

FOR REVIEW AND COMMENTS

Title 14 Local Government
Subtitle 1. General Provisions
Chapter 1 General Provisions
Subchapter 1 -- Sport Shooting Ranges and Facilities

A.C.A. § 14-1-101 (2012)

14-1-101. Sport shooting ranges and sports facilities.

(a) A sport shooting range or sports facility that is not in violation of a state law or an ordinance of a local unit of government prior to the enactment of a new ordinance of a local unit of government affecting the range or facility may continue to operate even if, at or after the time of enactment of the new ordinance affecting the range or facility, the operation is not in compliance with the new ordinance.

(b) No new ordinance of a local unit of government shall prohibit a sport shooting range or sports facility that is in existence on August 12, 2005, from doing any of the following within its existing geographic boundaries:

(1) Repairing, remodeling, or reinforcing any building or improvement as may be necessary in the interest of public safety or to secure the continued use of the building or improvement;

(2) (A) Reconstructing, repairing, rebuilding, or resuming the use of a facility or building damaged by fire, collapse, explosion, act of nature, or act of war occurring after August 12, 2005.

(B) The reconstruction, repair, or rebuilding shall be completed within one (1) year following the date of the damage or settlement of any property damage claim. If reconstruction, repair, or rebuilding is not completed within one (1) year, the reconstruction, repair, or rebuilding may be terminated in the discretion of the local unit of government;

(3) Expanding or enhancing its membership or opportunities for public participation; or

(4) Reasonably expanding or increasing facilities or activities.

(c) Except as otherwise provided in this section, this section shall not prohibit a local unit of government from regulating the location and construction of a sport shooting range or sports facility.

(d) As used in this section:

(1) "Local unit of government" means a county, city of the first class, city of the second class, or incorporated town;

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(2) "New ordinance" also includes an ordinance or an amendment to an existing ordinance;

(3) "Sport shooting range" means an area designed and operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar sport shooting; and

(4) (A) "Sports facility" means a baseball field, basketball court, gymnasium, golf course, soccer field, swimming pool, tennis court, or other facility for recreational sports.

(B) "Sports facility" does not include a facility for go-carts, motorcycles, motor vehicles, or other motorized conveyances.

Subchapter 3-- Adult-Oriented Businesses in Proximity to Locations Frequented by Children

14-1-301. Findings and legislative intent.

(a) The purpose of this subchapter is to establish requirements governing the location of adult-oriented businesses in order to protect the public health, safety, and welfare and to prevent criminal activity.

(b) Based on evidence of the adverse secondary effects of adult-oriented businesses and on findings discussed in cases, including *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002), *Erie v. PAP's A.M.*, 529 U.S. 277 (2000), *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), and *Young v. American Mini Theatres*, 427 U.S. 50 (1976), the General Assembly finds that:

(1) Adult-oriented businesses, as a category of commercial land uses, are associated with a wide variety of adverse secondary effects, including a negative impact on surrounding properties, personal and property crime, illicit drug use and trafficking, lewdness, prostitution, potential spread of disease, and sexual assault;

(2) Adult-oriented businesses should be separated from schools, playgrounds, places of worship, and other places frequented by children to minimize the impact of the secondary effects of the adult-oriented businesses on schools, playgrounds, places of worship, and other places frequented by children; and

(3) (A) There is a substantial government interest in preventing each of the negative secondary effects described in subdivision (b)(1) of this section.

(B) The substantial government interest exists independently of any comparative analysis between adult-oriented businesses and nonadult-oriented businesses.

14-1-302. Definitions.

