

ORDINANCE 23, 2005

AN ORDINANCE AMENDING SECTION 497, ARTICLES II AND IV OF THE ZONING CODE REGARDING SEXUALLY ORIENTED BUSINESSES

WHEREAS, the City of Valparaiso has intent to set reasonable and uniform regulations to prevent the concentration of sexually oriented businesses as specified in this Article are to control their adverse effects and prevent inappropriate exposure to the community; and

WHEREAS, the City of Valparaiso, Indiana has determined that the existing standards found in Section 497, Articles II and IV of the Zoning Code are either obsolete or lacking in substance to meet the current and future planning needs for our community; and

WHEREAS, it is the intent of this ordinance to replace in full both the existing Section 497, Articles II and IV of the Zoning Code by the establishment of standards within the City of Valparaiso; and

WHEREAS, it is the intent of this ordinance to accomplish this by planning and regulation demand special considerations;

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Valparaiso that Section 497, Articles II and IV of the Zoning Code of the City of Valparaiso should be and the same is hereby amended to read as outlined in the aforementioned;

APPENDIX A – Section 497 – Sexually Oriented Establishments

This Ordinance shall be in full force and effect immediately upon its adoption by the Common Council and approval by the Mayor.

PASSED by the Common Council of the City of Valparaiso, Indiana on the 9th day of May, 2005 by a 7-0 vote of 7 members present and voting.

[Signature]
Jon Costas, Mayor

ATTEST: [Signature]
Sharon Swihart, Clerk-Treasurer

Presented by me to the Mayor of the City of Valparaiso, Indiana, this 9th day of May 2005, at the hour of 9:40 o'clock P.M.

[Signature]
Sharon Swihart, Clerk-Treasurer

This ordinance approved and signed by me this 9th day of May 2005, at the hour of 9:40 o'clock P.M.

[Signature]
Jon Costas, Mayor

**APPENDIX A  
TO ORDINANCE 23, 2005**

**Section 497                      Sexually-Oriented Establishments**

**Intent**

The purpose of this section is to set reasonable and uniform regulations to prevent the concentration of sexually oriented businesses or adult uses and their location in areas deleterious to the community of Valparaiso, and to regulate the signs of such businesses to control their adverse effects and prevent inappropriate exposure to the community. The provisions of this ordinance are intended to prevent deterioration or blight of residential neighborhoods, by requiring specific locations for such operations. The City recognizes that important and substantial government interest provide a constitutional basis for reasonable regulation of the time, place and manner under which sexually oriented business operate, therefore the City has determined that persons seeking to operate sexually oriented businesses shall be required to observe specific location requirements before they commence business, as provided for in this article.

**Development Standards**

The following provisions shall apply to all sexually oriented establishments:

1. Such uses shall only be permitted in M-1 and M-2 Manufacturing Districts.
2. The following separation standards shall apply to all sexually-oriented establishments
  - a. No such use shall be located within a one thousand (1,000) foot radius of any other such use.
  - b. No such use shall be located within a one thousand (1,000) foot radius of any parcel located in a residential zoning district or portion of a planned unit development designated for residential purposes whether inside or outside of the corporate boundaries of the City of Valparaiso
  - c. No such use shall be located within one thousand (1,000) foot radius of any school whether public or private, day care home or center or nursery, religious institution, park, playing field, pool or billiard hall, coin-operated amusement center, dance center, ice or roller-skating rinks or parks or other public recreational facility typically catering to minors, indoor or outdoor theaters, art gallery, museum, libraries, other areas where large numbers of minors travel or congregate, and entryways/gateways to the City.

The aforementioned separation and radius standards shall be measured in a straight line from the closest points between property line to property line, without regard to intervening structures or objects, for sexually-oriented establishments that are located on a single tenant parcel. If said establishment is located within a multi-tenant building the measurement shall be from the property line of the entire multi-tenant premises to the property line of other uses, without regard to the intervening structures or objects, which requires the separation.

3. No such use shall be allowed within a block or portion thereof where a residential use exists
4. Not more than one such use shall be located in one building or on one parcel or zoning lot.
5. No adult use shall be permitted to operate as an accessory to an otherwise permitted use for a particular use unless it is permitted by this ordinance.
6. No sexually oriented establishment shall be conducted in any manner that permits the observation of any material depicting, describing, or relating to specified anatomical areas and or specified sexual activities by display, decorations, signage, show window, or other opening from any public right of way.
7. Signage for such establishments shall be subject to the applicable standards as set forth in Section 910 Signs in industrial districts:
  - a. Signage for such establishments shall not display any pictures, photographs, silhouettes, drawing, or other pictorial representations of a sexually oriented nature, and may contain only the legal name and address of said establishment.

**Sexually Oriented Establishment:** Any use of property available to the public, whether for profit or not, that: a) involves nude or topless dancing; b) predominantly advertises and offers material and/or items that depict and/or are generally used in sexual activity; or, c) allows other similar activities that depict, describe, simulate, or relate to sexual activities. Not limiting the proceeding, such shall also include any: 1) bookstore/shop in which the primary type of material offered is of a sexual nature; 2) motion picture arcade/motion picture theater in which the predominant type of material shown depicts sexual acts; 3) cabaret/lounge/night club in which the predominant attraction is nude or topless dancing; 4) health spa/sauna in which services of a sexual nature are offered to the public: including but not limited to any adult bookstore or supply store, adult hotel or motel, adult motion picture arcade, adult motion picture theater, adult cabaret, lounge, or night club, adult health spa/sauna, adult outdoor motion picture theater, adult live stage performing theater, adult model studio, adult novelty business, escort agency, massage parlor, sexual encounter center, or any other business that offers its patrons services or entertainment that provide nude dancing or other live recording performances that depict, describe, or relate to "specified anatomical areas" or "specified sexual activities."

