

MICHIGAN CITY COMMON COUNCIL

ORDINANCE NO. 4254

AMENDING THE MICHIGAN CITY COMPREHENSIVE ZONING ORDINANCE NO. 4120 BY CHANGING THE PROVISIONS FOR ADULT REGULATED USES AND REPEALING CERTAIN PROVISIONS OF THE MICHIGAN CITY MUNICIPAL CODE PERTAINING TO ADULT REGULATED USES

WHEREAS, the Plan Commission (the “Plan Commission”) of the City of Michigan City, Indiana (the “City”) has the authority, in accordance with Indiana Code 36-7-4-602 to initiate a proposal to adopt amendments to the Michigan City Comprehensive Zoning Ordinance (the “Zoning Ordinance”); and

WHEREAS, the Plan Commission and the Common Council have a duty to investigate the feasibility of adopting reasonable regulations to protect the citizens of the City from activities that have adverse effects on and are harmful to the health, safety, and general welfare of its citizenry; and

WHEREAS, the Plan Commission has found and the Common Council finds that a substantial need exists to significantly revise the Zoning Ordinance provisions regarding sexually oriented businesses (referred to as “adult regulated uses” in the Zoning Ordinance) within the City and to repeal certain sections of the Municipal Code which would conflict with those revisions; and

WHEREAS, the City of Michigan City retained Duncan Associates, Inc. (referred to as “Consultant”) to conduct a review of the City’s adult regulated use Zoning Ordinance provisions, assess parameters of the locations where sexually oriented businesses may locate, and recommend Zoning Ordinance modifications that would be protective of the health, safety, and general welfare of the City’s citizens but, also, be consistent with the protections afforded by the United States Constitution; and

WHEREAS, Consultant utilized nationally-known planners to provide these services; and

WHEREAS, the services provided by the Consultant to the Plan Commission and Common Council included the following elements:

1. Study of possible sites where sexually oriented businesses might be located within the City of Michigan City;
2. Consultation with the planning staff of the City of Michigan City on this issue;
3. Review of existing ordinances in the City of Michigan City and LaPorte County; and,
4. Review of studies and litigation concerning sexually oriented businesses in other communities throughout the U.S.; and

WHEREAS, the United States Supreme Court in *City of Renton v. Playtime Theater, Inc.*, 475 U.S. 41 (1986), held that local governments may rely upon the experiences of other cities as well as on its own studies in enacting local legislation to regulate sexually oriented businesses; and

WHEREAS, the United States Supreme Court in *Renton* and other cases has held that a local government may regulate such uses through content-neutral, time, place, and manner restrictions, so long as said regulations are designed to serve the government interest and do not unreasonably omit avenues of communication, and are aimed not at the content of protected speech within said establishments but, rather, at the secondary effects of said establishments on the surrounding communities; and

WHEREAS, it is not the intent of this Ordinance or any previously enacted ordinance to suppress or limit any speech activities protected by the First Amendment to the United States Constitution, but to enact a content neutral, reasonable time, place and manner regulation that effectively addresses the harmful secondary effects associated with sexually oriented businesses;

WHEREAS, the City of Michigan City respects the First Amendment rights of people and businesses, including the right to present certain types of entertainment that may not appeal to the entire population of the City, and through this Ordinance, it is the desire of the City of Michigan City to balance such rights of people and businesses that present sexually oriented entertainment with the City of Michigan City's interests in ensuring that the community does not suffer from adverse secondary effects of sexually oriented businesses; and

WHEREAS, the following studies regarding the adverse secondary effects associated with sexually oriented businesses have been provided to the City of Michigan City's Plan Commission and the Common Council:

- Kelly, Eric D. and Connie B. Cooper. 2000. *"Everything you always wanted to know about regulating sex businesses."* Chicago, IL: American Planning Association, Planning Advisory Service Report No. 495/496.
- National Law Center for Children and Families. "NLC Summaries of SOB Land Use Studies." 2005.
- Community Defense Council. "Appendix D: Summaries of Secondary Effects Reports."
- Hecht, Peter R. "Report to the American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses." March, 1996.
- Weinstein, Alan C. and Richard McCleary. "The Association of Adult Businesses with Secondary Effects: Legal Doctrine, Social Theory, and Empirical Evidence." 2012.
- McCleary, Richard and Alan C. Weinstein. "Do 'Off-Site' Adult Businesses Have Secondary Effects? Legal Doctrine, Social Theory, and Empirical Evidence." *Law & Policy*, Vol. 31, No. 2, April 2009.
- Cohen, Lawrence E. and Marcus Felson. "Social Change and Crime Rate Trends: A Routine Activity Approach." *American Sociological Review*, 1979, Vol. 44(August):588-608.
- McCleary, Richard. "Rural Hot Spots: The Case of Adult Businesses." *Criminal Justice Policy Review*, 2008, 19(2), pp. 153-163.
- Adams County Sheriff's Department. "Adams County Nude Entertainment Study and Ordinance." Adams County, Colorado. 1988 - 1991.
- Duncan Associates. "Regulation of Sexually Oriented Businesses in Alachua County: Field Survey, Analysis and Recommendations." Alachua County, Florida. August 2003.
- Quest Genetics. "Analysis Report Conducted by Quest Genetics [Positive tests for semen found on paper towels from video booths]." Alachua, Florida. October and November, 2003.
- Duncan Associates. "Evaluation of Zoning Regulations of Alachua, Florida, as Applied to Sexually Oriented Businesses." Alachua, Florida. May 11, 2004.
- Amarillo Planning Department. "A Report on Zoning and Other Methods of Regulating Adult Entertainment in Amarillo." Amarillo, Texas. September 12, 1977.

