

Ordinance No. 2001- 30

FILED FOR RECORD

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BE IT ENACTED BY THE QUORUM COURT, COUNTY OF MARION, STATE OF ARKANSAS, AN ORDINANCE TO BE ENTITLED:

MARY JO LAYTON  
MARION CO. CLERK

BY \_\_\_\_\_ *[Signature]*  
"AN ORDINANCE RESTRICTING SEXUALLY ORIENTED BUSINESSES;  
PRESCRIBING DEFINITIONS OF SEXUALLY ORIENTED BUSINESSES; AND FOR  
OTHER PURPOSES"

WHEREAS, the Quorum Court finds that the secondary effects of sexually oriented businesses are detrimental to the area surrounding the sexually oriented businesses; and,

WHEREAS, sexually oriented businesses require special restrictions in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the county, 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;

NOW, THEREFORE, BE IT ENACTED BY THE QUORUM COURT OF MARION COUNTY, ARKANSAS:

SECTION I: PURPOSE AND FINDINGS

A. Purpose: It is the purpose of this Ordinance to restrict sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the County, and to establish reasonable and uniform restrictions to prevent the deleterious location and concentration of sexually oriented businesses within the County. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors or sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material.

SECTION II: DEFINITIONS

A. "Adult cabaret, theater, arcade, or motion picture theater" means a club, bar, theater, restaurant, auditorium, or similar commercial establishment which regularly features:

- (1) Persons who appear in a state of nudity or semi-nude, either in person or by film;  
or,
- (2) Live performances which are characterized by the expose of "specified anatomical

areas” or by “specified sexual activities”.

B. “Establishment” means and includes any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business;
- (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- (3) The additions of any sexually oriented business to any other existing sexually oriented business; or,
- (4) The relocation of any sexually oriented business.

C. “Nude Model Studio” means any place where a person who appears semi-nude, in a state of nudity, or who displays “specified anatomical areas” and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pays money or any form of consideration. “Nude Model Studio” shall not include a proprietary school licensed by the State of Arkansas or a college, junior college, or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:

- (1) That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and,
- (2) Where in order to participate in a class a student must enroll at least three (3) days in advance of the class.

D. “Nudity” or “State of Nudity” means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

E. “Person” means an individual, proprietorship, partnership, corporation, association, or other legal entity.

F. “Semi-nude” or in a “Semi-nude condition” means the showing of the female breast below a horizontal line cross the top of the areola at its highest point of the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel, provided the areola is not exposed in whole or in part.

G. "Sexual encounter center" means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

- (1) Physical activities between male and female persons and/or persons of the same sex when one or more of the persons is in the state of nudity or semi-nude.

H. "Sexually oriented business" means an adult cabaret, adult motion picture theater, adult theater, nude model studio, sexual encounter center, adult arcade, adult bookstore, adult novelty store, or adult video store.

I. "Specified Anatomical Areas" means:

- (1) The human male genitals in a discernibly turgid state, even if completely or opaquely covered; or,
- (2) Less than completely and opaquely covered human genitals, pubic region, buttocks, or a female breast below a point immediately above the top of the areola.

J. "Specified sexual activities" means any of the following:

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts; or,
- (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy.

### SECTION III: CLASSIFICATION

Sexually oriented businesses are classified as follows:

- A. Adult arcades;
- B. Adult bookstores, Adult novelty stores, or Adult video stores;
- C. Adult cabarets, including nude or semi-nude dance halls;
- D. Adult motion picture theaters;
- E. Adult theaters;
- F. Nude model studios; and,
- G. Sexual encounter centers.

### SECTION IV: APPLICABILITY

This ordinance shall be applicable to all of the unincorporated areas of Marion County, Arkansas.

#### SECTION V: PERMITS

Every owner of a sexually oriented business shall apply for a permit prior to the opening of any new sexually oriented business in the unincorporated areas of Marion County, Arkansas, provided however, that no permit shall be required to any such sexually oriented business operating at the time of the adoption of this ordinance. The permit application shall be accompanied by a One Hundred Dollar (\$100) non-refundable permit and investigation fee. The permit application and fee shall be delivered to the office of the Marion County Judge. Within ten (10) days of such application, the applicant shall cause notice of such application, in a form prescribed by the County Judge, to be published in a newspaper of general circulation in the County. The Marion County Judge shall issue the permit within thirty (30) days from the receipt of the application and fee unless the County Judge determines that: (a) the owner's application is in conflict with this ordinance, or (b) The owner has been convicted of a felony or any sexual offense. If the proposed business location is in conflict with this ordinance, the County Judge shall notify the applicant of the conflict within such thirty (30) days from the receipt of the application and fee. The applicant shall have the right to appeal any adverse decision to the Quorum Court at its next regularly scheduled monthly meeting. The decision of the Quorum Court shall be final. For purposes of carrying out such investigation and inspection, the County Judge may call upon the Sheriff who shall assist in such investigation and inspection either in person or by a deputy.

