

## ORDINANCE NO. 87-23-CM

An Ordinance Amending Section 1.2, 3.1, 4.17 and Chapter 7 of Ordinance No. \_\_\_\_\_ Being the Unified Zoning Ordinance of Tippecanoe County, Indiana.

BE IT ORDAINED BY COUNTY COMMISSIONERS OF TIPPECANOE COUNTY, INDIANA; THE CITY COUNCIL OF THE CITY OF LAFAYETTE, INDIANA; THE CITY COUNCIL OF WEST LAFAYETTE, INDIANA; THE TOWN BOARD OF THE TOWN OF BATTLEGROUND, INDIANA; THE TOWN BOARD OF THE TOWN OF DAYTON, INDIANA; that Ordinance No. \_\_\_\_\_ being the Unified Zoning Ordinance of Tippecanoe County, Indiana, is hereby amended as follows:

## SECTION 1. Intent and Purpose.

In the development and adoption of this ordinance, it is recognized that there are some adult business uses which due to their very nature have serious objectionable operational characteristics particularly when located in close proximity to residential neighborhoods, thereby having a deleterious impact upon property values and the quality of life in such surrounding areas. It has been acknowledged by communities across the nation that state and local governmental entities have a special concern in regulating the operation of such businesses under their jurisdiction to ensure that these adverse secondary effects will not contribute to the blighting or downgrading of adjacent neighborhoods nor endanger the well-being of the youth in their communities. The special regulations deemed necessary to control the undesirable externalities arising from these enterprises are set forth below, and, as such, serve a substantial government interest. The primary purpose of these controls and regulations is to preserve the integrity and character of residential neighborhoods, to deter the spread of urban blight and to protect minors from the objectionable operational characteristics of these adult uses by restricting their close proximity to churches, parks, county courthouse square, libraries, schools (both public and parochial) and residential areas, while, at the same time, allow for reasonable alternative avenues of communication. This Section is based upon findings and studies which have been formally presented at public hearings.

## Section 2. DEFINITIONS.

That Section 1.2 "Definitions" of Chapter 1 "Terminology" be and is hereby amended by either adding thereto or amending in the appropriate alphabetical location the following definitions:

"Adult Bookstore" means an establishment having as a preponderance of its stock in trade or its dollar volume in trade, books, magazines, periodicals or other printed matter, or photographs, films motion pictures, video cassettes, slides, tapes, records or other forms of visual or audio representations which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

"Adult Cabaret" means a nightclub, bar theatre, restaurant or similar establishment which frequently features live performances by topless and/or bottomless dancers, go-go dancers, exotic dancers, strippers, or similar entertainers, where such performances are

distinguished or characterized by an emphasis on specified sexual activities or by exposure of specified anatomical areas and/or which regularly feature films, motion pictures, video cassettes, slides or other photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons.

"Adult Drive-in Theatre" means an open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions and other forms of visual productions, for any form of consideration, to person in motor vehicles or on outdoor seats in which a preponderance of the total presentation time is devoted to the showing of materials distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons.

"Adult Entertainment Business" means an adult book store, adult motion picture theatre, adult mini motion picture theatre, adult motion picture arcade, adult cabaret, adult drive-in theater, adult live entertainment arcade or adult service establishment.

"Adult Live Entertainment Arcade" means any building or structure which contains or is used for commercial entertainment where the patron directly or indirectly is charged a fee to view from an enclosed or screened area or booth a series of live dance routines, strip performances or other gyrational choreography which performances are distinguished or characterized by an emphasis on specified sexual activities or by exposure of specified anatomical areas.

"Adult Mini Motion Picture Theater" means any building or structure which contains or is used for commercial entertainment where the patron directly or indirectly is charged a fee, with a capacity of more than 5 but less than 50 persons, used for presenting films, motion pictures, video cassettes, slides or similar photographic reproductions in which a preponderance of the total presentation time is devoted to the showing of materials which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

"Adult Motion Picture Arcade" means any place to which the public is permitted or invited wherein coin 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 person per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

"Adult Motion Picture Theater" means any building or structure which contains or is used for commercial entertainment where the patron directly or indirectly is charged a fee, with a capacity of 50 or more persons used for presenting films, motion pictures, video cassettes, slides or similar photographic reproductions in which a preponderance of the total presentation time is devoted to showing of materials which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

"Adult Service Establishment" means any building, premises, structure or other facility, or any part thereof, under common ownership or control which provides a preponderance of services involving specified sexual activities or display of specified anatomical areas.

"Agriculture Zoning District" refers to an A, AA, or RC District.

"Establishment of an Adult Entertainment Business" means and includes any of the following:

- (a) the opening or commencement of any such business as a new business;
- (b) the conversion of an existing business, whether or not an adult entertainment business, to any of the adult entertainment businesses defined herein;
- (c) the addition of any of the adult entertainment businesses defined herein to any other existing adult entertainment business; or
- (d) the relocation of any such business.

"Integrated Center" means a building containing a number of individual, unrelated and separately operated uses which share common site facilities and services such as driveway entrances and exits, parking areas, truck loading, maintenance, sewer and water utilities, or similar common facilities and services; or one or more buildings containing individual, unrelated and separately operated uses, occupying a site under one ownership or management for lease, and utilizing one or a combination of the aforementioned common site facilities or services.