Duncan Associates and Cooper Consulting. "Sexually Oriented Entertainment & Related Businesses." Amherst, New York. October 2003.

Office of Land Development Services. "Report on Adult Oriented Businesses in Austin." Austin, Texas. May 19, 1986.

Planning Department Report. "Regulation of Adult Uses." Beaumont, Texas. September 14, 1982.

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Duncan Associates and Cooper Consulting. "Survey of Adult Oriented, Tattoo, Pawn, Check Advance, Title Loan, and Day Labor Businesses." Biloxi, Mississippi. June 21, 2001.

McCleary, Richard. "Crime Risk in the Vicinity of a Sexually Oriented Business: A Report to the Centralia City Attorney's Office." Centralia, Washington. February 28, 2004.

Community Protection Committee. "Final Report on Vice in Hamilton County." Chattanooga-Hamilton County, Tennessee. May 1997.

Malin MAI, Peter. "Report for the Office of the City Attorney: An Analysis of the Effects of Sobs on the Surrounding Neighborhoods in Dallas, Texas." Dallas, Texas, April 1997.

Zoning Administration, et al, prepared for Denver City Council. "A Report on the Secondary Impact of Adult Use Businesses in the City of Denver." Denver, Colorado, January 1998.

Thorpe, Robert W. "Des Moines Adult Use Study." Des Moines, Washington. August 1982.

Duncan Associates and Cooper Consulting. "Regulating Sexually Oriented Businesses in Detroit." Detroit, Michigan. January 24, 2005.

Palumbo, Gary, Town/Village Planner. "Adult Business Study." Ellicottville [Village of], New York. January 1998.

Department of Planning, Research & Development report to Office of City Attorney. "Effects of Adult Entertainment Businesses on Residential Neighborhoods." El Paso, Texas. September 26, 1986.

Cooper Consulting and Duncan Associates. "Survey of Appraisers in DFW: Effects of Land Uses on Surrounding Property Values." Fort Worth, Texas. September 2004.

McCleary, Richard, and James W. Meeker. "Final Report to the City of Garden Grove: The Relationship between Crime and Adult Business Operations on Garden Grove Boulevard." Garden Grove, California. October 23, 1991.

Sexually Oriented Business Ordinance Revision Committee. "Legislative Report on an Ordinance Amending Section 28-73 of the Code of Ordinances of the City of Houston, Texas." Houston, Texas. January 7, 1997.

Department of Metropolitan Development, Division of Planning. "Adult Entertainment Businesses in Indianapolis: An Analysis." Indianapolis, Indiana. 1984.

Department of Planning & Development. "Study & Recommendations for Adult Entertainment Businesses in the Town of Islip." Islip, New York. September 23, 1980.

Kelly, Eric D. and Connie B. Cooper. "Adult Use Study, Part 4: Summary, Findings and Recommendations." Kansas City, Missouri. April 1998.

Kelly, Eric D. and Connie B. Cooper. "Adult Use Study, Concluding Policy Analysis and Recommendations." Kansas City, Missouri. January 1999.

Oedipus, Inc. 1998. "Adult Use Survey." Kansas City, Missouri. 1998.

Kennedale Police Department. "Report on Nighttime Traffic Circulation in the Oak Crest Neighborhood." Kennedale, Texas. May 2005.

Virnig, April M., Assistant City Attorney. "Survey of Real Estate Appraisers." Kennedale, Texas. July 3, 2003.

Planning Department. "The City of Kent Adult Use Zoning Study." Kent, Washington. November 1992.

Duncan Associates and Cooper Consulting. "Study of Sexually Oriented Business." LaPorte County, Indiana. August 2012.

Duncan Associates and Cooper Consulting. "Sexually Oriented Entertainment & Related Businesses." Kenton and Campbell Counties, Kentucky. January 2004.

City Commission Public Hearing Minutes. "Amending Title XI of the City Code by Adding a New Chapter Prohibiting the Establishment of Sexually-Oriented Businesses in Certain Areas of the City." Las Vegas, Nevada. March 15, 1978.

Department of City Planning. "Study of the Effects of the Concentration of Adult Entertainment Establishments in the City of Los Angeles." Los Angeles, California. 1977.

McCleary, Richard. "Crime-Related Secondary Effects of Sexually-Oriented Businesses: Report to the City Attorney." Los Angeles, California. May 6, 2007.

Duncan Associates. "Background, Analysis and Recommendations: Zoning Amendments Related to Sex Businesses." Manassas, Virginia. December 2010.