As used in this subchapter:

(1) "Adult arcade" means any place where the public is permitted or invited and where a still or motion picture machine, projector, or other image-producing device is:

(A) Coin-operated or slug-operated or electronically, electrically, or mechanically controlled; and

(B) Maintained to show an image or images involving a specific sexual activity or a specific anatomical area to a person in a booth or viewing room;

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(2) "Adult bookstore or video store" means a commercial establishment that offers for sale or rent any of the following as one (1) of its principal business purposes:

(A) A book, magazine, periodical or other printed matter, photograph, film, motion picture, videocassette, reproduction, slide, or other visual representation that depicts or describes a specific sexual activity; or

(B) An instrument, a device, or paraphernalia that is designed for use in connection with a specific sexual activity;

(3) "Adult cabaret" means any nightclub, bar, restaurant, or other similar commercial establishment that regularly features a:

(A) Person who appears in a state of nudity or who is seminude;

(B) Live performance that is characterized by the exposure of a specific anatomical area or a specific sexual activity; or

(C) Film, motion picture, videocassette, slide, or other photographic reproduction that is characterized by the depiction or description of a specific sexual activity or a specific anatomical area;

(4) "Adult live entertainment establishment" means an establishment that features either a:

(A) Person who appears in a state of nudity; or

(B) Live performance that is characterized by the exposure of a specific anatomical area or a specific sexual activity;

(5) "Adult motion picture theater" means a commercial establishment in which for any form of consideration a film, motion picture, videocassette, slide, or other similar photographic reproduction characterized by the depiction or description of a specific sexual activity or a specific anatomical area is predominantly shown;

(6) "Adult-oriented business" means an adult arcade, an adult bookstore or video store, an adult cabaret, an adult live entertainment establishment, an adult motion picture theater, an adult theater, a massage establishment that offers adult services, an escort agency, or a nude model studio;

(7) "Adult theater" means a theater, a concert hall, an auditorium, or a similar commercial establishment that predominantly features a person who appears in a state of nudity or who engages in a live performance that is characterized by the exposure of a specific anatomical area or a specific sexual activity;

(8) "Child care facility" means a facility that is licensed by the Division of Child Care and

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Early Childhood Education of the Department of Human Services to provide care or supervision for minor children;

(9) "Escort" means a person who:

(A) For consideration agrees or offers to act as a date for another person; or

(B) Agrees or offers to privately model lingerie or to privately perform a striptease for another person;

(10) "Escort agency" means a person or business association that furnishes, offers to furnish, or advertises the furnishing of an escort as one (1) of its primary business purposes for any fee, tip, or other consideration;

(11) "Local unit of government" means a city of the first class, a city of the second class, an incorporated town, or a county;

(12) "Massage establishment that offers adult services" means an establishment that offers massage services characterized by an emphasis on a specific sexual activity or a specific anatomical area;

(13) "Nude", "nudity", or "state of nudity" means any of the following:

(A) The appearance of a human anus, human genitals, or a female breast below a point immediately above the top of the areola; or

(B) A state of dress that fails to opaquely cover a human anus, human genitals, or a female breast below a point immediately above the top of the areola;

(14) (A) "Nude model studio" means a place where a person who appears in a state of nudity or who displays a specific anatomical area is observed, sketched, drawn, painted, sculptured, photographed, or otherwise depicted by another person for money or other consideration.

(B) "Nude model studio" does not include a proprietary school that is licensed by this state, a college, community college, or university that is supported entirely or in part by taxation, a private college or university that maintains and operates educational programs in which credits are transferable to a college, community college, or university that is supported entirely or in part by taxation, or a structure containing an establishment to which the following apply:

(i) A sign is not visible from the exterior of the structure and no other advertising appears indicating that a nude person is available for viewing;

(ii) A person must enroll at least three (3) days in advance of a class in order to participate; and

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(iii) No more than one (1) nude or seminude model is on the premises at a time;

(15) "Park" means any area primarily intended for recreational use that is dedicated or designated by any federal, state, or local unit of government, local agency or entity, or any private individual, business, or group including any land leased, reserved, or held open to the public for use as a park;

(16) "Place of worship" means a structure where persons regularly assemble for worship, ceremonies, rituals, and education relating to a particular form of religious belief and which a reasonable person would conclude is a place of worship by reason of design, signs, or architectural features;

