

ORDINANCE 11-01-930-00
AN ORDINANCE CONCERNING SEXUALLY
EXPLICIT BUSINESS IN PUBLIC PLACES

Section I: Findings, Declarations of Public Policy, Purpose

A. Findings: The Board of Commissioners for the City of Smiths Grove, based on evidence concerning the adverse secondary effects of sexually explicit entertainment activities on the community, presented in hearings and in reports, and in findings incorporated in numerous cases heard by the United States Supreme Court, and in studies in many communities around the country, finds as follows:

1. Certain sexually explicit entertainment activities, which are or may become located near areas zoned for residential use, near schools and public parks, and near malls and similar open spaces that are catered to by family groups and children, would adversely effect the viability and use of such properties for such purposes;
2. The City of Smiths Grove has spent untold dollars on community development and neighborhood enhancement projects over the past years to attempt to eliminate blight and to further prevent deterioration of the City's neighborhood;
3. Certain sexually explicit entertainment activities, because of the condition of their operations, have or may contribute to an increased incidence of crime and juvenile delinquency, particularly when such activities are located in close proximity to one another;
4. Certain sexually explicit entertainment activities, particularly through outside displays, tend to attract undesirable clientele that discourage residents from undertaking civic improvements and cause residents and businesses to move elsewhere. Further they may frustrate attempts to attract to

and to a general deterioration of the City's neighborhoods;

5. The value of free expression in a free society can be protected by affording an opportunity for products and services to be sold at distinct and separate locations where such goods and services will be just as available to the public wishing to pay for them, but with a dramatically less deleterious effect on abutting neighborhoods;

6. The concentration of sexually explicit movies, books, videos, and sexual paraphernalia in the City may create public nuisances and may have a deleterious effect on property values;

7. Nationally there is extensive involvement of organized crime in the business of sexually explicit entertainment activities which is regulated herein, and the disclosure of the names of person who own as well as the names of persons who operate sexually explicit book stores and other sexually explicit entertainment establishments, would aid law enforcement officials in the enforcement of the Racketeer Influenced and Corruptions Organizations Act (RICO), as well as the enforcement of the laws of the state prohibiting the distribution of obscene matter, the use of minors to distribute obscene matter, advertising of obscene matter, distribution of obscene matter to minors, promoting sale of obscenity, the use of minors in sexual performances, the distribution of portrayal of sexual performances by a minor, promotion of material portraying a sexual performance by a minor, advertising of material portraying a sexual performance by a minor; and the use of a minor to distribute material portraying a sexual performance by a minor.

B: Declarations of Public Policy

1. The Board of Commissioners declare, as a matter of public policy, that in order to preserve surrounding neighborhoods, prevent blight, and the deterioration of the neighborhoods, protect property values, promote the return of residences and businesses to the City's neighborhoods, protect children from the deleterious effects of exposure to sexually explicit material, reduce the spread of communicable diseases, and decrease the incidence of crime and juvenile delinquency, the licensing and regulation of a sexually explicit entertainment establishment is a public necessity and is required in the interest of public health, safety and welfare, and the economic and aesthetic well being of the people.

B: Purpose

1. The purpose of this chapter is to effect the declaration of public policy set forth above as it relates to the foregoing findings of the Board of Commissioners, and more particularly to:
- a. Protect neighborhoods.
 - b. Prevent neighborhoods from suffering the noise, the blighting influence, and the increase in crime brought about by a concentration of sexually explicit entertainment establishments;
 - c. Prevent unsanitary conditions that exist in sexually explicit businesses and to reduce the spread of communicable diseases;
 - d. Protect children from the deleterious effects of exposure to sexually explicit matter;
 - e. Obtain sufficient information to identify those persons licensed or to be licensed for the operation of establishments selling, showing, or renting sexually explicit materials or providing sexually explicit services.

Section II: Definitions

A. Sexually explicit entertainment activity or activities, sexually explicit entertainment establishment, or sexually oriented business, as used in this chapter, shall mean one or more of the following activities:

1. Sexually explicit amusement arcade, is defined as an establishment which maintains one or more of the following: customer operated motion picture devices, computers or other image producing devices, peep shows, viewing areas, or other similar devices either electronically, electrically or mechanically controlled, or coin, token or slug operated and where the images so displayed are distinguished or characterized by the depicting or describing of sexual activities.