Planning and Development Department. "Adult Entertainment Business Study for Manatee County." Manatee County, Florida. June 1987.

Duncan Associates and Cooper Consulting. "Regulating Adult Oriented Businesses." Memphis and Shelby County, Tennessee. December 11, 2006.

Minnesota Crime Prevention Center. "An Analysis of the Relationship Between Adult Entertainment Establishments, Crime and Housing Values." Minneapolis, Minnesota. October 1980.

Planning Department. "Regulation of Adult Entertainment Establishments in New Hanover County." New Hanover County, North Carolina, July 1989.

Department of Planning Development. "Adult Use Study." Newport News, Virginia. March 1996.

Department of City Planning. "Adult Entertainment Study." New York City, New York. 1994.

Insight Associates for the Times Square Improvement District. "Report on the Secondary Effects of the Concentration of Adult Use Establishments in Times Square Area." New York City, New York. April 1994.

Gustin, Jon Stephen, Retired Oklahoma City Police Sergeant. "Quality of Life: A Look at Successful Abatement of Adult Oriented Business Nuisances in Oklahoma City, 1984-89." Oklahoma City, Oklahoma. June 1992.

Community Development Department, Planning Division. "Adult Entertainment businesses in Oklahoma City: A Survey of Real Estate Appraisers." Oklahoma City, Oklahoma. March 3, 1986.

Duncan Associates and Cooper Consulting, David Kuehl, and Shawn Wilson. "Survey of Florida Appraisers: Effects of Land Uses on Market Values." Palm Beach County, Florida. May 2008.

Duncan Associates. "Regulation of Sexually Oriented Businesses: An Analysis for Perry County, Indiana." Perry County, Indiana. July 2007.

Planning Department. "Adult Business Study." Phoenix, Arizona. May 25, 1979.

Duncan Associates. "Sexually-Oriented Business Study." Rochester, New York. July 2000.

"Survey of Appraisers in Rochester, New York." [Excerpts from Kelly, Eric D. and Connie B. Cooper. 2000. *Everything you always wanted to know about regulating sex businesses.* Chicago, IL: American Planning Association, Planning Advisory Service Report No. 495/496, pages 51 57].

City Commission. "Adult Entertainment Ordinances Minutes." Rome, Georgia. March 6, 1995.

Planning Department. "Regulation of Adult Entertainment Establishments." Saint Croix County, Wisconsin. September 1993.

Department of Construction and Land Use. "Director's Report and Recommendation on a Proposed Land Use Code Amendment Regulating the Location of Topless Dance Halls." Seattle, Washington. March 1986.

Dept. of Planning and Dev. "Director's Report: Adult Cabarets in Seattle." Seattle, Washington. March 28, 2006.

Town of Southeast. "Adult Use Zoning Planning Report." Southeast, New York. August, 18, 2005.

Dahlgren, Shardlow and Uban, Inc. "Summary of Review and Conclusions Regarding the City of St. Cloud's Regulation of Adult Use Businesses." St. Cloud, Minnesota. December 1994.

Police Department. "A Digest of Research: The Evidence of Relationships between Adult-Oriented Businesses and Community Crime and Disorder." St. Mary's, Georgia. July 1996.

Department of Planning and Economic Development and Minnesota Crime Control Planning Board. "Effects on Surrounding Area of Adult Entertainment Businesses in St. Paul." St. Paul, Minnesota. June 1978.

Cooper, Connie B., Eric D. Kelly, David C. Kuehl, and Shawn C. Wilson. "Survey of Texas Appraisers: Secondary Effects of Sexually Oriented Businesses on Market Values." Texas, June 2008.

Duncan Associates and Cooper Consulting. "Survey, Findings and Recommendations of Sexually Oriented Business." Toledo, Ohio. August 26, 2002.

Leverenz, Michael J., Assistant Chief of Police. "Police Memorandum on Adult Entertainment Ordinance." Tucson, Arizona. May 1, 1990.

Planning Department Staff Report to City Planning Commission. "Amendment to Zoning Regulations; Adult Business in C-Z Zone with Conditional Use Permit." Whittier, California. January 1978.

WHEREAS, the study prepared by Duncan Associates in 2012 for LaPorte County specifically looked at activities at one adult business in Michigan City (now closed) and several in the region, providing anecdotal evidence clearly confirming that the kinds of adverse effects and problems found in these businesses in other communities also arise in northern Indiana; and

WHEREAS, the Plan Commission and Common Council recognize that some of the cited studies included bars without sexually oriented entertainment among the businesses studied; nevertheless, the Common Council finds that addressing nightclubs having live, sexually oriented entertainment is a more critical local issue than that of bars without such entertainment, for these reasons:

1. Bars in Indiana are regulated by the State, and those State regulations directly address many of the concerns that arise with the service of alcohol but not those arising from the activities common in a sexually oriented business; and
2. The interaction between sexually oriented entertainers who are paid to work with very limited clothing and the customers who pay to see them work in these establishments creates a sexually charged environment and the opportunity to negotiate for the provision of additional services that do not involve dancing or other protected expression and this is unacceptable under the standards of the City of Michigan City and its citizens.

