

**COUNTY OF HOPKINS, KENTUCKY
ORDINANCE NO. 2000-1**

Sexually Oriented Business
(Repealed)

**AN ORDINANCE PROVIDING FOR THE LICENSING AND REGULATION OF
SEXUALLY ORIENTED BUSINESSES AND EMPLOYEES.**

BE IT ORDAINED BY THE COUNTY OF HOPKINS, KENTUCKY:

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

WHEREAS, sexually oriented businesses require special supervision in order to protect and preserve the health, safety and welfare of the patrons of such businesses as well as the citizens of the County; and

WHEREAS, the County finds that sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

WHEREAS, the concern over sexually transmitted diseases is a legitimate health concern of the County which demands regular regulation of sexually oriented businesses in order to protect the health and well-being of the citizens; and

WHEREAS, licensing is a legitimate and reasonable means of accountability to ensure that operators of sexually oriented businesses comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation; and

imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material.

1(b). Findings. Based on evidence concerning the adverse secondary effects of adult uses on the community presented in reports made available to the County, and on findings incorporated in the cases of City of Renton v. Play Time Theaters, Inc., 475 U. S. 41 (1986), Young v. American Mini Theaters, 426 U.S. 50 (1976), and Barnes v. Glen Theater, Inc., 501 U.S. 560 (1991), and in studies in other communities including, but not limited to, Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; and also on findings from the report of Attorney General's Working Group on the regulation of sexually oriented businesses (June 6, 1989, State of Minnesota), the County finds:

1. Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.

sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.

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

11. Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because of the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and operators of the facilities to self-regulate those activities and maintain those facilities.

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

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

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

15. A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place a heretofore non-existent incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety, and welfare of its patrons and employees, as well as the citizens of the County. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.

SECTION II. DEFINITIONS

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

1. "Adult Amusement Arcade" means any place to which the public is permitted or invited wherein coin operated, slug operated, or for any form of consideration, electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disk players, or other image producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

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

(a) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas," or

(b) Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities."

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be characterized as "Adult Book Store," "Adult Novelty Store," or "Adult Video Store." Such other business purposes will not serve

(c) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

5. "Adult Motion Theater" means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the dominant depiction or description of "specified sexual activities" or "specified anatomical areas."

6. "Adult Stage Show Theater" means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

7. "Church building" means any building used for worship by a religious organization whose activity is protected by the Kentucky Constitution Section 1(2) and the first amendment to the Constitution of the United States.

8. "County" shall mean the County of Hopkins, Kentucky.

9. "County Attorney" shall mean the Hopkins County Attorney or his/her designee.

10. "County Court Clerk" shall mean the Hopkins County Clerk or his/her designee.

11. "Judge/Executive" shall mean the Hopkins County Judge/Executive or his/her designee.

12. "Employee" shall mean any person who performs any service on the premises of a sexually oriented business on a full-time, part-time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. "Employee" does not include a person exclusively on the premises for

19. "Nude," "Nudity" or a "state of nudity" means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

20. "One thousand yards" means the measurement taken in a straight line from the nearest wall of the school, church, or park to any portion of a sexually oriented business establishment.

21. "Park" means a public or private area of land, with or without buildings, intended for outdoor active or passive recreational use by adults and/or children.

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

23. "School building" means any building used primarily for classroom instruction in a school.

24. "Semi-nude" or a "semi-nude condition" means the showing of the female breast below a horizontal line across the top of the areolae at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areolae is not exposed in whole or in part.

25. "Sexual Activities" shall mean depiction of human genitals in a state of sexual stimulation, active human masturbation, sexual intercourse or sodomy, holding or erotic touching of human genitals, pubic region, buttocks, or breasts.

1. Adult amusement arcades;
2. Adult book stores, adult novelty stores, or adult video stores;
3. Adult cabarets;
4. Adult motels;
5. Adult motion picture theaters;
6. Adult stage theaters;
7. Escort agencies; and
8. Sexual encounter centers.

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

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

1. An establishment shall not exhibit any lettering, wording, pictorial or representational matter which is distinguished or characterized by a depiction of sexual activities on any sign subject to public view from outside the establishment.
2. An establishment shall not display its stock in trade, inventory, or merchandise which depicts, describes or relates to sexual activities in such a manner as to be subject to public view from outside the establishment.
3. Except as otherwise provided by laws which may be more restrictive, no owner or operator of an establishment shall knowingly permit a person under eighteen (18) years of age to be employed by or enter the establishment.
4. An establishment must have an employee on duty at all times in which the business is opened and must be positioned at a station in the premises which is located

1. Any wall or partition which is situated so as to create a viewing area in which any amusement device or viewing screen is located shall be constructed of not less than one hour fire-restrictive material and shall contain no hole or other perforation.

