

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF STARKVILLE TO ESTABLISH ZONING REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES AND TO ESTABLISH LICENSING PROVISIONS AND OTHER REGULATIONS

ARTICLE I. General Provisions.

ARTICLE II. Licensing Requirements, Regulations and Standards of Conduct.

BE IT ORDAINED by the Mayor and the Board of Aldermen of the City of Starkville, Mississippi that the Zoning Ordinance of the City of Starkville be amended to establish zoning regulations for sexually oriented businesses and to establish licensing provisions and other regulations as follows:

ARTICLE I. GENERAL PROVISIONS.

Section 1.1: Statement of Purpose

It is the purpose of this ordinance to regulate sexually oriented businesses and related activities to promote the health, safety, morals, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented business within the City, and to avoid the disturbances associated with mixing alcohol and sexually oriented activities. This ordinance may be sometimes referred to as the "Adult Entertainment Ordinance".

Section 1.2: Findings of Fact

The Mayor and Board of Aldermen of the City of Starkville (hereinafter "Board") make the following findings of fact:

- A. The State of Mississippi authorizes the Mayor and Board of Aldermen of the City of Starkville to adopt regulations to secure the general health, safety and welfare of the citizens of the municipality and to regulate the use of land within the City of Starkville, through planning and zoning regulations; and
- B. Sexually oriented businesses where books, magazines, motion pictures, and other novelties and/or devices which depict, illustrate, describe or relate to "specified sexual activities" and are displayed, exhibited, distributed and/or sold, could locate in the City of Starkville; and
- C. Sexually oriented businesses could locate in the City of Starkville where dancers, entertainers or performers who, for any form of commercial gain, perform or are presented while displaying "specified anatomical areas"; and

- D. Representatives of the City Planning and Zoning Commission have reviewed the experiences of other cities and received reports concerning developments in other cities wherein there has been an influx in sexually oriented businesses; and
- E. Sexually oriented businesses can have adverse secondary effects on the community, particularly when they are located in close proximity to each other; they can cause an increase in crime, and they can adversely affect surrounding property values; and
- F. In order to protect the residential neighborhoods, the commercial districts and other areas of the community from the secondary adverse effects of sexually oriented businesses, it is necessary to establish zoning restrictions for sexually oriented businesses as delineated in Section 2.9 hereof; and
- G. The Planning and Zoning Commission has heretofore met on several occasions in which it took actions including;
 - 1. Obtaining studies from several areas of the United States in which the issue of regulation of sexually oriented businesses was addressed including studies that were followed by regulation of sexually oriented businesses that caused sexually oriented businesses to be concentrated and including studies that were followed by regulation of sexually oriented businesses that caused sexually oriented businesses to be disbursed;
 - 2. Review and consideration by the Planning and Zoning Commission of such said studies, followed by adoption of written findings as to recommendations for a type of regulation of sexually oriented businesses within the City of Starkville.
 - 3. Reviewed the Zoning Ordinance needs of the City of Starkville, taking into account the needs of sexually oriented businesses and the needs and interests of other types of businesses and of residences of the City of Starkville, and the respective zones in which businesses and residences were allowed, all in order to determine the appropriate area(s) in which sexually oriented businesses might be situated;
 - 4. A public hearing, for which fifteen (15) days notice was given in a newspaper of general circulation in Oktibbeha County generally and in Starkville, Mississippi, at which public input in the form of any comments, criticisms, questions, and objections were entertained;
 - 5. An independent review by the Governing Authorities of the City of Starkville of the same studies which had been reviewed by the Planning and Zoning Commission, followed by a separate and independent analysis by the Governing Authorities of those studies, all reduced to writing;
 - 6. An independent review by the Governing authorities of the Zoning Ordinance needs of the City of Starkville, taking into account the needs of sexually oriented businesses and the needs and interests of other types of businesses and of residences of the City of Starkville, and the respective zones in which businesses and residences were allowed, all in order to

determine the appropriate area(s) in which sexually oriented businesses might be situated;
and

