

**Article VIII: TO PROVIDE FOR THE REGULATION  
AND PERMITTING OF SEXUALLY ORIENTED BUSINESSES.**

**WHEREAS**, the TOWN OF KILMARNOCK (the "TOWN OF KILMARNOCK") finds that sexually oriented businesses require special regulations and oversight in order to protect and preserve the health, safety and welfare of the patrons of such businesses as well as the citizens of the Town of Kilmarnock (the "Town"); and

**WHEREAS**, the TOWN OF KILMARNOCK finds that sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution; and

**WHEREAS**, the concern over sexually transmitted diseases is a legitimate health concern of the Town which demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens; and

**WHEREAS**, the TOWN OF KILMARNOCK desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizens of the Town; and

**WHEREAS**, the TOWN OF KILMARNOCK has determined that zoning criteria alone will not adequately protect the health, safety, and general welfare of the Town; and

**WHEREAS**, it is not the intent of the TOWN OF KILMARNOCK or this ordinance to suppress any speech activities protected by the First Amendment of the United States Constitution or the Constitution of Virginia, but to enact a content-neutral ordinance which addresses the secondary effects of sexually oriented businesses; and

**IT IS HEREBY ORDAINED**, that the following ordinance is adopted.

**A. 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 Arcade** means any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of Specified Sexual Activities or Specified Anatomical Areas.

**Adult bookstore or adult video store** means an establishment having as a substantial or significant portion of its stock-in-trade books, magazines, other periodicals, videotapes, computer disks, CD-ROMs, DVD-ROMs, virtual reality devices or similar media that are distinguished or characterized by their emphasis on matter depicting, describing or relating to Specified Sexual Activities or Specified Anatomical Areas.

## Zoning Ordinance

***Adult Live Entertainment*** means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:

- a) persons who appear in a state of nudity or semi-nude; or
- b) live performances which are characterized by the exposure of Specific Anatomical Areas or by Specified Sexual Activities; or
- c) films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of Specified Sexual Activities or "Specified Anatomical Areas."

***Adult Motel*** means a hotel, motel or similar commercial establishment which:

- a) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas; and has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions; or
- b) offers a sleeping room for rent for a period of time that is less than ten hours; or
- c) allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten hours.

***Adult Novelty Store*** means an establishment having as a significant portion of its stock-in-trade instruments, devices, or paraphernalia which are designed for use in connection with Specified Sexual Activities.

***Adult Movie Theater*** means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of Specified Sexual Activities or "Specified Anatomical Areas."

***Adult Theater*** means a theater, concert hall, auditorium, or similar commercial establishments which regularly feature persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of Specified Anatomical Areas or by Specified Sexual Activities.

***Employee*** means a person who performs any service on the premises of a sexually oriented business or, a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

***Escort*** means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

## Zoning Ordinance

**Escort Agency** means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

**Establishment** means and includes any of the following:

- a) the opening or commencement of any Sexually Oriented Business as new business;
- b) the conversion of an existing business, whether or not a sexually oriented business, to any Sexually Oriented Business;
- c) the additions of any Sexually Oriented Business to any other existing sexually oriented business; or
- d) the relocation of any Sexually Oriented Business.

**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 proprietary school licensed by the Commonwealth of Virginia 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:

- a) that has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and
- b) where in order to participate in a class a student must enroll at least three days in advance of the class; and
- c) where no more than one nude or semi-nude model is on the premises at anyone time.

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

**Permit** means a person in whose name or permit to operate a Sexually Oriented Business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a Sexually Oriented Business.

**Person** means an individual, proprietorship, partnership, corporation, association, or other legal entity.

**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 breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

## Zoning Ordinance

***Sexual Encounter Center*** means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

- a) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- b) 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.

***Sexually Oriented Business*** means an adult arcade, adult bookstore, adult novelty store, adult video store, adult live entertainment, adult motel, adult movie theater, adult theater, escort agency, nude model studio, or sexual encounter center.

***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.

***Substantial Enlargement of a Sexually Oriented Business*** means the increase in floor areas occupied by the business by twenty-five percent (25%) or more, as the floor areas exist as of the effective date of this ordinance.

### **B. Permit required from the Police Chief**

#### **1. Application; issuance; duration; renewal.**

(a) Every person either operating or desiring to operate a Sexually Oriented Business, in addition to obtaining proof from the Department of Zoning that the location requirements set forth in Section D below are satisfied, shall apply to the Police Chief, or his designee, for a permit to operate the Sexually Oriented Business, in addition to obtaining a business license from the Town of Kilmarnock. Each such application shall be accompanied by a fee in the amount of \$500.00.

