

STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR RICHLAND COUNTY
ORDINANCE NO. 045-08HR

AN ORDINANCE AMENDING THE RICHLAND COUNTY CODE OF ORDINANCES; CHAPTER 26, LAND DEVELOPMENT; ARTICLE VI, SUPPLEMENTAL USE STANDARDS; SECTION 26-151, PERMITTED USES WITH SPECIAL REQUIREMENTS; SUBSECTION (C), STANDARDS; PARAGRAPH (66), SEXUALLY ORIENTED BUSINESSES; SO AS TO AMEND REQUIREMENTS PERTAINING TO SEXUALLY ORIENTED 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, and welfare of patrons of such businesses as well as citizens of the County; and

WHEREAS, upon review of numerous studies, case law, analyses, and observations, the County concludes that sexually oriented businesses, as a category of business, are associated with a wide variety of negative secondary effects, including but not limited to, personal and property crimes, public safety risks, prostitution, potential spread of disease, lewdness, public indecency, illicit sexual activity, illicit drug use and drug trafficking, adverse impacts on surrounding properties, litter, and sexual assault and exploitation; and

WHEREAS, the Richland County Council has a substantial government interest in minimizing and controlling these adverse effects and thereby protecting the health, safety and welfare of the citizenry; protect the citizens from 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 County's interest in regulating sexually oriented businesses extends to future secondary effects that could occur in the County related to current sexually oriented businesses as well as sexually oriented businesses that may locate in the County in the future; and

WHEREAS, the County recognizes its constitutional duty to interpret, construe, and amend its laws and ordinances to comply with constitutional requirements as they are announced; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the United States Constitution or the South Carolina Constitution, but to enact an ordinance to further the content-neutral governmental interests of the County, to wit, the controlling of secondary effects of sexually oriented businesses.

WHEREAS, the secondary effects information discussed herein is in addition to secondary effects information compiled and considered by the Richland County Council when it

adopted Ordinance 1609-87 HR, which became the original Sexually Oriented Business Ordinance, and subsequent amendments thereto; and

WHEREAS, the Richland County Council finds that documents and public comments in that original legislative record for Ordinance 1609-87HR, as well as the secondary effects information identified in this ordinance, provide legislative support for the original Sexually Oriented Business Ordinance.

Pursuant to the authority by the Constitution of the State of South Carolina and the General Assembly of the State of South Carolina, BE IT ENACTED BY RICHLAND COUNTY COUNCIL:

SECTION I. The Richland County Code of Ordinances, Chapter 26, Land Development; Article II, Rules of Construction/Definitions; Section 26-22, Definitions; "Sexually Oriented Business," is hereby amended as follows:

Sexually Oriented Business. An adult arcade, adult bookstore, adult video store, adult cabaret, adult motel, adult motion picture theater, sexual device shop, or sexual encounter center. As used in this chapter, the following definitions shall apply to such businesses:

- (a) *Adult Arcade.* Any place where the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are characterized by the depicting or describing of specified sexual activities or specified anatomical areas.
- (b) *Adult Bookstore or Adult Video Store.* A commercial establishment which, as one of its principal business purposes, offers for sale or rental (for any form of consideration) adult media.
 - (1) As used in this definition, “*principal business purpose or purposes*” means the commercial establishment has a substantial portion of its displayed merchandise which consists of said items; or has a substantial portion of the wholesale value of its displayed merchandise which consists of said items; has a substantial portion of the retail value of its displayed merchandise which consists of said items; or derives a substantial portion of its revenues from the sale or rental, for any form of consideration, of said items; or maintains a substantial section of its interior business space for the sale or rental of said items.
 - (2) As used in this definition, “*substantial*” means twenty-five percent (25%) or more.
- (c) *Adult Cabaret.* A nightclub, bar, restaurant, or similar commercial establishment, which regularly features, regardless of whether alcoholic beverages are served, persons who appear in a state of nudity or semi-nudity.
- (d) *Adult Media.* Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, videocassettes or compact discs, digital video discs, video reproductions, slides, or other visual representations, which are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas.
- (e) *Adult Motel.* A hotel, motel, or similar commercial establishment that:
 - (1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, slides, compact discs, digital video discs, video reproductions or similar photographic reproductions that are characterized by the depiction or description of specified sexual activities or specified anatomical areas; and
 - advertises the availability of such material by means of a sign visible from the public right-of-way, or by means of any on or off-premises advertising, including, but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or
 - (2) Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
 - (3) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.
- (f) *Adult Motion Picture Theater.* A commercial establishment that, for any form of consideration, exhibits or shows films, motion pictures, videocassettes, slides, compact discs, digital video discs, video reproductions, or similar photographic

reproductions that are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas.