- H. The Planning and Zoning Commission, and the Mayor and Board of Aldermen of the City of Starkville, Mississippi, recognize that there are some uses which, because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a deleterious effect upon adjacent areas, such that special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood; and
- I. The Planning and Zoning Commission and Mayor and Board of Aldermen of the City of Starkville, Mississippi, find that there is substantial evidence, including numerous studies, reports, and findings on the potential harmful effect of sexually oriented businesses made by other cities, experts, city planners, etc., which document that sexually oriented businesses adversely affect property values, cause an increase in crime, encourage businesses to move elsewhere, and contribute to neighborhood blight; and
- J. The Planning and Zoning Commission, and the Mayor and Board of Aldermen of the City of Starkville, Mississippi, find it necessary, expedient and in the best interest of the citizens of Starkville that such regulation would protect the health, safety, and welfare of the residents of Starkville, Mississippi; and that such regulation would be consistent with the existing and proposed long range community development plans; and
- K. It is not the intent of the Planning and Zoning Commission, nor the Mayor, nor the Board of Aldermen of Starkville, Mississippi, to condone or legitimize the distribution of obscene materials, and such governing body recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state enforcement officials to enforce state and federal obscenity statutes against any such illegal activities in the City of Starkville; and
- L. The Mayor and Board of Aldermen of the City of Starkville, Mississippi find and declare that nudity and sexual conduct and the depiction thereof, coupled with alcohol in public places, encourages undesirable behavior and is not in the interest of the public health, safety and welfare; and
- M. The Mayor and Board of Aldermen of the City of Starkville, Mississippi have chosen to avoid the disturbances associated with mixing alcohol and nude dancing by means of a reasonable restriction upon businesses which sell spirituous or vinous or malt or brewed beverages.

Section 1.3: Definitions

- A. ADULT ARCADE means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are 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."

B. ADULT BOOKSTORE or ADULT VIDEO STORE means a commercial establishment which, as one of its principal business purposes, offers for sale or rental 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, video cassettes or video reproductions, slides or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas,";
2. 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 categorized as ADULT BOOKSTORE or ADULT VIDEO STORE. Such other business purposes will not serve to exempt such commercial businesses from being categorized as an ADULT BOOKSTORE or ADULT VIDEO STORE, so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe "specified sexual activities" or "specified anatomical areas". A principal business purpose need not be a primary use of an establishment, so long as it is a significant use based upon the visible inventory or commercial activity of the establishment.

C. ADULT CABARET means a nightclub, bar, restaurant or similar commercial establishment which regularly features:

1. persons who appear in a state of semi-nudity; or
2. live performances which are characterized by the exposure of "specific anatomical areas"; or by "specified sexual activities"; or
3. films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or
4. persons who engage in lewd, lascivious or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

D. ADULT MOTEL means a hotel, motel or similar commercial establishment which:

1. offers accommodation to the public for any form of consideration and provides patrons

with closed-circuit television transmission, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproduction; and

2. offers a sleeping room for rent for a period of time that is less than twenty-four (24) hours; or
3. allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than twenty-four (24) hours.

E. ADULT MOTION PICTURE 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 depiction or description of "specified sexual activities" or "specified anatomical areas."

F. ADULT THEATER means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances of "specified anatomical areas" or of "specified sexual activities".

G. DIRECTOR means the Chief of Police and such employee(s) of the Police Department as he/she may designate to perform the duties of the Director under this ordinance.

H. ESCORT means a person who, for 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.

I. ESCORT AGENCY means a person or business association who furnishes, or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.

J. ESTABLISHMENT means and includes any of the following:

1. the opening or commencement of any sexual oriented business as a new business;
2. the conversion of any existing business, whether or not a sexually oriented business, to any sexually oriented business.
3. the additions of any sexually oriented business to any other existing sexually oriented business; or
4. the relocation of any sexually oriented business.

