

## **ARTICLE II. SEXUALLY ORIENTED BUSINESSES**

**Editor's note:** Ord. No. 98-5, Arts. 1--6, adopted February 12, 1998, did not specifically amend the Code; hence, inclusion herein as a new Art. II, §§ 2.9-21--2.9-26, was at the discretion of the editor.

### **Sec. 2.9-21. Purpose and intent.**

It is the purpose of this Article to regulate sexually oriented businesses to promote the health, safety and general welfare of the citizens of the County and to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within unincorporated areas of the County. The provisions of this Article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this Article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market, unless otherwise restricted by law.

(Ord. No. 98-5, Art. 1, 2-12-98)

### **Sec. 2.9-22. Definitions.**

(a) *Adult arcade.* Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled image producing devices are maintained to show images to five (5) or fewer viewers at one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" (i) or "specified areas" (j).

(b) *Adult bookstore or adult video store.* A commercial establishment whose principal business purposes is to offer for sale or rental for any form of consideration any one (1) 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" (i) or "specified anatomical areas" (j).

(c) *Adult cabaret.* A nightclub, bar, restaurant, or similar commercial establishment which regularly features:

(1) Persons who appear in a state of nudity; or

(2) Live performances which are characterized by the exposing of "specified sexual activities" (i) or "specified anatomical areas" (j); or

(3) Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction of "specified sexual activities" (i) or "specified anatomical areas" (j).

(d) *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, excluding those which are rated by the Motion Picture Association of America, which emphasize "specified sexual activities" (i).

(e) *Adult theaters.* A theater, concert hall, auditorium, or similar commercial establishment, which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of "specified sexual activities" (i) or "specified anatomical areas" (j).

(f) *Nudity or state of nudity.*

(1) The appearance of the bare human buttock, anus, male genitals, female genitals, or areola of the female breast.

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

(g) *Person.* An individual, proprietorship, partnership, corporation, association, or other legal entity.

(h) *Sexually oriented business.* An adult arcade, adult bookstore or adult video store, adult cabaret, adult motion picture theater, or adult theater as the same are defined herein.

(i) *Specified sexual activities.*

(1) Human genitals in a state of sexual stimulation or arousal.

(2) Acts of human masturbation, sexual intercourse, or sodomy.

(3) Fondling or other erotic touching of human genitals, pubic region, buttocks or female breasts.

(j) *Specified anatomical areas.*

(1) Less than completely and opaquely covered human genitals, pubic region, buttock, and female breasts below a point immediately above the top of the areola; and

(2) Human male genitals in a discernible turgid state, even if completely and opaquely covered.

(Ord. No. 98-5, Art. 2, 2-12-98)

**Sec. 2.9-23. Classification.**

Sexually oriented businesses are classified as follows:

- (1) Adult arcade;
- (2) Adult bookstores and adult video stores;
- (3) Adult cabarets;
- (4) Adult motion picture theaters; and
- (5) Adult theaters.

(Ord. No. 98-5, Art. 3, 2-12-98)

**Sec. 2.9-24. Location.**

Sexually oriented businesses may be allowed subject to the following:

- (1) No sexually oriented business may be operated within five hundred (500) feet of:
  - a. A church;
  - b. A public or private elementary, secondary or post-secondary school, pre-school, or child care facility;
  - c. A public park.
- (2) No sexually oriented business may be operated:
  - a. Within two hundred (200) feet of a boundary of a residential area of any residential use, public hotel or motel; or
  - b. Within four hundred (400) feet of a residential area or any residential use as measured by automobile travel distance from the exit of a sexually oriented business property to the property line of the residential area or use.
- (3) No sexually oriented business may be operated within one thousand (1,000) feet of another sexually oriented business or within two hundred (200) feet of any room, building, premises, place or establishment that sells or dispenses alcohol or beer.
- (4) For the purposes of subsection (1), 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 part of the premises where sexually oriented business is conducted, to the nearest property line of the premises of a church or public or private elementary or secondary school, or to the nearest boundary of an affected public park, residential district or residential lot.

(Ord. No. 98-5, Art. 4, 2-12-98)

**Sec. 2.9-25. Penalties.**

(a) Any person operating or causing to be operated any sexually oriented business in violation of any part of this Article, upon conviction, is punishable by a fine not to exceed five hundred dollars (\$500.00).

(b) If the violation is, in its nature, continuous in respect to time, the penalty for allowing the continuance thereof is a fine not to exceed two hundred fifty dollars (\$250.00) for each day that the same is unlawfully continued.

(c) A person who operates or causes to be operated a sexually oriented business in violation of this Article shall be subject to a suit for injunction as well as prosecution for criminal violations.

(Ord. No. 98-5, Art. 5, 2-12-98)

**Sec. 2.9-26. Exceptions to restrictions on location.**

A lawfully operating sexually oriented business shall not be rendered illegal by the subsequent location of a church, a public or private school, a pre-school, a child care facility, a public park, residential area, or residential uses.

