

ORDINANCE TO REGULATE SEXUALLY ORIENTED BUSINESSES LOCATED WITHIN
THE CITY OF BYRAM, MISSISSIPPI

WHEREAS, in order to promote the health, safety, morals, and general welfare of the citizens of Byram, Mississippi, the Mayor and Board of Aldermen find the adoption of ordinance to regulate sexually oriented businesses within our fair City.

NOW, THEREFORE, BE IT ORDAINED by the Board of Aldermen of the City of Byram, Mississippi as follows:

DIVISION 1. GENERALLY

SECTION. 101. Purpose and intent.

It is the purpose of this article to regulate sexually oriented businesses in order to promote the health, safety, morals and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the city. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this article 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.

SECTION. 102. Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adult arcade means a place to which the public is permitted or invited wherein coin-operated, slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons, per machines, projectors or other image-producing devices are maintained to show images to five or fewer persons, per machine, at any one time, and where the displayed images are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.

Adult bookstore and *adult video store* mean a commercial establishment which, as one of its principal business purpose, offers for sale or rent for any form of consideration any one or more of the following:

- (1) Books, magazines, periodicals or other printed matter or photographs, films, motion pictures, videocassettes or video reproductions, slides or other visual representations, which depict or describe specified sexual activities or specified anatomical areas; or
- (2) Instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities.

Adult cabaret means a nightclub, bar, restaurant or similar commercial establishment which regularly features:

- (1) Persons who appear in a state of nudity;
- (2) Live performances which are characterized by the exposure of specified anatomical areas or specified sexual activities; or
- (3) Films, motion pictures, videocassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

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

- (1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, and motion pictures, videocassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical area; and may have a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions. This definition shall not include R-rated films, as defined by the Motion Picture Association;
- (2) Offers a sleeping room for rent more than two times in a period of ten hours;
- (3) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten hours; or
- (4) Offers or allows a discount or refund which is less than one-half the normal daily rate.

Adult motion picture theater means a commercial establishment where, for any form of consideration, films, motion pictures, videocassettes, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas. This definition shall not include R-rated films as defined by the Motion picture Association.

Adult telecommunications business means a commercial establishment where, by means of telephone, any communication characterized by the description of specified anatomical areas or specified sexual activities is made for commercial purposes to any person, regardless of whether the maker of such communication placed the telephone call. Adult telecommunication businesses are exempt from the permit requirements of this article, but shall comply with locational requirements.

Adult theater means a theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or seminude, or live performances which are characterized by the exposure of specified anatomical areas or specified sexual activities.

Chief of police means the chief of police of the City of Byram or his designated agent.

Escort means a person who, for a consideration, agrees or offers to act as a companion, guide or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

Escort agency means a person or business association that furnishes, offers to furnish or advertises to furnish escorts as one of its primary business purposes, for a fee, tip or other consideration.

Establishment means and includes any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business;
- (2) The conversion of any existing business, whether or not such business is a sexually oriented business; to a sexually oriented business;
- (3) The addition of a sexually oriented business to any other existing sexually oriented business; or
- (4) The relocation of a sexually oriented business.

Landmark district means a geographically definable area with a concentration of landmark buildings, objects or sites.

Nude model studio means a place where a person who appears in a state of nudity or displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any other form of consideration.

Nudity and a *state of nudity* mean:

- (1) The appearance of a human bare buttock, anus, male genitals, female genitals or female breast; or
- (2) A state of dress which fails to opaquely cover a human buttock, anus, male genitals, female genitals or areola of the female breast.

Operates and *causes to be operated* mean to cause to function, or to put or keep in operation. A person may be found to be operating, or causing to be operated, a sexually

oriented business whether or not that person is an owner, part-time owner or permittee of the business.

Permittee means a person in whose name a permit to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit.

Residential district means a district whose designation begins with the letter “R” in the zoning ordinance

Residential use means a building, or portion of a building, used as a dwelling unit.

