations on those who produce adult books, films, photographs, or their ability to make them available to whom they desire, and that these regulations neither have the

purpose nor effect of restricting in any way the purchase or viewing of these materials by those who desire to view them; and

WHEREAS, these regulations will not significantly affect any person's ability to engage in the business herein regulated and will not significantly affect any person's ability to frequent any of the businesses herein regulated because within the City of Oak Grove there are sufficient business locations and/or buildings which are lawfully and reasonably available to accommodate any demand that exists for these businesses;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OAK GROVE:

## **SEXUALLY ORIENTED BUSINESSES**

### **ARTICLE I – INTRODUCTORY PROVISIONS**

**SECTION 1.01 PURPOSE AND INTENT.** 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 Oak Grove, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the City of Oak Grove. Specifically, it is the intent of this Ordinance to:

- A. To prevent the unsanitary conditions and to prevent health risks, including AIDs and other sexually transmitted diseases, caused by illicit and unlawful sexual relations in sexually oriented businesses;
- B. To protect children and the family environment from the deleterious and harmful effects of exposure to certain sexually explicit items and devices;
- C. To protect property values;
- D. To reduce crime and ensure the safety of residents and visitors; and
- E. To obtain the identity of persons licensed and to be licensed for the operation of establishments selling, showing, renting, or offering certain sexually explicit material or entertainment to ensure proper identification of those persons responsible for the operation of such businesses so as to assist in the proper enforcement of this Ordinance.

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.

Further, it is not the purpose of this Ordinance to establish community standards on obscenity nor to permit persons to engage in any activity which is in violation of law including, but not limited

to, state laws pertaining to the advertising, promotion, distribution, or sale of obscene matter or matters portraying a sexual performance by a minor, or state laws pertaining to the use of a minor in a sexual performance, or promotion of sexual performance by a minor, or the use of a minor to distribute material portraying sexual performance by a minor.

**SECTION 1.02 DEFINITIONS.** For the purposes of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

- A. **ADULT BOOTH.** Any area of a sexually oriented business establishment set off from the remainder of such establishment by one or more walls or other dividers or partitions and used to show, play, or otherwise demonstrate any adult materials or to view any live performance that is distinguished or characterized by an emphasis on the exposure of specified anatomical areas or specified sexual activities.
- B. **ADULT MATERIALS.** Any materials, whether new or used, that is distinguished or characterized by an emphasis on the exposure, depiction, or description of specified anatomical areas, or the conduct or simulation of specified sexually activities.
- C. **CITY CLERK.** The individual lawfully acting as the city clerk of the City of Oak Grove pursuant to the City Charter, or his or her designated representative.
- D. **DAY CARE.** A facility which provides care and/or supervision for adults or children on a day to day basis.
- E. **DAYS.** Calendar days, unless otherwise specifically set forth in this Ordinance.
- F. **EMPLOYEE.** Any person hired by or suffered or permitted to work in an establishment engaging in sexually oriented business activities whether that person receives remuneration or compensation directly from the operator or owner of the establishment, from patrons of the establishment, or from any other source whether by contract of employment or otherwise, for work or services performed for the benefit of the sexually oriented business. An employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods, such as foods, to the premises.
- G. **ESCORT.** A person who accompanies an individual for social purposes for any consideration.
- H. **ESTABLISHMENT.** A business entity or endeavor, fixed, mobile or travelling, including its owners, operators, directors, shareholders, partners, employees, and possessions.
- I. **HEARING OFFICER.** The Code Enforcement and Nuisance Board as established pursuant to Ordinance No. 2017-1.

- J. KNOWINGLY. As used in this Ordinance, the term "knowingly" shall have the meaning set forth at Kentucky Revised Statutes 501.020, as then amended.
- K. LICENSEE. 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.
- L. MATERIALS. Any book, magazine, newspaper, or other printed or written matter, or any picture, drawing, photograph, motion picture, video cassette film, or other pictorial representation or mechanical, chemical, or electrical reproduction, or any other articles, equipment, machines, instruments, novelties, devices, or paraphernalia.
- M. NUDITY OR STATE OF NUDITY. 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.
- N. OPERATOR. Any individual, partnership, corporation, or business entity who establishes and/or maintains a business as its owner or manager and may also mean LICENSEE as defined here above.
- O. PATRON. Any individual, other than a sexually oriented business employee or operator, present in or at any sexually oriented business at any time when such sexually oriented business is open for business; provided, however, that this definition shall not include persons delivering goods, materials (other than adult materials), food and beverages, or performing maintenance or repairs to the licensed premises.
- P. PERSON. Any individual, partnership, corporation, or business entity.
- Q. PLACE OF RELIGIOUS WORSHIP. Any structure used principally as a place wherein persons regularly assemble for religious worship including, but not limited to, sanctuaries, chapels, cathedrals, churches, mosques, synagogues, and on-site buildings adjacent thereto, such as parsonages, convents, fellowship halls, Sunday schools, and rectories.
- R. PREMISES. 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 structure, the grounds, private walkways, and parking areas under the ownership, control, or supervision of the sexually oriented business establishment.

- S. **PRINCIPAL OWNER.** Any person owning, directly or beneficially, 5% of a corporation's equity securities, 5% or more of the membership interests in a limited liability company, or, in the case of any other legal entity, 5% or more of the ownership interests in the entity.
- T. **PRINCIPAL USE.** A substantial or significant use, but not necessarily a majority of the business activity or stock in trade. The fact that a business may have one or more other principal uses unrelated to a sexually oriented business shall not relieve the business from the provisions of this Ordinance applicable to sexually oriented businesses. Principal use shall exist in the following circumstances:
- (1) Where a business establishment dedicates, or permits the use of, at least 15% of the utilized square footage of its premises for sexually oriented business activity or activities; or
  - (2) Where at least 15% of the gross receipts of a business establishment, excluding food and beverage receipts, result from sexually oriented business activity or activities.
- U. **REAL ESTATE OWNER.** Any individual, partnership, corporation, or business entity who has legal title to real estate, with or without accompanying actual possession thereof, or has the beneficial ownership of any real estate and a right to present use of enjoyment thereof, including a mortgage in possession.
- V. **REGULARLY.** As used in the phrases herein such as "regularly features" and "regularly offers," the term "regularly" means a consistent or repeated course of conduct engaged in or permitted by the operator of the business.
- W. **RESIDENTIAL DISTRICT.** The R-1, R-1A, R-2, R-3, RHM-1, and RMH-2 zoning districts as established by the Oak Grove Zoning Ordinance and illustrated on the Official Zoning Map for the City of Oak Grove, Kentucky.
- X. **RESIDENTIAL USE.** Any single-family dwelling, two-family dwelling or duplex, multi-family dwelling, manufactured home, qualified manufactured home, assisted living facility, boarding house and lodging house, congregate residence, dwelling group, extended stay hotel, residential care facility, and second and upper floor residential dwelling as defined below:
- Dwelling, single-family.* A building or portion thereof on an individual lot designed for or occupied exclusively by one (1) family. This term includes single-family attached dwellings and single-family detached dwellings. This term also includes modular homes but does not include manufactured or qualified manufactured homes.
- Dwelling, two-family.* A structure, located on a single lot, designed for or occupied exclusively by two (2) families living independent of each other in separate dwelling units. This use and building arrangement may also be referred to as a "duplex".

*Dwelling, multi-family.* A structure containing three (3) or more dwelling units on a single lot.

