

## **ORDINANCE**

**AHAB-O-0031-19**

### **ADOPTING AMENDMENT OF CHAPTER 20, ARTICLE XV OF THE DUPAGE COUNTY CODE OF ORDINANCES REGARDING REGULATION OF ADULT ENTERTAINMENT FACILITIES**

WHEREAS, the Ad Hoc Adult Business Committee (“Committee”) of the County Board of DuPage County, Illinois, in order promote the health, safety, and general welfare of the citizens of the County, and to combat and, or, alleviate the negative and harmful secondary effects associated with businesses engaged in on-premises, sexually-oriented adult entertainment, desires to establish reasonable and uniform regulations for businesses that: (i) have performances that are distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas where there is physical contact, or the opportunity for contact, between patrons and employees of the establishment; (ii) have performances that are distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas that involve the use of recorded media (i.e., video viewing booths, movie theaters, movie arcades, etc.); and

WHEREAS, the Committee desires to promote and enhance the health, safety, and general welfare of the citizens of the County, by combating and, or, alleviating negative and harmful secondary effects associated with adult businesses (as defined by the attached Ordinance) including: crime (namely sex crimes, prostitution, violence against women and children, public indecency, public lewdness, drug sales, use and possession and human trafficking); adverse effects on nearby properties (including decreased or stagnated valuations, reduced marketability, declining or stagnated rental rates, high occupancy turnover, the attraction of low quality commercial tenants, and the formation of commercial “dead zones”); blight (including the deterioration of local business districts and residential neighborhood, combating negative public perceptions and resident/business flight); health concerns (unsanitary conditions, spread of sexually transmitted diseases); impacts on public services (increased demand for police, judicial and social service resources); and eliminate the dehumanizing influence that adult businesses might have on their employees; and

WHEREAS, each of the foregoing negative secondary effects enumerated above constitutes a harm which the County has a substantial government interest in preventing, abating and, or, mitigating; and

WHEREAS, the County has received and considered numerous studies, reports and articles including, but not limited to: “Effects of Concentration of Adult Establishments.” City of Los Angeles, CA. (1977); “A Report on Zoning and Other Methods of Regulating Adult Entertainment Uses in Amarillo.” Planning Department, City of Amarillo, TX. (1977); “A Report on Zoning and Other Methods of Regulating Adult Entertainment Uses in Amarillo.” Planning Department, City of Amarillo, TX. (1977); “Effects on Surrounding Area of Adult Entertainment Businesses.” Division of Planning, Department of Economic Development and Planning, City of St. Paul, MN. (1978); “Adult Business Study.” City of Phoenix, AZ.

Department of Planning. (1979); "Study and Recommendations for Adult Entertainment Businesses in the Town of Islip, NY." Town of Islip, NY. (1980); "Commercial Revitalization Plan for the Charlton-Pollard neighborhood." Planning Department, City of Beaumont, TX. (1981); "Adult Entertainment Businesses in Indianapolis, An Analysis." Department of Metropolitan Development, Division of Planning, City of Indianapolis, IN. (1984); "Negative Secondary Effects of Sexually Oriented Businesses." City of El Paso, TX, Department of Planning Research and Development. (1986); "Adult Entertainment Businesses: Survey of Appraisers" Oklahoma City, OK. (1986); "40-Acre Study on Adult Entertainment," by the St. Paul Department of Planning and Economic Development, Division of Planning, (1987); "Location of Adult Business Uses." Planning Director, City of Bellevue, WA. (1988); "Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses." State of Minnesota Attorney General's Office. (1989); "Police Report and Citizens Report regarding Adult Entertainment Ord." Tucson, AZ. (1990); "Relationship between Crime and Adult Businesses on Garden Grove Boulevard." Garden Grove, CA (1991); "Adult Entertainment Study." Department of City Planning, City of New York, NY. (1994); "Effects of SOBs which Advertise Live, Semi-Nude Entertainment on Surrounding Properties [Dallas, TX]." Milan Group, (1994/1997); "Report on Adult Oriented Businesses in Austin." Office of Land Development Services, City of Austin, TX. (1996); "Adult Use Study." City of Newport News, VA (1996); "Memorandum to the City of Seattle Planning Commission." Planning Department, City of Seattle WA.; "Report on Adult Businesses Studies by the Sexually Oriented Business Ordinance Revision Committee." City of Houston, TX. (1997); "Staff Reports- City of Miami." (2008); "Adult Live Performance Venues Study." City Planning Commission, City of New Orleans, LA. (2016); "Adult Entertainment Zoning & Licensing Committee Report to the City of Mount Vernon [WA]." (2017); "Zoning (and Other Regulation of) Adult Uses." Barbara Gosselar; Environmental Research Group Report. (1996); "Preventing the Secondary Effects of Adult Entertainment Establishments: Is Zoning the Solution?" Dana Tucker. *Journal of Land Use and Environmental Law*, Vol. 12:2 (1997); "Strip Clubs According to Strippers: Exposing Workplace Sexual Violence" Kelly Holsopple. (1999); "Government Regulation of Adult Businesses Through Zoning and Anti-Nudity Ordinances: Debunking the Legal Myth of Negative Secondary Effects," 6 *Comm. Law & Policy* 355 (2001); "A Methodological Critique of the Linz-Yao Report: Report to the Greensboro City Attorney." Richard McCleary, Ph.D. (2003); "Survey of DFW Appraisers: Land Use Effects on Property Values" Cooper/Kelly, Dallas-Fort Worth, TX. (2004); "Report to the City Attorney [Kennedale, Texas] on Crime-Related Secondary Effects." Dr. Richard McCleary (2005); "Survey of Texas Appraisers: Secondary Effects of Sexually-Oriented Businesses on Market Values." Connie B. Cooper and Eric Damian Kelly (2008); "Crime-Related Secondary Effects: Secondary Effects of 'Off Site' Sexually-Oriented Businesses." Richard McCleary (2008); "Survey of Florida Appraisers: Effects of Land Uses on Surrounding Property Values." Prepared by Duncan Associates and Cooper Consulting for Palm Beach County, FA. (2008); "Rural Hot Spots: The Case of Adult Businesses." *Criminal Justice Policy Review*, 19(2), pp. 153-163. Duncan Associates. (2008); "Secondary Effects of Sexually Oriented Businesses: Report to the Ohio Attorney General." Drs. Richard McCleary and Wendt Regoeczi (2010); "The Association of Adult Businesses with Secondary Effects: Legal Doctrine, Social Theory, and Empirical Evidence." Alan C. Weinstein and Richard D. McCleary *Cardozo Arts & Entertainment Law Journal* (29 *Cardozo Arts & Ent. L.J.* 565, 2011); "Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD" by Jacqueline Reuben, Chris Serio-Chapman, Christopher