Seminude means a state of dress in which clothing covers no more than the genitals, public region and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

Sexual encounter center means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration;

- (1) Physical contact, in the form of wrestling or tumbling, between person of the same or opposite sex; or
- (2) Activities between male or female persons and/or persons of the same sex when one or more of such persons is in a state of nudity or seminudity.

Sexually oriented business means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult telecommunications business, adult theater, escort agency, nude model studio or sexual encounter center.

Specified anatomical areas mean:

- (1) Less than completely and opaquely covered:
 - a. Human genitals or public regions;
 - b. Buttock; and
 - c. Female breast below a point immediately above the top of the areola.
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- (3) Use of artificial devices or inanimate objects to depict any of the items described in this definition.

Specified sexual activities mean:

- (1) Human genitals in a state of sexual stimulation or arousal;
- (2) Acts of human masturbation, sexual intercourse or sodomy;

- (3) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast;
- (4) Acts of bestiality; and
- (5) Use of artificial devices or inanimate objects to depict any of the activities described in this definition.

Transfer of ownership or control means and includes any of the following:

- (1) The sale, lease or sublease of a sexually oriented business;
- (2) The transfer of securities that constitute a controlling interest in the sexually oriented business, whether by sale, exchange or similar means; or
- (3) The establishment of a trust, gift or other similar legal device which transfers the ownership or control of the sexually oriented business, except for transfer possessing the ownership or control.

SECTION. 103. Location.

- (a) A person within the city commits an offense if he operated or causes to be operated a sexually oriented business within 1,500 feet of:
 - (1) A duly organized and recognized church;
 - (2) A public or private elementary or secondary school;
 - (3) A boundary of a residential district
 - (4) A public park; or
 - (5) The property line of a lot devoted to a residential use as defined in the zoning ordinance.
- (b) A person within the city commits an offense if he causes or permits the operation; establishment, substantial enlargement or transfer of ownership or control of a sexually oriented business within 1,500 feet of another sexually oriented business.
- (c) A person within the city commits an offense if he causes or permits the operation, establishment or maintenance of more than one sexually oriented business in the same building or structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building or structure, or portion thereof, containing another sexually oriented business.
- (d) For the purpose of subsection (a) of this section, such measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises of a church or public or private elementary or secondary school, or to the nearest boundary of an affected public park, residential district or local historic district.

- (e) For the purposes of subsection (b) of this section, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.
- (f) A sexually oriented business lawfully operating as a conforming use within the city is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business permit, of a church, public or private elementary or secondary school, public park, residential district or residential lot within 1,500 feet of the sexually oriented business. The provision of this subsection shall apply only to the renewal of a valid permit, and does not apply when an application for a permit is submitted after a permit has expired or has been revoked.
(Ord. No. 910015, 11-8-1991)

SECTION. 104. Exemption from location restrictions.

- (a) If the chief of police or his duly authorized agent denies the issuance of a sexually oriented business permit to an applicant because the location of the sexually oriented business establishment is in violation of section 22-103, then the applicant may, not later than ten calendar days after receiving notice of the permit denial, file with the chief of police or his duly authorized agent a written request for any exemption from the locational restrictions of section 103.
- (b) If the written request for exemption as set forth in subsection (a) of this section is filed with the chief of police or his duly authorized agent within the ten-day limit, the mayor and board of aldermen shall consider the request. The chief of police or his duly authorized agent shall set a date for hearing on such request within 60 days from the date the written request is received and shall give notice to the public of such hearing as prescribed by law.
- (c) The mayor and board of aldermen shall hear and consider evidence offered by any interested person on a request for exemption.
- (d) The mayor and board of aldermen, in their discretion, may grant an exemption from the locational restrictions of section 22-103 if they make the following findings:
 - (1) The location of the proposed or existing sexually oriented business will not have a detrimental effect on nearby properties or be contrary to the public welfare;
 - (2) The granting of the exemption will not violate the spirit and intent of this article;
 - (3) The location of the proposed or existing sexually oriented business will not be down-

grade the property values or quality of life in the adjacent areas, or encourage the development of urban blight;