- (g) *Characterized By.* To describe the essential character or quality of an item, activity, or thing. As applied in this ordinance, no business shall be classified as a sexually oriented business by virtue of showing, selling or renting materials rated NC-17 or R by the Motion Picture Association of America.
- (h) *Child Care Facility.* A facility as defined in S.C. Code Ann. § 20-7-2700(b).
- (i) *Establish or Establishment of a Sexually Oriented Business.* 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 addition of another type(s) of sexually oriented business to any other existing sexually oriented business, such as the addition of an adult video store to an existing sexual device shop; or
 - (4) The relocation of any sexually oriented business.
- (j) *Nude or a State of Nudity.* The showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage or the showing of bare female breasts. This definition shall not include the act of a female breast-feeding a child in a public place; nor to infants or toddlers in a public place, nor to exposure of the human female breasts above a horizontal line across the top of the areola exhibited by a dress, blouse, shirt or other similar wearing apparel; nor to exposure of cleavage of the human female breasts exhibited by a dress, blouse, shirt, or similar wearing apparel.
- (k) *Person.* An individual, proprietorship, partnership, corporation, association, or other legal entity.
- (l) *Premises.* The real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business structure, the grounds, private walkways, and parking areas under the ownership, control, or supervision of the sexually oriented business.
- (m) *Regularly.* The consistent and repeated doing of the act so described.
- (n) *Semi-nude.* A state of dress in which the human male or female genitals, pubic area, vulva, anus, and anal cleft or cleavage are covered by fully opaque cloth or other material.
- (o) *Sexual Device Shop.* A commercial establishment that offers for sale:
 - 1) Any two of the following categories: 1) adult media, 2) lingerie; or 3) sexual devices; and combination thereof constitutes more than ten percent (10%) of its stock in trade or occupies more than ten percent (10%) of its interior business space.
 - 2) More than five percent (5%) of its stock in trade consists of sexual devices; or
 - 3) More than five percent (5%) of its interior business space is used for the display of sexual devices.
 - 4) Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing medical or healthcare products or services.

- (p) *Sexual Device.* Any three (3) dimensional object designed and marketed for stimulation of the male or female human genital organ or anus, or for sadomasochistic use or abuse of oneself or others, and shall include devices such as dildos, vibrators, penis pumps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or preventing pregnancy.
- (q) *Sexual Encounter Center.* A business or commercial enterprise that regularly offers, for any form of consideration, physical contact in the form of wrestling or tumbling between persons when one or more of the persons is semi-nude or nude.
- (r) *Specified Anatomical Areas.* The human genitals, pubic region, buttocks; the 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.
- (s) *Specified Sexual Activities.* Any of the following:
 - (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
 - (2) Actual or simulated intercourse, oral copulation, masturbation or sodomy; or
 - (3) Excretory functions as part of or in connection with any of the activities set forth in subsection (1) through (2) of this definition above.
- (t) *Viewing Room.* A room, booth, or other enclosed or partially enclosed area where a patron or patrons of a sexually oriented business would ordinarily be positioned while watching adult media or live entertainment.

SECTION II. The Richland County Code of Ordinances; Chapter 26, Land Development; Article VI, Supplemental Use Standards; Section 26-151, Permitted Uses with Special Requirements; Subsection (c), Standards; Paragraph (66), Sexually Oriented Businesses, is hereby amended as follows:

(66) *Sexually oriented businesses.*

a. *Use districts:* General Commercial, Heavy Industrial

b. *Purpose and Findings:*

1. The purpose of this subsection is to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of Richland County, and to establish reasonable and uniform regulations to prevent or reduce to any extent the secondary effects of sexually oriented businesses within the County. The provisions of this subsection have neither the purpose nor effect of imposing a limitation or restriction on the content of or reasonable access to any communicative materials or expression. Similarly, it is neither the intent nor effect of these regulations to restrict or deny access by adults to sexually oriented materials or expression protected by the First Amendment of the United States Constitution, 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 subsection to condone or legitimize the distribution or exhibition of obscenity.
2. Based on evidence of the adverse secondary effects of sexually oriented businesses presented in hearings and reports made available to the Richland County Council, and on the findings, interpretations, and narrowing

constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, LLC*, 124 S. Ct. 2219 (2003); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *Pap's A.M. v. City of Erie*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *Chesapeake B & M, Inc. v. Harford County*, 58 F.3d 1005 (4th Cir. 1995); *Giovani Carandola, Ltd. v. Fox*, 470 F.3d 1074 (4th Cir. 2006); *Centaur v. Richland County*, 392 S.E.2d 165 (S.C. 1990); and other cases; and on reports of secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Phoenix, Arizona (1979); Minneapolis, Minnesota (1980); Houston, Texas (1987); Indianapolis, Indiana (1984); Amarillo, Texas (1977); Garden Grove, California (1991); Los Angeles, California (1977); Whittier, California (1978); Austin, Texas (1986); Seattle, Washington (1989); Oklahoma City, Oklahoma (1986); El Paso, Texas (1986); New York City, New York (1994); Dallas, Texas (1997); Newport News, Virginia (1996); New York Times Square Study (1994); Phoenix, Arizona (1995-1998); Greensboro, North Carolina (2003); Toledo, Ohio (2002); Centralia, Washington (2004); and also from the reports of "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, January 12, 2000; "Survey of Appraisers Fort Worth & Dallas, Effects of Land Uses on Surrounding Property Values, by Duncan Associates, September 2004; and the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the Richland County Council finds:

- (a) Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, public safety risks, prostitution, potential spread of disease, lewdness, public indecency, illicit sexual activity, illicit drug use and drug trafficking, negative impacts on surrounding properties, litter, and sexual assault and exploitation.
- (b) Each of the foregoing negative secondary effects constitutes a harm which the County has a substantial government interest in preventing and/or abating in the future. This substantial government interest in preventing secondary effects, which is the County's rationale for this ordinance, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the County's interest in regulating sexually oriented businesses extends to future secondary effects that could occur in the County related to current sexually oriented businesses in the future as well as sexually oriented businesses that may locate in the County in the future. The County Council finds that the cases and secondary effects documentation relied on in this ordinance are reasonably believed to be relevant to said secondary effects.

c. *Classification.* Sexually oriented businesses are classified as follows:

1. Adult Arcades;
2. Adult Bookstores or Adult Video Stores;
3. Adult Cabarets;
4. Adult Motels;
5. Adult Motion Picture Theaters;
6. Sexual Device Shop; and
7. Sexual Encounter Centers.

d. *Location of Sexually Oriented Businesses:*

1. A sexually oriented business currently in operation or established subsequent to the enactment of this Ordinance shall comply with the provisions herein.
2. All sexually oriented businesses shall be located within a General Commercial or Heavy Industrial District.
3. A sexually oriented business shall not be located within one thousand (1,000) feet of any place of worship, a public or private elementary or secondary school, a child care facility or kindergarten, orphanage, a boundary of any residential district, a boundary of a parcel designated and assessed as residential use by the Richland County Assessor's Office; or a public park.
4. A sexually oriented business shall not be located within one thousand (1,000) feet of another sexually oriented business.
5. The operation, establishment, or maintenance of more than one (1) sexually oriented business is prohibited in the same building, structure, or portion thereof, or the increase of floor areas of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.
6. For the purpose of this subparagraph d. 3., above, measurement shall be made in a straight line, without regard to intervening structures or objects, the nearest property line of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a place of worship, or public or private elementary or secondary school, daycare facility, kindergarten, orphanage, a boundary of any residential district, a boundary of a parcel designated and assessed as residential use by the Richland County Assessor's Office, or a public park. Presence of a city or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this section.
7. For the purpose of subparagraph d. 4. above, the distance between any two (2) sexually oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the nearest property line of the premises where a sexually oriented business is conducted to the nearest property line of another premises where a sexually oriented business is conducted.

e. *Regulations pertaining to Sexually Oriented Businesses that offer Viewing Room(s).*

A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, adult media, or live entertainment characterized by emphasis on exposure or display of specified sexual activities or specified anatomical areas, shall comply with the following requirements:

- (1) A diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted must be provided to the Zoning Administrator. A manager's station may not exceed thirty-two (32) square feet of floor area. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale

or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches.