Welsh, Richard Matens, and Susan G. Sherman, Published April 2011; “More than a dance: The production of sexual health risk in the exotic dance clubs in Baltimore, USA.” Susan G. Sherman, Pamela Lilleston and Jacqueline Reuben. (August 2011); “Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime? An Examination Using Spatial Analyses.” Eric S. McCord and Richard Tewksbury. (2012); “Regulating Adult Entertainment Business: Zoning and First Amendment Limitations.” Kelly/Cooper, Stafford. (2013); “Potential Dangers of Sexually Oriented Businesses.” Phillip Martinez; “Strip Clubs, “Secondary Effects,” and Residential Property Prices.” Taggart Brooks, Brad Humphreys and Adam Nowak, Dept. of Economics, University of West Virginia. (2016); “Effects of Sexual Businesses on Society.” Marripedia.org. (2017); and

WHEREAS, the Committee has received and considered numerous court decisions including, but not limited to: Village of Euclid, Ohio v. Amber Realty Co., 272 U.S. 365 (1926); United States v. O’Brien, 391 U.S. 367 (1968); Young v. American Mini Theaters, 427 U.S. 50 (1976); Northend Cinema v. City of Seattle, 585 P.2d 1153 (1978); Schad v. Borough of Mount Ephraim, 452 U.S. 61 (1981); City of Renton v. Playtime Theaters, 475 U.S. 41 (1986); FW/PBS, Inc. v. City of Dallas, 493 U.S. 216 (1990); Barnes v. Glen Theatre, 501 U.S. 560 (1991); ILQ Investments v. City of Rochester, 25 F.3d 1413 (8<sup>th</sup> Cir., 1994); Ben Rich Trading, Inc., 126 F.3d 155 (3<sup>rd</sup> Cir., 1997); Stringfellow’s of New York v. City of New York, 91 N.Y.2d 382 (N.Y., 1998); Sammy’s of Mobile, Ltd. V. City of Mobile, 140 F.3d 993 (11<sup>th</sup> Cir. 1998); N.W. Enterprises v. City of Houston, 27 F. Supp. 2d 754 (S.D. Texas, 1998); City of Erie v. Pap’s A.M., 529 US 277 (2000); Schultz v. City of Cumberland, 228 F.3d 831 (7<sup>th</sup> Cir., 2000); Wise Enterprises, Inc. v. Unified Gov’t of Athens-Clarke County, 217 F.3d 1360 (11<sup>th</sup> Cir., 2000); Artistic Entertainment, Inc. v. City of Warner Robbins, 223 F.3d 1306 (11<sup>th</sup> Cir., 2000); Isbell v. Grand B Emporia, Inc., 258 F.3d 1108 at 1116 (9<sup>th</sup> Cir. 2001); LLEH, Inc. v. City of Wichita, 289 F.3d 358 (5<sup>th</sup> Cir., 2002); Jake’s, Ltd., Inc. v. City of Coates, 284 F.3d 884 (8<sup>th</sup> Cir. 2002)(cert. denied, 537 U.S. 948 (2002)); City of Los Angeles v. Alameda Books, 535 U.S. 425 (2002); Center for Fair Pub. Policy v. Maricopa County, 336 F.3d 1153 (9<sup>th</sup> Cir., 2003), cert. den. 541 U.S. 973 (2004); G.M. Enterprises, Inc. v. Town of St. Joseph, 350 F.3d 631 (7<sup>th</sup> Cir., 2003); R.V.S., L.L.C. v. City of Rockford, 361 F.3d 402 (7<sup>th</sup> Cir., 2004); City of Littleton v. Z.J. Gifts