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ORDINANCE NO. 2006-20

Be enacted by the Quorum Court of Miller County, State of Arkansas, an ordinance to be entitled:

“An ordinance to amend Ordinance #84-11 restricting sexually oriented businesses; prescribing definitions of sexually oriented businesses; and for other purposes”

Whereas, the Miller County, Quorum Court held a special meeting to give the public an opportunity to voice its opinions concerning sexually oriented businesses; and,

Whereas, the Quorum Court finds that the secondary effects of sexually oriented businesses require special restrictions on 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; and,

Now, therefore, be it enacted by the Quorum Court of Miller, 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 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 of 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 wither in person or by film or,
- (2) Live performances which are characterized by the exposure 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 pay money or may 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 persons 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 fully opaque coverage, 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 discerning 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 across the top of the areola at its highest point or 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, 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 a 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.

L. "Specified Anatomical Areas" means:

- (1) The human male genitals in a discerning turgid state even if completely of 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 Cabaret, Theater, Arcade, or motion picture theater" means a club, bar, theater, restaurant, auditorium, or similar commercial establishment which regularly features:

- (1) Person who appear in a state of nudity or semi-nudity or semi-nude, either in person or by film; or,
- (2) Live performances which are characterized by the exposure 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 conversions of an existing business, whether or not a 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 pay money or any form of consideration. "Nude Model Studio" shall not include a college, junior college, or university supported entirely or in part by public taxation; 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 persons 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 of the showing of the.

- A. Adult Arcades;
- B. Adult bookstores with adult novelties stores, or adult video stores;
- C. Adult cabarets;
- 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 Miller County, Arkansas:

Section V: Permits

Every owner of a sexually oriented business shall apply for a permit to the opening of any new sexually oriented business in the unincorporated areas of Miller County, Arkansas. 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 Miller County Judge. The Miller County Judge shall issue the permit within ten (10) business days from the receipt of the application and fee unless the County Judge determines that the owner's proposed business location is in conflict with this ordinance. If the proposed business location is in conflict with this ordinance, the County Judge shall notify the applicant of the conflict within ten (10) business 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.

Section VI: Location of sexually oriented business

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, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation school, special education schools, junior college, 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 designed 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 Miller County which is under the control, operation, or management of any governmental authority; or,
- (4) The property line of a lot devoted to residential use when said lots is in a platted subdivision if said residential use is not in a platted subdivision, then for purposes of this ordinance, the property line shall be one hundred (100) feet in any direction from a residence.

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

C. For the purpose of subsection A and B 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 sexually oriented business is conducted to the nearest property line of the premises of a use listed in subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements for this section.

D. 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 and B of this section.

Section VII: Additional restrictions for nude model studios and sexually oriented business

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 a sexually oriented business or in a 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 the 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 restroom 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.

Section VII: 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 person 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 educational programs in which credits are transferable 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 a 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 provision 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, clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected.

Section XIII: Conflicting Ordinance Repealed

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

Section XIV: Codification

This ordinance shall be codified in the Miller County code of ordinance and the section may be renumbered and relettered to accomplish such intention.

Attest: Anna Nicholas

Approved: [Signature]

Date: December 7, 2010

This ordinance being necessary for the health and protection of the citizens of Miller County shall be in full force and effect from and after passage and approval.