"Massage" means any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating or the external parts of the human body with the hands or with the aid of any mechanical electrical apparatus or appliances withor without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils powder, creams, lotions, ointment, or other such similar preparations commonly used in the practice of massage, under such circumstances that it is reasonably expected that the person to whom the treatment is provided or some third person on his behalf will pay money or give any other consideration or any gratuity therefore. However, massage as used in this ordinance shall not apply to the activity of any person who is registered or licensed by the United States Government or any agency thereof, by the State of Indiana or any agency thereof, by Tippecanoe County or any agency thereof, registered or licensed by any agency or association authorized to so register or licensed by any statute or ordinance of the United States, State of Indiana, Tippecanoe County, or any city or town in Tippecanoe County, while such person so registered or licensed is performing the services for which the registration or license was issued and during the period of time said registration or license is in effect.

"Massage Establishment" means any establishment having a source of income or compensation derived from the practice of massage as herein defined and which has a fixed place of business where any person, firm, association, or corporation engages in, or carries on any of the activities as defined in a massage.

"Residence District" refers to an R1, R1A, R1B, R2, R3, or R4 District.

"Services involving specified sexual activities or display of specified anatomical areas", as used in the definition of "Adult Service Establishment", means and includes any combination of two or more of the following activities:

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(1) the sale or display of books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records or other forms of visual or audio representations which are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas;

(2) the presentation of films, motion pictures, video cassettes, slides, or similar photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description or specified sexual activities or specified anatomical areas for observation by patrons;

(3) the operation of coin or slug operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image producing devices to show images to five (5) or fewer persons per machine at any one time and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas;

(4) live performance by topless and/or bottomless dancers, go-go dancers, exotic dancers, strippers, or similar entertainers, where such performances are distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas; and

(5) the operation of a massage establishment.

"Specified Anatomical Areas" means and includes any of the following:

(a) less than completely and opaquely covered human genitals, pubic region, buttocks, anus or female breast below a point immediately above the top of the areolae, or

(b) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

"Specified Sexual Activities" means and includes any of the following:

(a) human genitals in a state of sexual stimulation or arousal;

(b) acts of human masturbation, sexual intercourse or sodomy;

(c) fondling or other erotic touchings of human genitals, pubic regions, buttocks or female breasts;

(d) flagellation or torture in the context of sexual relationship;

(e) masochism, erotic or sexually oriented torture, beating or the infliction of pain;

(f) erotic touching, fondling or other such contact with an animal by a human being; or

(g) human excretion, urination, menstruation, vaginal or anal irrigation as part of or in connection with any of the activities set forth in "a" through "f" above.

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Section 3. That the part of the table in section 3.1 "Primary Uses" entitled "Business Uses: Miscellaneous" of Chapter 3 "Authorized Uses" be and is hereby amended, by adding, in the appropriate alphabetical location, the following use and designations for such use in the various districts, all to read as follows:

DISTRICTS IN WHICH PERMITTED

PRIMARY USE--R1, R1A, R1B, R2, R3, R4, AB, LB, GB, CB, SC, I, IR, A, FC

Adult	
Entertainment	
Business	X X

Section 4. That Section 4.17 "Signs" of Chapter 4 "Use Requirements" be and is hereby amended by adding a new sub-section (i) to read as follows:

(i) No adult entertainment business shall be conducted in any manner that permits the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas by display, decorations, sign, show window or other opening from any public way.

Section 5. That Chapter 7, "Improvement Location Permits" be and is hereby amended by adding a new Section 7.7 and renumbering the existing sections 7.7 and 7.8 and 7.9 respectively, the new section 7.7 to read as follows:

7.7 Adult Entertainment Businesses

The establishment of any adult entertainment business shall be prohibited if such business is within 500 feet of any other such adult entertainment businesses or within 500 feet of the property line of any church, public or parochial school, library, public park, or county courthouse square, or the boundary line of any residence zoning district or agriculture zoning district within Tippecanoe County, Indiana. The distance between one adult entertainment business and another adult entertainment business shall be measured in a straight line, without regard to intervening structures or objects, from the closest property line of each such business. The distance between an adult entertainment business and any church, public or parochial school, library, public park, county courthouse square, residence zoning district or agriculture zoning district shall be measured in a straight line, without regard to intervening structures or objects, from the closest property line of the adult entertainment business to the nearest property line of the church, public park or county courthouse square, or the nearest boundary line of the residence zoning district or agriculture zoning district. If any adult entertainment business is part of or included within an integrated center, only the portion of said center or leased space occupied by such adult entertainment business shall be included in determining the closest property line of said adult entertainment business.

Section 6. Severability

If any provision or clause of this Ordinance or the application thereof to any person or circumstances is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such decision shall not affect other ordinance provisions or clauses or applications thereof which can be implemented without the unconstitutional or invalid provisions, clause or application, and to this end the provisions and clauses of this ordinance are declared to be

severable.

Section 7 Effective Date  
This Ordinance shall be in full force and effect from and after the date of passage.

ADOPTED AND PASSED BY THE  
Board of Commissioners, this 8th day of  
September, 1987.

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Enacted by the Board of Commissioners of the  
County of Tippecanoe, Indiana, on this 8th day of  
September, 1987.

COMMISSIONERS  
OF THE BOARD OF  
TIPPECANOE  
OF THE COUNTY OF

*Eugene R. Moore*  
President  
EUGENE R. MOORE,

*Sue W. Scholler*  
SUE W. SCHOLLER, Member

*Bruce V. Osborn*  
Member  
BRUCE V. OSBORN,

ATTEST:  
*Sarah S. Brown*  
SARAH S. BROWN, Auditor

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