2. The interior of the premises shall be configured in such a manner that there shall be an unobstructed view from a manager's or cashier's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. The view required in this section must be by direct line of sight from the manager's or cashier's station.

3. No viewing room or booth shall be obstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials. No patron shall be permitted access to any area of the premises which has been designated as an area to which patrons are not permitted.

4. No viewing room or booth shall be occupied by more than one person at any time. No owner, operator, licensee or employee shall knowingly permit any viewing room or booth to be occupied by more than one person at any time.

5. All restrooms shall not contain any video playing devices or equipment.

6. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than ten (10) foot candles as measured at floor level.

7. It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron or customer is present in the premises.

8. No licensee, owner, operator or employee shall allow openings of any kind to exist between viewing rooms or booths.

2. An application for all licenses under this ordinance must be made on a form provided by the County.

3. All applicants must be qualified according to the provisions of this ordinance. The application may request and the applicant shall provide such information as to enable the County to determine whether the applicant meets the qualifications established in this ordinance.

4. If a person who wishes to operate a sexually oriented business is an individual, the person must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a 20% or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under the following section and each applicant shall be considered a licensee if a license is granted.

5. The completed application for a sexually oriented business license shall contain the following information and shall be accompanied by the following documents:

(a) If the applicant is:

(1) an individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is eighteen (18) years of age;

(2) a partnership, the partnership shall state its complete name and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement if any;

(3) a corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of its state of incorporation, evidence that the corporation is authorized to do business in

(f) The location of the proposed sexually oriented business, including a street address, and telephone number(s) if any. A two inch by two inch (2" x 2") color photograph and one (1) duplicate photograph of the applicant(s) taken within six (6) months of the date of the application, showing only the full face of the applicant(s). The photographs shall be provided at the applicant's expense. The license, when issued, shall have affixed to it one such photograph of the applicant(s).

(g) The applicant's social security number and/or his/her state or federally issued tax identification number.

(h) Each applicant shall submit a complete set of fingerprints on forms as prescribed by the Hopkins County Sheriff. The fingerprints shall be attached to the application.

(i) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram shall designate all areas where patrons are not permitted. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. If the applicant wishes to operate a sexually oriented business which will feature live performances, then the sketch or diagram shall demonstrate that the performance area complies with the requirements of Section XVIII(1) of this ordinance. In addition, if the applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty (150) square feet of floor space, films, video cassettes, or other video reproductions, or live entertainment which depicts specified sexual activities or specified anatomical areas, then

(a) The legal name of the applicant and all other names, including stage names or aliases used by the applicant.

(b) The age, date and place of birth of the applicant.

(c) The hair, weight and eye color of the applicant.

(d) The applicant's social security number.

(e) The present residence, address and phone number of the applicant, if any;

(f) Proof that the individual is at least eighteen (18) years of age;

7. Attached to the application form for a sexually oriented business employee shall be the following:

(a) A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the Hopkins County Sheriff. Any fees for the photographs and fingerprints shall be paid by the applicant.

(b) A statement detailing whether the applicant has been convicted in the past five (5) years of an offense for prostitution, solicitation, pandering, or sexual offenses under the laws of any state or the United States of America. The applicant shall provide the date of any such conviction, the place and jurisdiction of the conviction.

(c) A statement detailing whether the applicant has had a license under this ordinance or any other similar ordinance in any other county or state that has been revoked or suspended in the last three (3) years. The applicant shall state the date, place, and jurisdiction of the revocation or suspension and the reason for such revocation and suspension.

(c) An applicant has failed to provide information required by this ordinance for the issuance of the license or has falsely answered a question or request for information on the application form.

(d) The premises to be used for the sexually oriented business is not in compliance with applicable health and fire regulations required for buildings and structures within the County of Hopkins.

(e) The premises to be used for the sexually oriented business is not in compliance with applicable building and plumbing codes required for buildings and structures within the County of Hopkins.

(f) The location of the sexually oriented business does not comply with the zoning requirements for such businesses contained in the County's Code of Ordinances.

(g) The license fee required by this ordinance has not been paid.

(h) An applicant has failed to comply with any provision or requirement of this ordinance.

2. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. All licenses shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that they may be easily read at any time.

SECTION VIII. ISSUANCE OF SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE.

Upon receipt of an application for a sexually oriented business employee license properly filed with the County Court Clerk and upon payment of the non-refundable application fee, the County Court Clerk or his/her designee, shall immediately stamp the

refundable license fee of one hundred dollars (\$100.00). If the license is granted at a date later than July 1, then such license fee shall be prorated on a monthly basis.

3. Every application for a sexually oriented business employee license, whether for a new license or for renewal of an existing license, shall be accompanied by a one hundred dollar (\$100.00) non-refundable application and investigation fee.