- K. LICENSED DAY-CARE CENTER means a facility licensed by the State of Mississippi, whether situated within the City or not, that provides care, training, education, custody, treatment or supervision of more than twelve (12) children under fourteen (14) years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than twenty-four (24) hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.
- L. NUDE MODEL STUDIO means any 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 form of consideration.
- M. NUDITY or a STATE OF NUDITY means the appearance of a human bare buttock, anus, male genitals, female genitals, or female breast, without a fully opaque complete covering of the breast below a point immediately above the top of areola, or human male genitals, in a discernibly turgid state, even if completely and opaquely covered.
- N. PERMITTEE AND/OR LICENSEE means a person in whose name a permit and/or license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.
- O. PERSON means an individual, proprietorship, partnership, corporation, association, or other legal entity.
- P. SEMI-NUDE means a state of dress in which clothing covers no more than the human bare buttock, anus, male genitals, female genitals, or female breast without a fully opaque complete covering of the breast below a point immediately above the top of the areola, or human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- Q. SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:
1. physical contact in any form of wrestling or tumbling between persons of the opposite sex; or
 2. activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nudity.
- R. SEXUALLY ORIENTED BUSINESS means an adult arcade, adult bookstore, or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.
- S. SPECIFIED ANATOMICAL AREAS means the male genitals in a state of sexual arousal and/or vulva or more intimate parts of the female genitals.

T. SPECIFIED SEXUAL ACTIVITIES means and includes any of the following:

1. the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
2. sexual acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
3. masturbation, actual or simulated; or
4. excretory functions as part of, or in connection with, any of the activities set forth in A through C above.

U. SUBSTANTIAL ENLARGEMENT of a sexual oriented business means the increase in floor areas occupied by the business by more than twenty-five percent (25%), as the floor areas exist on the effective date of this Ordinance.

V. TRANSFER OF OWNERSHIP OR CONTROL of a sexually oriented business means and includes any of the following:

1. the sale, lease or sub-lease of the business;
2. the transfer of securities which constitute a controlling interest in the 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 business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

Section 1.4: Classification

Sexually oriented businesses are classified as follows:

- A. Adult arcades;
- B. Adult bookstores or adult video stores;
- C. Adult cabarets;
- D. Adult motels;
- E. Adult motion picture theaters;
- F. Adult theaters;
- G. Escort agencies;
- H. Nude model studios; and
- I. Sexual encounter centers

ARTICLE II. LICENSING REQUIREMENTS, REGULATIONS AND STANDARDS OF CONDUCT.

Section 2.1: Permit and/or License Required.

- A. It shall be unlawful for a person, partnership, firm or business, or corporation to operate a sexually oriented business without a valid permit and/or license issued by the Director. It shall also be unlawful for any person, partnership, firm or business, or corporation which is licensed to sell beer or light wine and/or alcoholic beverages as defined in *Mississippi Code Annotated* §67-1-5 (Miss. 1972, as amended 1998) as enacted or hereafter amended, to be licensed to operate a sexually oriented business within the corporate limits of the City of Starkville.
- B. An application for a permit and/or license must be made on a form provided by the City of Starkville. The application must be accompanied by a sketch or a diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but 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 inches.
- C. The applicant must be qualified according to the provisions of this ordinance and the premises must be inspected and found to be in compliance with the law by the health department, fire department, building official and zoning official.
- D. If a person who wishes to operate a sexually oriented business is an individual, he/she must sign the application for a permit and/or license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten (10%) percent, or greater, interest in the business must sign the application for a permit and/or license as applicant. If a corporation is listed as the owner of a sexually oriented business, or as the entity which wishes to operate such a business, each individual having a ten percent (10%) or greater interest in the corporation must sign the application for a permit and/or license as applicant.
- E. The fact that a person possesses other types of state or city permits and/or license does not exempt him/her from the requirement of obtaining a sexually oriented business permit and/or license.
- F. Applications for a permit, whether original or renewal, must be made to the Director by the intended operator of the enterprise. Applications must be submitted by hand delivery to the office of Director or the Director's designee during regular working hours. Application forms shall be supplied by the Director. The intended operator shall be required to give the following information on the application form:

1. a. The name, street address (and mailing address, if different), and Mississippi driver's license number of the intended operator:
 - b. The name and street address (and mailing address, if different) of the owner(s);
2. The name under which the establishment is to be operated and a general description of the services provided;
3. The telephone number of the establishment;
4. The address and legal description of the tract of land on which the establishment is to be located;
5. If the establishment is in operation, the date on which the owner(s) acquired the establishment for which the permit is sought, and the date on which the establishment began operations as a sexually oriented business at the location for which the permit is sought; and
6. If the establishment is not in operation, the expected startup date (which shall be expressed in number of days from the date of issuance of the permit). If the expected startup date is to be more than ten (10) days following the date of issuance of the permit, then a detailed explanation of the construction, repair or remodeling work or other cause of the expected delay and a statement of the owner's time schedule and plan for accomplishing the same.

G. The application shall be accompanied by the following:

1. Payment of the application fee in full;
2. If the establishment is a Mississippi corporation, a certified copy of the Articles of Incorporation, together with all amendments thereto;
3. If the establishment is a foreign corporation, a certified copy of the Certificate of Authority to Transact Business in this state together with all amendments thereto;
4. If the establishment is a limited partnership formed under the laws of Mississippi, a certified copy of the Certificate of Limited Partnership, together with all amendments thereto;
5. If the establishment is a limited liability company, LLC, a certified copy of the Certificate of Formation, together with all amendments thereto;
6. If the establishment is a foreign limited partnership, a certified copy of the

Certificate of Limited Partnership and the qualification documents, together with all the amendments thereto;

7. Proof of the current fee ownership of the tract of land on which the establishment is to be situated, in the form of a copy of the recorded deed;
8. If the persons identified as the fee owner(s) of the tract of land in item F are not also the owners of the establishment, then the lease, purchase contract, purchase option contract, lease option contract or other document(s) evidencing the legally enforceable right of the owners of the establishment to have or obtain the use and possession of the tract or portion thereof that is to be used for the establishment for the purpose of the operation of the establishment;
9. Any of the items B through G, above shall not be required for a renewal application, if the applicant states that the documents previously furnished to the Director with the original application, or previous renewals thereof, remain correct and current.

H. The application shall contain a statement under oath that:

1. The applicant has personal knowledge of the information contained in the application and that the information contained therein and furnished therewith is true and correct; and,
2. The applicant has read the provisions of this Article.

I. A separate application and permit shall be required for each sexually oriented business.

Section 2.2: Issuance of Permit and/or License

- A. The Director shall approve the issuance of a permit and/or license to an applicant within thirty (30) days after receipt of an application, unless he/she finds one or more of the following to be true:
1. An applicant is under eighteen (18) years of age;
 2. An applicant or an applicant's spouse is overdue in his payment to the City of taxes, fines or penalties assessed against him, or imposed upon him in relation to a sexually oriented business;
 3. An applicant has failed to provide information reasonably necessary for issuance of the permit and/or license or has falsely answered a question or request for information on the application form;

4. An applicant is residing with a person who has been denied a permit and/or license by the City to operate a sexually oriented business within the preceding twelve (12) months, or residing with a person whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months;
 5. The premises to be used for the sexually oriented business have not been approved by the health department, fire department, building official and zoning official, as being in compliance with applicable laws and ordinances;
 6. The permit and/or license fee required by this ordinance has not been paid;
 7. An application of the proposed establishment is in violation of, or is not in compliance with, any of the provisions of this ordinance.
 8. The applicant is currently licensed to sell beer or light wine and/or alcoholic beverages as defined under *Mississippi Code Annotated* §67-1-5 (Miss. 1972, as amended 1998) as enacted or hereafter amended.
- B. The permit and/or 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. The permit and/or license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.
- C. The health department, fire department, building official and zoning official shall complete their certification that the premises is in compliance or not in compliance within twenty (20) days of the receipt of the application by the Director. The certification shall be promptly presented to the Director.
- D. In the event that the Director determines that an applicant is not eligible for a permit, the applicant shall be given notice in writing of the reasons for the denial within forty-five (45) days of the receipt of its application by the Director, provided that the applicant may request, in writing, that such period be extended for an additional period of not more than ten (10) days at any time before the notice is issued in order to make modifications necessary to comply with this ordinance.
- E. An applicant may appeal the decision of the Director regarding denial to the Mayor and Board of Aldermen by filing fifteen (15) days after the applicant is given notice of the Director's decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The Director may submit a memorandum in response to the memorandum filed by the applicant on appeal to the Mayor and Board of Aldermen. After reviewing such memoranda, as well as the Director's written decision, if any, and exhibits submitted to the Director, the Mayor and Board of Aldermen shall vote to either uphold or overrule the Director's decision. Such vote shall be taken within twenty-one (21) calendar days after the date on which the City Clerk receives the notice of appeal. However, all parties shall be required to comply with the

