

ORDINANCE NO. 2006-1
ORDINANCE REGULATING CERTAIN SEXUALLY
ORIENTED ADULT BUSINESSES

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 Wythe County Board of Supervisors finds that sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution, and for sexual liaisons of a casual nature; 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, licensing is a legitimate and reasonable means of accountability to ensure that operators of sexually oriented businesses comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation; and

WHEREAS, there is convincing documented evidence that sexually oriented 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, causing increased crime and the downgrading of property values; and

WHEREAS, it is recognized that sexually oriented businesses, due to their nature, have serious objectionable operational characteristics, thereby contributing to urban blight and downgrading the quality of life in the adjacent area; and

WHEREAS, the Wythe County Board of Supervisors 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 Wythe County Board of Supervisors has determined that locational criteria alone do not adequately protect the health, safety, and general welfare of the people of this 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

WHEREAS, it is not the intent of the Wythe County Board of Supervisors to condone or legitimize the distribution of obscene material, and the Board of Supervisors 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.

NOW, THEREFORE, IT IS ORDAINED by the Board of Supervisors of Wythe County, Virginia as follows:

SECTION 1. Definitions.

The following words, terms and phrases, when used in this ordinance shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

Adult bookstore/videostore means an establishment having as a substantial or significant portion of its stock-in-trade books, magazines and other periodicals and/or videotapes, computer disks, CD-ROMs, DVD-ROMs, virtual reality devices or any other similar media that are distinguished or characterized by their emphasis on matter depicting, describing or relating to “specified sexual activities”, or “specified anatomical area” or are intended for the sexual stimulation or titillation of patrons.

Adult Business means adult bookstore/videostore, adult mini-motion picture theater, adult motion picture theater, adult store, a business providing adult entertainment, adult merchandise, or any other establishment including without limitation any adult modeling studio, adult cocktail lounge or adult nightclub, that regularly emphasizes an interest in matter relating to specified sexual activities or specified anatomical areas or is intended for the sexual stimulation or titillation of patrons.

Adult Care Center. Same as “Child care center,” except that such facility is for the care of adults.

Adult entertainment means dancing, modeling or other live performances if the performers’ performance is characterized by an emphasis on specified anatomical areas or specified sexual activities, or is intended for the sexual stimulation or titillation of patrons. Also includes the showing of films, motion pictures, video cassettes, slides, photographic reproductions, virtual reality devices, internet sites or files transmitted over the internet, or other media that are characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas or is intended for the sexual stimulation or titillation of patrons.

Adult merchandise means magazines, books, other periodicals, videotapes, movies, photographs, slides, CD-ROMs, DVD-ROMs, virtual reality devices or other similar media that are characterized by their emphasis on matter depicting, describing or relating to specific sexual activities or specified anatomical areas or are intended for

the sexual stimulation or titillation of patrons. Also includes toys, novelties, instruments, devices or paraphernalia either designed as representations of human genital organs or female breasts, or designed or marketed primarily for use to stimulate human genital organs and lingerie or leather goods marketed or presented in a context to suggest their use for sadomasochistic practices.

Adult mini-motion picture theater means an enclosed building with a capacity of less than 50 persons used for presenting material for observation by patrons distinguished or characterized by an emphasis on matter depicting, describing or relating to “specified sexual activities” or “Specified anatomical areas.”

Adult model studio means a commercial establishment, including a lingerie store or novelty store, in which a person performs or simulates specified sexual activities, exposes specified anatomical areas, or engages in other Performances intended for the sexual stimulation or titillation of patrons.

Adult motion picture theater means an enclosed building with a capacity of 50 or more persons used for presenting material for observation by patrons distinguished or characterized by an emphasis on matter depicting, describing or relating to “specified sexual activities” or “specified anatomical areas.”

Adult nightclub means a restaurant, bar, club, or similar establishment that regularly features adult entertainment.

Adult Store means an establishment having adult merchandise as a substantial or significant portion of its stock-in-trade.

Employee means an individual working or performing services for any adult business, including any independent contractor who provides services on behalf of any adult business to the patrons of such business, whether or not the individual receives any remuneration, gratuity, or tips of any kind, or pays the permittee or manager for the right to perform or entertain in the adult business.

Live entertainment means entertainment provided in person including, but not limited to, musical performances, music played by disc jockeys, public speaking, dramatic performances, dancing, modeling, or comedy performances.

Specified Anatomical Areas means less than completely and opaquely covered human genitals, pubic region, buttock, or female breast below a point immediately above the top of the areola; or human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities means human genitals in a state of sexual stimulation or arousal; sexual intercourse or sodomy; or fondling or other erotic touching of human genitals, pubic region, buttock or female breast, including masturbation.