WHEREAS, based on all of the evidence in the record before it, including, but not limited to, the Resolution and recommendation of the Plan Commission, the studies identified above, and the recommendations of Duncan Associates, Inc. which are based on its experience in other communities and its review of the studies cited above and other local efforts to address such secondary adverse effects, the Common Council finds that the following principles are essential to the effective control of sexually oriented businesses: 1. That certain conduct occurring on the premises of sexually oriented businesses is detrimental to the health, safety, and the general welfare of the citizens of the City of Michigan City and, therefore, such conduct must be regulated; and 2. That regulation of sexually oriented businesses is necessary because in the absence of such regulation, significant criminal activity, including prostitution, illegal drug use, disruptive behavior and high-risk sexual conduct that may result in health hazards, has historically and regularly occurred; and 3. That sexually oriented businesses have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and downgrading of property values; these

deleterious effects create a legitimate concern of the City of Michigan City to protect property values and business interests and to generally protect the City of Michigan City from urban blight associated with sexually oriented businesses; and 4. That it is well recognized that sexually oriented businesses have serious objectionable operational characteristics, particularly when they are located in close proximity to each other, thereby contributing to urban blight; and 5. That the secondary effects precipitated by the establishment of a sexually oriented business can be substantially mitigated by requiring separation of the sexually oriented business from sensitive land uses and places of public assembly and from other sexually oriented businesses; and 6. That sexually oriented businesses have the greatest adverse effect on residential neighborhoods and should thus be separated, to the maximum extent practicable, from residential neighborhoods; and 7. That sexually oriented businesses are likely to attract criminal elements that prey on “soft targets,” including children, and it is thus important to separate sexually oriented businesses from libraries, and child care, educational, recreational and religious facilities, all of which are places where children are likely to congregate; and 8. That because of the tendency of sexually oriented businesses to attract criminal elements that prey on soft targets, it is important to seek locations for such businesses that are not located along pedestrian routes, where young people, old people, and others who are vulnerable, are likely to walk in going about their day-to-day business; thus, locations to which the primary access is by automobile minimize the risk of persons going about their daily business encountering persons who are visiting or even loitering around the sexually oriented business; and 9. That the types of sexually oriented media shown in sexually oriented video viewing booths are available for viewing, purchase, or rental in other types of sexually oriented businesses which are less harmful to the health, safety and welfare of the community, and therefore, sexually oriented video viewing booths should be prohibited in favor of such other media venues; and 10. That experiences in other communities show that uses such as sexually oriented bath houses, sexually oriented body painting studios, sexually oriented encounter centers, sexually oriented massage businesses, sexually oriented motels, sexually oriented modeling/photography studios, and sexually oriented video viewing kiosks, booths or arcades create the opportunity for casual high-risk sexual activity, prostitution, drug use, other criminal activity, and create logistical difficulties and risks of physical endangerment for police officers responsible for policing such businesses; that these highly problematic uses do not involve First Amendment protected speech or such protected speech is available in other venues which are less harmful to the health, safety, and welfare of the community, and such uses are associated with deleterious effects; and, therefore, such uses should be prohibited within the City of Michigan City; and 11. That experiences in other communities show that private booths, back rooms, “VIP” rooms, and other small and private spaces in sexually oriented businesses create the opportunity for high-risk sexual activity, prostitution, drug use, and other criminal activity, and create logistical difficulties and risks of physical endangerment for police officers responsible for policing such businesses and, for these reasons, it is essential that movies, performances, and other activities at sexually oriented businesses be permitted only in large rooms that are open and visible to management, other patrons, and code enforcement and police officers who may visit the establishment during operating hours; and

WHEREAS, the Common Council desires to minimize and control the adverse secondary effects associated with sexually oriented businesses and thereby protect the health, safety, and welfare of its citizenry; preserve the quality of life; preserve property values and the character of surrounding neighborhoods; and to deter the spread of urban blight; and

WHEREAS, staff and consultants for the City of Michigan City are currently in the process of planning for and drafting language for a new zoning or overlay district for the U.S. Highway 12 corridor; and

WHEREAS, it is the intent of the City not to introduce significant new uses to that corridor during the time that the ordinance enacting a new zoning or overlay district is being developed; and

WHEREAS, for those reasons, this Ordinance includes an interim provision limiting the establishment of adult uses along that corridor; and

WHEREAS, the Common Council finds that amendments to the Zoning Ordinance are necessary to effectively address allowable uses, location, and site design for such sexually oriented businesses; and

WHEREAS, the Plan Commission convened a public hearing on September 24, 2013, and received public testimony concerning amendments to the text of the Zoning Ordinance concerning the regulation of sexually oriented businesses and the secondary effects of sexually oriented businesses, including increased crime, prostitution, drug use and other illegal activities, and depreciation of property values, in accordance with all requirements of applicable law; and

WHEREAS, the Common Council received the report and recommendations of the Plan Commission concerning such text amendments to the Zoning Ordinance prior to its meeting of October 30, 2013 and on such date received public comments concerning the amendments recommended by the Plan Commission in accordance with all requirements of applicable law.

NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MICHIGAN CITY, INDIANA AS FOLLOWS:

Section 1. That the foregoing recitals are incorporated herein by reference.

Section 2. That after reviewing the Plan Commission's Resolution No. 2-13 and related Findings of Fact and other information previously filed with the Common Council and that provided to the Common Council by the public during the time set aside for public comment; having given due consideration, as required by Indiana Code 36-7-4-603, to how the proposed Zoning Ordinance change will affect or conform to 1) the City's Comprehensive Plan; 2) the current conditions and the character of current structures and uses in the entire City of Michigan City; 3) the most desirable uses for which residential property in the City of Michigan City is adapted; 4) the need to conserve property values throughout the City of Michigan City; and 5) whether the proposed change is consistent with responsible development and growth in the City of Michigan City; having found it is necessary to protect the health, safety and welfare of the citizens of Michigan City to enact the proposed changes in the Zoning Ordinance and repeal certain sections of the Municipal Code all regarding adult regulated uses; in view of all of the evidence in the record before it and using the appropriate standards to guide its determination, the Common Council finds that it has been demonstrated to be in the best interest of the City of

Michigan City that the changes to the Zoning Ordinance and the Code as recommended by the Plan Commission in its Resolution No. 2-13 is approved by the Common Council.

Section 3. That the amendments to the Zoning Ordinance, which includes adding certain provisions and deleting certain other provisions related to adult regulated uses, is set forth in Exhibit A (which is attached hereto and incorporated herein), and are hereby adopted in their entirety.

Section 4. That the following provisions of the Michigan City Municipal Code (referred to as the "Municipal Code") shall be repealed:

- (a) Chapter 26, Article III entitled "Massage" shall be repealed in its entirety; and,
- (b) Section 50-162 and Section 50-163 of Article VIII of Chapter 50.

Section 5. That this Ordinance shall be effective upon its passage by the Common Council, approval by the Mayor of Michigan City, Indiana, and any necessary publication.

Introduced by: /s/ Chris Schwanke, Member

Adopted this 30th day of October, 2013 by the Common Council of the City of Michigan City, Indiana.

/s/ Duane Parry, President
Common Council
City of Michigan City, Indiana

This Ordinance is approved by me this 30th day of October, 2013.

/s/ Ron Meer, Mayor
City of Michigan City, Indiana

ATTEST: /s/ Gale A. Neulieb, City Clerk
City of Michigan City, Indiana

EXHIBIT A

PROPOSED AMENDMENTS TO THE MUNICIPAL CODE FOR THE CITY OF
MICHIGAN CITY, INDIANA RELATED TO REGULATION OF ADULT USES

AMEND Appendix C – Joint Zoning Ordinance

Article 07. Business Districts

AMEND “Table 07.02 Schedule of Permitted Uses” as follows:

- Retail trade limited to the following:
 - DELETE “Adult book and video stores”
 - ADD “Media store, general,” ADD “P” under each zoning district, and ADD cross-reference to Section 14.03(d) under “Use Requirements”
 - ADD “Media store, with backroom,” ADD “P” under each zoning district, and ADD cross-reference to Section 14.08(d) under “Use Requirements”
- Services limited to the following:
 - DELETE “Video rental store”
- Health care and social assistance limited to the following:
 - ADD “Massage therapy services,” ADD “P” under each zoning district, and ADD cross-reference to Section 14.08(d) under “Use Requirements”
- Entertainment and recreation limited to the following:
 - DELETE “Adult regulated use”
 - DELETE “Massage establishments”

Article 08. Central Business Districts

AMEND “Table 08.02 Schedule of Permitted Uses” as follows:

- Retail trade limited to the following:
 - ADD “Media store, general,” ADD “P” under each zoning district and ADD cross-reference to Section 14.03(d) under “Use Requirements”
 - ADD “Media store, with backroom,” ADD “P” under each zoning district, and ADD cross-reference to Section 14.03(e) under “Use Requirements”
- Services limited to the following:
 - DELETE “Video rental store”
- Health care and social assistance limited to the following:
 - ADD “Massage therapy services,” ADD “P” under each zoning district, and ADD cross-reference to Section 14.08(d) under “Use Requirements”

Article 09. Industrial Districts

AMEND “Table 09.02 Schedule of Permitted Uses” as follows”

- Retail trade limited to the following:
ADD “Adult retail store,: ADD “P” under each zoning district, and ADD cross-reference to Section 14.09(a) under “Use Requirements”
- Health care and social assistance limited to the following:
ADD “Massage therapy services,: ADD “P” under each zoning district, and ADD cross –reference to Section 14.08(d) under “Use Requirements”
- Entertainment and recreation limited to the following:
ADD “Adult cabaret,” ADD “P” under each zoning district, and ADD cross-reference to Section 14.09(a) under “Use Requirements”

Article 14 – Use Regulations

AMEND “Section 14.03 Retail Trade” as follows”