- (4) The location of an additional sexually oriented business, or the continued location of an existing sexually oriented business in the area, will not be contrary to any program of neighborhood conservation, nor will it interfere with any efforts of urban renewal or restoration; and
 - (5) All other applicable provisions of this article will be observed.
- (e) The mayor and board of alderman shall grant or deny the exemption by a majority vote. The vote shall be decided on the basis of a preponderance of the evidence. The decision of the mayor and board of aldermen shall be final. An appeal to the decision of the mayor and board of aldermen shall lie by common law writ of certiorari to a court of competent jurisdiction. Such appeal must be made within 30 days of the decision of the mayor and board of aldermen.
 - (f) If the mayor and board of aldermen grants the exemption, the exemption shall be valid for one year from the date of the action of the mayor and board of aldermen. Upon the expiration of an exemption, the sexually oriented business shall be in violation of the locational restrictions of section 22-103 until the applicant applies for and receives another exemption.
 - (g) If the mayor and board of aldermen denies the exemption, the applicant may not reapply for an exemption until at least 12 months have elapsed since the date of the action of the mayor and board of aldermen.
 - (h) The grant of an exemption does not exempt the applicant from any other provisions of this article, other than the locational restrictions of section 103

SECTION. 105. Escort agencies.

- (a) An escort agency permittee within the city shall not employ, use or allow the services of any person under the age of 18 years in the operation of such establishment.
- (b) A person shall commit an offense if he acts as an escort, or agrees to act as an escort, for any person under the age of 18 years.

SECTION. 106. Nude model studios.

- (a) A nude model studio within the city shall not employ, use or allow the services of any person under the age of 18 years in the operation of such establishment.
- (b) A person under the age of 18 years shall commit an offense if he appears in a state of nudity in or on the premises of a nude model studio. It shall be a defense to prosecution under this subsection if the person under 18 years was in a restroom not open to public view or persons of the opposite sex.
- (c) A person shall commit an offense if he appears in a state of nudity, or knowingly allows another to appear in a state of nudity, in an area of a nude model studio premises which can be viewed from the public right-of-way.

- (d) There shall be no bed, sofa or mattress in any room on the premises of a nude model studio, except that a sofa may be placed in a reception room which is open to the public.

SECTION. 107. Adult theaters and adult motion picture theaters.

- (a) The requirement and provisions of other sections of this Code remain applicable to adult theaters and adult motion picture theaters.
- (b) A person shall commit an offense if he knowingly allows a person under the age of 18 years to appear in a state of nudity in or on the premises of an adult theater or adult motion picture theater.
- (c) A person under the age of 18 years shall commit an offense if he knowingly appears in a state of nudity in or on the premises of an adult theater or adult motion picture theater.
- (d) It shall be a defense to prosecution under subsections (b) and (c) of this section if the person under 18 years of age was in a restroom which is not open to public view or persons of the opposite or same sex.

SECTION. 108. Adult motels.

Evidence that a sleeping room in a hotel, motel or similar commercial establishment has been rented and vacated two or more times in a period of time less than ten hours shall create a rebuttable presumption that the establishment is an adult motel as such term is defined in Section 102

SECTION. 109. Exhibition of sexually explicit films or videos.

- (a) A person who operates within the city, or causes to be operated, a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than 150 square feet of floor space, a film, videocassette or other video reproduction which depicts specifies sexual activities or specified anatomical areas, shall comply with the following requirements:
 - (1) Upon application for a sexually oriented business permit, the application shall be accompanied by a diagram of the premises showing a plan of such premises, specifying the location of one or more manager's stations and the location of overhead lighting fixtures, and such plan shall designate any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if such permit is granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north, or object, and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The chief of police or his duly authorized agent may

waive the diagram requirement for renewal applications if the applicant adopts and certifies that the configuration of the premises has not been altered since it was prepared.