SECTION 2. Adult Business Permit required from County Administrator – application; issuances; duration; renewal.

- (a) Every person either operating or desiring to operate an adult business, in addition to obtaining any required business license, if required, shall apply to the County Administrator, or his designee, for a permit to conduct such activity. Each such application shall be accompanied by a fee in the amount of \$150.00.

- (b) Information required on and with the permit application shall include, but not be limited to, the following:
 - (1) The applicant's full name, age, sex, race, weight, height, hair and eye color, address, telephone number, date and place of birth and social security number.
 - (2) Names and addresses of references.
 - (3) Whether the applicant has been convicted of any felony or misdemeanor and, if so, the nature of the offense, when and where convicted and the penalty or punishment assessed.
 - (4) Whether the applicant holds or has held, in the name of this business or any other, any other permits under this ordinance or a similar adult use ordinance from another locality within the past five years, and, if so, the names and locations of such other permitted businesses.
 - (5) Whether the applicant has been denied a permit or has had a permit revoked under any statute or ordinance requiring a permit to operate an adult business and, if so, when and where the denial or revocation occurred.
 - (6) Photograph and fingerprints of applicant.
 - (7) Name, including any fictitious names, and address of the business for which a permit is sought.
 - (8) A criminal records check of the applicant shall be provided by the applicant with the application, along with the applicant's written authorization to investigate whether the information provided by the applicant is true.
 - (9) A description of the intended business activity and, if adult entertainment is to be provided, a detailed description of such entertainment.

- (10) Written declaration, dated and signed by the applicant, certifying that the information contained in the application is true and correct.
- (c) For a corporation, partnership or other legal entity, "applicant" includes each officer, director, partner or principal of the entity and the managers of the adult business.
 - (d) The County Administrator or his designee shall act on the application within 30 days of the filing of an application containing all the information required by this section, unless information requested from other law enforcement agencies is not received within that 30-day period, in which case the County Administrator or his designee shall have an additional 30 days to act on the application. Upon the expiration of the applicable time period, unless the applicant requests and is granted a reasonable extension of time, the applicant may, at its option, begin operating the business for which the permit is sought, unless and until the County Administrator or his designee notifies the applicant of a denial of the application and states the reasons for denial.
 - (e) The applicant shall be issued a permit unless the county's investigation or the information furnished by the applicant shows any of the following:
 - (1) The applicant has failed to provide information required by this ordinance or has falsely answered a question.
 - (2) The applicant has been convicted of a felony within the past five years.
 - (3) The applicant has been convicted of a crime of moral turpitude or a crime involving obscenity laws within the past three years.
 - (4) The applicant has been denied a permit or has had a permit revoked within the past 12 months under any statute or ordinance requiring a permit to operate an adult business.
 - (5) Failure of the applicant's business to comply with the county's building, plumbing, utility, health, electric or fire prevention codes, or with any other applicable county or state laws or regulations.
 - (6) The application fee has not been paid.
 - (f) If the application is denied, the County Administrator or his designee shall notify the applicant of the denial and state the reasons for the denial.
 - (g) The permit shall be valid for 12 months from the date thereof and may be renewed in the same manner as it was initially obtained. The application fee for a renewal permit shall be \$75.00. No permit shall be transferable.

- (h) Any changes in the ownership or principals of the business entity to which the permit is issued or in the managers of the adult business will automatically make the permit void. Such changes shall be reported to the County Administrator or his designee, and a new application may be submitted for review.

SECTION 3. Adult Business Employee License required from County Administrator – application; issuance; duration, renewal.

- (a) No person shall obtain employment with or be employed by an adult business as full-time, part-time or independent contractor, agent or by another status without having secured an adult business employee license. Employee does not include a person on the premises exclusively for repair or maintenance of the premises or for delivery of goods to the premises. Application for an adult business employee license shall be to the County Administrator or his designee. Each such application shall be accompanied by a fee in the amount of \$75.00.
- (b) Information required on and with the license application shall include, but not be limited to, the following:
 - (1) The applicant's full name, age, sex, race, weight, height, hair and eye color, address, telephone number, date and place of birth and social security number.
 - (2) Names and addresses of references.
 - (3) Whether the applicant has been convicted of any felony or misdemeanor and, if so, the nature of the offense, when and where convicted and the penalty or punishment assessed.
 - (4) Whether the applicant holds or has held any other permits or licenses under this ordinance or a similar adult use ordinance from another locality within the past five years, and, if so, the names and locations of such other businesses and employers.
 - (5) Whether the applicant has been denied a permit or license or has had a permit or license revoked under any statute or ordinance requiring a permit or license to operate an adult business or be employed in an adult business and, if so, when and where the denial or revocation occurred.
 - (6) Photograph and fingerprints of applicant.
 - (7) A criminal records check of the applicant shall be provided by the applicant with the application, along with the applicant's written authorization to investigate whether the information provided by the applicant is true.
 - (8) Written declaration, dated and signed by the applicant, certifying that the information contained in the application is true and correct.

