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**ORDINANCE NO. 2018-25**

**AN ORDINANCE  
TO MOVE THE BUSINESS REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES  
FROM CHAPTER 150 IN TITLE XV: LAND USAGE TO CHAPTER 117 SEXUALLY  
ORIENTED BUSINESSES IN TITLE XI: BUSINESS REGULATIONS.**

SUMMARY

It is the purpose and intent of this ordinance is to restate and move the business regulations for Sexually Oriented Businesses included in Chapter 150 Zoning Code of Title XV: Land Usage to Chapter 117 Sexually Oriented Businesses of Title XI Business Regulations. Locational requirements for Sexually Oriented Businesses will be remain a part of Chapter 150 Zoning Code (Unified Development Ordinance) of Title XV: Land Usage of the Auburn City Code.

\_\_\_\_\_ Recorder's Office

\_\_\_\_\_ Auditor's Office

\_\_\_\_\_ Clerk's Office

\_\_\_\_\_ Other

\_\_\_\_\_ Publish Public Hearing

2/5/2019 @ 6pm

X Publish O/R after adoption

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TO MOVE THE BUSINESS REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES  
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ORIENTED BUSINESSES IN TITLE XI: BUSINESS REGULATIONS.**

**WHEREAS**, the zoning and subdivision ordinances are being replaced with a unified development ordinance; and

**WHEREAS**, the locational requirements for a sexually oriented business will be retained within the unified development ordinance; and

**WHEREAS**, the remaining sections of the sexually oriented business ordinance is more suited to be within Title XI: Business Regulations; and

**WHEREAS**, this ordinance restates the provisions of the Sexually oriented business ordinance as it relates to the regulation of said businesses within the City of Auburn, Indiana or within the area controlled by the zoning code of the City of Auburn, Indiana.

***NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY  
OF AUBURN, INDIANA:***

**SEXUALLY ORIENTED BUSINESSES**

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## 117.000 PURPOSE AND FINDINGS

### A. Purpose

It is the purpose of this subchapter to regulate sexually oriented businesses in order to promote 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 businesses within the city. The provisions of this subchapter 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 not the intent nor effect of this subchapter 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 or effect of this subchapter to condone or legitimize the distribution of obscene material.

### B. Findings

Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to Council, and on findings incorporated in the case of *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theaters*, 426 U.S. 50 (1976), *Barnes v. Glen Theater, Inc.*, 501 U.S. 560 (1991), and all other relevant court decisions related to and concerning the adverse secondary effects of adult uses on the community.

This subchapter has also taken into account land usage studies performed 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 the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the Council 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.
- 2) Certain employees of sexually oriented businesses defined in this subchapter as adult theaters and cabarets engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.
- 3) Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those, which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows.
- 4) Offering and providing such space encourages such activities, which create unhealthy conditions.
- 5) Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.
- 6) At least 50 communicable diseases may be spread by activities occurring in

sexually oriented businesses, including but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections.

- 7) Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States - 600 in 1982, 2,200 in 1983, 4,600 in 1984, 8,555 in 1985 and 253,448 through December 31, 1992.
- 8) As of December 31, 1999, there are a significant number of reported cases of AIDS in the State of Indiana.
- 9) Since 1981 and to the present, there have been a number of persons in Auburn and DeKalb County, Indiana testing positive for the HIV antibody.
- 10) The number of cases of early (less than one year) syphilis in the United States reported annually has risen, with 33,613 cases reported in the 1982 and 45,200 through November 1990.
- 11) The number of cases of gonorrhea in the United States reported annually remains at a high level, with over one-half million cases reported in 1990.
- 12) The surgeon general of the United States in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.
- 13) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, can be transmitted, among other ways, by sexual acts.
- 14) Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.
- 15) Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where people view "adult" oriented films.
- 16) The findings noted in divisions (1) through (15) above raise substantial governmental concerns and a substantial governmental interest.
- 17) Sexually oriented businesses have operational characteristics, which should be reasonably regulated in order to protect those substantial governmental concerns and or interests.
- 18) 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 nonexistent 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 city. 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.
- 19) Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the

illegal and unsanitary sexual activity occurring in adult theaters.