- ADD(d) Media Store, General.
 - (1) A “Media Store General” is a store that sells or rents books, videos and other media in which 10 percent or less of the retail floor area or numbers of items in inventory are adult media.
 - (2) There shall be no electronic viewing of adult media within the store.
 - (3) The store shall be treat as an “Adult Retail Store” If it meets any of the criteria contained in the definition of an “Adult Retail Store.”
- ADD(e) Media Store, with Backroom.
 - (1) A “Media Store, with Backroom: is a store that sells or rents books, videos and other media in which more than 10 percent but less than 35 percent of the retail floor area or numbers of items in inventory are adult media.
 - (2) The store shall continuously meet the following conditions:
 - (a) All adult media shall be maintained in a separate room from other media;
 - (b) Access to the room shall be through an opaque, solid door controlled through the use of an electronic access release located at least 66 inches above the floor located at the checkout counter and controlled by a store employee;
 - (c) The room shall be posed with a notice indicating that only persons 18 years of age or older are allowed in the room; and,
 - (d) There shall be no electronic viewing of adult media within the store.
 - (3) The store shall be treated as an “Adult Retail Store” if it meets any of the criteria contained in the definition of an “Adult Retail Store.”

AMEND “Section 14.08 Health Care and Social Services” as follows:

- ADD(d) Massage Therapy Services.
 - (1) "Massage Therapy Services" shall be a permitted use only when provided by massage therapist certified under Indiana Code Title 25, Art. 21.8 or by physicians, surgeons, nurses, physical therapists, occupational therapists, or chiropractors who are licenses, certified or registered to practice their respective professions under the laws of the state.
 - (2) All licenses or certified professionals providing massage therapy shall have their state license or certification posted in a conspicuous place clearly visible by all persons entering the place of business, with the exception of licensed or certified professional providing massage therapy within a hospital, nursing home, sanitarium, senior assisted living facility or other health care facility licenses under the state.
 - (3) Excepted from these provisions are barbers and beauticians licensed under the laws of the state, providing massage limited to the head and scalp; and trainers working as employees of accredited high schools and college acting within the scope of their employment.

AMEND "Section 14.09 Entertainment and Recreation" as follows"

REPEAL (a) Adult Entertainment Business

NEW SUB SECTION

(a) Adult Regulated Uses

(1) Prohibited Uses

(a) Purpose. The purpose of this sub-section is to be very clear about the prohibition of uses specified here. Under basic principles of zoning, uses that are not listed as "permitted" are prohibited; however, litigation and studies from other communities suggest that there is sometimes confusion in the application of adult use regulations to similar and related uses.

(b) Prohibited Uses. The following uses are prohibited:

1. Adult bath house;
2. Adult encounter center;
3. Adult massage establishment;
4. Adult motel;
5. Adult video arcade;
6. Escort services, whether provided by an agency or individual;
7. Nude modeling or nude photography studio; and,
8. The showing of any electron or visual media to the public in a space of less than 600 square (see § 14.09(a)(4)a.). Nothing in this description is intended to apply to private activities of

residents or their description is intended to apply to private residence. Nothing in this description is intended to apply to pay-per-view fees charged to the occupant of a hotel room

(2) Locational Standards Applicable to All Adult Regulated Uses

- a. Separation Requirements. Any adult regulated use shall be located at least 750 feet from any R-designated residential zoning district and at least 750 feet from any other uses shown below. Distance limitations shall be measured in a straight line forming the shortest distance between any property line of the adult regulated use and the property line of any R-designated residential zoned property or property occupied by uses specified herein.
 1. Adult regulated use;
 2. Churches, chapels, temples, synagogues, and similar places of worship;
 3. Day care centers, commercial/preschools;
 4. Libraries;
 5. Parks/playgrounds;
 6. Schools, elementary, middle and high; and,
 7. Single family home not located within an R-designated residential zoning district (measured from the adult regulated use to the nearest portion of the single family home).
- b. Prohibition in Gateway Area. No adult regulated use shall be located within 500 feet of U.S. highway 12 between Liberty Trail and Trail Creek. This is an interim control that will be superseded by a gateway zoning or overlay district that is currently being developed for the U.S. 12 corridor.

(3) Operating Standards for ALL Adult Regulated Uses

It shall be the responsibility of management to enforce the following operating standards, and any failure to achieve these standards shall be a violation of this ordinance:

- (a) No one under the age of 18 shall be permitted on premises for any reason;
- (b) No prostitution or solicitation of prostitution shall take place on the premises;
- (c) No dealing in or consumption of drugs or other unlawful substances shall take on the premises;
- (d) No alcohol shall be permitted on the property outside the business;
- (e) No loitering shall be permitted on the property outside the business;

- (f) No adult media, adult novelties, or images of sexually explicit activities, or specified anatomical areas shall be viewable from the outside of the adult regulated use;
- (g) No live sexually explicit activities shall take place on the premises; and,

(h) No live display of specified anatomical areas shall take place on the premises.