D-4, LLC, 541 U.S. 774 (2004); World Wide Video of Washington v. City of Spokane, 368 F.3d 1186 (9<sup>th</sup> Cir., 2004); New Albany DVD, Inc. v. City of New Albany, 362 F. Supp.2d 1015 (S.D. Ind., 2005); Gammoh v. City of La Habra, 395 F.3d 1114 (9<sup>th</sup> Cir., 2005); Fantasyland Video, Inc. v. County of San Diego, 2005 WL 1429810 (S.D. Cal. 2005); Dr. John’s, Inc. v. City of Roy, 465 F.3d 1150 (10<sup>th</sup> Cir., 2006); Andy’s Restaurant and Lounge, Inc. v. City of Gary, 466 F.3d 550 (7<sup>th</sup> Cir., 2006); 181 South Inc. v. Fischer, 454 F.3d 228 (3<sup>rd</sup> Cir., 2006); City of Chicago v. Pooh Bah Enterprises, 224 Ill.2d 390 (Ill., 2006); Fantasy Ranch, Inc. v. City of Arlington, 459 F.3d 546 (5<sup>th</sup> Cir., 2006); Déjà vu of Nashville, Inc. v. Metro. Gov’t of Nashville and Davidson County, 466 F.3d 391 (6<sup>th</sup> Cir., 2006); Buzdum v. Village of Germantown, 2007 WL 3012971 (E.D. Wis., 2007); H & A Land Corp v. City of Kennedale, 480 F.3d 336 (5<sup>th</sup> Cir. 2007), cert. den. Sub nom. Reliable Consultants, Inc. v. City of Kennedale, 128 S. Ct. 196 (U.S. 2007); 84 Video/Newsstand, Inc. v. Santini, 2007 WL 3047207 (N.D. Ohio, 2007); Bottoms Up Enterprises, Inc. v. Borough of Homestead, 2007 WL 2908762 (W.D. Penn., 2007); Little Mack Entertainment II, Inc. v. City of Marengo, 625 F.Supp.2d 570 (W.D. Mich., 2008); Sensations, Inc. City of Grand Rapids, 526 F.3d 291 (6<sup>th</sup> Cir., 2008); Richland Bookmart, Inc. v. Knox County, Tenn., 555 F.3d 512 (6<sup>th</sup> Cir., 2009); Flanigan’s

Enterprises Inc. v. Fulton County, 596 F.3d 1265 (11<sup>th</sup> Cir., 2010); Peek-A-Boo Lounge of Bradenton, Inc. v. Manatee County, Fla. (Peek-A-Boo II), 630 F.3d 1346 (11<sup>th</sup> Cir. 2011); Uniontown Retail #36, LLC. v. Board of Commissioners Jackson County, 950 N.E.2d 332 (Ind. App. 2011); Green Valley Investment LLC. v. County of Winnebago, 790 F. Supp.2d 947 (E.D. Wis., 2011); Metro Pony, L.L.C. v. City of Metropolis, Ill., 2012 WL 1389656 (S.D. Ill., 2012); Foster v. City of El Paso, 396 S.W.3d 244 (Texas App., 2013); Entertainment Productions, Inc. Shelby County, TN, 721 F.3d 729 (6<sup>th</sup> Cir. Ct., 2013)(cert. denied, 2014 U.S. LEXIS 533 (Jan. 13, 2014)); Cricket Stores 17, LLC. v. City of Columbia, 97 F.Supp.3d 737 (S.C. Dist., 2015); BBL, Inc. v. City of Angola, 809 F.3d 317 (7<sup>th</sup> Cir., 2015); Cornell Restaurant Ventures, LLC. v. City of Oakland Park, 681 Fed.Appx. 859 (11<sup>th</sup> Cir., 2017); Forbes v. Pierce County, 5 Wa.App.2d 423 (Wash. App., 2018); Maxim Cabaret, Inc. v. City of Sandy Springs, 304 Ga. 187 (GA, 2018); 1407, LLC v. City of Fort Wayne, 2019 U.S. Dist. LEXIS 12781 (N.D. Ind., 2019);and