- (2) The diagram shall be sworn to be true and correct by the applicant.
- (3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the zoning administrator.
- (4) It is the duty of the owner(s) and operator(s) of the premises to ensure that at least one (1) employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
- (5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one (1) of the manager's stations. The view required in this subparagraph must be by direct line of sight from the manager's station.
- (6) It shall be the duty of the owner(s) and operator(s), and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in subparagraph (5) above remains unobstructed by any doors, walls, merchandise, display racks, or other materials at all times and to ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted in the diagram submitted pursuant to subparagraph (1) above.
- (7) No viewing room may be occupied by more than one (1) patron or customer at any time.
- (8) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1) foot-candle as measured at the floor level.
- (9) It shall be the duty of the owner(s) and operator(s), and it shall also be the duty of any agents and employees present in the premises, to ensure that the illuminations described above, is maintained at all times that any patron is present in the premises.
- (10) No owner or operator shall allow openings of any kind to exist between viewing rooms.
- (11) The operator or owner shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.
- (12) The owner or operator shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces with no rugs or carpets.
- (13) The owner or operator shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material.

- f. *Regulations pertaining to adult cabarets and sexual encounter centers.* It shall be a violation of this chapter for an employee, independent contractor, or person under a similar arrangement with any owner, operator, manager, agent, shareholder of an adult cabaret or sexual encounter center, while located within an adult cabaret or sexual encounter center, to appear in a manner that does not conform to the definition of semi-nude.
- g. *Exemptions.* The following activities or businesses are exempt from the requirements of section 26-151(c)(66):
 - 1. A business or organization in which a person serves as a model for a drawing, painting, sketching, sculpture or other similar art studio class operated:
 - (a). By a university or college or other institution of higher education; or
 - (b). By a non-profit arts organization, such as a museum, gallery, artist association or arts cooperative.
 - 2. A professional or community theater, or a theater affiliated with an institution of higher education, that produces works of dramatic arts in which actors or actresses occasionally appear on stage in a state of semi-nudity, nudity, or in any state of undress as part of his or her dramatic role.
- (h) *Administrative Decision-making Process; Appeals.*
 - (1) Under no circumstances shall staff review and decision-making of an application of a sexually oriented business for a permitted use with special requirements, including determination of completeness, extend beyond fifteen business (15) days from the date of receipt of an application. In the event that a County official is required to take an act or do a thing pursuant to section 26-55 of the Richland County Code of Ordinances and any other section referenced therein, and fails to take such an act or do such a thing within the time prescribed, such failure shall not prevent the exercise of constitutional rights of an applicant. If the County fails to inform an applicant, by any reasonable means, of a decision by the County by the close of business on the fifteenth (15) business day from receipt of application, the application shall be deemed granted and the applicant allowed to commence or continue operation the day after the deadline for action has passed.
 - (2) Under no circumstances shall an appeal of an administrative decision pursuant to section 26-58 of the Richland County Code of Ordinances concerning an application by a sexually oriented business for a permitted use with special requirements exceed a time period of seventy-five business (75) days from the date of receipt of an appeal to the Board of Zoning Appeals. In the event that a County official, including the Board of Zoning Appeals, is required to take an act or do a thing pursuant to section 26-58 of the Richland County Code of Ordinances and any other section referenced therein, and fails to take such an act or do such a thing within the time prescribed, such failure shall not prevent the exercise of constitutional rights of an applicant. If the County fails to inform an applicant, by any reasonable means, of a decision by the Board of Zoning Appeals by the close of business on the sixtieth (60) business day from receipt of an appeal, the application shall be deemed granted and the applicant allowed to commence or continue operation the day after the deadline for action has passed.
- (i) *Amortization; Conforming Use*
 - (1) Any sexually oriented business in operation before the effective date of this ordinance that does not comply with the location restrictions found in subsection (d) above is permitted to continue its operation for a period not to

exceed three years from the effective date of this ordinance. During this period of non-compliance, such continued operation shall not be increased, enlarged, extended, or altered.

- (2) A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the subsequent location, of a place of worship, a public or private elementary or secondary school, a child care facility or kindergarten, orphanage, a boundary of any residential district, a boundary of a parcel designated and assessed as residential use by the Richland County Assessor's Office, or a public park within one thousand (1,000) feet of the sexually oriented business.

SECTION III. Severability. If any section, subsection, or clause of this article shall be deemed unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

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

SECTION V. Effective Date. All sections of this ordinance shall be effective on and after July 15, 2008.

RICHLAND COUNTY COUNCIL

BY: _____
Joseph McEachern, Chair

ATTEST THIS THE ____ DAY

OF _____, 2008

Michielle R. Cannon-Finch
Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE

Approved As To LEGAL Form Only
No Opinion Rendered As To Content

First Reading:	February 4, 2008
Public Hearing:	February 26, 2008
Second Reading:	April 15, 2008
Third Reading:	July 15, 2008