- (2) The application shall be sworn to be true and correct by the applicant.
- (3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the chief of police or his duly authorized agent.
- (4) It shall be the duty of the owners and operators of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that a patron is present inside the premises.
- (5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from the manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises have two or more designated manager's stations, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct sight from the manager's station.
- (6) It shall be the duty of the owners and operators, and any agents, employees and independent contractors employed at the premises who are present in the premises, to ensure that the view area specified in subsection (a)(5) of this section remains unobstructed by any doors, walls merchandise, display racks or other materials at all times when a patron is present in the premises, and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (a)(1) of this section.
- (7) 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 one foot-candle, as measured at the floor level.
- (8) It shall be the duty of the owners and operators, and any agents and employees present in the premises, to ensure that the illumination as set forth in subsection (a)(7) of this section is maintained at all times that any patron is present in the premises.
- (9) A person having a duty under this section shall commit an offense if he fails to fulfill such duty.

SECTION. 110. Display of sexually explicit material to minors.

- (a) A person shall commit an offense if, in a business establishment open to persons under the age of 18 years, he displays a book, pamphlet, newspaper, magazine, film or videocassette, the cover of which depicts, in a manner calculated to arouse sexual lust or passion for commercial gain, or to exploit sexual lust or perversion for commercial gain, any of the following:
 - (1) Human sexual intercourse, masturbation or sodomy;
 - (2) Fondling or other erotic touching of human genitals, pubic region, buttocks or female breasts;
 - (3) Less than completely and opaquely covered human genitals, buttocks or that portion of the female breast below the top of the areola; or
 - (4) Human male genitals in a discernibly turgid state, whether covered or uncovered.

- (b) In this section, the term “display” means to located an item in such a manner that, without obtaining assistance from an employee of the business establishment:
 - (1) It is available to the general public for handling and inspection; or
 - (2) The cover or outside packaging on the item is visible to members of the general public.

SECTION. 111. Injunction.

- (a) Any person who operates, or causes to be operated, a sexually oriented business within the city without a valid permit, or in violation of section 103, is subject to a suit for injunction, as well as prosecution for criminal violations.

SECTION. 112. Enforcement

- (a) Any person who violates any provision of this article, upon conviction, shall be punished as provided in section 113. It shall be the duty of the chief of police to enforce the provisions of this article. This article may also be enforced by injunctive relief through a court of competent jurisdiction.
- (b) It shall be a defense to prosecution that a person appearing in a state of nudity did so in a modeling class operated:
 - (1) By a school licensed by the state, a college, community college or university supported entirely or partly by taxation;
 - (2) By a private college or university which maintains and operates educational programs in which credits are transferrable to a college, community college or university supported entirely or partly by taxation; or
 - (3) In a structure:
 - a. Which has no sign visible from the exterior of the structure, and no other advertising that indicates a nude person is available for viewing;
 - b. Where, in order to participate in a class, a student must enroll at least three days in advance of the class; and
 - c. Where no more than one nude model is on the premises at any one time.

- (4) It is a defense to prosecution that each item of descriptive, printed, film or video material offered for sale or rental, taken as a whole, contains serious literary, artistic, political or scientific value;
- (5) No alcohol permit may be issued for any sexually oriented business premises within the prescribed areas of section 103.

SECTION 113. Violations are Misdemeanors.

Violation of any provision of this ordinance is a misdemeanor and shall be punished by a fine not to exceed \$1000 and 90 days in jail.

SECTION 114. Effective date.

This ordinance shall be effective 30 days from and after passage.

The foregoing Ordinance, having been reduced to writing, Alderman White moved that said Ordinance be adopted. Alderman Marble seconded. The vote was as follows:

Alderman Alday voted:	<u>aye</u>
Alderman Douglas voted:	<u>aye</u>
Alderman Ford voted:	<u>absent</u>
Alderman Marble voted:	<u>aye</u>
Alderman White voted:	<u>aye</u>
Mayor Tremonte voted	

Whereupon the Mayor declared the Motion carried and the ordinance approved and adopted.

SO ORDAINED, The foregoing ordinance was approved this the 12th day of April, 2012.

CITY OF BYRAM

By/S: NICK TREMONTE, Mayor

ATTEST: By/s: ANGELA RICHBURG, City Clerk