4. If the application for a sexually oriented business employee license is granted, whether for a new license or for renewal of an existing license, the applicant shall pay an annual non-refundable license fee of fifty dollars (\$50.00). If the license fee is granted after July 1, it shall be prorated on a monthly basis.

SECTION X. EXPIRATION AND RENEWAL OF LICENSE.

1. All licenses granted under this ordinance shall expire on June 30 of each year. All licenses must be renewed annually. Application for renewal shall be made fifteen (15) days before the expiration date.

2. The licensing procedures described in Sections VI through IX shall govern the procedures for renewal of all licenses required under this ordinance.

SECTION XI. INSPECTION.

An applicant or licensee shall permit representatives of the County, including representatives of the Sheriff's Office, Fire Department, Zoning Department, or other County departments or agencies to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

a written declaration under penalty of perjury executed by the person effecting the service, declaring the time, date, and the manner by which service was made. The notice shall inform the applicant of the right to appeal as described herein.

2. From the decision of the County Judge/Executive refusing to grant the permit, the applicant may appeal to a Court of competent jurisdiction.

3. From the decision of the County Judge/Executive granting a permit, any citizen of the county may appeal to a Court of competent jurisdiction.

4. Before any appeal is perfected, the party appealing shall file a copy of the decision of the County Judge/Executive with the Circuit Clerk and shall execute a bond guaranteeing the payment of the cost of the appeal. The cost of the appeal shall be adjudged against the person losing the appeal.

5. The County Attorney shall resist any appeal filed by an applicant and shall represent the County Judge/Executive granting a permit in any court proceedings.

SECTION XVI. SUSPENSION OR REVOCATION.

1. The Judge/Executive shall suspend a license for a period of thirty (30) days if it is determined that a licensee has:

(a) Violated or is not in compliance with any section of this ordinance, or

(b) Refused to allow an inspection of the sexually oriented business premises as authorized by this ordinance.

2. The Judge/Executive shall revoke a license if a cause of suspension in Section XVI occurs and the license has been suspended within the preceding twelve (12) months.

3. The Judge/Executive shall revoke a license if it is determined that:

2. Any notice of suspension or revocation shall advise the applicant that the suspension or revocation shall be effective in ten (10) days unless an appeal is taken as described herein.

3. From the decision of the County Judge/Executive suspending or revoking the permit, the applicant may appeal to a Court of competent jurisdiction

4. Before any appeal is perfected, the party appealing shall file a copy of the decision of the County Judge/Executive with the Circuit Clerk and shall execute a bond guaranteeing the payment of the cost of the appeal. The cost of the appeal shall be adjudged against the person losing the appeal.

5. The County Attorney shall resist any appeal filed by an applicant and shall represent the County Judge/Executive granting a permit in any court proceedings.

SECTION XVIII. REGULATIONS PERTAINING TO LIVE PERFORMANCES.

1. All live performances in any sexually oriented business shall be on a designated performance area consisting of a stage or platform at least eighteen (18) inches above the immediate floor level and removed at least six (6) feet from any area in which any patrons are permitted.

2. No person shall appear nude or in a state of nudity while engaged in any live performance on the premises of any sexually oriented business.

3. No person shall appear semi-nude or in a semi-nude condition while engaged in any live performance on the premises of any sexually oriented business except on the stage or platform described in Section XVIII hereof.

than twelve (12) months or both. These penalties shall be in addition to the remedies of suspension and revocation provided in this ordinance.

SECTION XXIII. EFFECTIVE DATE.

This ordinance shall be read on two separate days and will become effective upon publication pursuant to KRS Chapter 424.

The foregoing Ordinance was read to and presented to a meeting of the Hopkins Fiscal Court of the County of Hopkins, Kentucky, for the first reading on the 6th day of January, 2000, and a second meeting on the 20th day of January, 2000. Motion was made by Magistrate Hamilton, seconded by Magistrate Stanley, that the Ordinance be adopted as the law of the County of Hopkins, Kentucky, to be effective immediately upon publication thereof as required by law.

Upon vote being taken thereof, the votes were cast as follows:

<u>MAGISTRATES</u>	<u>YEA</u>	<u>NAY</u>
Karol Welch	<u> X </u>	<u> </u>
Coletta Wheeler	<u> X </u>	<u> </u>
Steve Stanley	<u> X </u>	<u> </u>
Whitey Hawkins	<u> X </u>	<u> </u>
Paul Hamilton	<u> X </u>	<u> </u>
Dick Purdy	<u> X </u>	<u> </u>
Patricia Hawkins	<u> X </u>	<u> </u>
Richard Frymire	<u> X </u>	<u> </u>