*Manufactured Home.* A dwelling designed to accommodate one (1) family constructed after June 15, 1976, in accordance with the National Manufactured Home Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et. Seq., as amended, and designed to be used as a single-family residential dwelling with or without permanent foundation when connected to the required utilities and which includes the plumbing, heating, air conditioning, and electrical systems therein.

*Manufactured Home, Qualified.* A manufactured home that meetings all the following criteria:

1. Is manufactured on or after July 15, 2002;
2. Is affixed to a permanent foundation, is connected to appropriate facilities, and is installed in accordance with KRS 227.550;
3. Has a width of at least twenty (20) feet at its smallest width measurement or is two (2) stories in height and oriented on the lot or parcel so that its main entrance door faces the street;
4. Has a minimum total living area of nine-hundred (900) square feet; and
5. Is not located in a manufactured home land-lease community.

*Assisted Living Facility.* A building or structure that contains three (3) or more apartments with private baths and facilities for an individual's meal preparation (which may include a refrigerator, stove, microwave oven, or other appliances) and providing supportive service such as assistance with household chores, cleaning, shopping, meals, laundry, transportation, 24-hour supervision, and organized social activities and not constituting a boarding and lodging house or nursing home.

*Boarding House or Lodging House.* A single-family dwelling, not constituting a hotel, motel, or bed and breakfast, where for compensation and by prearrangement for definite periods, lodging is provided to three (3) or more persons. Meals may or may not be provided, but there is one common kitchen facility and no meals are provided to persons not residing in the dwelling.

*Congregate Residence.* Any building or portion thereof which contains facilities for living, sleeping, and sanitation and may include facilities for eating and cooking for occupancy other than a family. A congregate residence includes a convent, monastery, dormitory, fraternity or sorority house, but does not include a shelter (day or homeless), crisis counseling center, rehabilitation home, or substance abuse treatment facility.

*Dwelling group.* Any combination of two or more buildings comprised of single-family dwellings, two-family dwellings, or multi-family dwellings on a single lot.

*Extended Stay Hotel.* A hotel, motel, or multi-family dwelling which provides rooms or suites for lease or rent for a term of more than one (1) week but less than six (6) months.

*Residential Care Facility.* A residence, authorized or licensed by the Commonwealth of Kentucky, operated and maintained by a sponsoring private or governmental agency to provide services in a homelike setting for persons with disabilities as provided in KRS 100.984.

*Second or Upper Story Residential Dwelling.* A dwelling unit, or group of dwelling units, located immediately above the first floor of a structure. These uses are characterized as mixed use where the ground floor of the structure is occupied by a commercial or professional use(s) and the upper floor(s) by a residential use(s).

- Y. SEMI-NUDE OR STATE OF SEMI-NUDITY. 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.
- Z. SEXUALLY ORIENTED BUSINESS. An adult amusement arcade, adult book store, adult lingerie store/modeling studio, adult motel, adult motion picture theater, adult novelty center, adult stage show theater, adult video rental center, cabaret, commercial sexual entertainment center, escort agency, self-designated adult entertainment center, semi-nude modeling studio, sexual encounter center, or any other commercial enterprise a principal business purpose of which is the offering of a service or the selling, renting, or exhibiting of devices or any other items, intended to provide sexual stimulation or sexual gratification to the patron including, but not limited to, any combination of the above listed activities and uses.
- (1) ADULT AMUSEMENT ARCADE. An establishment having as one of its principal uses one or more of the following: customer-operated motion picture devices, peep shows, viewing areas and/or similar devices either coin, token or slug operated or which, in consideration of an entrance fee, display matter distinguished or characterized by an emphasis on displays of "specified anatomical areas" or "specified sexual activities", as hereinafter defined.
- (2) ADULT BOOK STORE. An establishment having as one of its principal uses the sale, rent, or display of pictures, books, periodicals, magazines, appliances, and similar material which are distinguished or characterized by their emphasis on displays of "specified sexual activities", as hereinafter defined.
- (3) ADULT LINGERIE STORE/MODELING STUDIO. A commercial establishment where live models exhibit lingerie intended for adult audiences.
- (4) ADULT MOTEL. A hotel, motel, or similar commercial establishment which offers accommodations to the public for any form of consideration and provides patrons with closed-circuit television transmission, films, motion pictures, video

cassettes, slides, discs, or other photographic reproductions which are characterized by the depiction or description of "specified anatomical areas" or "specified sexual activities", and/or has a sign visible from the public right-of-way which advertises the availability of this adult type of entertainment.

- (5) ADULT MOTION PICTURE THEATER. An establishment having as one of its principal uses the presentation of motion pictures, slide projections, and other similar material having as a dominant theme or characterized or distinguished by an emphasis on matter displaying, describing or relating to "specified anatomical areas" or "specified sexual activities", as hereinafter defined, for observation by persons therein. 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.
- (6) ADULT NOVELTY CENTER. A commercial establishment which regularly features for sale instruments, devices, "adult toys" or paraphernalia which are designed for or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of oneself or others. Such instruments and devices include, but are not limited to, dildos, vibrators, penis pumps, and physical representations of the human genital organs but shall not include condoms, contraceptive devices, spermicidal substances and lubricants, or other such products designed to prevent pregnancy or sexually transmitted diseases.
- (7) ADULT STAGE SHOW THEATER. An establishment having as one of its principal uses the regular presentation of live performances having as a dominant theme or characterized or distinguished by an emphasis on matter displaying semi-nudity or "specified sexual activities" for observation by persons therein.
- (8) ADULT VIDEO RENTAL CENTER. A commercial establishment which has as one of its principal businesses the rental or sale of video cassettes, DVDs, or other video or digital recordings which display material distinguished or characterized by an emphasis on displays of "specified anatomical areas" or "specified sexual activities".
- (9) CABARET. An establishment which regularly features as one of its principal uses persons who appear semi-nude before patrons.
- (10) COMMERCIAL SEXUAL ENTERTAINMENT CENTER. Any commercial establishment not otherwise described herein which as one of its principal uses regularly offers matter, services, or entertainment appealing to adult sexual interests if the establishment or its entertainment, services, or goods are advertised by or on behalf of the establishment in a manner patently designed to appeal to such adult sexual interests.

- (11) ESCORT AGENCY. A person or commercial enterprise which for a fee, tip, or other consideration offers to furnish, or advertises to furnish, escorts as one of its principal business purposes.
- (12) SELF-DESIGNATED ADULT ENTERTAINMENT CENTER. Any establishment which designates all or a portion of its premises as for adults only and has a policy of excluding minors from its premises or from a portion of its premises and which advertises so as to convey the impression that the services, entertainment, matter, or goods available at the premises or at the portion of the premises designated for adults only are characterized or distinguished by displays of "specified anatomical areas" or "specified sexual activities".
- (13) SEMI-NUDE MODELING STUDIO. A place where persons regularly appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. This definition shall not apply to any place where persons appearing in a state of semi-nudity did so in a class operated:
- (a) By a college, junior college, or university supported entirely or partially through taxation;
  - (b) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
  - (c) In a structure 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 where, in order to participate in the class a student must enroll at least three days in advance of the class.
- (14) SEXUAL ENCOUNTER CENTER. An establishment that, as one of its principal business purposes, purports to offer for any form of consideration, physical contact in the form of wrestling or tumbling between persons of the opposite sex when one or more of the persons is semi-nude.
- AA. SPECIFIED ANATOMICAL AREAS. Specified anatomical areas are:
- (1) Less than completely and opaquely covered (a) human genitals, (b) human buttock or anus, or (c) female breasts below a point of immediately above the top of the areola;
  - (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
  - (3) Any combination of the above.
- BB. SPECIFIED CRIMINAL ACTIVITIES. Any of the following offenses:
- (1) KRS 510.040, 510.050, or 510.060 (rape in the first, second, or third degree); KRS 510.070, 510.080, or 510.090 (sodomy in the first, second, or third