- 20) Requiring licensees of sexually oriented businesses to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.
- 21) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest and or concern in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.
- 22) It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct, which this subchapter is designed to prevent or who are likely to be witnesses to such activity.
- 23) The fact that an applicant for an adult use license has been convicted of a sexually or violent related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this subchapter.
- 24) The barring of such individuals from the management of adult uses for a period of years serves as a deterrent to and prevents conduct, which leads to the transmission of sexually transmitted diseases.
- 25) The general welfare, health, morals and safety of the citizens of the city will be promoted by the enactment of this subchapter.

## 117.001 DEFINITIONS

### ADULT ARCADE

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 disc 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."

### ADULT BOOKSTORE, ADULT NOVELTY STORE or ADULT VIDEO STORE

A commercial establishment in which 20% or more of the inventory by quantity is offered 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 categorized as ADULT

BOOKSTORE, ADULT NOVELTY STORE, or ADULT VIDEO STORE. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an ADULT BOOKSTORE, ADULT NOVELTY STORE, or ADULT VIDEO STORE so long as more than 20% of the business purposes are offered for sale or rental for consideration the specified materials which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

#### ADULT CABARET

A nightclub, bar, restaurant, or similar commercial establishment, which regularly features:

- A. Persons who appear in a state of nudity or semi-nude; or
- B. Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities;" or
- C. 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".

#### ADULT MOTEL

A hotel, motel or similar commercial establishment which:

- A. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, 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 reproductions; or
- B. Offers a sleeping room for rent for a period of time that is less than 10 hours; or
- C. Allows a tenant or occupant of a sleeping room to sub rent the room for a period of time that is less than 10 hours.

#### ADULT MOTION PICTURE THEATER

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 area". R-rated movies are not intended to meet this definition. NC-17 and or X-rated type movies are intended to meet this definition.

#### ADULT THEATER

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". R-rated movies are not intended to meet this definition. NC-17 and X-rated movies are intended to meet this definition.

#### CONNECTED or CONNECTION

The person receives consideration in return for providing as service to or for sexually oriented business.

#### EMPLOYEE

A 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 repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

### ESCORT

A person who, for consideration, agrees or offers to act as a sexual companion for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

### ESCORT AGENCY

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

### ESTABLISHMENT

Includes any of the following:

- A. The opening or commencement of any sexually oriented business as a new business;
- B. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- C. The additions of any sexually oriented business to any other existing sexually oriented business; or
- D. The relocation of any sexually oriented business.

### LICENSEE

A person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business.

### NUDE MODEL STUDIO

Any place where a person who appears semi-nude, in a state of nudity, or who displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration.

NUDE MODEL STUDIO shall not include a proprietary school licensed by the state or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:

- A. That has no sign visible from exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and
- 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 or semi-nude model is on the premises at any one

time.

NUDITY or a STATE OF NUDITY

The showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

PERSON

An individual, proprietorship, partnership, corporation, association, limited liability company or partnership or any other legal entity recognized under local, state, federal or international law.

SEMI-NUDE or in a SEMI-NUDE CONDITION

The showing of the female breast below a horizontal line across the top of the areola 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 areola is not exposed in whole or in part.

SEXUAL ENCOUNTER CENTER

A business or commercial enterprise that, as one of its business purposes, offers for any form of consideration:

- A. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- B. 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-nude.

SEXUALLY ORIENTED BUSINESS

An adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio or sexual encounter center.

SPECIFIED ANATOMIC AREAS

- A. The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
- B. Less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola.

SPECIFIED CRIMINAL ACTIVITY Any of the following offenses:

- A. Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries; for which:



- 1) Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
  - 2) Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
  - 3) Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.
- B. The fact that a conviction is being appealed shall have no effect on the disqualification of the application or a person residing with the applicant.

SPECIFIED SEXUAL ACTIVITIES Any of the following:

- A. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts;
- B. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or
- C. Excretory functions as part of or in connection with any of the activities set forth in divisions (1) and (2) above.

SUBSTANTIAL ENLARGEMENT

The increase in floor areas occupied by the business by more than 25%, as the floor areas exist on the date this subchapter takes effect.

TRANSFER OF OWNERSHIP OR CONTROL Includes any of the following:

- A. The sale, lease or sublease of the business;
- B. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
- C. 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.

