

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON) ORDINANCE 2020-11
TOWN OF SOUTH CONGAREE)

AN ORDINANCE TO AMEND SOUTH CONGAREE CODE OF ORDINANCES CHAPTER 158.144: SO AS TO UPDATE THE ORDINAANCE TITLE XV: LAND USAGE.

WHEREAS, the Mayor and Town Council is authorized to establish ordinances for the general purposes of guiding development in accordance with existing and future needs and promoting public health, safety, morals, convenience, order, appearance, prosperity and general welfare and;

NOW THEREFORE, BE IT ORDERED by the town of South Congaree, South Carolina, in Council duly assembled and by the authority thereof, that:

158.144: SEXUALLY ORIENTED BUSINESSES.

- I. **Standards:**
 - A. If any of the provisions of this chapter are inconsistent with the provisions of any other law presently existing or enacted in the future the more restrictive requirement shall apply.
 - B. If any other provision of any other chapter of these ordinances is clearly in conflict with this chapter this chapter shall apply.
 - C. Other provisions determined by the Planning Commission, Architectural Review Board or the Zoning Board of Appeals to have a detrimental effect on the surrounding neighborhood and businesses.

- II. **Severability:** If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

- III. **Purpose.**
 - A. It is the purpose of this section to regulate sexually oriented businesses to promote the health, safety, morals and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the continued deleterious location and concentration of sexually oriented businesses within the city.
 - B. The provisions of this section have neither the purpose nor effect of imposing a limitation or restriction on the content of any communication materials including sexually oriented materials.

- C. Similarly, it is not the intent or effect of this section to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.
- D. Neither is it the intent or effect of this section to condone or legitimize the distribution of obscene material.

IV. **Definitions.**

For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- A. **ADULT ARCADE.** Any place to which 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 (1) time, and where the images so displayed are distinguished or characterized by the depicting or describing of "certain sexual activities" or "specified anatomical areas."
- B. **ADULT BOOKSTORE or ADULT VIDEO STORE.** A commercial establishment which, as one (1) of its principal business purposes, offers for sale or rental for any form of consideration any one (1) or more of the following:
 - 1. Books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video cassettes or video reproductions, slides, or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas;" or
 - 2. Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities." A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as **ADULT BOOKSTORE or ADULT VIDEO STORE**. Other business purposes will not serve to exempt the commercial establishment from being categorized as an **ADULT BOOKSTORE or ADULT VIDEO STORE** so long as one (1) of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe "specified sexual activities" or "specified anatomical areas."
- C. **ADULT CABARET.** A nightclub, bar, restaurant, or similar commercial establishment which regularly features:
 - 1. Persons who appear in a state of nudity;
 - 2. Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities;" or

3. 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."
- D. ADULT MOTEL.** A hotel, motel or similar commercial establishment which:
1. 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;
 2. Offers a sleeping room for rent for a period of time 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 less than ten (10) hours.
- E. ADULT MOTION PICTURE THEATER.** 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."
- F. ADULT THEATER.** A theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."
- G. ESCORT.** 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.
- H. ESCORT AGENCY.** A person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one (1) of its primary business purposes for a fee, tip or other consideration.
- I. ESTABLISHMENT.** Includes any of the following:
1. The opening or commencement of any sexually oriented business as a new business;
 2. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
 3. The additions of any sexually oriented business to any other existing sexually oriented business; or
 4. The relocation of any sexually oriented business.
- J. PERMITTEE AND/OR LICENSEE.** A person in whose name a permit and/or license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.
- K. NUDE MODEL STUDIO.** Any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided to be observed,

sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration.