degree); KRS 510.110, 510.120, or 510.130 (sexual abuse in the first, second, or third degree); KRS 510.140 (sexual misconduct); 510.150 (indecent exposure); KRS 517.050 (falsifying business records); KRS 529.020, 529.030, 529.040, or 529.050 (prostitution, promoting prostitution in the first, second, or third degree); KRS 529.070 (permitting prostitution); KRS 531.020, 531.030, 531.040 (distributing obscene matter, distributing obscene matter to minors, using minors to distribute obscene matter); KRS 218A.140 et seq. (offenses relating to controlled substances); any offense listed in KRS 531.300 through 531.370 (sexual exploitation of minors offenses); engaging in organized crime (KRS 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:

- (a) 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;
  - (b) 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
  - (c) 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.
- (2) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

CC. SPECIFIED SEXUAL ACTIVITIES. Partial or complete male and/or female nudity in conjunction with any one or more of the following:

- (1) Displays of human genitals in a state of sexual stimulation or arousal;
- (2) Acts of human masturbation, sexual intercourse, or sodomy;
- (3) Fondling, holding, or other erotic touching of human genitals, pubic region, buttock, or breasts; or
- (4) Excretory functions as part of or in connection with any of the activities set forth in parts (1), (2), or (3) of this definition.

**SECTION 1.02 ADMINISTRATION.** The City Clerk is authorized to develop administrative procedures and the application forms, consistent with this Ordinance, deemed necessary for the orderly and complete administration of the provisions contained herein. The City Clerk may request and shall receive, so far as is required in the discharge of the duties described in this Ordinance, the assistance and cooperation of other departments and officials of the City.

**SECTIONS 1.03 THROUGH 2.00 RESERVED.**

## **ARTICLE II. GENERAL RESTRICTIONS AND OPERATING REGULATIONS**

**SECTION 2.01 MATERIAL AND PERSONS NOT TO BE SUBJECT TO PUBLIC VIEW.** A sexually oriented business shall not display pictorial representations of specified sexual activities or specified anatomical areas in such manner as to be subject to public view from outside of a building containing such business establishment. No employee nor patron of a sexually oriented business shall appear in a state of nudity or semi-nudity in an area of the sexually oriented business which can be viewed from outside of the licensed business establishment. This provision includes views from public sidewalks, streets, arcades, hallways, passageways, or any outdoor area.

**SECTION 2.02 EMPLOYEE AND PATRON AGE REQUIREMENT.** An operator or employee of a sexually oriented business shall not permit a person under 18 years of age to be employed by or to enter the establishment. A sexually oriented business shall, at all times, cause the entrance of the establishment to be so attended as to ensure compliance with the requirements contained in this section. In addition, one sign of not less than one square foot or greater than four square feet in area shall be prominently placed and readily visible at the entrance of the sexually oriented business, with lettering at least one inch high, notifying potential patrons that no one under 18 years of age is permitted in the establishment.

**SECTION 2.03 RESTRICTED HOURS.** No sexually oriented business shall be or remain open for business between the hours of 12:00 A.M. and 12:00 P.M. on any day.

**SECTION 2.04 SALE OF ALCOHOLIC BEVERAGES PROHIBITED.** An establishment containing a sexually oriented business shall not make application for and shall not be granted any license to sell alcoholic beverages otherwise issued pursuant to Ordinance 2020-01. The sale, use, or consumption of alcoholic beverages on the premises of a sexually oriented business is prohibited, provided that, any sexually oriented business which holds a license to sell alcoholic beverages on the effective date of this Ordinance may continue to serve alcoholic beverages until the expiration date of its annual license at which time it shall not make application for or be granted another such license. Nothing herein shall exempt a sexually oriented business from Section 2.03.

**SECTION 2.05 ANIMALS PROHIBITED.** No animal, except only for seeing-eye dogs required to assist the blind, shall be permitted at any time at or in any sexually oriented business.

**SECTION 2.06 CONSTRUCTION, MAINTENANCE, EXTERIOR AND INTERIOR CONFIGURATION, AND OCCUPANCY REQUIREMENTS.** Sexually oriented businesses are subject to the following construction, maintenance, exterior and interior configuration, and occupancy requirements:

- A. Managers Station. Excepting only adult motels, the interior of the sexually oriented business shall be configured in such a manner that there is an unobstructed view from a manager's station(s) of every area of the building to which any patron is

permitted access for any purpose, excluding only restrooms. The view required by this subsection must be by direct line of sight from the manager's station. At least one operator or employee shall be situated at each station at all times that any patron is present inside the sexually oriented business.

- B. Obstruction of View Prohibited. It shall be an offense for any owner, operator, agent, or employee to knowingly permit the view area specified in subsection 2.06A to be obstructed by any doors, walls, merchandise, display racks, or other materials at any time that any patron is present on the premises, or to allow a patron access to any area of the premises which has been designated in the application filed pursuant to this Ordinance as an area in which patrons will not be permitted.
- C. Restrooms. All restrooms in a sexually oriented business shall be equipped with standard toilets, sinks, and other traditional lavatory facilities. Restrooms shall not contain video, photographic, monitoring, or other surveillance equipment. No adult materials, specified sexual activities, or live performances shall be provided or allowed at any time in the restrooms of a sexually oriented business. Separate male and female restrooms shall be provided. Separate facilities shall be provided and used by employees and patrons.
- D. Interior Lighting. It shall be an offense for any owner, operator, agent, or employee to knowingly allow patrons access to any area interior to a building that is not illuminated by overhead lighting fixtures to an intensity of at least one foot-candle as measured at floor level. Such lighting intensity shall be maintained at all times during which the sexually oriented business is open to the public.
- E. Lighting of Parking Lots and Walkways. Lighting shall be required which is designed to illuminate all off-street parking areas and on-site exterior walkways serving such use for the purpose of increasing the personal safety of patrons and reducing the incidents of vandalism, theft, and other criminal activity. Said lighting shall be a minimum of two foot-candles at any point (all portions) of the parking lot or walkway.
- F. Windows and doors. Exterior doors and windows of any building containing a sexually oriented business shall not be propped or kept open at any time while the business is open. Exterior windows shall be covered with opaque covering at all times.
- G. Outdoor lights and displays. No portion of the exterior of a sexually oriented business's premises shall utilize or contain any flashing lights, search lights, spotlights, or any other similar lighting system. Except as provided in subsection I of this section, no exterior portion of the sexually oriented business shall contain any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner. This shall apply to any advertisement, display, promotional materials, decorations, or sign.