(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 has been denied a permit or has had a permit revoked under any statute or ordinance requiring a permit to operate Sexually Oriented Business and, if so, when and where the denial or revocation occurred.
- (5) Photograph and fingerprints of applicant.
- (6) Name and address of the business for which a permit is sought.

## Zoning Ordinance

(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) A criminal records check for each initial employee or proposed employee must be provided by the applicant with the application, along with the employee's or proposed employee's written authorization to investigate whether the information provided by the applicant is true. For each new employee or proposed employee, the applicant/permittee must submit a criminal records check for that individual along with that person's written authorization to conduct further investigation.

(9) The location of the proposed Sexually Oriented Business, including a legal description of the property, street address and telephone number(s), if any.

(10) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimension of the interior of the premises to an accuracy of plus or minus six inches.

(11) A current certificate and straight-line drawing prepared within thirty days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing Sexually Oriented Businesses within 2,500 feet of the property to be certified; the property lines of any established religious institution/synagogue, school, or public park or recreation area within 2,500 feet of the property to be certified. For purposes of this Section, a use shall be considered existing or established if it is in existence at the time an application is submitted.

(12) If an applicant wishes to operate a Sexually Oriented Business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty square feet of floor space, films, video cassettes, other video reproductions, or live entertainment which depict Specified Sexual Activities or Specified Anatomical Areas, then the applicant shall comply with the application requirements set forth in Section E.

(13) 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, shareholder, partner or principal of the entity and the manager of the store.

(d) The Police Chief or his designee shall act on the application within 60 days of the filing of an application containing all the information required by this section.

(e) The applicant shall be issued a permit unless the Town's investigation or the information furnished by the applicant shows any of the following:

(1) The applicant has been convicted of a felony within the past five years;

(2) The applicant has been convicted of a crime of moral turpitude or a crime involving the obscenity laws within the past three years;

(3) 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 bookstore or adult video store; or

(4) Failure of the applicant's business to comply with the Town's zoning, building, plumbing, utility, health, electric or fire prevention codes, or with any other applicable Town or state laws or regulations, including this ordinance.

## Zoning Ordinance

(f) 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 \$250.00. No permit shall be transferable.

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

### **2. Revocation of Permit**

(a) The Police Chief or his designee may revoke any permit issued pursuant to this article (i) for fraud, misrepresentation or any false statement contained in the application; (ii) upon conviction of the applicant for any felony, crime involving moral turpitude, or crime involving the obscenity laws after the permit is issued; (iii) for failure to comply with the provisions of this article; or (iv) if the applicant's business fails to comply with applicable Town or state laws or regulations, including this ordinance.

(b) If the Police Chief or his designee revokes a permit, he shall notify the permittee in writing of such action, the reasons for the revocation, and the permittee's right to request a hearing. To receive a hearing, the permittee must make a written hearing request which must be received by the Police Chief, or his designee, within ten days of the date of the revocation notice. If a timely hearing request is not received by the Police Chief, or his designee, the decision 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 Police Chief or his designee. The permittee shall have the right to present evidence and argument or to have counsel do so. Within a reasonable time after the hearing, the Police Chief, or his designee, shall render his decision which shall be final. The permittee must discontinue operation of its business when the decision to revoke the permit becomes final.

(c) When protection of public health, safety or general welfare requires such action, the Police Chief, or his designee, may immediately revoke a permit issued under this article by so stating in a written notice to the permittee. When action is taken pursuant to this subsection, the permittee shall immediately discontinue operation of its business, but shall have the right to a hearing as stated in subsection (2).

### **3. Availability of prompt judicial review.**

After denial of an initial or renewal application or after revocation of a permit by the Police Chief or his designee, the applicant or permittee may seek prompt judicial review of such administrative action in the Circuit Court of the County of Lancaster. Any such request for judicial review shall be filed within 30 days of final administrative action.

## Zoning Ordinance

### **C. Inspections.**

An applicant or licensee shall permit representatives of the Police Chief, Health Department, Fire Department, Zoning Department, or other Town departments or agencies to inspect the premises of a Sexually Oriented Business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

### **D. Location of Sexually Oriented Businesses.**

#### **1. Permitted Zoning Districts.**

No Sexually Oriented Business may be operated in any zoning district except those districts unconditionally designated C-1.