- (c) The County Administrator or his designee shall act on the application within 30 days of the filing of an application containing all the information required by this section, unless information requested from other law enforcement agencies is not received within that 30-day period, in which case the County Administrator or his designee shall have an additional 30 days to act on the application. Upon the expiration of the applicable time period, unless the applicant requests and is granted a reasonable extension of time, the applicant may, at its option, begin employment in this business for which the license is sought, unless and until the County Administrator or his designee notifies the applicant of a denial of the application and states the reasons for denial.
- (d) The applicant shall be issued a license unless the county's investigation or the information furnished by the applicant shows any of the following:
 - (1) The applicant has failed to provide information required by this ordinance or has falsely answered a question.
 - (2) The applicant has been convicted of a felony within the past five years.
 - (3) The applicant has been convicted of a crime of moral turpitude or a crime involving obscenity laws within the past three years.
 - (4) The applicant has been denied a permit or license or has had a permit or license revoked within the past 12 months under any statute or ordinance requiring a permit to operate an adult business or be employed in an adult business.
 - (5) The application fee has not been paid.
- (e) If the application is denied, the County Administrator or his designee shall notify the applicant of the denial and state the reasons for the denial.
- (f) The license shall be valid for 12 months from the date thereof and may be renewed in the same manner as it was initially obtained. The application fee for a renewal license shall be \$27.50. No license shall be transferable.

SECTION 4. Grounds for Revocation.

The County Administrator or his designee may revoke any permit or license issued pursuant to this ordinance for the following:

- (a) Fraud, misrepresentation or any false or misleading statement contained in the application;
- (b) Conviction of the permittee or licensee for any felony, crime involving moral turpitude, or crime involving obscenity laws after the permit or license is issued;

- (c) The permittee or any employee of the permittee has knowingly allowed possession, use or sale of illegal controlled substances in or on the premises;
- (d) The permittee or any employee of the permittee has knowingly allowed prostitution on the premises;
- (e) The permittee has refused to allow an inspection of the adult business premises as authorized by this ordinance;
- (f) On two or more occasions within a 12-month period, employees of the adult business at the time of the offenses committed an offense in or on the permitted premises for which a conviction has been obtained constituting;
 - a. Aiding, abetting or harboring a runaway child;
 - b. Prostitution or promotion of prostitution;
 - c. Exposing minors to harmful materials;
 - d. Dissemination of obscenity;
 - e. Sexual assault; or
 - f. Violation of Section 9 of this ordinance.

The fact that a conviction is being appealed shall have no effect on the revocation of the permit or license.

- (g) The permittee is convicted of violations regarding any taxes or fees related to the adult business;
- (h) The permittee has failed to operate or manage an adult business in a peaceful and law abiding manner;
- (i) The permittee or an employee of the permittee knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual activity to occur in or on the permitted premises;
- (j) The permittee has been operating an adult business not approved under the applicable permit;
- (k) The permittee or licensee has failed to comply with the provisions of this ordinance;
- (l) The permittee's business fails to comply with other applicable county or state laws or regulations.

SECTION 5. Procedure upon denial of an application or revocation of a permit or license.

- (a) If the County Administrator or his designee denies an application or revokes a permit or license, he shall notify the applicant or permittee or licensee in writing of such action, the reasons therefore, and the right to request a hearing. To receive a hearing, the applicant or permittee or licensee must make a written hearing request which must be received by the County Administrator or his designee within ten days of the date of the notice of denial or revocation. If a timely hearing request is not received by the County Administrator or his designee, the decision of the County Administrator or his designee shall be final. If a hearing is properly requested, it shall be held within ten days from receipt of the hearing request. The hearing shall be presided over by the County Administrator or his designee. The applicant or permittee or licensee shall have the right to present evidence and argument or to have counsel do so. Within five days of the hearing, the County Administrator or his designee shall render his decision which shall be final. A permittee must discontinue operation of its business when the decision to revoke the permit becomes final and a licensee shall cease employment when the decision to revoke the license has become final.

