

IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI

AN ORDINANCE repealing section 4301., 4308., 4312., and 4316., Jackson County Code, 1984, relating to adult use entertainment and adult entertainment businesses, and enacting, in lieu thereof, four new sections relating to the same subject, with a penalty provision.

ORDINANCE NO. 5721, February 28, 2023

INTRODUCED BY Jalen Anderson, County Legislator

WHEREAS, the Legislature has become aware of a category of adult entertainment business, known as a "sexual encounter entertainment," that has operated in unincorporated Jackson County in the past and could conceivably so operate in the future, but that is not currently subject to regulation under chapter 43 of the Jackson County Code; and,

WHEREAS, it is in the best interests of the health, welfare, and safety of the citizens of Jackson County that such businesses be licensed and regulated by the County in the same manner as other adult entertainment businesses are licensed and regulated; now therefore,

BE IT ORDAINED by the County Legislature of Jackson County, Missouri, as follows:

Section A. Enacting Clause. Sections 4301., 4308., 4312., and 4316., Jackson County Code, 1984, are hereby repealed, and four new sections enacted in lieu thereof, to be known as sections 4301., 4308., 4312., and 4316., to read as follows:

4301. Definitions.

For purposes of this Chapter, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

“Adult Bookstore or Adult Video Store” means a commercial establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of “specified sexual activities” or “specified anatomical areas.”

A “principal business activity” exists where the commercial establishment:

(a) has at least 35% of its displayed merchandise which consists of said items, or

(b) has at least 35% of the wholesale value of its displayed merchandise which consists of said items, or

(c) has at least 35% of the retail value (defined as the price charged to customers) of its displayed merchandise which consists of said items, or

(d) derives at least 35% of its revenues from the sale or rental, for any form of consideration, of said items, or

(e) maintains at least 35% of its interior business space for the display, sale, and/or rental, for any form of consideration, of said items (aisles and walkways used to access said items shall be included in "interior business space" maintained for the display, sale, or rental of said items), or

(f) maintains at least five hundred square feet (500 sq. ft.) of its interior business space for the display, sale, and/or rental of the foregoing items (aisles and walkways used to access said items shall be included in "interior business space" maintained for the display, sale, or rental of said items) and limits access to the premises to adults only; or

(g) offers for sale or rental at least two thousand (2,000) of the foregoing items *and* limits access to the premises to adults only; or

(h) maintains an "adult arcade," which means 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 regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting "specified sexual activities" or "specified anatomical areas."

“Adult Cabaret” means a nightclub, juice bar, restaurant, lounge, or similar commercial establishment which regularly features persons who appear semi-nude.

“Adult Entertainment Business” means an “adult bookstore or adult video store,” an “adult cabaret,” an “adult motion picture theater,” an “explicit novelty store,” [or] a “semi-nude model studio,” or a “sexual encounter establishment.”

“Adult Motion Picture Theater” means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of “specified sexual activities” or “specified anatomical areas” are regularly shown to more than five persons for any form of consideration.

“Characterized by” means describing the essential character or quality of an item. As applied in this Chapter, no business shall be classified as an adult entertainment business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

“County” means Jackson County, Missouri.

“Director” means the [Director of the] Jackson County [Public Works Department] Environmental Health Administrator or his or her designee.

“Employ, Employee, and Employment” describe and pertain to any person who performs any service on the premises of an adult entertainment business, on a full time, part time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

“Establish or Establishment” shall mean and include any of the following:

- (a) The opening or commencement of any adult entertainment business as a new business;
- (b) The conversion of an existing business, whether or not an adult entertainment business, to any adult entertainment business; or
- (c) The addition of any adult entertainment business to any other existing adult entertainment business.

“Explicit Novelty” means any three (3) dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, 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 for preventing pregnancy.

"Explicit Novelty Store" means a commercial establishment that is open to adults only and that regularly features explicit novelties. 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.

"Hearing Officer" means an attorney, not otherwise employed by the County, who is licensed to practice law in Missouri, and retained to serve as an independent tribunal to conduct hearings under this Chapter.