2. Sexually explicit bookstore or novelty store is defined as an establishment which has a significant or substantial portion of its stock and trade or derives a significant or substantial portion of its revenues, or devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sale or display space for the sale, rent or display of pictures, books, periodicals, magazines, appliances, instruments, devices, toys, paraphernalia, videos, DVDs, and similar material which are distinguished or characterized by their emphasis on depictions of sexual activities.

3. Sexually explicit video cassette center is defined as an establishment which has a significant or substantial portion of its stock and trade, or derives a significant or substantial portion of its revenues, or devotes a significant portion of its interior business for advertising or maintains a substantial section of its sale or display space for the rental or retail sale of video cassettes or DVDs which depict material distinguished or characterized by an emphasis on or depictions of sexual activities.

A. Commercial or private sexual entertainment center is defined as any establishment

not otherwise described in this section which regularly makes available material, services, or entertainment appealing to sexual interest, including but not limited to a bath house, swingers club or other similar establishment if the establishment or its entertainment, services, or goods are advertised by or on behalf of the establishment in a manner patently designed to appeal to such sexual interest. Entertainment appealing to adult sexual interest shall mean any exhibition, live performance, display or dance of any type, which has as a significant or substantial portion of such performance in any sexual activities, or the exhibition of any person or persons in a nude state as defined herein;

B. Director shall mean the chief financial officer of the City of Smiths Grove or his designee;

C. Establishment shall mean a business entity, enterprise, activity, undertaking, or endeavor of any nature conducted for gain or profit, or a not for profit private club conducted, operated, or owned by an individual, partnership, limited liability company, registered limited liability partnership, corporation, association or any other entity, fixed, mobile or traveling, including its owners, operators, directors, shareholders, partners and employees;

D. Licensee shall mean a person who is the holder of a valid license under this chapter, also including an agent, servant or employee or other person acting on behalf of the licensee whenever the licensee is prohibited from doing a certain act under this chapter;

E. Nude shall mean exposure of a person in such a manner as to expose to view by patrons or members the genitals, pubic region or the areola or nipple of the female breast, even partially or completely covered by translucent material, or human or simulated male genitals in a discernable turgid state;

F. Sexual activity shall mean depiction of human genitals or the female breast, or acts of human masturbation, sexual intercourse, sodomy, fellatio, cunnilingus, holding or other erotic touching of the human genitals, pubic region, buttocks or breasts.

Section III: Restrictions, Requirements, and Conditions

A. An establishment engaging in sexually explicit entertainment activity may not have more than one outside flush to the wall facial style sign, not to exceed ten feet in length and three feet in width with no flashing lights and no lettering, wording or pictorial representational matter which is distinguished or characterized by an emphasis on depictions of sexual activities as defined hereinabove.

B. An establishment engaging in sexually explicit entertainment activity may not display its stock and trade or matter depicting, describing, or relating to sexual activities in such a manner to be subject to public view from outside the establishment, including but not limited to a view from public sidewalks, streets, arcades, hallways or passways.

C. An operator of an establishment engaging in sexually explicit entertainment activity or sexually explicit escort service, or its employee, shall not permit a person under eighteen years of age to be employed by or to enter his establishment, or to be a patron of such service. This chapter should not be construed to be an exemption from, or in conflict with, any requirement found in any statute, ordinance or regulation or other provision of law applicable to a licensee or potential licensee hereunder which is more stringent in terms of an age requirement for employees.

D. An operator engaging in a sexually explicit entertainment activity, shall at all times cause the interest of his establishment to be so attended as to ensure compliance with the requirements contained hereinabove.

E. An establishment licensed to engage in sexually explicit entertainment shall not provide such entertainment between the hours of 12:00 a.m. and 6:00 a.m.

F. The public entrance to a sexually explicit entertainment establishment shall not be located nearer than 500 feet from any church, synagogue, or other permanent place of worship, licensed day care center, public or private elementary, middle or secondary school, institution of higher learning or business college, any park, mall, playground, or park like area of open space under the control of a governmental agency. Such distance shall be measured along a straight line from the nearest property line of the real estate on which that building or area is located to the entrance to such establishment engaging in sexually explicit entertainment activity.