- (b) When an imminent threat of substantial harm to public health or safety requires such action, the County Administrator or his designee may immediately revoke a permit or license issued under this ordinance by so stating in a written notice to the permittee or licensee. When action is taken pursuant to this subsection, the permittee shall immediately discontinue operation of its business and a licensee shall immediately cease employment but shall have the right to a hearing as stated in subsection (a).

SECTION 6. Availability of prompt judicial review.

After denial of an initial or renewal application or after revocation of a permit or license by the County Administrator or his designee, the applicant or permittee or licensee may seek prompt judicial review of such administrative action in the circuit court of the county. Any such request for judicial review shall be filed within 30 days of when the administrative action becomes final. The county will facilitate the applicant, permittee or licensee in obtaining prompt review.

SECTION 7. Inspection.

In addition to any existing legal authority, law enforcement officials and representatives of county departments shall have the authority to inspect an adult business for the purpose of determining compliance with the provisions of this ordinance.

SECTION 8. Regulations pertaining to adult businesses providing adult entertainment.

- (a) For purposes of this section, adult entertainment is defined as dancing, modeling or other live entertainment if the entertainment is characterized by an emphasis on specified sexual activities or specified anatomical areas or is intended for the sexual stimulation or titillation of patrons.
- (b) No person shall provide adult entertainment for patrons of an adult business except upon a stage located in an area open to all patrons of the business. The stage shall be at least 18 inches above the level of the floor and separated by a distance of at least three feet from the nearest area occupied by patrons. No patron shall be permitted within three feet of the stage while the stage is occupied by an entertainer.
- (c) The adult business shall provide separate dressing room facilities for female and male entertainers which shall not be occupied or used in any way by anyone other than them.
- (d) The adult business shall provide entertainers access between the stage and the dressing rooms which is completely separated from the patrons. If separate access is not physically feasible, the establishment shall provide a walk aisle at least four feet wide for entertainers between the dressing room area and the stage with a railing, fence or other barrier separating the patrons and the entertainers which prevents any physical contact between patrons and entertainers.
- (e) No entertainer shall have physical contact with any patron and no patron shall have physical contact with any entertainer while in or on the premises of the adult business.
- (f) No patron shall directly pay or give any gratuity to any entertainer. A patron who wishes to pay to give a gratuity to an entertainer shall place the gratuity in a container that is at all times located separately from the entertainers for the purpose of preventing any physical contact between a patron and an entertainer. No entertainer shall solicit any gratuity from any patron.
- (g) Patrons must be at least 18 years of age.
- (h) No operator or manager of an adult business shall cause or allow an entertainer to contract to or engage in any entertainment such as a “couch”, a “straddle”, or “lap” dance with a patron while in or on the premises of an adult business. No entertainer shall contract to or engage in a “couch”, “straddle”, or “lap” dance with a patron while in or on the establishment premises. For purposes of this subsection, “couch”, “straddle”, or “lap” dance is defined as an employee of the establishment intentionally touching any patron while

engaged in any specified sexual activity or other activity intended for the sexual stimulation or titillation of patrons, or the exposure of any specified anatomical area.

- (i) This section shall not apply: to an employee of an establishment who, while acting as a waiter, waitress, host, hostess, or bartender, comes within three feet of a patron. No employee shall engage in any specified sexual activity or other activity intended for the sexual stimulation or titillation of patrons, or expose any specified anatomical area while acting as a waiter, waitress, host, hostess or bartender.
- (j) Signs or attention-getting devices for the adult business shall not contain any words or graphics depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined in Section 1 of this ordinance.
- (k) The adult business shall not remain open at anytime between the hours of one o'clock (1:00) a.m. and eight o'clock (8:00) a.m. on weekdays and Saturdays and one o'clock (1:00) a.m. and noon (12:00) p.m. on Sundays.
- (l) All owners, managers, employees and entertainers shall be at least 18 years of age.
- (m) The owner or operator shall install, operate and maintain a security camera and video tape system designed by a security specialist. Surveillance cameras shall continuously monitor all entrances, parking areas and all areas of the establishment where the adult business is conducted. Such cameras shall provide clear imagery of the establishment's patrons and their vehicles. Tapes recording activities in the areas under surveillance shall be preserved for a period of four months. Authorized representatives of the county or law enforcement officials shall have access to such tapes upon request.
- (n) The owner or operator shall provide adequate lighting for all entrances, exits and parking areas serving the adult business, and all areas of the establishment where the adult business is conducted. "Adequate lighting" means sufficient lighting for clear visual and security camera surveillance.

SECTION 9. Regulations pertaining to all adult businesses.