- H. Outdoor seating prohibited. No portion of the sexually oriented business's premises shall be arranged to provide or otherwise allow for outdoor seating. All tables, chairs, stools, benches, and similar appurtenances shall be located within an enclosed building.
- I. Signage. A sexually oriented business, except where a standard provided by law is more restrictive or where required by law (see Section 2.02), shall not have more than one sign exterior to the building, flush to the wall (façade sign) not to exceed in size ten feet in length (horizontal to the ground) and three feet in width (vertical to the ground) with no flashing lights and with no pictorial matter which is distinguished or characterized by an emphasis on displays of specified anatomical areas or specified sexual activities. Temporary signage shall not be permitted in connection with a sexually oriented business.
- J. Noise. No loudspeakers or sound equipment audible beyond the premises of a sexually oriented business shall be used at any time.
- K. Excluding an adult motel, a sexually oriented business shall not place or permit a bed, sofa, or mattress in any room on the premises to which members of the public have access, except that a sofa may be placed in a reception room open to the public.
- L. Restricted access. No sexually oriented business patron shall be permitted at any time to enter into any non-public portions of any sexually oriented business, including specifically, but without limitation, any storage areas or dressing or other rooms provided for the benefit of sexually oriented business employees. This subsection shall not apply to persons delivering goods, materials, food and beverages, or performing maintenance or repairs to the licensed premises; provided, however, that such persons shall remain in such non-public areas only for the purposes and to the extent and time necessary to perform their job duties.
- M. Special regulations for adult booths. Adult booths shall be prohibited in all sexually oriented business establishments except an adult amusement arcade. Adult booths are subject to the following requirements:
  - 1. Only one individual shall occupy an adult booth at any one time. No individual occupying an adult booth shall engage in any specified sexual activities. No individual shall damage or deface any portion of an adult booth.
  - 2. In addition to satisfying the requirements of subsection A of this section, all adult amusement arcades shall be arranged in such a manner that the entire interior portion of each adult booth shall be visible from the common area of the adult amusement arcade. To satisfy this requirement, there shall be a permanently open and unobstructed entrance way for each adult booth and for the entranceway from the area of the adult amusement arcade that provides other adult materials to the area of the adult amusement arcade containing the adult booths. Each of these entranceways shall not be capable of being closed

or obstructed, entirely or partially, by any door, curtain, partition, drapes, or any other obstruction whatsoever that would be capable of wholly or partially obscuring the area of the adult amusement arcade containing the adult booths or any person situated in an adult booth. It shall be unlawful to install an adult booth within a sexually oriented business establishment for the purpose of providing a secluded viewing of adult materials or live performances.

3. There shall be one continuously lighted main aisle along side the adult booths provided in an adult amusement arcade. Each person situated in a booth shall be visible at all times from the aisle.
4. Except for the open booth entranceway, the walls and partitions of each adult booth shall be constructed and maintained of solid walls or partitions without any holes or openings whatsoever.

## **SECTION 2.07 LOCATION RESTRICTIONS.**

- A. The public entrance to an establishment engaging in a sexually oriented business shall not be located within 1,500 feet of any building containing a public or private day care, elementary, middle or secondary school, institution of higher education or business college, any park-like area of open space under the control of a governmental agency, any building used for a place of religious worship, or any building used for a governmental function or public library. Such distance shall be measured along a straight line from the nearest property line of the property on which the building or public park-like area is located to the public entrance to such establishment engaging in a sexually oriented business.
- B. The public entrance to an establishment engaging in a sexually oriented business may not be located within 1,500 feet of any residential zoning district or a residential use. Such distance shall be measured along a straight line from the boundary line of the residential district or property line of a lot containing a residential use to the public entrance to such establishment engaging in a sexually oriented business.
- C. The public entrance to an establishment engaging in sexually oriented business shall not be located within 1,000 feet of the public entrance of another sexually oriented business. Such distance shall be measured along a straight line from the public entrance of the sexually oriented business to the public entrance to the other establishment engaging in a sexually oriented business.
- D. The public entrance to an establishment engaging in a sexually oriented business shall not be located within 500 feet of the public entrance of an establishment licensed to serve alcoholic beverages. Such distance shall be measured along a straight line from the public entrance of the sexually oriented business to the public entrance to such establishment licensed to serve alcoholic beverages.

- E. All sexually oriented business establishments shall comply with all other pertinent zoning regulations of the City of Oak Grove. Sexually oriented businesses are permitted in the B-2 District only.
- F. For the purposes of subsections A, B, C, and D, public entrance shall mean any exterior door of a building containing a sexually oriented business that is accessible by patrons.

**SECTION 2.08 PROHIBITED ACTIVITIES.** Nothing contained in this Ordinance is intended, or shall be construed, to permit or authorize activities which are unlawful under state law or local ordinance. It is unlawful for an operator or licensee to knowingly violate the following regulations or to allow, either knowingly or recklessly, an employee or a patron to violate the following regulations.

- A. It shall be a violation of this Ordinance for a licensee, patron, or any other person to knowingly or intentionally, in or on the premises of a sexually oriented business, appear in a state of nudity, regardless of whether such public nudity is expressive in nature. It shall be a violation of this Ordinance for any person, other than a licensee, to knowingly or intentionally appear in a state of semi-nudity in or on the premises of a sexually oriented business. It is a defense to prosecution under this provision if the defendant was in a restroom not open to public view of person(s) of the opposite sex. This provision applies to all operators and employees of a sexually oriented business but does not apply to patrons of adult motels.
- B. It shall be a violation of this Ordinance for a licensee or any other person in or on the premises of a sexually oriented business to perform or conduct any specified sexual activity with or for a licensee, patron, or any other person. No sexually oriented business patron shall perform or conduct any specified sexual activity with or for any licensee, patron, or other person in or on the premises of a sexually oriented business. This provision applies to all operators and employees of a sexually oriented business but does not apply to patrons of adult motels.
- C. It shall be a violation of this Ordinance to conduct a sexually oriented business outside of a completely enclosed building.
- D. It shall be a violation of this Ordinance for a licensee to knowingly or intentionally, in or on the premises of a sexually oriented business establishment, appear in a semi-nude condition unless the licensee, while semi-nude, remains at least six feet from any patron or customer and on a fixed stage at least 18 inches from the floor. The six-foot requirement is measured from the edge of the stage where the semi-nude licensee is located to the patron seating or standing area, or, if patrons are allowed to sit at the stage, from the edge of the stage to a line or other barrier six feet from the edge beyond which licensees are allowed to appear semi-nude.

- E. It shall be a violation of this Ordinance for a licensee, while semi-nude in or on the premises of a sexually oriented business, to knowingly or intentionally receive any pay or gratuity directly from any patron or for any patron to knowingly or intentionally pay or give any gratuity directly to any licensee, while said licensee is semi-nude in or on the premises of a sexually oriented business establishment. Where a tip or gratuity is provided following the completion of a semi-nude performance, any such tip or gratuity shall be placed into a receptacle provided by the operator and shall not be provided directly to the employee or performer.
- F. It shall be a violation of this Ordinance for any person to knowingly allow a person under the age of 18 years to appear in a state of nudity or semi-nudity in or on the premises of a sexually oriented business.
- G. It shall be a violation of this Ordinance for a person under the age of 18 years to act as an escort. It shall be a violation of this Ordinance for a person to act as an escort or agree to act as an escort to any person under the age of 18 years.

**SECTIONS 2.09 THROUGH 3.00 RESERVED.**

**DIVISION III. LICENSE STANDARDS; FEES; REVOCATION; APPEAL**

**SECTION 3.01 SEXUALLY ORIENTED BUSINESS LICENSE REQUIRED.** It shall be unlawful for any person to operate a sexually oriented business within the City of Oak Grove without a valid sexually oriented business license.