G. The public entrance to a sexually explicit entertainment establishment shall not be located nearer than 500 feet from any area zoned residential. Such distance shall be measured along a straight line from the boundary line of the nearest area zoned for residential purposes to the entrance to such an establishment engaging in a sexually explicit activity.

H. The public entrance to a sexually explicit entertainment establishment shall not be located nearer than 500 feet from the public entrance of another sexually explicit entertainment activity establishment. Such distance shall be measured in a straight line from the nearest entrance to a building containing an existing sexually explicit entertainment establishment to the entrance or proposed entrance to the building containing the proposed new sexually explicit entertainment establishment.

I. No entertainer, dancer, or escort in a sexually oriented business shall be permitted to have any physical contact with any other entertainer, dancer, employee, patron, or spectator, while that entertainer or dancer is performing.

No alcoholic beverages shall be present, stored, or consumed on any premises sexually oriented business.

No person shall appear nude on the premises of any sexually oriented business.

No person shall while on the premises of a sexually oriented business engage in or sexual activity.

Licensing Requirements

The owner or operator of an establishment intending to engage or engaging under a ed license in a sexually explicit entertainment activity, shall make application for a license with ccordance with this subchapter. A separate license is required for each separate or assumed hich an owner or operator conducts business. All applications must be accompanied by a igation fee. Such application shall be in writing, under oath, and shall be in the form he Director and shall contain the following information, together with such further information or may require:

The name and location of the establishment, including any assumed or e under which the establishment is or will be operated, and the name and business address unt;

2. The name, address, date of birth and social security number or tax number of the owner, to include any person who owns ten percent or more of the partnership, limited liability company or limited partnership;

3. The name and address of all directors and officers, or persons performing a

similar function to an officer or director, of any licensee or applicant which is a corporation, or the name and address of the manager of any licensee or applicant which is a limited liability company, and the name and address of the licensee's designated agent for service of process.

4. In the event the applicant or licensee is not the owner of record of the real property on which the licensed establishment is located or to be located, the application shall include a notarized statement from the owner of record of the real property acknowledging that a sexually explicit entertainment establishment is to be located on the real property upon the issuance of the license. The applicant shall also furnish the name and address of the owner of record of the real property and a copy of the lease or rental agreement;

5. The name, address, date of birth and social security number of all persons engaged in the day to day employment or contract labor on the licensed premises. If the licensee is to engage in the sale, rental, or showing of books or movies distinguished or characterized by an emphasis on matter depicting or relating to sexual activities as defined hereinabove, then all persons designated to engage in the selection of such books and movies to be offered for sale or rental or to be shown shall be subject to the provisions of this section. All persons who at any time shall be responsible for attending the entrance of the establishment for the purpose of ensuring compliance with the provisions hereinabove shall be subject to the provision of this section;

6. The name, address, date of birth and social security number of the individual designated by the applicant to manage the business and responsible for ensuring compliance with the restrictions, requirements and conditions of this chapter and with the rules and regulations promulgated by the Director. A sworn affidavit of that individual stating that he has received a copy of this chapter and that

he willfully undertake on behalf of the applicant to comply with this chapter and all applicable rules shall be included with the application;

7. The name, address, date of birth and social security number of the individual designated by the applicant or licensee to be responsible for keeping the information required hereunder current at all times, together with a sworn affidavit of that individual stating that he has received a copy of this chapter, that he understands the requirements hereof pertaining to disclosure of information, and that he willfully undertakes on behalf of the applicant to comply therewith.

H. The nature of the activity or activities to be engaged in at such location.

I. A criminal record report for the applicants, owners, directors, partners, officers, or employees whose names are required pursuant to this chapter within the last five years for any gambling or sexual offense.

J. The name and address of any person to whom the applicant wants to mail notice to be given in case of a violation or of other matters effecting the license hereunder.

11. A photograph or drawing of any signs displayed or proposed to be displayed on the exterior of the establishment and a statement of the dimensions of the signs.

12. Proof of compliance with occupational license fees.

13. The information required hereinabove shall be at all times current, even after the granting of the license by the Director, it shall be the responsibility of the operator or other person designated in the license application to notify the Director no later than the close of the first business day after the effective date of any changes, alterations or modifications in any information contained in the application.