(17) "Playground" means any:

(A) Public park or outdoor recreational area with play equipment installed and designed to be used by children; and

(B) Outdoor recreational area with play equipment installed that is owned and operated by a charitable organization or a business;

(18) "Public library" means:

(A) A city library established under § 13-2-501 et seq.;

(B) A county library established under § 13-2-401 et seq.;

(C) A joint city-county library established under § 13-2-401 et seq. or § 13-2-501 et seq.; and

(D) Any other library system established under § 13-2-401 et seq., § 13-2-501 et seq., or § 13-2-901 et seq.;

(19) "Recreational area or facility" means an area or facility open to the public for recreational purposes;

(20) "Residence" means a permanent dwelling place;

(21) "School" means a public or private elementary, secondary, charter, or postsecondary school;

(22) "Seminude" means a state of dress for which clothing covers no more than the genitals, the pubic region, and a female breast below a point immediately above the top of the areola, as well as portions of the body that are covered by supporting straps or devices;

(23) "Specific anatomical area" means any of the following:

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(A) A human anus, genitals, pubic region, or a female breast below a point immediately above the top of the areola that is less than completely and opaquely covered; or

(B) Male genitals in a discernibly turgid state if less than completely and opaquely covered;

(24) "Specific sexual activity" means any of the following:

(A) A sex act, actual or simulated, including an act of human masturbation, sexual intercourse, oral copulation, or sodomy; or

(B) Fondling or other erotic touching of a human genital, a pubic region, a buttock, an anus, or a female breast; and

(25) "Walking trail" means a pedestrian trail or path primarily used for walking but also for cycling or other activities.

14-1-303. Location of adult-oriented businesses.

(a) An adult-oriented business shall not be located within one thousand feet (1,000') of a child care facility, park, place of worship, playground, public library, recreational area or facility, residence, school, or walking trail.

(b) For the purposes of this section, the measurement required in subsection (a) of this section shall be made in a straight line in all directions, without regard to intervening structures or objects, from the nearest point on the property line of a parcel containing an adult-oriented business to the nearest point on the property line of a parcel containing a child care facility, park, place of worship, playground, public library, recreational area or facility, residence, school, or walking trail.

(c) An adult-oriented business lawfully operating in conformity with this section is not in violation of this section if a child care facility, park, place of worship, playground, public library, recreational area or facility, residence, school, or walking trail subsequently locates within one thousand feet (1,000') of the adult-oriented business.

HISTORY: Acts 2007, No. 387, § 1.

14-1-304. County and municipal ordinances.

This subchapter does not prohibit a local unit of government from enacting and enforcing ordinances that regulate the location of adult-oriented businesses in a manner that is at least as restrictive as § 14-1-303.

14-1-305. Civil action.

(a) If there is reason to believe that a violation of this subchapter is being committed in any local unit of government:

(1) The county attorney of the county where the adult-oriented business is located shall maintain an action to abate and prevent the violation and to enjoin perpetually any person who is committing the violation and the owner, lessee, or agent of the building or place in or where the violation is occurring from directly or indirectly committing or permitting the violation; or

(2) A citizen of this state who resides in the county, city, or town where the adult-oriented business is located may in the citizen's own name maintain an action to abate and prevent the violation and to enjoin perpetually any person who is committing the violation and the owner, lessee, or agent of the building or place in or where the violation is occurring from directly or indirectly committing or permitting the violation.

14-1-306. Criminal penalties.

(a) (1) A violation of § 14-1-303 is a Class A misdemeanor.

(2) Each day of violation constitutes a separate offense.

(b) A person violating § 14-1-303 is subject to a fine under § 5-4-201 et seq. and a sentence of imprisonment under § 5-4-401 et seq.

HISTORY: Acts 2007, No. 387, § 1.

14-1-307. Exceptions.

This subchapter shall not apply to an adult-oriented business that is lawfully operating on or before July 31, 2007.