(4) Design Standards applicable to Adult Motion Picture Theaters

Any building used for the operation of an adult motion picture theater shall meet the following design standards:

- (a) Presentation Area. All areas open to customers shall contain a minimum floor area of 600 square feet. No doors, curtains, screens, furniture, or other materials shall be used to obscure any part of the room from view of the theater's management.
- (b) Lighting. Lighting levels shall be a minimum of two (2) foot-candles measured at the three(3) feet above floor level.
- (c) Seating. Seating shall consist of individual, theater-style seats anchored in place, no more than 22 inches in width and seat backs no higher than 25 inches, with solid arms on each side of seat. No couches, benches, movable chairs, beds, loose cushions, mattresses or other materials shall be used within the theater. Separate spaces for wheelchairs shall be provided in accordance with the applicable provisions of the application building code and the Americans with Disabilities Act.

(5) Design Standards applicable to Adult Cabarets

Any building used for the operation of an adult cabaret shall meet the following design standards:

- a. Stage Required. All entertainment shall take place on a stage elevated a minimum of 24 inches above the floor. A 30-inch high rail or other barrier erected 36 inches from the stage shall be provided to separate entertainers and customers.
- b. Performance Areas. All entertainment and interaction between entertainers and customers shall take place in an area fully viewable by all and having a minimum of 600 square feet. No doors, curtains, screens, furniture, or other materials shall be used to obscure any interaction between customers and entertainers from view of the cabaret's management.
- c. Lighting. All entertainment and interaction between entertainers and customers shall take place in an area having a minimum lighting level of Five (5) foot-candles at a height of three (3) feet

above the floor. This lighting standard shall not apply to the stage area.

AMEND Table 18.01 Required Off-Street Parking Spaces

Retail		
ADD	Adult retail store	1 space per 250 sq. ft. gross floor area
Services		
DELETE	Video rental store	1 space per 300 sq. ft. gross floor area
ADD	Media store, general or with backroom	1 space per 300 sq. ft. gross floor area
Entertainment and recreation		
DELETE	Adult entertainment business	1 space per 70 sq. ft. gross floor area for adult entertainment 1 space per 250 sq. ft. gross floor area for adult retail
ADD	Adult cabaret	1 space per 70 sq. ft. gross floor area
ADD	Adult theater	1 space per 2 seats

Definitions in Article 31

AMEND Section 31.02 Definitions "A"

REPEAL and REPLACE **Adult regulated use**. The following definitions shall apply to adult regulated uses:

- (1) **Adult bath house.** An establishment which is not a hotel but which Contains any combination of baths, showers, saunas and pools for public use and which excludes persons under the age of 18 from part or all of the facility that is open to adults
- (2) **Adult cabaret.** An establishment that customarily features adult entertainers providing live adult entertainment or which holds itself out to the public as an establishment where adult entertainment is available, but such definition shall not include any uses prohibited by this ordinance. Signs, advertisements or an establishment name including verbal or pictorial allusions to sexual stimulation or

gratification or by references to “adult entertainment,” “strippers,” “showgirls,” “exotic dancers,” “gentleman’s club,” “XXX” or similar terms, shall be considered evidence that the establishment holds itself out to the public as providing adult entertainment. The fact that an establishment does not serve alcoholic beverages shall not remove it from classification as an adult cabaret if it otherwise falls under this definition.

- (3) **Adult encounter center.** A business or enterprise that offers live physical contact between two or more persons when one or more of the persons is in a state of nudity or semi-nudity, for the purpose of engaging in sexually explicit activities or touching specified anatomical areas.
- (4) **Adult entertainer.** Any person paid by some form of remuneration to provide live adult entertainment to customers at an adult regulated use that may consist of dancing, singing, acting, other forms of performing, or individual conversations with customers whereby the entertainer is paid any form of remuneration directly or indirectly for such conversations.
- (5) **Adult entertainment.** Any of the following activities, when performed live by an adult entertainer at an adult regulated use: dancing, singing, talking, touching, gymnastics, acting, other forms of performing, or individual conversations with customers.
- (6) **Adult massage establishment.** A business or enterprise where a massage is provided by a person not certified by the state as a massage therapist under Indiana Code Title 25, Art. 21.8 or by someone other than a physician, surgeon, nurse, physical therapist, occupational therapist, or chiropractor who is licensed, certified or registered to practice their respective professions under the laws of the state, or any business that provide massage for the purpose of sexual stimulation.
- (7) **Adult media.** Media which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to sexually explicit activities or specified anatomical areas.
- (8) **Adult motel.** An establishment which customarily:
 - a. Offers accommodations to the public for any form of consideration and provides patrons with transmissions of adult media; and which advertises the availability of adult media by means of a sign, visible from the public right-of-way, or by means of any off-premises advertising, including, but not limited to,