B. The Director will cause the premises to be inspected within fifteen days after the application has been submitted. After such application has been received and all application requirements of this chapter are in compliance, the Director shall then issue a license within twenty days after the application has been submitted if all restrictions, requirements and conditions and all applicable requirements of this chapter and other applicable laws have been met, except that no license will be issued if the applicant or any owner, operator, director, officer, partner, shareholder or employee has been convicted of any sexual or gambling offense as set forth hereinabove. The granting of a license does not certify compliance with all applicable laws nor does it estop the City from enforcement of all applicable laws or ordinances. If the inspection reveals failure to comply with any restrictions, requirements or conditions herein, the Director shall notify the applicant in writing of that fact, stating what failures have been discovered, allowing reasonable time to correct such defects, and inform the applicant of the appeal procedure if the applicant does not agree with the Director's decision.

C. Any license granted according to this subchapter shall at all times be conspicuously posted and displayed in a public area so as to be open to the view of the patrons and proper public authorities.

D. Application for or granting of a license according to this subchapter is deemed to permit periodic inspections of any establishment required to have a license under this chapter by the Director or its designee or any law enforcement officer for the purpose of verifying compliance with the terms and conditions of this chapter.

E. No operator shall own, maintain, operate or conduct an establishment engaging in sexually explicit entertainment activities defined hereinabove without a license required by this chapter.

F. No owner shall permit sexually explicit entertainment activities to be conducted on his property unless and until such property is licensed according to this chapter.

G. All licensees shall be for the fiscal year July 1 to June 30th, or the remaining portion of such fiscal year. The annual license fee shall be \$1,000.00 which shall be due and payable upon the issuance of a license and on or before July 1st of each year thereafter. All license fees shall be remitted to the City Treasurer. Application for renewal of the license shall be made on or before June 30th of each year and accompanied by the annual fee along with any occupational license fee required. Such applications shall also contain any changes in the information required hereinabove which have occurred since the previous application.

Section V: Administration, Suspension, Revocation or Refusal to Renew a License

A. The Director may refuse to issue, renew, or may revoke or suspend any license granted under this chapter if at any time the Director finds that a licensee or applicant;

1. Has failed to comply with the restrictions, requirements and conditions of this chapter, or with such material regulations as may be enacted by the Director pursuant to this chapter; Has knowingly provided false information to gain or maintain a license or work permit or has willfully failed to keep the information required hereinabove current;

2. Has knowingly allowed or an operator or employee has knowingly allowed possession, use or sale of controlled substances on the premises, or knowingly allowed prostitution or solicitation for prostitution on the premises, or knowingly allowed the violation of other criminal statutes as set out hereinabove.

B. If the Director finds that a licensee or applicant has violated any of the provisions of

this chapter, he or his designee may request:

1. The licensee or applicant orally or through warning letter take corrective action;
2. The licensee or applicant to meet informally with him or his designee. He or his designee may require the licensee or applicant to appear before him at a hearing and show cause why disciplinary action should not be taken. At any point, the licensee or applicant may request that a hearing be held. At any hearing under this subchapter, the Director shall consider all relevant factors including:
 - a. The willfulness of the licensee or applicant's failure to comply with the applicable restrictions, requirements and conditions, and the willfulness of the failure of the individual designated on the licensee's application to undertake such compliance;
 - b. The extent to which the failure to comply has been repeated by the licensee or applicant or by the individual designated on the licensee's application to undertake such compliance;
 - c. Any mitigating circumstances which the licensee or applicant has shown which makes compliance impractical or impossible;
 - d. Whether the licensee or applicant has remedied the failure to comply prior to the hearing;
 - e. The willfulness of the failure of the owner or operator to undertake compliance with the disclosure of current information required hereunder;
 - f. The extent to which such failure to disclose information required to be kept hereunder has been repeated;
 - g. The length of time such disclosure requirements have been out of compliance;

- h. The number of violations;
- i. The number and frequency of incidents of illegal conduct;
- j. Whether the licensee or its agents or employees are found to have had knowledge of the illegal conduct;
- k. Whether the licensee or its agents or employees are found to have had knowledge of the illegal conduct;
- l. The degree to which licensee's business is found to have permitted or encouraged such illegal conduct.