Director's decision during the pendency of the appeal.

Section 2.3: Fees.

The annual fee for a sexually oriented business permit and/or license is Fifteen Hundred Dollars (\$1,500.00). This fee is to be used to pay for the cost of the administration and enforcement of this ordinance.

Section 2.4: Inspection.

An applicant, or permittee, and/or licensee shall permit representatives of the Police Department, Health Department, Fire Department, Zoning Department, or other City or State departments or agencies to inspect the premises of the sexually oriented business for the purpose of ensuring compliance with the laws, at any time it is occupied or open for business.

Section 2.5: Expiration of Permit and/or License.

- A. Each permit and/or license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 2.2. Application for renewal should be made at least thirty (30) days before the expiration date so that the expiration of the permit and/or license will not be affected.
- B. When the Director denies renewal of a license, the applicant shall not be issued a permit and/or license for one year from the date of denial. If, subsequent to denial, the Director finds that the basis of denial of the renewal permit and/or license has been corrected or abated, the applicant may be granted a permit and/or license, if at least ninety (90) days have elapsed since the date denial became final.

Section 2.6: Suspension.

The Director shall suspend a permit and/or license for a period not to exceed thirty (30) days, if he/she determines that permittee and/or licensee, or an employee of a permittee and/or licensee has:

- A. violated or is not in compliance with any section of this ordinance;
- B. become impaired or intoxicated through the use of alcoholic beverages, while on the sexually oriented business premises;
- C. refused to allow an inspection of the sexually oriented business premises as authorized by this ordinance;
- D. knowingly permitted gambling by any person on the sexually oriented business premises.

Section 2.7: Revocation.

- A. The Director shall revoke a permit and/or license, if a cause of suspension in Section 2.6

occurs and the permit and/or license has been suspended within the preceding twelve (12) months.

B. The Director shall also revoke a permit and/or license if he/she determines that:

1. a permittee and/or licensee gave false or misleading information in the material submitted during the application process;
2. a permittee and/or licensee or an employee has knowingly allowed possession, use or sale of controlled substances or alcoholic beverages on the premises;
3. a permittee and/or licensee or an employee has knowingly allowed prostitution on the premises;
4. a permittee and/or licensee or an employee knowingly operated the sexually oriented business during a period of time when the permittee's and/or licensee's permit and/or license was suspended;
5. a permittee and/or licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual conduct to occur in, or on, the permitted and/or licensed premises; or has knowingly permitted the sale, possession and/or consumption of alcoholic beverages of any kind on the premises of said licensed premises;
6. a permittee and/or licensee is delinquent in payment to the City or State for any taxes or fees past due;
7. the owner or operator of the permitted establishment knowingly allowed a person under eighteen (18) years of age to enter an establishment; or
8. that there was a change of owner or operator for which a transfer application was not timely filed.

C. When the Director revokes a permit and/or license, the revocation shall continue for one (1) year, and the permittee and/or licensee shall not be issued a sexually oriented permit and/or license for one (1) year from the date revocation became effective. If, subsequent to revocation, the Director finds that the basis for revocation has been corrected or abated, the applicant may be granted a permit and/or license, if at least ninety (90) days have elapsed since the date the revocation became effective.