WHEREAS, the Committee has identified additional studies, reports and articles as being pertinent to the matters under consideration including but not limited to: “Social Change and Crime Rate Trends: A Routine Activity Approach.” American Sociological Review, Vol. 44 (August): 588-608. 3 Rural, Small Town and County-Focused Studies McCleary, Richard (1979); “Adult Entertainment, Crime, and Housing Values,” Minneapolis, MN, 1980; “Documentation of Secondary Effects of Sexually Oriented Businesses,” Fort Worth, TX, 1986; “Adult Entertainment Business Study for Manatee County, FA.” Planning and Development Department, County of Manatee, Florida. (1987); “Supplement to the 1978 St. Paul Study,” St. Paul, MN, 1987-8; “Quality of Life: A Look at Successful Abatement of Adult Oriented Nuisances in Oklahoma City (Oklahoma 1984-89)” ; “Regulation of Adult Entertainment Establishments.” Saint Croix County, Wisconsin. Duncan Associates (September 1993); “Summary of Review and Conclusions Regarding St. Cloud’s Regulation of Adult Use Businesses.” St. Cloud, Minnesota. (December 1994); “Report to the American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses.” Weinstein, Alan C. and Richard McCleary. (March 1996); “A Digest of Research: The Evidence of Relationships between Adult-Oriented Businesses and Community Crime and Disorder.” St. Mary’s, Georgia. (July 1996); “Adult Business Study.” Ellicottville [Village of], New York. Duncan Associates and Cooper Consulting (January 1998); “Adult Entertainment - Supplement to 1987 Study,” St. Paul, MN (1998); “Secondary Impact of Adult Use Businesses,” Denver, CO (1998); “Adult Use Study: Summary and Recommendations,” prepared by Eric Damian Kelly and Connie B. Cooper for the City of Kansas City, (April 1998); “Survey of Appraisers in the Rochester and Monroe County, New York, Regarding Effects on Property Values of Proximity of Sexually Oriented Businesses,” prepared by Duncan Associates and the City of Rochester, (1999); “Alcohol and Hypermasculinity as Determinants of Men's Empathic Responses To Violent Pornography.” By Jeanette Norris, William H. George, (July 1999); “Everything You Always Wanted to Know about Regulating Sex Businesses,” Eric Damian Kelly and Connie B. Cooper; Planning Advisory Service Report No. 495-96. Chicago: American Planning Association, (2000); “Field Study of Regulated Uses and Other Uses,” prepared for the City of Biloxi, Mississippi, by Eric Damian Kelly and Connie B. Cooper of Duncan Associates, (July 2001); “Survey, Findings and Recommendations on Sexually Oriented Businesses,” prepared for the City of Toledo, Ohio, by Eric Damian Kelly and Connie B. Cooper of Duncan Associates, (August 2002); “Regulation of Sexually Oriented Businesses in Alachua County: Field Survey,

Analysis and Recommendations.” Alachua County, Florida. August 2003. Quest Genetics; and “Analysis Report Conducted by Quest Genetics.” Alachua, Florida. October and November 2003. Palumbo, Gary, Town/Village Planner; “Sexually Oriented Entertainment & Related Businesses.” Kenton and Campbell Counties, Kentucky. Planning and Development Department. (January 2004); “Crime Risk in the Vicinity of a Sexually Oriented Business: A Report to the Centralia City Attorney's Office.” Dr. Richard McCleary. (Revised Report, February 28, 2004); “Regulating Sexually Oriented Businesses in Detroit,” Eric Damian Kelly and Connie B. Cooper, Detroit, MI (2005); “Regulating Adult Oriented Businesses, Memphis-Shelby County, TN,” Eric Damian Kelly and Connie B. Cooper (2006); “Regulation of Sexually Oriented Businesses: An Analysis for Perry County, Indiana.” Perry County, Indiana. Dahlgren, Shardlow and Uban, Inc. (July 2007); “Do ‘Off-Site’ Adult Businesses Have Secondary Effects? Legal Doctrine, Social Theory, and Empirical Evidence.” Law & Policy, Vol. 31, No. 2, Cohen, Lawrence E. and Marcus Felson. (April 2009); “Adult Use Study,” prepared by Duncan Associates, Inc., for the Plan Commission and Common Council, City of Michigan City, IN, (2012-13); and

WHEREAS, the County has received and considered the testimony and written statements from DuPage County residents, business owners, a real estate broker, a real estate appraiser, health officials, school district officials, law enforcement personnel, and representatives of adult businesses; and

WHEREAS, the County has reviewed and analyzed the aforesaid studies, reports, articles, judicial decisions, and the experience and legislative findings of other municipalities and counties throughout the United States, and within DuPage County, concerning the impacts, or “secondary effects,” of adult businesses on the areas in which such businesses are located or take place; and