- (a) Sexually explicit material shall not be displayed in the windows of adult businesses. Further, adult merchandise shall not be visible from any point outside the establishment.
- (b) Signs advertising the adult business and any attention-getting devices shall not display sexually explicit pictures or language.

- (c) All off-street parking areas of the adult business shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one foot candle of light on the parking surface and walkways. Adequate lighting shall also be provided for all entrances and exits serving the adult business.
- (d) Adult businesses shall not employ any person under the age of 18.
- (e) Wide angle mirrors and/or video systems must be used to provide the manager with continuous monitoring of all areas of the establishment.
- (f) The owner or operator shall install, operate and maintain a security camera and video tape system designed by a security specialist who shall continuously monitor all exterior entrances and parking areas of the establishment. Such cameras shall provide clear imagery of the establishment's patrons and their vehicles. Tapes recording activities in the areas under surveillance shall be preserved for a period of 12 months. Authorized representatives of the police department or the planning department shall have access to such tapes in accordance with applicable law.
- (g) For purposes of this article, an "employee" means an individual working or performing services for any adult business, including any independent contractor who provides services on behalf of any adult business to the patrons of such business, whether or not the individual receives any remuneration, gratuity, or tips of any kind, or pays the permittee, manager or other person for the right to perform or entertain in the adult business.

SECTION 10. Transfer of Permit Prohibited.

- (a) A permittee shall not operate an adult business at any place other than at the address designated in the approved permit.
- (b) A permittee shall not transfer its permit to another person.

SECTION 11. State of Nudity in Adult Business.

- (a) As used in this section, the term "state of nudity" means a state of undress so as to expose the human male or female genitals, pubic area or buttocks or to cover any of them with less than a fully opaque covering, or the showing of the female breast or any portion thereof below the top of the nipple, of the covering of the breast or any portion thereof below the top of the nipple with less than a fully opaque covering.

- (b) Every person who knowingly, voluntarily and intentionally appears in any area or premises of an adult business to which any patron, customer or member of the audience has access or view in a state of nudity, or employees, encourages or procures another person so to appear, shall be guilty of a Class One Misdemeanor punishable by confinement in jail for not more than twelve months or a fine of not more than twelve months or a fine of not more than \$2,500.00, or both.

- (c) Nothing contained in this section shall be construed to apply to the exhibition, presentation, showing or performances of any play, ballet, drama, tableau, production or motion picture in any theater, concert hall, museum of fine arts, school, institution of higher learning or other similar establishment which is primarily devoted to such exhibitions, presentation, shows or performances as a form of expression of opinion, communication, speech, ideas, information, art or drama as differentiated from commercial or business advertising, promotion or exploitation of nudity for the purpose of advertising, promoting, selling or serving products or services or otherwise advancing the economic welfare of a commercial or business enterprise, such as a hotel, motel, bar, nightclub, restaurant, tavern, or dance hall.

SECTION 12. Violations

Violations of this ordinance are prohibited as unlawful and may be civilly enjoined and are subject to punishment as a Class One Misdemeanor, being confinement in jail for not more than twelve months or a fine of not more than \$2,500.00, or both. Each day a violation continues is a separate offense. The imposition of a penalty pursuant to this section does not prevent permit or license suspension or revocation by administrative proceeding and sanction. Except as provided in the second sentence of section 2(d) or section 3(c) of this ordinance, operation of an adult business without a permit or employment with or by an adult business without a license is prohibited and a violation of the ordinance.

SECTION 13. Exception – Breast Feeding.

No person shall be deemed to be in violation of this ordinance for breast feeding a child.

SECTION 14. Severability.

If any section, subsection, clause or other portion of this ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this ordinance.

SECTION 15. Effective Date; Application.

This ordinance was duly considered following a required public hearing held on April 25, 2006, and was adopted by the Board of Supervisors of Wythe County, Virginia, at its regular meeting held on April 25, 2006, the members voting as follows:

| <u>NAME</u> | <u>FOR</u> | <u>AGAINST</u> | <u>ABSENT</u> |
|--------------------|------------|----------------|---------------|
| Susan R. Crigger | X | | |
| James E. Hagee | X | | |
| Charles S. Dix | X | | |
| Lisa R. Eaton | X | | |
| Wythe B. Sharitz | X | | |
| Danny C. McDaniel | X | | |
| Martha P. Umberger | X | | |

This ordinance shall become effective at 12:01 a.m. on April 26, 2006.

I certify this to be a true and correct copy taken from the April 25, 2006 minutes of the Wythe County Board of Supervisors meeting.

R. Cellell Dalton, Clerk