D. After denial of an application by the Mayor and Board of Aldermen, or denial of a renewal of an application, or suspension or revocation of a permit and/or license by the Director, the applicant or licensee or permittee may seek prompt judicial review of such administrative action in any court of competent jurisdiction. The administrative action shall be promptly reviewed by the court.

Section 2.8: Transfer of Permit and/or License.

A permittee and/or licensee shall not transfer a permit and/or license to another, nor shall a permittee and/or licensee operate a sexually oriented business under the authority of a permit and/or license at any place other than the address designated in the application.

Section 2.9: Locational Restrictions.

Sexually oriented businesses shall be permitted in an M-1 Zone designated for manufacturing (light industry) only, provided that:

- A. The sexually oriented business may not be operated within 500 feet of:
 - 1. a church, synagogue or regular place of worship;
 - 2. a public or private elementary or secondary school;
 - 3. a boundary of any residential district;
 - 4. a public park;
 - 5. a licensed day-care center;
 - 6. another sexually oriented business;
 - 7. an animal shelter;
 - 8. a dance studio;
 - 9. a public building; or
 - 10. a use where minors are the primary patrons.

- B. A sexually oriented business may not be operated in the same building, structure, or portion thereof, containing another sexually oriented business.

- C. For the purpose of this ordinance, 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 where a sexually oriented business is conducted, to the nearest property line of the premises of a church, synagogue, regular place of worship, or public or private elementary or secondary school, or to the nearest boundary of an affected public park, residential district, residential lot, licensed day-care center, another sexually-oriented business, animal shelter, dance studio, public building, or a use where minors are the primary patrons.

- D. For purposes of Subsection 3 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.

Section 2.10: Non-Conforming Uses.

- A. Any business lawfully operating on the effective date of this ordinance that is in violation of the locational or structural configuration requirements of this ordinance shall be deemed a non-conforming use. The non-conforming use will be permitted to continue for a period not to exceed two years, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such non-conforming uses shall not be increased, enlarged, extended, or altered, except that the use may be changed to a conforming use. If two (2) or more sexually oriented businesses are within 500 feet of one another, and otherwise in a permissible location, the sexually-oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business(es) is non-conforming.
- B. A sexually oriented business lawfully operating as a conforming use is not rendered a non-conforming use by the location, subsequent to the grant or renewal of the sexually oriented business permit and/or license, of a church, synagogue, or regular place of religious worship, public or private elementary or secondary school, licensed day-care center, public park or residential district within five hundred (500) feet of the sexually oriented business. This provision applies only to the renewal of a valid permit and/or license, and does not apply when an application for a permit and/or license is submitted after a permit and/or license has expired or has been revoked.

Section 2.11: Additional Regulations for Adult Motels.

- A. Evidence that a sleeping room in a hotel, motel or a similar commercial establishment has been rented and vacated two or more times in a period of time that is less than ten (10) hours, creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this ordinance.
- B. It is unlawful if a person, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented permit and/or license, rents or sub-rents a sleeping room to a person, and within ten (10) hours from the time the room is rented, he/she rents or sub-rents the same sleeping room again.
- C. For purposes of subsection 2 of this section, the terms "rent" or "sub-rent" mean the act of permitting a room to be occupied for any form of consideration.

Section 2.12: Regulations Pertaining to Exhibition of Sexually Explicit Films or Videos.

- A. A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassettes, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:
 - 1. Upon application for a sexually oriented permit and/or license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location

of one or more manager's stations and the location of all overhead lighting fixtures, and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted.

2. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should 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 (6"). The Director may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
3. The application shall be sworn to be true and correct by the applicant.
4. No alteration in the configuration or location of a manager's station may be made without the prior approval of the Director or his designee.
5. It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
6. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a 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 has two or more manager's stations designated, 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 line of sight from the manager's station.
7. It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in Subsection E remains unobstructed by any doors, walls, merchandise, display racks, or other materials, at all times, 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 of this section.
8. No viewing room may be occupied by more than one person at any time.
9. 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 (1.0) foot-candle, as measured at the floor level.
10. It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the illumination described

above is maintained at all times that any patron is present in the businesses.