117.002 CLASSIFICATION

Sexually oriented businesses are classified as follows:

- A. Adult arcades;
- B. Adult bookstores, adult novelty stores, 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.

117.003 SEXUALLY ORIENTED BUSINESS LICENSE

A. License required

- 1) It is a violation of this subchapter:
  - a) For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the city pursuant to this subchapter.
  - b) For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the city pursuant to this subchapter.
  - c) For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this subchapter.
- 2) An application for a license must be made on a form provided by the city.
- 3) All applicants must be qualified according to the provisions of this subchapter. The application may request and the applicant shall provide such information (including fingerprints) as to enable the city to determine whether the applicant meets the qualifications established in this subchapter.
- 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 an 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 division (B) below 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 or her legal name and any aliases and submit proof that he or she is 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, the names and capacity of all officers, directors and principal stockholders, and the name of the registered corporate agent and the address of the registered office for service of process.
    - (4) A Limited Liability Company

The LLC shall state its complete name, and the names of all managers and or members, evidence that the LLC is in good standing under the laws of its state of organization. The names and capacity of all officers, directors and principal members, and the name of the registered company agent and the address of the registered office for service of process.

- (5) Any other business entity recognized or able to be operated in the state, and the name of all individuals with an ownership interest therein, evidence that said business is in good standing under the law. Also, the names and capacity of all officers, members, directors, owners, partners, or any other individual who has decision making power within the business and the registered agent of the business for service of process.
- b) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant: he or she must state the sexually oriented business's trade name and submit the required registration documents.
- c) Whether the applicant, or a person residing with the applicant, has been convicted of a specified criminal activity as defined in this subchapter, and, if so, the specified criminal activity involved, the date, place, and jurisdiction of each.
- d) Whether the applicant, or a person residing with the applicant, has had a previous license under this subchapter or other similarly sexually oriented business ordinances from another city or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or a person residing with the applicant has been a partner in a partnership or an officer, director or principal stockholder of a corporation, member manager or member of an LLC or any other person with a private business interest that is licensed under this subchapter whose license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.
- e) Whether the applicant or a person residing with the applicant holds any other licenses under this subchapter or other similar sexually oriented business ordinance from another city or county and, if so, the names and location of such other licensed businesses.
- f) The single classification of license for which the applicant is filing.
- g) The location of the proposed sexually oriented business, including a legal description of the property, an up to date survey prepared by a licensed surveyor in the state, evidence of clear title by way of title insurance, the street address and telephone number(s), if any of said business.
- h) The applicant's mailing address and residential address and the applicant's home and business phone numbers.
- i) A recent photograph of the applicant(s) and any individual who is involved with the business including all professionals involved with the development of the business at the time of application.
- j) The applicant's driver's license number, Social Security Number, and/or his or her state or federally issued tax identification number.

- k) 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 should be professionally prepared, and 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 inches.
  - l) A current certificate and straight-line drawing prepared within 30 days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within 1,000 feet of the property to be certified; the property lines of any established religious institution/synagogue, residential zone, school or public park or recreation area, institutions licensed to sell alcohol, and family oriented businesses within 1,000 feet of the property to be certified. For purposes of this section, a use shall be considered existing or established, if it is in existence at the time an application is submitted.
  - m) If an 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 150 square feet of floor space, films, video cassettes, other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth in this code.
- 6) Before any applicant may be issued a sexually oriented business employee license, the applicant shall submit on a form to be provided by the city the following information:
- a) The applicant's name or any other name (including "stage" names) or aliases used by the individual;
  - b) Age, date, and place of birth;
  - c) Height, weight, hair and eye color;
  - d) Present residence address and telephone number;
  - e) Present business address and telephone number;
  - f) Date, issuing state and number of driver's permit or other identification card information;
  - g) Social security number; and
  - h) Proof that the individual is at least 18 years of age.
  - i) Address for the last 10 years.
  - j) Any denial of a sexually oriented business application in any other municipality, county or state for the last 10 years by the business or any individual acting on behalf of the company.
- 7) Attached to the application form for a sexually oriented business employee license as provided above, 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 police department. The applicant shall pay any fees for the photographs and fingerprints.
  - b) A statement detailing the license history of the applicant for the five years immediately preceding the date of the filing of the application, including whether

such applicant previously operated or is seeking to operate, in this or any other county, city or state has ever had a license, permit or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked or suspended. In the event of any such denial, revocation, or suspension, state the name, the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation, or suspension shall be attached to the application.