WHEREAS, among the undesirable secondary effects associated with adult businesses are depression of property values in the surrounding neighborhood, increased expenditure for the allocation of law enforcement personnel to preserve law and order, increased burden on the judicial system as a consequence of the criminal behavior, an acceleration of community blight by the concentration of such establishments in particular areas; and

WHEREAS, the County has determined that the above enumerated evidence is relevant to the secondary effects the County seeks to combat and, or, alleviate; and

WHEREAS, there is convincing documented evidence that adult businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, that includes, but is not limited to, causing increased crime and the diminution of property values; and

WHEREAS, the ancillary unlawful and unhealthy activities that are commonly associated with adult business operations are presently uncontrolled or ignored, and occasionally actively promoted, by the operators of adult businesses; and

WHEREAS, it is recognized that adult businesses, as a category of commercial uses, and due to their nature, have serious objectionable operational characteristics, produce negative secondary effects; and

WHEREAS, the County has determined that the experiences of other jurisdictions reported in the above-enumerated documents are relevant to the County's situation and, thus, may be reasonably relied upon, for several reasons, including, but not limited to: (i) the near universal experience of such communities establishes that as a category of commercial use, adult businesses consistently produce negative secondary effects (albeit, in some instances, to differing degrees or manifested in different forms); (ii) the experiences of some of the communities are similar in some respect (presence of similar types of adult businesses, prostitution activity associated with adult businesses, etc.) to the experiences of DuPage County; (iii) the majority of studies involve densely populated, urban/suburban areas demographically similar to DuPage County; and (iv) it is reasonable to believe that the experiences of some of the communities that have not yet been observed in this County could be repeated here if the County failed to implement a comprehensive regulatory program; and

WHEREAS, the extensive evidence presented to the County shows that the establishment and locations of adult businesses and their related sexually oriented activities are associated with increased criminal activity, negatively impact nearby properties, generate unsanitary conditions and are antithetical to the public health, welfare, safety, and economic vitality and growth of the community; and

WHEREAS, the evidence presented demonstrates that negative land use impacts including pornographic litter, discarded prophylaxis, noise, glare and traffic problems are directly related to or associated with adult businesses and their related activities; and

WHEREAS, criminal activity is generally higher in areas in close proximity to adult businesses in comparison to areas without adult businesses, including, specifically, reported sex crimes and arrests for sex crimes; and

WHEREAS, the concern over criminal activity is a legitimate and substantial governmental concern of the County which demands reasonable regulation of adult businesses in order to protect the health and well-being of the citizens; and

WHEREAS, the criminological theory of ambient crime risk, known as the "routine activity theory of hotspots," predicts that adult businesses will generate large, significant crime-related secondary effects as the result of three factors: (i) adult businesses draw patrons from wide catchment areas; (ii) adult business customers are disproportionately male, open to vice overtures, reluctant to report victimizations to the police and, thus, present "soft" targets; and (iii) the high density of "soft" targets at the site attracts predatory criminals, including vice purveyors and criminals who pose as vice purveyor in order to lure or lull potential victims; and

WHEREAS, DuPage County has experienced criminal activity associated with both vice purveyors (prostitution) and criminals who pose as vice purveyors in order to lure or lull potential victims, and

WHEREAS, adult businesses are frequently the site of illegal activities, including the sale and use of illicit drugs, and for unlawful sexual activities, including prostitution, human trafficking and public indecency; and

WHEREAS, studies have shown that adult businesses are a major source of calls for police service and that, specifically, adult businesses with on-site entertainment generate more calls for police service per business than either retail (off-premises) adult businesses or generic restaurants with liquor licenses; and

WHEREAS, certain crimes, such as lewdness, prostitution, or drug use, often involve non-objecting participants and, consequently, such activities rarely result in calls to '911,' or criminal arrests; and

WHEREAS, DuPage County law enforcement investigations have established that prostitution is wide-spread and occurring in the overwhelming majority of the county's encounter spa-type adult businesses, those being businesses offering sexually-oriented entertainment to its patrons performed by nude or minimally attired employees while in secluded, poorly lit rooms involving close proximity and, or, direct physical contact between the employee and patron; and

WHEREAS, DuPage County's experiences are identical to those of nearly every other community in the country that also have encounter spa-type adult businesses operating within their jurisdiction, which experiences include frequent prostitution activity, illicit drug use; and

WHEREAS, surveillance within adult businesses by police agencies around the United States have routinely detect illegal conduct within and around businesses featuring live performance entertainment, including prostitution, public lewdness, public intoxication, illicit drug use and human trafficking; and

WHEREAS, DuPage County law enforcement has expressed concern about suspected human trafficking in DuPage County and that the victims of such trafficking are believed to be used as sex workers in some of the County's adult businesses, especially the encounter spa-type businesses; and

WHEREAS, adult business owners and employees are unlikely to report certain criminal which they are complicit in such as money laundering, tax evasion, human trafficking, illicit drug use by their employees and prostitution; and