#### SECTION VI: LOCATION OF SEXUALLY ORIENTED BUSINESSES

A. A person commits an offense if the person operates or causes to be operated a sexually oriented business within two thousand (2000) feet of:

- (1) A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities; or,
- (2) A public or private educational facility including, but not limited to, child day care facilities, nursery schools, pre-schools, kindergartens, elementary schools, junior high schools, middle schools, high schools, continuation schools, special education schools, junior colleges, and universities; "School" includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school; or
- (3) A public park or recreational area which has been designated for park or recreational activities including, but not limited to, a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas, or other similar public land within Marion County which is under the control, operation or management of any government authority; or,
- (4) Any other sexually oriented businesses.

B. A person commits an offense if the person operates or causes to be operated a sexually oriented business within six hundred (600) feet of a residence.

C. A person commits an offense if that person owns, operates, or establishes a sexually oriented business within one (1) miles of another sexually oriented business.

D. For the purpose of subsection A, B, and C of this section, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in subsection A, B, or C. Presence of a city, county, or other political subdivision boundary shall be irrelevant for purposes for calculating and applying the distance requirements of this section.

E. A sexually oriented business lawfully operating in accordance with this ordinance will not be considered as a violation of this ordinance by the subsequent location of those uses outlined in subsections A, B and C of this section.

F. Notwithstanding the foregoing, nothing in this Section shall be construed so as to prohibit the operation of a sexually oriented business which was established prior to the enactment of this Ordinance.

#### SECTION VIII: ADDITIONAL RESTRICTIONS FOR NUDE MODEL STUDIOS AND SEXUALLY ORIENTED BUSINESSES

A. No person under the age of eighteen (18) years shall be employed by a person to appear semi-nude or in a state of nudity in sexually oriented business or in nude model studio. Any person who knowingly violates this subsection shall be guilty of an offense.

B. A person under the age of eighteen (18) years commits an offense if the person appears semi-nude or in a state of nudity in or on he premises of a nude model studio or a sexually oriented business. It is a defense to prosecution under this subsection if the person under eighteen (18) years was in a rest room not open to public view or visible to any other person.

C. A person commits an offense if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in an area of a nude model studio or a sexually oriented business premises which can be viewed from the public right of way.

D. No person under the age of eighteen (18) years shall be permitted within any building or structure during the hours of operation of any sexually oriented business within such building or structure. Any person who violates this subsection shall be guilty of an offense.

E. No person shall operate a sexually oriented business during the hours of 12:00 midnight to 7:00 a.m., or on a Sunday. No person shall appear nude or semi-nude in such sexually oriented business during the hours of 12:00 midnight to 7:00 a.m., or on a Sunday. Any person who violates this subsection shall be guilty of an offense.

SECTION VIII: ADDITIONAL RESTRICTIONS CONCERNING PUBLIC NUDITY

It shall be an offense for a person who knowingly and intentionally in a sexually oriented business, appears in a state of nudity or depicts specified sexual activities.

SECTION IX: EXEMPTIONS

A. It is a defense to prosecution under Section VII that a persona appearing in a state of nudity did so in a modeling class operated:

- (1) By a proprietary school, licensed by the State of Arkansas, a college, junior college, or university supported entirely or partly by taxation;
- (2) By a private college or university which maintains and operates education programs in which credits are transferrable to a college, junior college, or university supported entirely or partly by taxation; or,
- (3) In a structure:
  - (a) which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and,
  - (B) where, in order to participate in a class a student must enroll at least three (3) days in advance of the class.

SECTION X: INJUNCTION

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

SECTION XI: CRIMINAL PENALTIES

A person who operates or causes to be operated a sexually oriented business in violation of any provisions of this ordinance shall be guilty of a misdemeanor and shall be fined in an amount not to exceed Two Hundred Fifty Dollars (\$250) each day or part of a day during which a violation is continued or repeated shall constitute a separate offense.

SECTION XII: SEVERABILITY

If any section, subsection or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsection, and clauses shall not be affected.