"Influential Interest" means any of the following: (1) the actual power to operate the adult entertainment business or control the operation, management or policies of the adult entertainment business or legal entity which operates the adult entertainment business, (2) ownership of a financial interest of thirty percent (30%) or more of a business or of any class of voting securities of a business, or (3) holding an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the adult entertainment business.

"Licensee" shall mean a person in whose name a license to operate an adult entertainment business has been issued, as well as the individual or individuals listed as an applicant on the application for an adult entertainment business license. In the case of an "employee," it shall mean the person in whose name the adult entertainment business employee license has been issued.

"Nudity or a 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, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

"Operator" means any person on the premises of an adult entertainment business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated an adult entertainment business whether or not that person is an owner, part owner, or licensee of the business. For purposes of this Chapter, an operator of an adult entertainment business shall also be deemed a manager of the adult entertainment business.

"Person" shall mean individual, proprietorship, partnership, corporation, association, or other legal entity.

"Premises" means the real property upon which the adult entertainment business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the adult entertainment business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for an adult entertainment business license.

"Regularly" means the consistent and repeated doing of an act on an ongoing basis.

"Semi-Nude or State of Semi-Nudity" means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

"Semi-Nude Model Studio" means a place where persons regularly appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. This definition does not apply to any place where persons appearing in a state of semi-nudity did so in a class operated:

(a) By a college, junior college, or university supported entirely or partly by taxation;

(b) 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

(c) In a structure:

(1) Which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; and

(2) Where, in order to participate in a class a student must enroll at least three days in advance of the class.

"Sex Therapy" means therapy designed to help individuals and couples experiencing issues achieving sexual satisfaction. Sex therapy does not involve specified sexual activity between clients and therapists.

"Sexual Encounter Establishment" means an establishment, other than a hotel, motel, or similar establishment offering public accommodations, which, for any form of consideration, provides a place where two or more persons may congregate, associate, or consort in connection with "specified sexual activities" or the exposure of "specified anatomical areas." This definition does not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the State of Missouri engages in "sex therapy."

"Specified Anatomical Areas" means and includes:

(a) Less than completely and opaquely covered: human genitals, pubic region; buttock; and female breast below a point immediately above the top of the areola; and

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

"Specified Criminal Activity" means any of the following crimes for which less than five years has elapsed since the date of conviction or the date of release from confinement with respect to a felony, or for which less than two years has elapsed since the date of conviction with respect to a misdemeanor, whichever is the later date:

(a) sexual offenses set forth in RSMo ch. 566;

(b) prostitution offenses set forth in RSMo ch. 567;

(c) offenses involving a child and sex set forth in RSMo ch. 568;

(d) pornography and related offenses set forth in RSMo ch. 573;

(e) controlled substance, illegal drug, or narcotics offenses as set forth in the state comprehensive drug control act set forth in RSMo ch. 195;

(f) offenses similar to the foregoing offenses that are set forth in other portions of the state statutes;

(g) any attempt, solicitation, or conspiracy to commit one of the foregoing offenses;
or

(h) any offense in another jurisdiction that, had the predicate act(s) been committed in Missouri, would have constituted any of the foregoing offenses.

"Specified Sexual Activity" means any of the following:

- (a) intercourse, oral copulation, masturbation or sodomy; or
- (b) excretory functions as a part of or in connection with any of the activities described in (a) above.

"Transfer of Ownership or Control" of an adult entertainment business shall mean any of the following:

- (a) The sale, lease, or sublease of the business;
- (b) The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or

(c) 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.

"Viewing Room" shall mean the room, booth, or area where a patron of an adult entertainment business would ordinarily be positioned while watching a film, videocassette, digital video disc, or other video reproduction.

4308. Revocation.

(a) The Director shall issue a written notice of intent to revoke an adult entertainment business license or an adult entertainment business employee license, as applicable, if the licensee knowingly violates this Chapter or has knowingly allowed an employee or any other person to violate this Chapter and a suspension of the licensee's license has become effective within the previous twelve-month (12-mo.) period.

(b) The Director shall issue a written notice of intent to revoke an adult entertainment business license or an adult entertainment business employee license, as applicable, if:

(1) The licensee has knowingly given false information in the application for the adult entertainment business license or the adult entertainment business employee license.