WHEREAS, crime analysis which utilizes "calls for service" is more likely to understate the correlation between adult businesses and crimes such as prostitution, lewdness, public indecency, obscenity and illicit drug activity, although "calls for service" do have an impact on police resources; and

WHEREAS, adult businesses generate a large amount of calls for service in which disgruntled customers call '911' claiming to have been defrauded or not having received the services they believed they paid for, and

WHEREAS, adult businesses have employed underage (under 18 years old) females as nude dancers, often with the knowledge of adult business management; and

WHEREAS, in the past, an underage (under 18 years old) female was employed by an adult business in DuPage County as a nude dancer; and

WHEREAS, an adult business employee licensing program is an effective means of preventing the employment of underage persons and the victims of human trafficking by DuPage County adult businesses; and

WHEREAS, an adult business employee licensing program is also an effective means of identifying, monitoring, and imposing limited restrictions on the employment of persons currently involved with the criminal justice system for illicit drug possession, sale or use, prostitution, sex crimes, pandering, human trafficking, and similar offenses; and

WHEREAS, adult businesses under certain circumstances, particularly circumstances related to the sale and consumption of alcoholic beverages on premises, begets criminal behavior and tends to create undesirable community conditions; and

WHEREAS, some communities have reported the prevalence of organized crime in adult businesses which uses such businesses to launder money and further criminal enterprises; and

WHEREAS, for the foregoing reasons, adult businesses increase the costs for law enforcement and the judicial system; and

WHEREAS, the concern over sexually transmitted diseases is a legitimate health concern of the County which demands reasonable regulation of sexually-oriented businesses in order to protect the health and well-being of the citizens; and

WHEREAS, numerous communicable diseases, at least 50 types of sexually transmitted diseases, may be spread by activities occurring in adult businesses, including but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis salmonella, campylobacter and Shigella infections, chlamydial, myoplasmal and ureaplasma infections, trichomoniasis, and chancroid; and

WHEREAS, some communicable diseases, such as hepatitis C, remain a viable contagion outside the body for up to 24 hours outside the human body and may contaminate surfaces exposed to bodily fluids; and

WHEREAS, police investigations throughout the United States, including investigations in DuPage County, have confirmed illicit sexual activity and unsanitary conditions taking place in adult businesses; and

WHEREAS, sexual acts, including masturbation, and oral and anal sex, occur at unregulated adult businesses, especially those which involve private encounter sessions or



provide private or semiprivate booths or cubicles for viewing films, videos, or live sex shows; and

WHEREAS, DuPage County law enforcement report that persons arrested for prostitution at DuPage County's encounter-type spas seldom utilize prophylactic measures to prevent the spread of sexually-transmitted diseases; and

WHEREAS, police investigations in other communities have observed booth conditions to be, generally, unsanitary and a public health concern in which, in one community, 81% to 96% of samples obtained from such booths tested positive for semen; and

WHEREAS, numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view "adult" oriented films; and

WHEREAS, adult businesses with inadequate interior lighting or without clear lines of sight to all parts of the premises encourage lewd behavior and illegal sexual activity; and

WHEREAS, adult businesses enable female employees to engage in sex work by virtue of the businesses' physical characteristics (e.g., poor lighting, secluded areas), economic factors (e.g., high earnings for employees selling sex), and the prevailing social norms condoning sex work; and

WHEREAS, female sex workers have been disproportionately infected with HIV and STDs, and that such diseases are frequently occupational hazards of sex work, facilitated by high rates of unprotected sex, as well as multiple and high-risk sex partners; and

WHEREAS, licensing and operational restrictions are legitimate and reasonable means of accountability to ensure that operators of adult businesses do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation; and

WHEREAS, the concern over property values and preservation of the real estate tax base is a legitimate and substantial governmental concern of the County which demands reasonable regulation of adult businesses in order to protect the property interests and expectations of its citizens, and the County's own financial solvency; and

WHEREAS, the evidence presented reflects that the presence of any adult businesses would decrease the market value of any business property located in the vicinity would decrease the rental value of business property, would decrease the rentability/salability of business property nearby, would decrease the annual income of businesses located in the vicinity; and

WHEREAS, the evidence presented reflects that the presence of any adult businesses would both decrease the market value of private residences and decrease the rentability/salability of residential property located in the vicinity of such businesses; and

WHEREAS, the evidence presented reflects that adult businesses have a greater negative impact on properties based on the proximity of the adult business to the affected property, and

that as distances increase, the negative effects attributable to adult businesses decrease, and that with respect to residential properties the effect is largely diminished at distances between 1,000 feet and 2,000 feet, and that for commercial properties, the negative effects attributable to adult businesses is largely diminished at the 1,000 foot distance; and

WHEREAS, the evidence presented reflects that differing types of adult businesses have differing degrees of negative impact on nearby properties, that adult businesses featuring on-premises entertainment have a greater effect than strictly off-premises adult businesses; and