- L. **NUDITY or A STATE OF NUDITY.** The appearance of a human bare buttock, anus, male genitals, female genitals or female breast.
- M. **PERSON.** An individual, proprietorship, partnership, corporation, association or other legal entity.
- N. **SEMI-NUDE.** A state of dress in which clothing covers no more than the genitals, pubic region and areola of the female breast, as well as portions of the body covered by supporting straps or devices.
- O. **SEXUAL ENCOUNTER CENTER.** A business or commercial enterprise that, as one (1) of its primary business purposes, offers for any form of consideration:
 - 1. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
 - 2. Activities between male and female persons and/or persons of the same sex when one (1) or more of the persons is in a state of nudity or semi-nude.
- P. **SEXUALLY ORIENTED BUSINESS.** An adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio or sexual encounter center.
- Q. **SPECIFIED ANATOMICAL AREAS.** The male genitals in a state of sexual arousal and/ or the vulva or more intimate parts of the female genitals.
- R. **SPECIFIED SEXUAL ACTIVITIES.** Includes any of the following:
 - 1. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts;
 - 2. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy;
 - 3. Masturbation, actual or simulated; or
 - 4. Excretory functions as part of or in connection with any of the activities set forth in division (a) through (c) above.
- S. **SUBSTANTIAL ENLARGEMENT OF A SEXUALLY ORIENTED BUSINESS.** The increase in floor areas occupied by the business by more than 25%, as the floor areas exist on 4-6-1993.
- T. **TRANSFER OF OWNERSHIP OR CONTROL OF A SEXUALLY ORIENTED BUSINESS.** Includes any of the following:
 - 1. The sale, lease or sublease of the business;
 - 2. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means; or
 - 3. The establishment of a trust, gift or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.
- V. **CLASSIFICATION.**
 - A. Sexually oriented businesses are classified as follows:

- B. Adult arcades;
- C. Adult bookstores or adult video stores;
- D. Adult cabarets;
- E. Adult motels;
- F. Adult motion picture theaters;
- G. Adult theaters;
- H. Escort agencies;
- I. Sexual encounter centers.

VI. PERMIT REQUIRED.

- A. A person commits a misdemeanor if he or she operates a sexually oriented business without a valid permit issued by the town for the particular type of business in operation.
- B. An application for a permit must be made on a form provided by the Zoning Official or his or her designee. The application must be accompanied by 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 must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.
- C. The applicant must be qualified according to the provisions of this section and the premises must be inspected and found to be in compliance with the law by the Health Department, Fire Department and building official.
- D. If a person who wishes to operate a sexually oriented business is an individual, he or she must sign the application for a permit as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual with a ten percent (10%) or greater interest in the business must sign the application for a permit as applicant. If a corporation is listed as owner of a sexually oriented business, each individual with a ten percent (10%) or greater interest in the corporation must sign the application for a permit as applicant.
- E. The fact that a person possesses other types of state, county, or city permits and/or licenses does not exempt him or her from the requirement of obtaining a sexually oriented business permit.

VII. ISSUANCE OF PERMIT AND FEE.

- A. The Town Zoning Official or his or her designee shall approve the issuance of a permit to an applicant within 30 days after receipt of an application unless he or she finds one
 - 1. An applicant is under 18 years of age.
 - 2. An applicant or an applicant's spouse is overdue in his or her payment to the town of taxes, fees, fines, or penalties assessed against him or her or imposed upon him or her in relation to a sexually oriented business.

3. An applicant has failed to provide information reasonably necessary for issuance of the permit or has falsely answered a question or request for information on the application form.
 4. An applicant is residing with a person who has been denied a permit, by the city to operate a sexually oriented business within the preceding 12 months, or residing with a person whose license to operate a sexually oriented business has been revoked within the preceding 12 months.
 5. The premises to be used for the sexually oriented business has not been approved by the Health Department, Fire Department and the building official as being in compliance with all applicable laws and ordinances.
 6. The permit fee required by this section has not been paid.
 7. An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this section.
 8. The permit, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The permit shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.
- B. The annual fee for a sexually oriented business permit is \$1,000.

VIII. INSPECTION. An application of permittee shall permit representatives of the Police Department, Health Department, Fire Department, Zoning Department, or other city 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, and it is unlawful to refuse to permit the inspection of the premises at any time it is occupied or open for business.

XI. EXPIRATION OF PERMIT.

- A. Each permit shall expire one (1) year from the date of issuance and may be renewed only by making application as provided herein. Application for renewal shall be made at least 30 days before the expiration date, and when made less than 30 days before the expiration date, the expiration of the permit will not be affected except for good cause shown.
- B. When the Zoning Official or his or her designee denies renewal of a permit, the applicant shall not be issued a permit for one (1) year from the date of denial. If, subsequent to denial, the Zoning Official or his or her designee that the basis for denial of the renewal permit has been corrected or abated, the applicant may be granted a permit.

X. SUSPENSION OF PERMIT. The Zoning Official or his or her designee may suspend a permit for a period not to exceed 30 days if he or she determines that a permittee or an employee of a permittee has:

1. Violated or is not in compliance with any division of this section;

2. Engaged in excessive use of alcoholic beverages while on the sexually oriented business premises;
3. Refused to allow an inspection of the sexually oriented business premises as authorized by this chapter; or
4. Knowingly permitted gambling by any person on the sexually oriented business premises.