3. When the Director determines or is requested to hold a hearing pursuant to this subchapter, he shall serve written notice of the hearing and of the specific nature of the charges to be determined. That notice shall be served upon the licensee or applicant at the address listed for the licensee or applicant in the application at least seven days in advance of the hearing. Service of notice shall be deemed complete upon certified mailing return receipt requested, or personal delivery. At the hearing, the Director shall afford the licensee or applicant an opportunity to be represented by an attorney, to present evidence, to cross examine adverse witnesses, and otherwise to rebut the evidence presented against the licensee or applicant. Within three days after the hearing and based upon evidence received at the hearing, the Director shall issue his findings and shall determine the sanction, if any, to be imposed on the licensee or applicant, or upon the owner of the licensed establishment which may include suspension of the licensee's license for a period not to exceed one year, revocation of the license, or refusal to issue a license. If a Director suspends a license a Director may at its option allow the owner to pay in lieu of part or all of the days suspended the sum of up to \$50.00 per day. If the licensee's license is suspended or the

application refused, all persons listed on the application whether as partner, director, officer, owner, part owner, operator or managing partner, may also be suspended from participating in any sexually explicit entertainment activities for a period not to exceed five years, if the Director finds that such persons knew or reasonably should have known of the violation for which the license is suspended or refused and failed to take steps to promptly cure the violation.

4. The findings and rulings of any hearing before the Director shall be a final determination of the issues raised unless appealed. Any such appeal must be made within twenty days of the Director's finding to a court of competent jurisdiction. If an applicant or licensee pursues a judicial appeal of the final decision of the Director, then the City shall immediately issue a provisional license to the applicant or to the licensee and that licensee or applicant may operate or continue to operate a sexually oriented business pending the entry of a judgment on the appeal.

5. The Director is empowered to enact from time to time whatever rules and regulations are deemed necessary for the orderly and complete administration of this chapter as the need arises for such rules and regulations.

VI. Effect and Limitation

It is not the purpose of this chapter to establish community standards on obscenity nor to permit persons to engage in any activity which is in violation of law, including but not limited to state laws pertaining to the advertising, promotion, distribution or sale of obscene matter, or matters portraying a sexual performance by a minor, or state laws pertaining to the use of a minor in a sexual performance, or promotion of a sexual performance by a minor, or the use of a minor to distribute material portraying sexual performance by a minor.

VII. Submittal of Application

An applicant licensee shall sign and submit a consent providing that the Director, his designee or any law enforcement officer may inspect the entire licensed premises at any reasonable time with immediate entry. Nothing in this subchapter shall prevent regulatory agencies, including but not limited to building inspectors, health inspectors, and OSHA inspectors, from conducting unannounced routine inspections of all of the licensed premises to ensure compliance with all applicable codes, statutes and ordinances. Further, the Director or any agent or employee designated by him may examine the books, papers and records of any applicant or licensee as he may deem reasonably necessary to perform his duties hereunder.

VIII. Penalty and Forfeitures

Any person who violates any provision of this chapter for which no specific penalty is provided shall be guilty of a misdemeanor and for the first offense be fined not less than \$100.00 and not more than \$500.00, or be imprisoned in the county jail for not more than six months or both. For the second and each subsequent violation, he shall be fined not less than \$200.00 or more than \$500.00, or be imprisoned in the county jail for not more than twelve months or both. If the person who violates any provision of this chapter is a corporation, limited liability company, partnership, joint stock company, association or fiduciary, then the president and/or principal officers, members or partners responsible for such violations may be punished and imprisoned as authorized by this section.

Upon any conviction of a person for the violation of any offense in this chapter, all property held in violation of this chapter, and any person property, including but not limited to books, video tapes, films and other property used in the commission of furtherance of an offense under this chapter shall be forfeited

as provided in KRS 500.090 by court order and sold, destroyed, or otherwise disposed of in accordance with KRS 500.090.

Approved: James L. Gilley
James L. Gilley, Mayor
First Reading November 24, 2003

Attest: Donna L. Looney
Donna L. Looney, City Clerk
Second Reading December 1, 2003