**SECTION 3.02 EMPLOYEE LICENSE REQUIRED.** It shall be unlawful for any person to be an "employee," as defined in this Ordinance, of a sexually oriented business in the City of Oak Grove 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.

**SECTION 3.03 SEXUALLY ORIENTED BUSINESS LICENSE APPLICATION; CONTENTS.**

- A. The principal owner(s) or the operator(s) of an establishment intending to engage, or engaging under a previously issued license, in a sexually oriented business shall make application for a license with the City Clerk in accordance with this Ordinance.
- B. The application shall be in writing, notarized, and shall be in the form prescribed by the City Clerk. The application will be deemed complete when it contains the following information:
  - (1) The name, business location address, business mailing address and phone number of the establishment and the name and business address of the prospective licensee;

- (2) The applicant's full true name, mailing address, date of birth, and a copy of a government-issued photo identification card or set of fingerprints;
  - (a) If the applicant is one or more natural persons, then all principal owners shall comply and
  - (b) If the applicant is other than an individual, such as a corporation or partnership, each officer, director, general partner, principal owner and each other person who will participate directly in decisions relating to management of the business shall sign the application for a license as the applicant and comply with the requirements of this Ordinance;
- (3) The name and address of the prospective licensee's designated agent for service of process;
- (4) If the applicant is not the owner of record of the real property on which the licensed establishment is located or to be located, the application shall include the name and address of the owner of record of the real property;
- (5) A designation of the sexually oriented business, as defined in Section 1.02, in which the applicant seeks to engage at the specified location;
- (6) All convictions for specified criminal activities, as defined in this Ordinance, of the applicant or applicants whose names are required pursuant to this section;
- (7) The name and mailing address of any person to whom the applicant wants mail notice to be given in case of violation or other matters affecting any license hereunder; and
- (8) A drawing or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The drawing 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 inches. The drawing or diagram shall clearly indicate areas of public or patron access and those areas where access is restricted. In addition, a site plan shall be submitted drawn to a scale of no greater than 1" = 100' denoting the building location, building entrances and exits, exterior parking, entrance drives, and walkway areas, and the location, type, and intensity of lighting.

- C. Any application for a sexually oriented business license that does not include all of the information and documents required pursuant to subsection B of this section as well as the license fee required by Section 3.09, shall be deemed to be incomplete and shall not be acted on or processed by the City Clerk. The City Clerk shall, within five days of submittal, return the incomplete application to the applicant along with a written explanation of the reasons why the application is incomplete.

#### **SECTION 3.04 EMPLOYEE LICENSE REQUIRED.**

- A. Any person intending to be an employee at a sexually oriented business shall make application for an employee license with the City Clerk in accordance with this section. The application shall be in writing, notarized, and shall be in the form

prescribed by the City Clerk and shall be deemed complete when it contains the following items:

- (1) The legal name of the applicant;
- (2) Any and all aliases or names used or to be used by the applicant in the course of prior, current or prospective appearances or performances as a dancer, performer, or entertainer;
- (3) The applicant's mailing address where the applicant may be contacted by the City Clerk;
- (4) The applicant's date of birth (with birth certificate or government-issued photo identification card);
- (5) A set of the applicant's fingerprints or a copy of a government-issued photo identification card;
- (6) A recent photograph of the applicant;
- (7) All convictions for specified criminal activities, as defined in this Ordinance, of the applicant; and
- (8) Any information required under this section deemed to be private and/or confidential within the meaning of KRS 61.878, or within the constitutional right to privacy, shall not be disclosed to any person other than law enforcement agencies or other governmental agency.

- B. Any application for an employee license that does not include all of the information and documents required pursuant to subsection A of this section as well as the license fee required by Section 3.09, shall be deemed to be incomplete and shall not be acted on or processed by the City Clerk. The City Clerk shall, within five days of submittal, return the incomplete application to the applicant along with a written explanation of the reasons why the application is incomplete.

**SECTION 3.05 INFORMATION TO BE CURRENT; CITY CLERK TO BE NOTICED OF CHANGES.** The information required by Sections 3.03 and 3.04 shall be kept current by the licensee at all times even after the granting of a license by the City Clerk. It shall be the responsibility of the operator or other person designated in the license application to notify the City Clerk no later than the close of the fifth business day after the effective date of any changes, alterations or modifications in any information contained in the application including, but not limited to: name of the establishment; any change in the corporate or partnership information submitted as part of the application; names and mailing addresses of employees; name and address of designated agent for service of process; designation of the activity or activities to be engaged in at the establishment, as defined in Section 1.02; and the name and mailing address of any person the applicant wants mail notice to be given in case of violation or other matters affecting the license.

#### **SECTION 3.06 ISSUANCE OR DENIAL OF LICENSE.**

- A. Upon the filing of a complete application for a sexually oriented business license or employee license under sections 3.03 or 3.04, the City Clerk shall issue a temporary license to the applicant provided the complete application, on its face,

does not indicate a clear violation of this Ordinance. The temporary license shall expire 15 days after the final decision of the City Clerk to deny or grant the license. Within 20 business days after the receipt of a completed application for a sexually oriented business license, the City Clerk shall cause the premises to be inspected for compliance with zoning, building, safety, health, and fire codes. If inspections are not made within the specified 20 days, unless such failure is due to the applicant's or the real estate owner's disallowance of said inspections, the property shall be deemed to comply with the codes specified in the previous sentence. Within 20 business days after the receipt of a completed application, the City Clerk shall either issue a license, or issue a written notice of intent to deny a license, to the applicant. The City Clerk shall approve the issuance of a license unless one or more of the following is found to be true:

- (1) An applicant is less than 18 years of age;
- (2) An applicant is delinquent in the payment to the City of Oak Grove of taxes, fees, fines, or penalties assessed against or imposed upon the applicant in relation to a sexually oriented business;
- (3) An applicant has failed to provide information or true and correct information required of the applicant for issuance of the license;
- (4) An applicant for a sexually oriented business license, including any operator or principal owner of the adult sexually oriented business establishment, has been convicted of a specified criminal activity, as defined in this Ordinance;
- (5) The applicant for a sexually oriented business employee license has been convicted of a specified criminal activity, as defined in this Ordinance;
- (6) The license fee required by Section 3.09 has not been paid;
- (7) The proposed sexually oriented business is located in a zoning district other than a B-2 district or is not in compliance with the location restrictions or other requirements established for sexually oriented businesses under this Ordinance (sexually oriented business license only);
- (8) The applicant's premises is not in compliance with applicable zoning, building, safety, health, or fire codes (sexually oriented business license only); or
- (9) The applicant or the proposed establishment is in violation of or is not in compliance with any applicable section of this ordinance.

- B. In cases where the sexually oriented business requires the construction of a new building(s), additions to an existing building(s), or interior modifications which are incomplete at the time of application, any sexually oriented business license issued shall be conditioned upon the applicant obtaining a certificate of occupancy and complying with all applicable building codes and the requirements of this Ordinance. No occupancy of the building or portion thereof for use as a sexually oriented business shall occur until such conditions are satisfied and the building (or portion thereof) has been inspected. Upon completion, the applicant shall notify the City Clerk in writing. Upon notification, the City Clerk shall cause all necessary inspections to occur within twenty days.