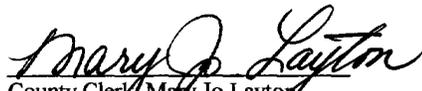
SECTION XIII. CONFLICTING ORDINANCE REPEALED

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION XIV. EMERGENCY CLAUSE

It is hereby determined that this Ordinance is essential for the safety, health and welfare of the citizens of Marion County. Therefore, an emergency is hereby declared to exist and this Ordinance being necessary for the immediate safety, health and welfare of Marion County shall be in full force and effect from and after the date of its passage.

Approved this 11 day of Sept., 2001

  
County Clerk, Mary Jo Layton

  
County Judge, W. E. "Bill" Beaumont

Attest:

MARION COUNTY QUORUM COURT  
ROLL CALL RECORD

ORDINANCE # 2001-30  
DATE Aug. 14, 2001

MOTION READ BY: Marcus Flippin  
MOVED BY: \_\_\_\_\_ SECONDED BY: \_\_\_\_\_

1st Reading

JUSTICES	YEA	NAY	ABSTAIN	ABSENT
JUSTICE JESSIE ADAMS (DIST.#5)				
JUSTICE MARCUS FLIPPIN (DIST.#3)				
JUSTICE STEVEN JONES (DIST.#7)				
JUSTICE HARRY GRAHAM (DIST.#2)				
JUSTICE SUE MACKEY (DIST.#8)				
JUSTICE WESLEY SHIPMAN (DIST.#9)				
JUSTICE SAM TINSLEY (DIST.#6)				
JUSTICE JEFF WEAVER (DIST.#1)				
JUSTICE RAYMOND WILLIAMS (DIST.#4)				

ADOPTED: \_\_\_\_\_ REJECTED: \_\_\_\_\_

MOTION TO SUSPEND RULES AND PLACE ON 2<sup>ND</sup> READING, TITLE ONLY   
MOVED BY: \_\_\_\_\_ SECONDED BY: \_\_\_\_\_

Sept. 11, 2001

JUSTICES	YEA	NAY	ABSTAIN	ABSENT
JUSTICE JESSIE ADAMS (DIST.#5)				
JUSTICE MARCUS FLIPPIN (DIST.#3)				
JUSTICE STEVEN JONES (DIST.#7)				
JUSTICE HARRY GRAHAM (DIST.#2)				
JUSTICE SUE MACKEY (DIST.#8)				
JUSTICE WESLEY SHIPMAN (DIST.#9)				
JUSTICE SAM TINSLEY (DIST.#6)				
JUSTICE JEFF WEAVER (DIST.#1)				
JUSTICE RAYMOND WILLIAMS (DIST.#4)				

ADOPTED \_\_\_\_\_ REJECTED \_\_\_\_\_

MOTION TO SUSPEND RULES AND PLACE ON 3<sup>RD</sup> READING, TITLE ONLY + to adopt  
MOVED BY: \_\_\_\_\_ SECONDED BY: \_\_\_\_\_

Sept. 11, 2001

JUSTICES	YEA	NAY	ABSTAIN	ABSENT
JUSTICE JESSIE ADAMS (DIST.#5)	—	—	—	✓
JUSTICE MARCUS FLIPPIN (DIST.#3)	—	—	✓	—
JUSTICE STEVEN JONES (DIST.#7)	✓			
JUSTICE HARRY GRAHAM (DIST.#2)	✓			
JUSTICE SUE MACKEY (DIST.#8)	✓			
JUSTICE WESLEY SHIPMAN (DIST.#9)	✓			
JUSTICE SAM TINSLEY (DIST.#6)	✓			
JUSTICE JEFF WEAVER (DIST.#1)	✓			
JUSTICE RAYMOND WILLIAMS (DIST.#4)	✓			

ADOPTED  REJECTED \_\_\_\_\_

MOTION TO ADOPT  
MOVED BY: Justice Graham SECONDED BY: Justice Weaver

To Approve  
Emergency Clause

JUSTICES	YEA	NAY	ABSTAIN	ABSENT
JUSTICE JESSIE ADAMS (DIST.#5)	—	—	—	✓
JUSTICE MARCUS FLIPPIN (DIST.#3)	—	✓	—	—
JUSTICE STEVEN JONES (DIST.#7)	✓			
JUSTICE HARRY GRAHAM (DIST.#2)	✓			
JUSTICE SUE MACKEY (DIST.#8)	✓			
JUSTICE WESLEY SHIPMAN (DIST.#9)	✓			
JUSTICE SAM TINSLEY (DIST.#6)	✓			
JUSTICE JEFF WEAVER (DIST.#1)	✓			
JUSTICE RAYMOND WILLIAMS (DIST.#4)	✓			

ADOPTED \_\_\_\_\_ REJECTED \_\_\_\_\_

Mary Jo Layton  
MARY JO LAYTON, COUNTY CLERK