XI. REVOCATION OF PERMIT.

- A. The Zoning Official or his or her designee shall revoke a permit if a cause for suspension in division (H) above occurs and the permit has been suspended within the preceding 12 months for willful and knowing violation of this section.
- B. The Zoning Official or his or her designee shall revoke a permit if he or she determines that:
 1. A permittee knowingly gave false or misleading material information in the application submitted to the Zoning Department during the application process;
 2. A permittee or an employee has knowingly allowed possession, use or sale of controlled substances on the premises;
 3. A permittee or an employee knowingly allowed prostitution on the premises;
 4. A permittee or an employee knowingly operated the sexually oriented business during a period of time permittee's permit was suspended;
 5. A permittee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or other sexual conduct to occur in or on the permitted premises; or
 6. A permittee is delinquent in payments to the city, county or state for any taxes or fees past due related to the sexually oriented business.
- C. When the Zoning Official or his or her designee revokes a permit, the revocation shall continue for one (1) year, and the permittee shall not be issued a sexually oriented business permit for one (1) year from the date revocation became effective. If, subsequent to revocation, the Zoning Official or his or her designee finds that the basis for the revocation has been corrected or abated, the applicant may be granted a permit if at least 90 days have elapsed since the date the revocation became effective.

XII. TRANSFER OF PERMIT. A permittee shall not transfer his or her permit to another, nor shall a permittee operate a sexually oriented business under the authority of a permit at any place other than the address designated in the application.

XIII. LOCATION OF SEXUALLY ORIENTED BUSINESSES.

Owing to the negative secondary effects of sexually oriented or adult uses as evidenced by studies performed in other locations, and the deleterious effect of such negative secondary effects on existing businesses and/or residential areas around them, the

location of such uses where permitted shall be tempered by the supplemental siting criteria of this section:

- A. No property line of a lot containing such use shall be located within 1,000 feet, measured in a straight line, from the closest point of the property line(s) of any:
 - 1. A residence or a Residential Zone;
 - 2. A church or religious institution;
 - 3. Public or private elementary and secondary schools, daycare centers, museums;
 - 4. Public parks and recreational facilities; or
 - 5. Any other adult or sexually oriented business. In addition, no more than one sexually oriented business shall be allowed in the same building or within 1,000 feet of sexually oriented business.
- B. A person commits a misdemeanor if he or she operates or causes to be operated a sexually oriented business outside of a designated C-1 district. All sexually oriented businesses shall be located with a C-1 district.
- C. A person commits a misdemeanor if he or she operates or causes to be operated a sexually oriented business within 1,000 feet of:
 - 1. A church;
 - 2. A public or private elementary or secondary school;
 - 3. A public park adjacent to any residential use; or
 - 4. The property line of a lot devoted to residential use.
- D. A person commits a misdemeanor if he or she causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within 1,000 feet of another sexually oriented business.
- E. A person commits a misdemeanor if he or she causes or permits the operation, establishment, or maintenance of more than one (1) sexually oriented business 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.
- F. For the purpose of this section, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church or public or private elementary or secondary school, or to the nearest boundary of an affected public park, residential district or residential lot.
- G. For purposes of division (3) above of this section, 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 closest exterior wall of the structure in which each business is located.
- H. Any sexually oriented business lawfully operating on 4-6-1993 that is in violation of division (1) through (6) of this section shall be deemed a non-conforming use. The non-conforming use will be permitted to continue for a period not to exceed two (2) years, unless sooner terminated for any reason or voluntarily

discontinued for a period of 30 days or more. The non-conforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two (2) or more sexually oriented businesses are within 1,000 feet of one another and otherwise in a permissible location the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the after established business(es) is non-conforming.

- I. A sexually oriented business lawfully operating as a conforming use is not rendered a non-conforming use by the location, subsequent to the grant or renewal of the sexually oriented business permit of a church, public or private elementary or secondary school public park, residential district, or a residential lot with 1,000 feet of the sexually oriented business. This provision applies only to the renewal of a valid permit and does not apply when an application for a permit is submitted after a permit has expired or has been revoked.