- c) A statement whether the applicant has been convicted of a specified criminal activity as defined in this subchapter and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.

#### B. Issuance of license

- 1) The Clerk-Treasurer or like kind position shall be the individual charged with processing the license requirements and issuing the license under this subchapter. The Clerk-Treasurer or like kind position shall be charged with delegating authority and assigning responsibilities in order to carry out the functions and procedures under this subchapter.
- 2) The applicant under this subchapter must be in compliance with all health and safety laws promulgated by any county, state or federal agency.
- 3) The applicant must be in compliance and have written evidence from the DeKalb County Health Department that the business applied for will meet all health and safety provisions under the guidance and authority of the County Health Department.
  - a) Upon the filing of said application for a sexually oriented business employee license, the city shall issue a temporary license to said applicant. The application shall then be referred to the appropriate city departments for an investigation to be made on such information as is contained on the application. The application process shall be completed within 90 days from the date the completed application is filed. After the investigation, the city shall issue a license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true: The applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
  - b) The applicant is under the age of 18 years of age;
  - c) The applicant has been convicted of a "specified criminal activity" as defined in this subchapter;
  - d) The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this subchapter; or
  - e) The applicant has had a sexually oriented business employee license revoked by any governmental body within four years of the date of the current application. If the sexually oriented business employee license is denied, any temporary license previously issued is immediately deemed null and void. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as set forth in division (G) of this section.
- 4) A license granted pursuant to this section shall be subject to annual renewal upon the written application of the applicant and a finding by the city that the applicant

has not been convicted of any specified criminal activity as defined in this subchapter or committed any act during the existence of the previous license, which would be grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth in division (C) of this section.

- 5) Within 90 days after receipt of a completed sexually oriented business application, the city shall approve or deny the issuance of a license to an applicant. The city may extend this period for a time of up to 60 days upon good cause shown. The city shall approve the issuance of a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:
  - a) An applicant is under 18 years of age.
  - b) An applicant or a person with whom applicant is residing is overdue in payment to the city of taxes, fees, fines, or penalties assessed against or imposed upon him or her in relation to any business.
  - c) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.
  - d) An applicant or a person with whom the applicant is residing has been denied a license by the city to operate a sexually oriented business within the preceding 12 months or whose license to operate a sexually oriented business has been revoked within the preceding 12 months.
  - e) An applicant or a person with whom the applicant is residing has been convicted of a specified criminal activity defined in this subchapter.
  - f) The premises to be used for the sexually oriented business have not been approved by the health department, fire department, and the building official as being in compliance with applicable laws and ordinances.
  - g) The license fee required by this subchapter has not been paid.
  - h) An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this subchapter.
- 6) The license, if granted shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business and the classification for which the license is issued pursuant to 117.002. 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.
- 7) The health department, fire department, police department and the building official and or like kind department shall complete their certification that the premises is in compliance or not in compliance within 75 days of receipt of the application by the city. An extension of this time may be made upon good cause shown.
- 8) A sexually oriented business license shall issue for only one classification as found in 117.002.
- 9) The applicant herein must be in compliance and present written evidence from the DeKalb County Health Department that all standards and regulations under their authority have been met.

#### C. Fees

- 1) Every application for a sexually oriented business license (whether for a new license or for renewal of an existing license) shall be accompanied by a \$750 non-refundable application and investigation fee.
- 2) In addition to the application and investigation fee required above, every sexually oriented business that is granted a license (new or renewal) shall pay to the city an annual non-refundable license fee of \$250 within 30 days of license issuance or renewal.
- 3) Every application for a sexually oriented business employee license (whether for a new license or for a renewal of an existing license) shall be accompanied by an annual \$250 non-refundable application, investigation, and license fee, referred to above.
- 4) All license applications and fees shall be submitted to the Clerk-Treasurer.
- 5) The above referenced fees shall be used for investigations and administrative purposes. The purpose of the fee is not to limit or prohibit the ability to establish such businesses under this subchapter in any way.