- newspapers, magazines, pamphlets or leaflets, radio, internet or television; or
 - b. Permits patrons to be filmed or photographed performing “sexually explicit activities” or displaying “specified anatomical areas” for electric transmission outside the room; or
 - c. Offers a room for rent for a period of time that is less than 10 hours; or allows an occupant of a room to sub-rent the room for a period of time that is less than 10 hours.
- (9) **Adult motion picture theater.** An establishment which customarily shows adult media and is marketed as or offers adult media described as “XXX”. This definition specifically excludes adult video arcades.
- (10) **Adult novelties.** Instruments, devices, toys, or paraphernalia either designed as representations of human genitals or female breasts or designed or marketed primarily for use in sexual stimulations of specified anatomical areas.
- (11) **Adult regulated use.** An adult cabaret, adult motion picture theater, adult retail store.
- (12) **Adult retail store.** A retail establishment that meets any one of the following four tests:
- a. 35 percent or more of the gross public floor area or gross wall display area or stock in trade consists of adult media; or
 - b. Offers for sale items from any two (2) of the following categories; adult media; lingerie; leather goods marketed or presented in a context to suggest their use for sadomasochistic practices; and the combination of such items comprise more than 10 percent of its gross public floor area or stock in trade; or
 - c. More than 10 percent of its gross public floor area or stock in trade consists of adult novelties; or
 - d. It is advertised, marketed, or holds itself out in any forum as an “XXX,” “adult,” or “sex” business.
- (13) **Adult video arcade.** Any place to which the public is permitted or invited wherein cash-operated, credit-operated, coin-operated or slug-operated or electronically, internet or mechanically controlled still or motion picture machines, projects or other image producing devices are maintained to show images depicting “sexually explicit activities” or “specified anatomical areas”.

- (14) **Escort.** A person who, for consideration in any form, offers to act as a companion or date for another person, and who offers to perform sexually explicit activities while acting as a companion or date.
- (15) **Escort agency.** A person or business association that offers to furnish or advertises to furnish escorts as one of its business purposes, for a fee, tip or other consideration.
- (16) **Nude modeling or photography studio.** Any place where a person appears in a state of nudity or displays specific anatomical areas, and is provided any form of consideration to be observed, sketched, drawn, painted, sculpted, photographed or similarly depicted by other persons. This does not include a modeling studio whose primary function is to provide art classes as part of a college, university or educational institution and which is certified by the state of Indiana.
- (17) **Nudity.** A state of undress in which the human pubic area, anus, genitals, nipples or areolas are viewable.
- (18) **Semi-nudity.** A state of undress in which clothing (of any type) covers no more than the human pubic area, anus, and genitals.
- (19) **Sexually explicit activities.** Acts of human masturbation, sexual intercourse, sodomy, bestiality, erotic or sexual stimulation with objects or mechanical devices; acts of human anilingus, cunnilingus, fellatio, flagellation, masturbation, sadism, sadomasochism, sexual intercourse, sodomy, or any excretory functions as part of or in connection with any of the activities set forth above. This definition shall include sexual stimulation of another person's genitals whether clothed or unclothed.
- (20) **Specified anatomical areas.** Any of the following: less than completely and opaquely covered human genitals, pubic area, anus, female areola or nipple, or any combination thereof; or human male genitals in a discernibly turgid state, even if completely and opaquely covered. Opaquely covered does not include the use of paint or latex or other similar materials applied to the body.

Section 31.03 Definitions "B"

DELETE Book store.

Section 31.09 Definitions "H"

ADD **Hotel room.** A room in an inn, motel, hotel or other facility operated to accommodate overnight guests; a room shall be considered a “hotel room” if it occupies at least 150 square feet and includes a bathroom and bed.

Section 31.14 Definitions “M”

ADD **Massage.** The act of touching, stroking, kneading, stretching, friction, percussion, and vibration, and includes holding, positioning, causing movement of the soft tissues and applying manual touch and pressure to the body.

ADD **Massage therapy services.** A massage provided by massage therapists certified under Indiana Code Title 25, Art. 21.8 or by physicians, surgeons, nurses, physical therapists, occupational therapists, or chiropractors who are licensed, certified or registered to practice their respective professions under the laws of the state.

ADD **Media store, general.** A store that sells or rents books, videos and other media in which 10 percent or less of the retail floor area or numbers of items in inventory are adult media, but does not meet the criteria contained in the definition of an “Adult Retail Store.”

ADD **Media store, with backroom.** A store that sells or rents books, videos and other media in which more than 10 percent but less than 35 percent of the retail floor area or numbers of items in inventory are adult media, but does not meet the criteria contained in the definition of a “Adult Retail Store.”

Section 31.23 Definitions “V”

DELETE **Video store**

Enactment Provisions Article 32 – Appendix

AMEND Appendix: Uses by Zoning District

- **Retail trade:**
 - DELETE “Adult book and video stores”
 - ADD “Adult Retail Store,” and ADD “P” under the M1 and M2 Districts
 - ADD “Media store, general,” and ADD “P” under B1, B2, B3, CBD1, CBD2 Districts
 - ADD “Media store, with backroom,” and ADD “P” under B1, B2, B3, CBD1, CBD2 Districts

- **Services:**
DELETE "Video rental store"
- **Health care and social assistance:**
ADD "Massage therapy services," and ADD "P" under B1, B2, B3, CBD1, CBD2, M1, M2 Districts
- **Entertainment and recreation**
DELETE "Adult regulated use"
DELETE "Massage establishments"
ADD "Adult Cabaret," and ADD "P" under the M1 and M2 Districts
ADD "Adult Motion Picture Theater," and ADD "P" under the M1 and M2 Districts