- A. Adult Arcade: A commercial establishment that offers coin-operated (or operation by any other form of consideration) electronically-, electrically-, or mechanically-controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices to show images to fifty (50) or fewer persons per machine at any one (1) time, and where the images so displayed are distinguished or characterized by the depicting of specified anatomical areas or specified sexual activities.
- B. Adult Bookstore or Supply Store: An establishment having twenty five percent (25%) or more of all usable interior, retail, wholesale, or warehouse space devoted to the distribution, display, or storage of books, magazines, and other periodicals and/or photographs, drawings, slides, video tapes, DVDs, recording tapes, and/or novelty items which are distinguished or characterized by their emphasis on matters depicting, cribbing, or relating to "Specific Sexual Activities" or "Specified Anatomical Areas". Such establishments or the segment or section devoted to the sale or display of such material in an establishment is customarily not open to the public generally, but only to one or more classes of the public, excluding any minor by reason of age
- C. Adult Cabaret, Lounge, Night Club: An establishment which features any of the following: topless dancers, and/or bottomless dancers, go-go dancers, strippers, male and/or female impersonators or similar entertainers, or topless and/or bottomless waitpersons or employees. Lingerie or bathing suit fashion shows, not infrequently features entertainers who display "specified anatomical areas" or features entertainers who, by reason of their appearance or conduct, perform in a manner which is designed primarily to appeal to the prurient interest of the patron or features entertainers who engage in, or are engaged in, explicit simulation of "Specified Sexual Activities."
- D. Adult Health Spa/Sauna: A health spa, sauna or massage parlor that excludes minors by reason of age and/or provides steam bathes, heat bathing, massage, alcohol rub, fomentation, electric or magnetic treatment, or similar treatment or manipulation of the human body, and is distinguished or characterized by an emphasis on "Specified Sexual Activities" or "Specified Anatomical Area," as defined herein. This definition does not include health spas, salons or similar establishments that offer massage therapy or other manipulation of the human body by a certified massage therapist.
- E. Adult Hotel/Motel: A motel, which rents rooms by the hour and presents visual displays, graphic materials, or activities that depict, describe or relate to "Specified Sexual Activities" or "Specified Anatomical Area." Or a hotel, motel, or similar commercial establishment offering public accommodations

for any form of consideration that provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes recorders, DVD recorders, slides, or other photographic reproductions for viewing or recording, characterized by an emphasis upon the depiction or description of "Specified Sexual Actives" or Specified Anatomical Areas" and/or rents leases or lets any room for less than a six (6) hour period, or rents leases or lets any single room more than twice in a twenty-four (24) hour period.

- F. Adult Motion Picture Arcade or Adult Live Stage Performing Theater: Any place to which the public is permitted or invited wherein coin or token-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to fifty (50) or fewer persons per machine at any one time, and where images so displayed are distinguished or characterized by an emphasis on matter depicting or describing "Specified Sexual Activities" or "Specified Anatomical Areas."
- G. Adult Model Studio: Any place where models who display "Specified Anatomical Areas" are present to be observed, sketched, drawn, painted, sculpted, photographed, or similarly depicted by persons who pay some form of consideration or gratuity. This definition shall not apply to any bona fide art school or similar educational institution or a professional photographic studio.
- H. Adult motion picture theater- An establishment emphasizing or predominantly showing sexually oriented movies.
- I. Adult Novelty Business: A business which has as a principal activity the sale of devices which stimulate human genitals or devices designed for sexual stimulation. OR An establishment having a substantial or significant portion of its sales or stock in trade consisting of toys, devices, clothing novelties, lotions and other items distinguished or characterized by their on or use for "Specialized Sexual Activities" or Specified Sexual Areas" or an establishment that holds itself out to the public as a purveyor of such materials based upon signage, advertising, displays, actual sales, exclusion of minors from the establishment's premises or any other factors showing the establishment's primary purpose is to purvey such material.
- J. Adult Outdoor Motion Picture Theater: A drive-in theater used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "Specified Sexual Activities" or "Specified Anatomical Areas" for observation by patrons of the theater. Such establishment is customarily not open to the public generally, but only to one or more classes of the public, excluding any minor by reason of age.
- K. Display publicly- The act of exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content of character distinguished by normal unaided vision viewing it from a street, highway, or public sidewalk, or from the property of others, or from any portion of the premises where items and materials other than adult media are on display to the public.
- L. Escort Agency: A person or business who furnishes, offers to furnish, or advertises the furnishing of escorts for a fee, tip, or other consideration.
- M. Escort: A person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees to privately model lingerie, or to privately perform a striptease for another person.
- N. Establishment- Any business regulated by this Article IV section 497.

- O. Lingerie modeling studio- An establishment or business that provides the services of live models modeling lingerie to individual, couples, or small groups in a room smaller than 600 square feet.
- P. Massage Parlor: A place where manipulated massage or manipulated exercises are practiced for pay upon the human body by anyone using mechanical, therapeutic, or bathing devices or techniques for prurient or sexual purposes.
- Q. Nudity or a state of nudity means:
  - a. The appearance of a human anus or genitals, or female breast; or
  - b. A state of dress, which fails to opaquely cover a human anus or genitals, or female breast.
- R. Sexual Encounter Center: A commercial establishment that, as one (1) 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 (1) or more of the persons is in the state of nudity.
- S. Specified Anatomical Areas:
  - a. Less than completely and opaquely covered human genitals, pubic region, buttocks or female breast below the point immediately above the top of the areola, and
  - b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- T. Specified Sexual Activities:
  - a. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts; or
  - b. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; or
  - c. Masturbation, actual or simulated; or
  - d. Excretory functions as part of or in connection with any of the activities set forth in subsections (a) through (c) above.