D. Inspection

- 1) An applicant or licensee shall permit representatives of the Police Department, Health Department, Fire Department, Zoning/Building Department or other relevant city departments or agencies to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time it is occupied or open for business.
- 2) A person who operates a sexually oriented business or his or her agent or employee violates this subchapter if he or she refuses to permit such lawful inspection of the premises at any time it is open for business.

E. Expiration of license

- 1) Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in division (A) above. Application for renewal shall be made at least 30 days before the expiration date; the expiration of the license will not be affected.
- 2) When the city denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial.

F. Suspension

The city shall suspend a license for a period not to exceed 30 days if it determines that a license or an employee of a licensee has:

- 1) Violated or is not in compliance with any section of this subchapter;
- 2) Refused to allow an inspection of the sexually oriented business premises as authorized by this subchapter.

G. Revocation

- 1) The city shall revoke a license if a cause of suspension in division (F) above occurs and license has been suspended within the preceding 12 months.
- 2) The city shall also revoke a license if it determines that:

- a) A licensee gave false or misleading information in the material submitted during the application process;
  - b) A licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;
  - c) A licensee has knowingly allowed prostitution on the premises;
  - d) A licensee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
  - e) A licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises; or
  - f) A licensee is delinquent in payment to the city, county, or state for any taxes or fees past due.
- 3) When the city revokes a license, the revocation shall continue for one year, and the licensee shall not be issued a sexually oriented business license for one year from the date the revocation became effective. If, subsequent to revocation, the city finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became effective.
- 4) After denial of an application, or denial of renewal of an application, or suspension or revocation of any license, the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction. However, before seeking judicial review the applicant must request an administrative hearing before Board of Public Works and Safety. The Board of Public Works and Safety shall conduct an administrative hearing in which evidence will be presented and findings will be made which will: either affirm the revocation, modify the revocation in some manner or overturn the revocation. After the administrative review, the applicant may then seek a competent court to promptly review the administrative action as soon as the court's calendar may permit.

#### H. Transfer of license

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

### 117.004 REGULATIONS

#### A. Additional regulations for adult motels

- 1) 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 10 hours creates a rebuttal presumption that the establishment is an adult motel as that term is defined in this subchapter.
- 2) A person commits a violation of this subchapter if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented license, he or she rents or sub rents a sleeping room to a person and, within 10 hours from the time the room is rented, he or she rents or sub rents the same sleeping room again.
- 3) For purposes of division (2) above, the terms "rent" or "sub rent" mean the act of



permitting a room to be occupied for any form of consideration.

B. Regulations pertaining to exhibition of sexually explicit films, videos or live entertainment in viewing rooms

- 1) A person who operates 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, video cassette, live entertainment or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:
  - a) Upon application for a sexually oriented 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 32 square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. 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. The city 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.
  - b) The application shall be sworn to be true and correct by the applicant.
  - c) No alteration in the configuration or location of a manager's station may be made without the prior approval of the city.
  - d) It is the duty of the licensee of the premises to ensure that at least one licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
  - e) 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.
  - f) It shall be the duty of the licensee to ensure that the view area specified in division (e) above remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and, 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 division (a) of this subsection.
  - g) No viewing room may be occupied by more than one person at any time.
  - h) 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 five foot-candles as measured at the floor level.

- i) It shall be the duty of the licensee to ensure that the illumination described in division (B) (1) (h) above is maintained at all times that any patron is present in the premises.
  - j) No licensee shall allow openings of any kind to exist between viewing rooms or booths.
  - k) No person shall make or attempt to make an opening of any kind between viewing booths or rooms.
  - l) The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.
  - m) The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces with no rugs or carpeting.
  - n) The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within 48 inches of the floor.
- 2) A person having a duty under divisions (1) (a) through (n) above is in violation of this subchapter if he or she knowingly fails to fulfill that duty.

C. Additional regulations for escort agencies

- 1) An escort agency shall not employ any person under the age of 18 years.
- 2) A person is in violation of this subchapter if the person acts as an escort or agrees to act as an escort for any person under the age of 18 years.