XIV. ADDITIONAL REGULATIONS FOR ADULT MOTELS.

- A. Evidence that a sleeping room in a hotel, motel or a similar commercial establishment has been rented and vacated two (2) or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this chapter.
- B. A person commits a misdemeanor if, as the person in control of a sleeping room in a hotel, motel or similar commercial establishment that does not have a sexually oriented business permit, he or she rents or sub rents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he or she rents or sub rents the same sleeping room again.
- C. For purposes of division (2) above of this section, the terms "rent" or "sub rent" mean the act of permitting a room to be occupied for any form of consideration.

XV. REGULATIONS FOR EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS.

- A. 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 150 square feet of floor space, a film, video cassette or other reproduction which depicts "specified sexual activities" or "specified anatomical areas," 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 (1) 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. A manager's station may not exceed 32 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 shall be oriented to the north or to some designated street or

object and shall 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. The Zoning Official or his or her designee may waive the foregoing diagram for renewal applications if the applicant adopts a diagram 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 Zoning Official or his or her designee.
4. It is the duty of the owners and operators of the premises to ensure that at least one (1) employee is on duty and situated in each manager's station. This may be made without the prior approval of the Zoning Official or his or her designee.
5. The interior of the premises shall be configured in 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. Video reproduction equipment shall not be allowed in restrooms. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in a manner that there is an unobstructed view from at least one (1) of the manager's stations of each area of the premises to which any patron is permitted access for any purpose. The view required in this subsection must be by direct line of sight from the manager's station.
6. It shall be the duty of the owners and operators, and it shall also be the duty of any agents and employees present in the premises to ensure that the view area specified in division (e) above remains unobstructed by any walls, merchandise, display racks or other materials at all times and in every booth or room in which viewing of videos, as defined in division (a) above is taking place, the bottom of the door must be at least 18 inches above the floor level, and 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 division (a) above of this section.
7. No viewing room may be occupied by more than one (1) 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 one (1) foot-candle as measured at the floor level.
9. It shall be the duty of the owners and operators and it shall also be the duty of any agents and employees present in the premises to ensure that

the illumination described above, is maintained at all times that any patron is present on the premises.

- B. A person having a duty under divisions 1 through 9 above commits a misdemeanor if he or she knowingly fails to fulfill that duty.

XVI. EXEMPTIONS. It is a defense to prosecution under this section that a person appearing in a state of nudity did so in a modeling class operated:

- A. By a proprietary school, licensed by the State of South Carolina, a college, junior college or university supported entirely or partly by taxation;
- B. By a private college or university which maintains and operates education programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
- C. In a structure:
 - 1. Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing;
 - 2. Where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and
 - 3. Where no more than one (1) nude model is on the premises at any one (1) time.

(1985 Code, § 9-111) Penalty, see § 158.999

XVII. INSPECTION.

- A. An applicant or permittee shall permit the Zoning Official or his or her designee and representatives of the police, health and fire departments or other governmental departments or agencies involved in code enforcement 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.
- B. A person who operates a sexually oriented business, or their agent or employee is in violation of this Zoning Ordinance if he refuses to permit such lawful inspection of the premises at any time it is occupied or open for business.

XVIII. SUSPENSION.

The Zoning Official or his or her designee shall suspend a zoning permit for a period not to exceed 30 days if he determines that a permittee or an employee of a permittee has:

- A. Violated or is not in compliance with any section of this Zoning Ordinance.
- B. Engaged in excessive use of alcoholic beverages while on the sexually oriented business premises.
- C. Refused to allow an inspection of the sexually oriented business premises as authorized by this section.
- D. Knowingly permitted gambling by any person on the sexually oriented business premises.

XIX. REVOCATION.


- A. The Zoning Official or his or her designee shall revoke a zoning permit in the event the zoning permit of the sexually oriented business has been suspended two times within any 12-month period.
- B. The Zoning Official or his or her designee shall also revoke a zoning permit if he determines that:
 - 1. A permittee gave false or misleading information in the material submitted to the building department during the application process.
 - 2. A permittee or an employee has knowingly allowed possession, use or sale of controlled substances on the premises.
 - 3. A permittee or an employee has knowingly allowed prostitution on the premises.
 - 4. A permittee or an employee knowingly operated the sexually oriented business during a period of time permittee's permit was suspended.
 - 5. A permittee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual conduct to occur in or on the permitted premises.

1st Reading: 1/21/2020
Public Hearing: 2/18/2020
2nd Hearing: 2/18/2020



Danny Jones, Mayor

Attest:



Patt Shull, Town Clerk