(Ord. No. 98-5, Art. 6, 2-12-98)

**WASHINGTON COUNTY, ARKANSAS**

**SEXUALLY ORIENTED BUSINESS APPLICATION FORM**

**Name of Business:**

\_\_\_\_\_

**Applicant:** \_\_\_\_\_ **Phone:** \_\_\_\_\_

**Address:** \_\_\_\_\_ **Fax**  
**#:** \_\_\_\_\_

I certify under perjury that the following statements and answers herein made and all data, information, and evidence herewith submitted are, to the best of my knowledge and belief, true and correct. I understand that submittal of incorrect or false information is grounds for invalidation of this application. I understand that the County might not approve what I am applying for, or might set conditions on approval.

**Signature of Applicant or Representative** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Property Owner:** \_\_\_\_\_ **Phone:** \_\_\_\_\_

**Address:** \_\_\_\_\_ **Fax**  
**#:** \_\_\_\_\_

I certify under penalty of perjury that I am the owner of the property that is the subject of this application or I am the owner's authorized agent and I have read all of this application and consent to its filing.

**Signature of Property Owner or Agent:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**To whom should the County send correspondence? (List names and addresses)**

**Property Information:**

**Section:** \_\_\_\_\_, **Township:** \_\_\_\_\_, **Range:** \_\_\_\_\_

**Tax Parcel Numbers:** \_\_\_\_\_

**Planning Area:** \_\_\_\_\_ **School District:** \_\_\_\_\_ **Quorum Court District:** \_\_\_\_\_

**Road Information:**

U.S., State, or County road # giving access to property: \_\_\_\_\_

Road surface (asphalt, chip & seal, gravel or unimproved):

Right of way width :

**Utility Information:**

(Check box if utility has existing lines on or fronting the property and write the name of the company.)

Water company name: \_\_\_\_\_ Electric company name: \_\_\_\_\_

Gas company name: \_\_\_\_\_ Telephone company name : \_\_\_\_\_

Cable company name: \_\_\_\_\_ Sewer System / Septic: \_\_\_\_\_

Total Acreage of Property: \_\_\_\_\_ Proposed Use of the Property: \_\_\_\_\_

**WASHINGTON COUNTY, ARKANSAS**

**SEXUALLY ORIENTED BUSINESSES CHECKLIST**

**Definition of a sexually oriented business (Sec. 2.9-22,23)**

Sexually oriented businesses are classified as follows (please check the following as it applies):

\_\_\_\_\_ 1. Adult arcade

Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled image producing devices are maintained to show images to five (5) or fewer viewers at one time, and where images are so displayed.

\_\_\_\_\_ 2. Adult bookstores and adult video stores

A commercial establishment whose principal business purpose is to offer for sale or rental for any form of consideration any one or more of the following:

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".

\_\_\_\_\_ 3. Adult cabaret

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

1. Persons who appear in a state of nudity
2. Live performances which are characterized by the exposing of "specified sexual activities or "specified anatomical areas"
3. Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction of "specified sexual activities" or "specified anatomical areas"

\_\_\_\_\_ 4. 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, excluding those which are rated by the Motion Picture Association of America, which emphasize "specified sexual activities".

\_\_\_\_\_ 5. Adult theaters.

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

**For Planning Staff Use Only:**

**Location (Sec 2.9-24)**

Please check next to the following if they should apply:

1. No sexually oriented business may be operated within five hundred (500) feet of:

a. A church  
\_\_\_\_\_

b. A public or private elementary, secondary or post-secondary school, pre-school, or child care facility \_\_\_\_\_

c. A public park  
\_\_\_\_\_

2. No sexually oriented business may be operated:

<http://www.washington.county/Planning/Forms/exotic.htm>

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a. Within two hundred (200) feet of a boundary of a residential use, public hotel or motel

b. Within four hundred (400) feet of a residential area or any residential use as measured by automobile travel distance from the exit of a sexually oriented business property to the property line of the residential area or use.

3. No sexually oriented business may be operated within one thousand (1,000) feet of another sexually oriented business or within two hundred (200) feet of any room, building, premises, place or establishment that sells or dispenses alcohol or beer.

4. For the purposes of subsection (1), 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 part of the premises where sexually oriented business is conducted, to the nearest property line of the premises of a church or public or private elementary or secondary school, or to the nearest boundary of an affected public park, residential district or residential lot.

#### **Penalties (Sec. 2.9-25)**

(a) Any person operating or causing to be operated any sexually oriented business in violation of any part of this article, upon conviction, is punishable by a fine not to exceed five hundred dollars (\$500.00).

(b) If the violation is, in its nature, continuous in respect to time, the penalty for allowing the continuance thereof is a fine not to exceed two hundred fifty dollars (\$250.00) for each day that the same is unlawfully continued.

(c) A person who operates or causes to be operated a sexually oriented business in violation of this Article shall be subject to a suit for injunction as well as prosecution for criminal violations. (Ord. No. 98-5, Art. 5, 2-12-98)

#### **Exceptions to restrictions on location (Sec. 2.9-26)**

A lawfully operating sexually oriented business shall not be rendered illegal by the subsequent location of a church, a public or private school, a pre-school, a child care facility, a public park, residential area, or residential uses. (Ord. No. 98-5, Art. 6, 2-12-98)