WHEREAS, adult businesses in commercial areas have been responsible for creating "dead zones" actively avoided by people who are not interested in patronizing the adult business which is a detriment to the neighboring businesses; and

WHEREAS, adult businesses significantly decrease the property marketability for both residential and commercial properties located within distances of between 500 feet to 2000 feet of the adult businesses; and

WHEREAS, surveys of real estate appraisers repeatedly reveal that respondents believe that an adult business operating after 11:00 pm adversely affects nearby property values, however, such effects on nearby property values appear to be significantly lessened when the adult business is located within zoning districts with primarily industrial and heavy manufacturing uses; and

WHEREAS, studies indicate that adult businesses tended to be magnets for lower quality businesses such as pawnshops, liquor stores, check-cashing establishments; and

WHEREAS, a community's license plate survey of the cars used by patrons of certain adult businesses revealed from the observed, and traceable data, less than 4% of adult business patrons resided within one mile of the business visited, and that 44% of the customers resided outside of the community's city limits; and

WHEREAS, adult business patrons are drawn from a larger regional area (and not local neighborhoods near adult businesses) and, thus, adult business patrons may feel less inhibited in their personal behavior when away from their home community; and

WHEREAS, the notion that adult businesses attract a transient patron-base is further evidenced by the experience of small, rural communities that have too few residents to support such businesses relying upon local customers alone, but which have adult businesses locate therein in proximity to highway interchanges; and

WHEREAS, adult businesses, because they attract a primarily transient customer base and conduct late-night business operations, are out of character and are incompatible uses with the County's residential and business districts and, accordingly, those adult businesses that are not otherwise subject to locational restrictions under the County's existing zoning ordinance and, or, state statute, require additional operational restrictions to ameliorate the negative adverse effects attributable to such businesses; and

WHEREAS, when adult businesses are located in close proximity to each other, such concentration has contributed to accelerating urban blight and downgrading the quality of life in the adjacent areas; and

WHEREAS, the extensive evidence presented establishes that the establishment of adult businesses and their related activities are associated with a degradation of the quality of life within nearby neighborhoods and within the larger community in general; and

WHEREAS, in other communities where adult businesses concentrate, those communities report that pornographic litter is more prevalent and local residents (both male and female, adult and children) report more instances of having been sexually propositioned; and

WHEREAS, in numerous other communities, local residents have testified that adult businesses in their neighborhoods generate other types of offensive litter and potentially unsanitary litter, in addition to pornographic litter, such as condoms, condom wrappers and discarded underwear; and

WHEREAS, in numerous other communities, local residents responded to surveys that they believe adult businesses located close to a residential or commercial property would depreciate that property's value, with the greatest impact being to single-family homes;

WHEREAS, in a phone survey of residents residing near adult businesses, large majorities of the responding residents said they would want to move if an adult business opened in their neighborhood; and

WHEREAS, in a phone survey of residents residing near adult businesses, women commonly expressed fear for themselves and their children because of the problems associated with adult businesses; and

WHEREAS, sexual violence and anti-social conduct directed against women, including acts ranging from verbal harassment, physical and sexual abuse, prostitution solicitation and financial exploitation is prevalent in adult businesses featuring live entertainment; and

WHEREAS conduct which is directed against women but that is prohibited by law or socially eschewed in other settings are a commonplace with adult business entertainers, and such conduct is commonly ignored by the adult businesses' owners, managers, and staff; and

WHEREAS, some studies have reported that, in those jurisdictions, there was a weak or non-existent correlation between adult businesses and certain conditions commonly characterized as adverse secondary effects; and

WHEREAS, studies that purport to refute or minimize the existence of adverse secondary effects associated with adult businesses are at odds with the vast majority of secondary effects literature and, further, such findings are often contrary to reported anecdotal evidence and real-life experiences gathered from communities throughout the United States; and

WHEREAS, the County desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight; and

WHEREAS, the County has determined that DuPage County Zoning Ordinance's locational criteria alone do not adequately protect the health, safety, and general welfare of the people of this County; and

WHEREAS, the County has determined that its existing prohibition of alcohol sales and consumption on the premises of adult businesses do not adequately protect the health, safety, and general welfare of the people of this County from the occurrence of criminal behavior and other undesirable conditions normally associated with adult businesses; and

WHEREAS, sexually oriented businesses require special supervision from the public safety agencies of the County in order to protect and preserve the health, safety, morals, and welfare of the patrons of such businesses as well as the citizens of the County; and

WHEREAS, the County recognizes that some activities which occur in connection with sexually oriented businesses (SOBs) are protected as expression under the First Amendment to the United States Constitution, and the County further recognizes that First Amendment rights are among our most precious and highly protected rights, and wishes to act consistently with full protection of those rights; and

WHEREAS, it is not the intent of this Ordinance to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance which addresses the secondary effects of sexually oriented businesses; and

WHEREAS, it is not the intent of the County to condone or legitimize the distribution of obscene material, and the County recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state law enforcement officials to enforce state obscenity statutes against any such illegal activities in the County, and

WHEREAS, persons often frequent certain adult theatres, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex in or near the premises of such sexually oriented businesses, or for the purpose of purchasing or selling illicit drugs; and

WHEREAS, operational restrictions on video viewing booths can reduce opportunities for, or the likelihood of, customers masturbating privately, or engaging in anonymous sex through the use of "glory holes"; and

WHEREAS, the 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 theatres.