- C. An applicant that is ineligible for a license due to subsections 3.06A(4)(5) of this section, may qualify for a sexually oriented business or employee license only when the time period required by the applicable provisions in Section 1.02BB has elapsed.
- D. The sexually oriented business license, if granted, shall state on its face the business name, the name of the persons or persons to whom it is granted, the number of the license issued to that applicant, the expiration date, and the address of the sexually oriented business. A sexually oriented business employee license shall contain the licensee's name, address, license number, and a photograph. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to such business so that it may be easily read at any time. 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 or performing, and shall produce such license for inspection upon request by a law enforcement officer or other authorized City of Oak Grove enforcement official. Such officer or official, pursuant to this Ordinance, shall request verification of an employee's license only when reasonable and necessary to advance the purposes of this Ordinance.

**SECTION 3.07 INSPECTIONS.** The application for or the grant of a license to operate a sexually oriented business is deemed to permit periodic inspections of the public areas of any licensed establishment during such establishment's business hours for the purpose of verifying compliance with the terms and conditions of this Ordinance. This subsection shall be reasonably construed and applied by enforcement personnel and does not authorize a harassing or excessive pattern of inspections.

**SECTION 3.08 OPERATION WITHOUT VALID LICENSE PROHIBITED.**

- A. Immediately upon the effective date of this Ordinance no person shall operate, own, or be employed at an unlicensed sexually oriented business, such conduct having been prohibited under Ordinance 2002-5. All licenses presently held by a sexually oriented business shall remain in full force and effect without the necessity of reapplication until the annual renewal date set forth in Section 3.09. However, current licenses shall be subject to regulation by the terms of this Ordinance and shall be in full compliance with this Ordinance within 60 days after the effective date hereof, provided that a sexually oriented business which is currently licensed and has obtained non-conforming use status per KRS 100.253 shall be exempt from the location restrictions of this Ordinance. In addition, signs which are rendered nonconforming by the provisions of Section 2.06 may continue subject to compliance with nonconformity provisions of the City of Oak Grove Zoning Ordinance. All pending applications at the time of the effective date hereof and new applications received thereafter shall be subject immediately to the terms of this Ordinance.

- B. Within 60 days following the effective date of this Ordinance, all employees then employed and subject to the licensing requirements of this Ordinance shall make an application for licensure as required by Section 3.04. Within 90 days following the effective date of this Ordinance, no person shall be an employee of a sexually oriented business without a validly issued and current sexually oriented business employee license.
- C. No owner shall permit a sexually oriented business to operate on his property without such sexually oriented business being properly licensed except as permitted under subsection A of this section.
- D. No person shall permit himself to be an operator or an employee at a sexually oriented business which has not been validly licensed hereunder, except as permitted under subsection A of this section.
- E. No person shall own, operate, or be employed at an establishment engaged in a sexually oriented business unless all employees of the establishment have obtained the license required by Section 3.04 of this Ordinance.

#### **SECTION 3.09 LICENSE YEAR; LICENSE FEES.**

- A. All sexually oriented business licenses shall be for the fiscal year, July 1 to June 30, or the remaining portion of such fiscal year. The annual license fee shall be \$1,000 and payable to the City of Oak Grove. Fees are to be paid at the time of application. For new applications, annual fees shall be prorated in the amount of \$83 per month for the remaining full months of a fiscal year provided no fee shall be less than \$250.
- B. All sexually oriented business employee licenses shall be for the fiscal year, July 1 to June 30, or the remaining portion of such fiscal year. The annual license fee shall be \$25 and payable to the City of Oak Grove. Fees are to be paid at the time of application.
- C. Application for renewal of a sexually oriented business license shall be made at least 90 days, but not more than 120 days, before the expiration of the current license and shall be accompanied by the annual fee of \$1,000. Application for renewal of a sexually oriented business employee license shall be made at least 30 days before the expiration of the current license and shall be accompanied by the annual fee of \$25.
- D. The renewal application shall also contain any changes in the information required by Section 3.03 or 3.04 which have occurred since the previous application. If the renewal application and/or the annual fee are not tendered in a timely fashion, the City Clerk shall serve notice to the licensee that the failure to submit the renewal application and/or the annual fee within ten business days will be deemed an

abandonment of the license as of the above-referenced renewal deadline. Service of the notice required by this section shall be deemed complete upon certified mailing, return receipt requested, or personal delivery.

### **SECTION 3.10 LICENSE DENIAL, SUSPENSION, REVOCATION; HEARING AND APPEAL.**

- A. The City Clerk shall issue a written letter of intent to suspend a sexually oriented business license or an employee license, as applicable, for a period not to exceed 30 days if it determines that the licensee knowingly or recklessly violated or is not in compliance with any section of this Ordinance, or, knowingly refused to allow an inspection of the licensed premises as authorized by this Ordinance.
- B. The City Clerk shall issue a written statement of intent to revoke a sexually oriented business license or an employee license, as applicable, if the licensee knowingly or recklessly commits two or more violations specified in this Ordinance within a 12-month period.
- C. The City Clerk shall issue a written statement of intent to revoke a sexually oriented business license or an employee license, as applicable, if:
  - (1) Sexually oriented business license.
    - (a) The licensee knowingly gave false information in the material submitted during the application process;
    - (b) The licensee has been convicted of a specified criminal activity as defined in Section 1.02;
    - (c) The sexually oriented business licensee has knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended; or
    - (d) The licensee has engaged in or knowingly allowed any specified sexual activity to occur in or on the licensed premises. This subsection does not apply to an adult motel, unless the licensee knowingly allowed the specified sexual activities to occur either in exchange for money or in a place within public view.
  - (2) Sexually oriented business employee license.
    - (a) The licensee knowingly gave false information in the material submitted during the application process;
    - (b) The licensee has been convicted of a specified criminal activity as defined in Section 1.02;
    - (c) The licensee has knowingly been employed at a sexually oriented business during a period of time when the employee's license was suspended; or
    - (d) The licensee has engaged in a specified sexual activity in or on a sexually oriented business's premises.

- D. The fact that a conviction is being appealed shall have no effect on the revocation of the license, provided however, that any reversal of a conviction shall automatically eliminate that conviction from consideration in this Ordinance.
- E. When, after the notice and hearing procedure described in subsection F of this section, the City Clerk revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license or an employee license for one year from the date revocation becomes effective, provided that, if the conditions of subsection G of this section are met, a provisional license will be granted pursuant to that subsection.
- F. If facts exist for denial, suspension, or revocation of a sexually oriented business license or an employee license issued under this Ordinance, the City Clerk shall notify the applicant or licensee (respondent) in writing of the intent to deny, suspend, or revoke the license, including the grounds therefore, by personal delivery, or by certified mail. The notification shall be directed to the most current business address on file with the City Clerk and will provide the address of the Hearing Officer to which the respondent should direct his or her response. The notice shall specify a date, not less than 10 days nor more than 20 days after the date the notice is issued, on which the Hearing Officer shall conduct a hearing on the City Clerk's written notice of intent to deny, suspend, or revoke the license.
- (1) The Hearing Officer shall conduct a hearing at which the respondent shall have the opportunity to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine adverse witnesses. The City Clerk may also be represented by counsel and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. Such proceeding shall be transcribed or recorded. The hearing shall take no longer than two days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. Within ten working days after any hearing, the Hearing Officer shall issue a written decision on the matter and mail such decision to the respondent by certified mail no later than three working days after the date of such decision.
  - (2) If, as a result of the hearing, the Hearing Officer finds that insufficient facts exist to justify the denial, suspension, or revocation of the license, the City Clerk shall, within five days of the Hearing Officer's decision, issue any pending permit or stay any suspension or revocation. Notice of the Hearing Officer's decision shall be sent by certified mail to the respondent. Nothing herein precludes the City of Oak Grove from pursuing any additional remedies provided by law.
  - (3) If, as a result of the hearing, the Hearing Officer finds that sufficient facts exist to warrant the denial, suspension, or revocation, then such denial,

suspension, or revocation shall become final five days after the Hearing Officer sends, by certified mail, the written decision and notice affirming the City Clerk's decision to deny, suspend, or revoke the license. Such notice shall include a statement advising the respondent of the right to appeal such decision to a court of competent jurisdiction.