Section 2.13: Exterior Portions of Sexually Oriented Businesses.

- A. It shall be unlawful for an owner or operator of a sexually oriented business to allow the merchandise or activities of the establishment to be visible from a point outside the establishment.
- B. It shall be unlawful for any owner or operator of a sexually oriented business to allow the exterior portion of the sexually oriented business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by the provisions of this ordinance.
- C. It shall be unlawful for the owner or operator of a sexually oriented business to allow exterior portions of the establishment to be painted any color other than a single achromatic color. This provision shall not apply to a sexually oriented business, if the following conditions are met:
 - 1. the establishment is a part of a commercial multi-unit center; and
 - 2. the exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the business, are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multi-unit center.
- D. Nothing in this section shall be construed to require the painting of an otherwise unpainted exterior portion of a sexually oriented business.

Section 2.14: Signage.

- A. Notwithstanding any other City ordinance, code, or regulation to the contrary, it shall be unlawful for the owner or operator of any sexually oriented business or any other person to erect, construct, or maintain any sign for the sexually oriented business, other than the one (1) primary sign and one (1) secondary sign, as provided herein.
- B. The primary sign shall have no more than two (2) display surfaces. Each such display surface shall:
 - 1. not contain any flashing lights;
 - 2. be a flat plane, rectangular in shape;
 - 3. not exceed seventy-five (75) square feet in area; and
 - 4. not exceed ten (10) feet in height or ten (10) feet in length.

- C. The primary sign shall contain no photographs, silhouettes, drawings, or pictorial representations in any manner, and may contain only the name of the enterprise.
- D. Each letter forming a word on a primary sign shall be of solid color. The background behind such letters on the display surface of a primary sign shall be of a uniform and solid color.
- E. The secondary sign shall have only one (1) display surface. Such display surface shall:
 - 1. be a flat plane, rectangular shape;
 - 2. not exceed twenty (20) square feet in area;
 - 3. not exceed five (5) feet in height and four (4) feet in width; and
 - 4. be affixed or attached to any wall or door of the enterprise.
- F. The provision of item A of subsection 2 and subsections 3 and 4 shall also apply to the secondary sign.

Section 2.15: Exemptions.

It is a defense to prosecution under this ordinance that a person appearing in a state of nudity did so in a modeling class operated:

- A. by a propriety school, licensed by the State of Mississippi; a college, junior college, or university supported entirely or partly by 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.

Section 2.16: Notices.

- A. Any notice required or permitted to be given by the Director or any other City office, division, department or other agency under this ordinance to any applicant, operator or owner of an establishment may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for the permit, or transfer application which has been received by the Director, or any notice of address change which has been received by the Director. Notices mailed as above shall be deemed given upon their deposit in the United States mail. In the event that any notice given by mail is returned by the postal service, the Director or his designee shall cause it to be posted at the principal entrance to the establishment.
- B. Any notice required or permitted to be given to the Director by any person under this

ordinance shall not be deemed given until and unless it is received in the office of the Director.

- C. It shall be the duty of each owner who is designated on the permit application and each operator to furnish notice to the Director in writing of any change of residence or mailing address.

Section 2.17: Injunction.

A person who operates or causes to be operated a sexually oriented business without a valid permit and/or license or otherwise violates this ordinance is subject to a suit for injunction as well as prosecution for criminal violation.

Section 2.18: Separability.

If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

Section 2.19: Conflicting Ordinances Repealed.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 2.20: Effective Date.

Because the adoption of this ordinance is necessary for the immediate and temporary preservation of the public peace, health and safety and because the opening of sexually oriented businesses have adverse, secondary effects on the community, this Ordinance shall take effect and be in force from and after its passage.

Section 2.21: Proof of Publication.

The Clerk is directed to cause this ordinance to be published one time in the Starkville Daily News and to obtain proof of publication thereof.