D. Additional regulations for nude model studios

- 1) A nude model studio shall not employ any person under the age of 18 years.
- 2) A person under the age of 18 years is in violation of this subchapter if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this division if the person under 18 years was in a restroom not open to public view or visible to any other person.
- 3) A person when applicable and is in violation of this subchapter if the person 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.
- 4) A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises; except that a sofa may be placed in a reception room open to the public.

E. Additional regulations concerning public nudity

- 1) It shall be a violation of this subchapter for a person who knowingly and intentionally, in a sexually oriented business, appears in a state of nudity or depicts specified sexual activities.

- 2) It shall be a violation of this subchapter for a person who knowingly or intentionally in a sexually oriented business appears in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least ten feet from any patron or customer and on a stage at least two feet from the floor.
- 3) It shall be a violation of this subchapter for an employee, while semi-nude in a sexually oriented business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any employee, while said employee is semi-nude in a sexually oriented business.
- 4) It shall be a violation of this subchapter for an employee, while semi-nude to touch a customer or the clothing of a customer.

#### 117.005 PROHIBITION AGAINST CHILDREN IN A SEXUALLY ORIENTED BUSINESS

A person violates the provisions of this subchapter if the person knowingly allows a person under the age of 18 years on the premises of a sexually oriented business.

#### 117.006 EXEMPTIONS

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

- A. By a proprietary school, licensed by the state; 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; or
- C. In a structure:
  - 1) Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
  - 2) Where, in order to participate in a class a student must enroll at least three days in advance of the class; and
  - 3) Where no more than one nude model is on the premises at any one time.

#### 117.007 INJUNCTION

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of this subchapter is subject to a suit for injunction or other applicable court ordered relief. Such violations shall be punishable by a fine of up to \$2,500.00 by the City. Each day a sexually oriented business so operates in violation is a separate violation.

#### 117.008 SEVERABILITY; CONFLICTING ORDINANCES REPEALED

- A. If any section, subsection, or clause of this subchapter shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected.
- B. All ordinances or parts of ordinances in conflict with the provisions of this subchapter are hereby repealed.

117.009 HOURS OF OPERATION

All businesses operating under this subchapter shall close by 10:00 P.M. each day and may not open before 12:00 P.M. each day. All businesses operating under this subchapter shall not be open on Sunday.

117.010 PROHIBITION AGAINST EMPLOYEES OF THE POLICE DEPARTMENT BEING EMPLOYED AT A SEXUALLY ORIENTED BUSINESS

It is hereby and henceforth, a policy of the Board of Public Works and Safety that no member, employee, or volunteer of the Police Department of the city shall be an employee of a sexually oriented business.

117.011 PENALTY

Violation of any provision of this chapter shall result in the application of the enforcement and penalty provisions in addition to the all other remedies available at law under State and Federal Law, including but not limited to fines of up to \$2,5000.00 per day for each violation, and possible injunction, restraining order, and any other remedy available at law or equity.

**WHEREFORE**, this Ordinance shall take effect after proper publication in a newspaper of daily circulation in DeKalb County, State of Indiana and further the ordinance shall be codified as Chapter 117 of the Auburn Municipal Code and placed on the City of Auburn web-based internet code site. Also, the original of this resolution shall be maintained by the Office of the Clerk-Treasurer and available for public inspection during normal business hours.

**PASSED AND ADOPTED** by the Common Council of the City of Auburn, Indiana, this 5 day of February, 2019.

  
\_\_\_\_\_  
**JAMES FINCHUM**, Councilmember

**ATTEST:**

  
\_\_\_\_\_  
**PATRICIA MILLER** Clerk-Treasurer

Tabled 12/4/2018

1<sup>st</sup> Reading 1/15/2019

2<sup>nd</sup> Reading \_\_\_\_\_

Presented by me to the Mayor of the City of Auburn, Indiana, this 5 day of

February \_\_\_\_\_, 2019.

  
PATRICIA MILLER Clerk-Treasurer

APPROVED AND SIGNED by me this 5 day of February \_\_\_\_\_, 2019.

  
NORMAN E. YODER, Mayor

AYE

NAY

James Finchum 

Mike Watson 

Dennis K. Kruse, II 

Denny Ketzenberger

Wayne Madden

Kevin Webb 

Michael Walter 