- G. When a decision to deny, suspend, or revoke a license becomes final, the applicant or licensee (aggrieved party) whose application for a license has been denied, or whose licenses has been suspended or revoked, shall have the right to appeal such action to a court of competent jurisdiction within 15 working days of the date the adverse decision becomes final. Until the time for an appeal has passed, any temporary license issued to the aggrieved party under this Ordinance shall remain in effect throughout the administrative proceedings described in this section. Upon the filing of any court action to appeal, challenge, restrain or otherwise enjoin the enforcement of the denial, suspension or revocation, the City Clerk shall immediately issue the aggrieved party a provisional license and shall file the record of the administrative proceeding with the reviewing court within ten business days after he/she receives notice of said action. The provisional license shall allow the aggrieved party to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee. The provisional license will expire upon the court's entry of a judgment on the merits of the aggrieved party's action to appeal, challenge, restrain or otherwise enjoin the enforcement of the City Clerk's decision.

#### **SECTIONS 3.11 THROUGH 4.00 RESERVED.**

### **ARTICLE IV. SCIENTER, SEVERABILITY, AND PENALTY**

**SECTION 4.01 SCIENTER NECESSARY TO PROVE LIABILITY.** This Ordinance does not impose strict liability for violations of its provisions. Where any provision or offense herein fails to state a necessary level of culpability to establish a violation or liability, the offense shall be established upon a showing that the person acted knowingly or recklessly with regard to the predicate act. Notwithstanding anything to the contrary, for the purposes of this Ordinance, an act by an employee shall be imputed to the sexually oriented business licensee for the purpose of establishing a violation of this Ordinance, or for purposes of license denial, modification, or revocation only if a licensee allowed, either knowingly or by reckless failure to supervise, a violation of this Ordinance to occur. It shall be a defense to liability that the sexually oriented business licensee was powerless to prevent the violation.

**SECTION 4.02 FAILURE OF OFFICIAL TO MEET TIME FRAME NOT TO RISK APPLICANT OR LICENSEE RIGHTS.** In the event that a government official is required to take an act or do a thing pursuant to this Ordinance within a prescribed time, and fails to take such act or do such thing within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the official under this Ordinance, but not completed in the time prescribed, includes approval of condition(s) necessary for approval by the City of Oak Grove of an applicant or licensee's application for a sexually

oriented business license or a sexually oriented business employee license (including a renewal), the applicant or licensee shall be deemed to have satisfied the condition(s) for which approval was sought.

**SECTION 4.03 SEVERABILITY.** Each section and provision of this Ordinance is hereby declared to be independent sections and provisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision 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 or 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. Additionally, should any license procedure in this Ordinance be deemed invalid, the substantive regulations and restrictions contained herein shall not be affected thereby.

**SECTION 4.04 PENALTY.**

- A. Any person who violates any provision of this Ordinance shall be subject to a civil penalty of not less than \$100 nor more than \$1,000 as imposed by the City Clerk. Each day that a violation continues after notice has been served shall be deemed a separate offense. Any person cited pursuant to this subsection and assessed a civil penalty shall have the right to appeal such penalty to the Hearing Officer in accordance with Ordinance No. 17-01.
- B. Notwithstanding subsection A above, any person who violates any provision of this Ordinance or who knowingly provides false information in an attempt to gain or maintain a license, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$250 nor more than \$500 or imprisonment not to exceed 90 days, or both, for each offense. Any person cited hereunder for a failure to meet a requirement hereof may be cited again for said failure one or more days after a prior citation and in such case each citation shall constitute a separate offense.
- C. In addition to the penalties provided herein for violations of this Ordinance, the City Clerk is authorized to pursue remedial civil actions for violations of this Ordinance by civil complaint or petition for injunctive relief, declaration of rights or other appropriate proceedings filed in the Christian County, Kentucky Circuit Court.

**SECTION 4.05 REPEAL OF CONFLICTING ORDINANCES.** All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

**SECTION 4.06 EFFECTIVE DATE.** This ordinance shall take effect upon passage and publication according to law.

SECTIONS 4.07 THROUGH 5.00 RESERVED.

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ORDINANCE 2020 13

AN ORDINANCE REPEALING AND REPLACING ORDINANCES NO. 2002-5, 1998-7, 1997-11, AND 1996-5 AND ESTABLISHING LICENSING REQUIREMENTS AND REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES AND EMPLOYEES WITHIN THE CITY OF OAK GROVE, KENTUCKY.

PUBLICLY READ AND PASSED ON FIRST READING: October 6, 2020

PUBLICLY READ AND PASSED ON SECOND READING: November 17, 2020

APPROVED: \_\_\_\_\_

  
Theresa Jarvis, Mayor

ATTEST: \_\_\_\_\_

  
Angela Comperry, City Clerk

AFFP  
CITY OF OAK GROVE, KENTUCKY OR

## Affidavit of Publication

STATE OF KY }  
COUNTY OF CHRISTIAN } SS

CITY OF OAK GROVE, KENTUCKY  
ORDINANCE NO. 2020-13

A SUMMARY OF AN ORDINANCE REPEALING AND REPLACING ORDINANCES NO 2002-5, 1998-7, 1997-11, AND 1996-5 AND ESTABLISHING LICENSING REQUIREMENTS AND REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES AND EMPLOYEES WITHIN THE CITY OF OAK GROVE, KENTUCKY.

Bobbie Fisher, being duly sworn, says:

That she is Accounting Clerk of the Kentucky New Era, a daily newspaper of general circulation, printed and published in Hopkinsville, Christian County, KY; that the publication, a copy of which is attached hereto, was published in the said newspaper on the following dates:

December 01, 2020

By summary, the purpose of this ordinance is to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of Oak Grove, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the city of Oak Grove. The purpose of the ordinance is to address/abate the secondary effects of sexually oriented businesses, including but not limited to personal and property crime, prostitution, spread of disease, illicit drug use and drug trafficking, negative impacts on property values, urban blight, pornographic litter, and sexual assault and exploitation.

Article 1 of the ordinance updates the definitions used under the ordinance, and affirms the specific intentions of the city of Oak Grove in amending the ordinance licensing sexually oriented businesses.

Article 2 provides the general restrictions and regulations applying to sexually oriented businesses. This article adds new restrictions on hours of operation, restrictions on the use of alcohol in sexually oriented businesses, limitations on the presence of animals, and adds requirements that restrooms be separated by both male/female and employee/patron

It establishes new requirements for lighting in parking lots and walkways, provides new requirements for windows and doors, limits outdoor lights and displays, prohibits outdoor seating, places limitations on signage, limitations on noise audible outside of the establishment, restricts access of patrons to nonpublic portions of the establishment, and places special restrictions on adult booths.