#### **2. Set-back Requirements.**

No Sexually Oriented Business may be operated with 2,500 feet of the following:

(a) A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;

(b) 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 schools, special education schools, junior colleges, and universities; school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;

(c) A boundary of any residential district as defined in the Town of Kilmarnock Zoning Ordinance;

(d) A public or private park or recreational area which has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian / bicycle paths, wilderness areas, or other similar public land within the Town which is under the control, operation, or management of the Town park and recreation authorities;

(e) The property line of a lot devoted to a residential use as defined in the Town of Kilmarnock Zoning Ordinance;

(f) An entertainment business which is oriented primarily towards children or family entertainment; or

(g) Premises licensed pursuant to the alcoholic beverage control regulations of the State;

(h) Any motel, hotel, or travel lodge; or

(i) Any truck stop or truck rest area.

**3. Other Requirements.**

No Sexually Oriented Business may be operated on any primary road or thoroughfare (Rt. 3, Rt. 200)

**E. Regulations Pertaining to the Exhibition of Sexually Explicit Films, Videos or Live Entertainment in Viewing Rooms.**

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 square feet of floor space, a film, video cassette, live entertainment, or other video reproduction which depicts Specified Sexual Activities or Specified Anatomical Area, shall comply with the following requirements:

1. Upon application for a Sexually Oriented Business permit, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more managers stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. 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 dimension of all areas of the interior of the premises to an accuracy of plus or minus six inches. The Town may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certified that the configuration of the premises has not been altered since it was prepared.

2. The application 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 Town.

4. It is the duty of the permittee of the premises to ensure that at least one permitted 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 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 of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

## Zoning Ordinance

6. It shall be the duty of the permittee to ensure that the view area specified in paragraph 5 above remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to paragraph 1 of this Section.

7. No viewing room may be occupied by more than one person 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 five foot-candles as measured at the floor level.

9. It shall be the duty of the permittee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

10. No permittee shall allow openings of any kind to exist between viewing rooms or booths.

11. No person shall make or attempt to make an opening of any kind between viewing booths or rooms. There shall be no opening of any kind between viewing booths or rooms.

12. The permittee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any opening or holes exist.

13. The permittee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

14. The permittee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood composition board or other porous material shall be used within forty-eight inches of the floor.

### **F. Regulations for Escort Agencies.**

1. An escort agency shall not employ any person under the age of 18 years.
2. An escort agency shall not agree to act as an escort for any person under the age of 18 years.

### **G. Regulations for Nude Model Studios.**

1. A nude model studio shall not employ any person under the age of 18 years.
2. A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

### **H. Additional Regulations Concerning Public Nudity.**

## Zoning Ordinance

1. Operators of Sexually Oriented Businesses shall not allow persons to appear in a state of nudity or depict specified sexual activities.
2. Operators of Sexually Oriented Businesses shall not allow persons to appear in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least ten feet from any patron or customer and on a stage at least two feet from the floor.
3. Operators of Sexually Oriented Businesses shall not allow employees to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any employee, while said employee is semi-nude in a Sexually Oriented Business.
4. Operators of Sexually Oriented Businesses shall not allow employees, while semi-nude, to touch a customer or the clothing of a customer.

### **I. Prohibition Against Children In a Sexually Oriented Business.**

Persons under the age of 18 years are not allowed on the premises of a Sexually Oriented Business.

### **J. Hours of Operation.**

No Sexually Oriented Business, except for an adult motel, may remain open at any time between the hours of Ten o'clock P.M. and Ten o'clock A.M. on weekdays and Saturdays, and opening no sooner than one o'clock P.M. and closing prior to ten o'clock P.M. on Sundays.

### **K. Exemptions.**

It is a defense to prosecution under Section H that a person appearing in a state of nudity did so in a modeling class operated:

1. by a proprietary school, licensed by the Commonwealth of Virginia; 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 days in advance of the class; and
  - (c) where no more than one nude model is on the premises at any one time.

Zoning Ordinance

**L. Violations and Penalties.**

A person who operates or causes to be operated a Sexually Oriented Business without a valid permit or in violation of this ordinance is subject to a suit for injunction as well as prosecution for criminal violations. Such violations shall be punishable as a Class 1 misdemeanor. Each day a Sexually Oriented Business so operates shall constitute a separate offense or violation.

**M. Severability.**

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

**N. Effective Date.**

This ordinance is effective immediately.

Adopted:

Attest: \_\_\_\_\_  
Lee Hood Capps  
Town Manager