WHEREAS, the minimum size requirements on adult peep show booths/adult arcades provide adequate avenue for entrance and egress in the event of emergency, and

WHEREAS, in reference to the testimony regarding the benefits of small sized adult booths with “occupancy” lights, the County believes that such features are insufficient to negate the problems of the booths being used for discrete sexual liaisons insofar as such measures have not proven adequate in the airline industry, and

WHEREAS, in reference to the testimony regarding the benefits of small sized adult booths, the County is concerned about the ability of disabled customers or customers in general to easily enter and exit “airplane bathroom” sized booths, and

WHEREAS, the County is concerned that public safety requires that the booths be sized in a manner which provides for safe and expedient ingress and egress in the event of an emergency, and

WHEREAS, the County believes that requiring the booth entry be open and the establishment of minimum floor space requirements best balance the important public safety interests in both providing safe routes of ingress and egress and curbing illegal and unsanitary sexual activity occurring in adult theaters, and

WHEREAS, requiring licensees of sexually oriented business to keep information regarding current employees and, or, performers and certain past employees and, or, performers 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 and,

WHEREAS, the fact that an applicant for a license has been convicted of a sexually related crime or crime of moral turpitude leads to the rational assumption that the applicant may engage in that conduct in contravention of this Ordinance, and

WHEREAS, the adoption of adult business licensing ordinance is reasonably expected to, (i) address, mitigate, and, if possible, eliminate the adverse impacts and secondary effects of Sexually Oriented Business Activities on the areas in which such activities are located or take place and on the persons who are exposed to such activities; (ii) ensure that Sexually Oriented Business Activities are established, managed, and operated in a safe and legal manner at all times; and (iii) ensure that the unnecessary public health risks associated with Sexually Oriented Business Activities are minimized to the greatest extent possible, or eliminated altogether; and

Whereas, it has been the experience of DuPage County and the experience of other communities that adult businesses offering on premises entertainment attract individuals who: i) have already been consuming alcohol or illicit substances; ii) are seeking sexual gratification; iii) are not residents of the local communities; and iv) because of their drug or alcohol use and not being in their home community, tend to act with fewer inhibitions, which factors appear to

contribute to a significant number of the calls for service, and related criminal activity, at adult businesses ; and

Whereas, it has been the experience of DuPage County and the experience of other communities that a disproportionate share of the calls for police service, and related criminal activity, occurs at adult businesses offering on premises entertainment during the overnight hours; and

Whereas, the County has a significant interest in seeing that its limited law enforcement resources are better utilized, especially during the overnight hours; and

Whereas, as recognized in *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435, 441 (6th Cir.1998), “[i]t is not unreasonable to believe that such regulation of hours of shops selling sex literature would tend to deter prostitution in the neighborhood at night or the creation of drug ‘corners’ on the surrounding streets,” and, thus, the same would hold true for any adult business; and

WHEREAS, 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; and

WHEREAS, such a licensing procedure will place a heretofore nonexistent duty on the operators to see that the adult business is run in a manner consistent with the health, safety and welfare of its patrons, employees and performers, as well as the citizens of the County.

NOW, THEREFORE, BE IT HEREBY ORDAINED that the County Board hereby enacts the attached amendments to Chapter 20, Article XV of the DuPage County Code of Ordinances, as set forth in Exhibit A; and

BE IT FURTHER ORDAINED that the aforesaid amendments shall have an effective date of August 2019; and

BE IT FURTHER ORDAINED that the County Clerk publish notice hereof and send copies of the foregoing to: (1) the DuPage County Department of Building and Zoning, (2) the DuPage County Sheriff, (3) the DuPage County State’s Attorney, (4) the DuPage County Clerk, (5) the DuPage County Health Department and (6) the Municipal Code Corporation for update of the DuPage County Code; and

BE IT FURTHER ORDAINED that the Municipal Code Corporation is authorized only to make such typographical changes as are necessary to properly codify this ordinance into the DuPage County Code.

ENACTED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2018, A.D.

\_\_\_\_\_  
DANIEL J. CRONIN, CHAIRMAN

DU PAGE COUNTY BOARD

ATTEST:

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JEAN KACZMAREK, COUNTY CLERK