It also provides for location restrictions for new sexually oriented businesses. Sexually oriented businesses must be 1500 feet from schools, daycares, parks, religious assemblies, public buildings and residential districts. They must be 1000 feet from any other sexually oriented business. They must be 500 feet from an establishment licensed to sell alcohol. They are restricted to districts zoned B-2.

The ordinance provides new additional prohibited activities in sexually oriented businesses. It is a violation of the ordinance to appear in a state of nudity in a sexually oriented business. It is a violation of the ordinance for persons to perform certain specified sexual activities in a sexually oriented business. It is prohibited to conduct a sexually oriented business outside of a completely enclosed building. It adds distancing requirements, whereby a licensee cannot appear in a semi-nude condition unless any patron remains at least 6 feet away from a patron or customer, on a fixed stage at least 18 inches off the floor. It is prohibited for a licensee to receive any pay or gratuity directly from a patron, or a patron to give any pay or gratuity to a licensee, while the licensee is in a state of semi-nudity.

Article 3 amends the licensing procedures for sexually oriented businesses. It adds a yearly licensing requirement for employees, with a fee of \$25, and established the contents of the employee licensing application. It provides a yearly licensing fee for sexually oriented businesses of \$1000. It forbids the operation of a sexually oriented business by anyone without a license. It allows for the inspection of the public areas of sexually oriented businesses for the purpose of verifying compliance with this ordinance. It provides for the procedures by which the city clerk must approve or deny a license.

It also provides for the procedures regarding the suspension or revocation of a license. It provides for the right for a hearing of any denial, suspension or revocation

That said newspaper was regularly issued and circulated on those dates.

SIGNED:



Accounting Clerk

Subscribed to and sworn to me this 1st day of December 2020.

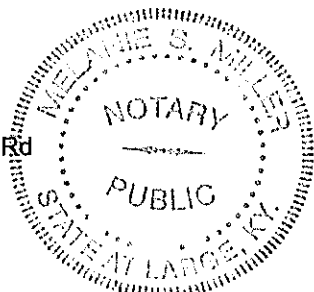


Melanie Miller, , Christian County, KY

My commission expires: September 26, 2023

00151709 00748399

Angela Comperry  
25NE-City of Oak Grove  
8505 Pembroke Oak Grove Rd  
PO Box 250  
OAK GROVE, KY 42262



of a license before the Oak Grove Code Enforcement and Nuisance Board and establishes the procedures and time restrictions for such an appeal. It provides for the right of appeal of a final determination of a decision by the Oak Grove Code Enforcement and Nuisance Board to a court of competent jurisdiction.

Article 4 establishes penalties for the violation of this ordinance. Any person who violates the provisions of this ordinance shall be subject to a civil penalty of not less than \$100 and not more than \$1,000 as imposed by the city clerk. Each day that a violation occurs after notice has been served shall be a separate offence. Any person cited and imposed a penalty shall have the right to appeal such a penalty to the Hearing Officer in accordance with Ordinance No. 17-01.

In addition, any person who violates any provision of this ordinance or knowingly provides false information in an attempt to gain or maintain a license, shall be guilty of a misdemeanor, and upon conviction shall be punished with a fine of not less than \$250 or more than \$500 or imprisonment not to exceed 90 days, or both, for each offense. Any person cited hereunder for a failure to meet a requirement hereof may be cited again for said failure one or more days after the citation and in such case shall constitute a separate offence.

Furthermore, the city clerk is authorized to pursue remedial civil actions for violations of this ordinance by civil complaint or petition for injunctive relief, declarations of rights or other appropriate proceedings filed in the Christian County Circuit Court.

Publicly read this 6th day of October, 2020.

Publicly read this 17 day of November, 2020.

APPROVED:

\_\_\_\_\_/s/  
Theresa Jarvis, Mayor  
City of Oak Grove, Kentucky

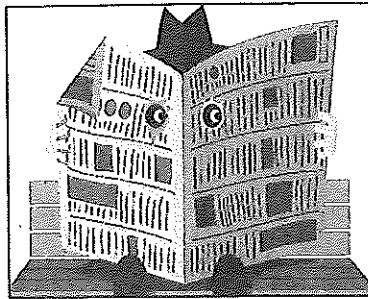
ATTEST:

\_\_\_\_\_/s/  
Angela Comperry, City Clerk  
City of Oak Grove, Kentucky

I, Mark A. Gilbert, hereby certify I am an Attorney licensed to practice law in the Commonwealth of Kentucky, my office is located at 701 South Main Street, Hopkinsville, KY 42240. I further certify the foregoing Summary of Ordinance 2020-07 was prepared in accordance with the requirements of KRS 83A.060(9), and is a true and accurate summary of the contents of said Ordinance.

\_\_\_\_\_/s/  
Mark A. Gilbert

PUBLISHED: In the Kentucky New Era, the 1st day of December, 2020.



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**Classifieds**

**CITY OF OAK GROVE, KENTUCKY  
ORDINANCE NO. 2020-13**

**A SUMMARY OF AN ORDINANCE REPEALING AND REPLACING ORDINANCES  
NO 2002-5, 1998-7, 1997-11, AND 1996-5 AND ESTABLISHING LICENSING  
REQUIREMENTS AND REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES  
AND EMPLOYEES WITHIN THE CITY OF OAK GROVE, KENTUCKY.**

By summary, the purpose of this ordinance is to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of Oak Grove, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the city of Oak Grove. The purpose of the ordinance is to address/abate the secondary effects of sexually oriented businesses, including but not limited to personal and property crime, prostitution, spread of disease, illicit drug use and drug trafficking, negative impacts on property values, urban blight, pornographic litter, and sexual assault and exploitation.

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It also provides for the procedures regarding the suspension or revocation of a license. It provides for the right for a hearing of any denial, suspension or revocation of a license before the Oak Grove Code Enforcement and Nuisance Board and establishes the procedures and time restrictions for such an appeal. It provides for the right of appeal of a final determination of a decision by the Oak Grove Code Enforcement and Nuisance Board to a court of competent jurisdiction.

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In addition, any person who violates any provision of this ordinance or knowingly provides false information in an attempt to gain or maintain a license, shall be guilty of a misdemeanor, and upon conviction shall be punished with a fine of not less than \$250 or more than \$500 or imprisonment not to exceed 90 days, or both, for each offense. Any person cited hereunder for a failure to meet a requirement hereof may be cited again for said failure one or more days after the citation and in such case shall constitute a separate offense.

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Publicly read this 6th day of October, 2020.  
Publicly read this 17 day of November, 2020.

APPROVED:

/s/  
Theresa Jarvis, Mayor  
City of Oak Grove, Kentucky

ATTEST:

/s/  
Angela Comperry, City Clerk  
City of Oak Grove, Kentucky

I, Mark A. Gilbert, hereby certify I am an Attorney licensed to practice law in the Commonwealth of Kentucky, my office is located at 701 South Main Street, Hopkinsville, KY 42240. I further certify the foregoing Summary of Ordinance 2020-07 was prepared in accordance with the requirements of KRS 83A.060(9), and is a true and accurate summary of the contents of said Ordinance.

/s/

Mark A. Gilbert

PUBLISHED: In the Kentucky New Era, the 1st day of December, 2020.