

FOR REVIEW AND COMMENTS

§7.8- Adult Oriented Businesses

The purpose of this section 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 consistent with A.C.A §14-1-301.

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

~~(2) (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.~~

§7.8.1- Definitions.

As used in this section:

(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;

(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:

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

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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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~~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.~~

~~(eb) 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.~~

~~§7.8.2- Exterior Sign~~

~~All adult oriented businesses shall comply with the following standards for exterior advertising:~~

- ~~a) exterior advertising shall be meet the separation requirements listed above in §7.8.2~~
- ~~b) exterior advertising shall be limited to one, on-site sign, with a maximum size of two-square foot and shall be non-illuminated;~~
- ~~c) offsite signage shall be prohibited.~~

~~**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.~~

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7.8.3- ~~14-1-306~~—Criminal penalties.

~~(a)~~ (1) A violation of this section § 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.

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

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

3. A person who operates or causes to be operated an adult oriented business in violation of this ordinance will be subject to a suit for injunction as well as prosecution for criminal violations.

~~HISTORY: Acts 2007, No. 387, § 1.~~

~~§7.8.4- 14-1-307—Exceptions.~~

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

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