(2) The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises of the adult entertainment business;

(3) The licensee has knowingly or recklessly engaged in or allowed solicitation or prostitution on the premises of the adult entertainment business;

(4) The licensee knowingly or recklessly operated the adult entertainment business during a period of time when the license was finally suspended or revoked;

(5) The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity or specified criminal activity to occur in or on the premises of the adult entertainment business, except with regard to specified sexual activity at a licensed sexual encounter establishment; or

(6) The licensee has knowingly or recklessly allowed a person under the age of eighteen (18) years to consume alcohol or appear in a state of semi-nudity or nudity on the premises of the adult entertainment business.

(c) The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.

(d) When, after the notice and hearing procedure described in this Chapter, the County revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued an adult entertainment business license or adult entertainment business employee license for one (1) year from the date revocation becomes effective.

4312. Regulations Pertaining to Exhibition of Sexually Explicit Films on Premises.

(a) A person who operates or causes to be operated an adult entertainment business which exhibits in a booth or viewing room on the premises, through any mechanical or electronic image-producing device, a film, video cassette, digital video disc, video streaming device, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.

(1) Each application for an adult entertainment business license shall contain a diagram of the premises showing the location of all operator's stations, booths or viewing rooms, overhead lighting fixtures, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain equipment for displaying films, video cassettes, digital video discs, or other video reproductions. The diagram shall also designate the place at which the license 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 inches. The Director may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since the diagram was prepared.

(2) It shall be the duty of the operator, and of any employees present on the premises, 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.

(3) The interior 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 (5.0) foot candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.

(4) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no specified sexual activity occurs in or on the licensed premises, except with regard to a licensed sexual encounter establishment.

(5) It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:

(i) That the occupancy of viewing rooms less than 150 square feet is limited to one person.

(ii) That specified sexual activity on the premises is prohibited, except with regard to a licensed sexual encounter establishment.

(iii) That the making of openings between viewing rooms is prohibited.

(iv) That violators will be required to leave the premises.

(v) That violations of these regulations are unlawful.

(6) It shall be the duty of the operator to enforce the regulations articulated in (5)(i) through (iv) above.

(7) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station, which shall be in a fixed location, of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more operator'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, excluding restrooms, from at least one of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any

employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

(8) It shall be the duty of the operator to ensure that no porous materials are used for any wall, floor, or seat in any booth or viewing room.

(b) It shall be unlawful for a person having a duty under subsections (a)(1) through (a)(8) to knowingly fail to fulfill that duty.

(c) No patron shall knowingly enter or remain in a viewing room less than 150 square feet in area that is occupied by any other patron.

(d) No patron shall knowingly be or remain within one foot of any other patron while in a viewing room that is 150 square feet or larger in area.

(e) No person shall knowingly make any hole or opening between viewing rooms.

4316. Prohibited Conduct.

- (a) No patron, employee, or any other person shall knowingly or intentionally, in an adult entertainment business, except a sexual encounter establishment, appear in a state of nudity or engage in a specified sexual activity.
- (b) No person shall knowingly or intentionally, in an adult entertainment business, except a sexual encounter establishment, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six (6) feet from all patrons and on a stage at least eighteen (18) inches from the floor in a room of at least six hundred (600) square feet.
- (c) No employee who regularly appears semi-nude in an adult entertainment business shall knowingly or intentionally touch a customer or the clothing of a customer on the premises of an adult entertainment business.
- (d) No person shall sell, use, or consume alcoholic beverages on the premises of an adult entertainment business.
- (e) No person shall knowingly or recklessly allow a person under the age of eighteen (18) years to be or remain on the premises of an adult entertainment business.

(f) No person shall engage in any gambling activity on the premises of an adult entertainment business.

(g) No operator or licensee of an adult entertainment business shall knowingly violate the regulations in this section or knowingly allow an employee or any other person to violate the regulations in this section.

(h) A sign in a form to be prescribed by the Director, and summarizing the provisions of subsections (a), (b), (c), (d), (e), and (f) shall be posted near the entrance of the adult entertainment business in such a manner as to be clearly visible to patrons upon entry. No person shall cover, obstruct, or obscure said sign.

Section B. Penalty Provision.

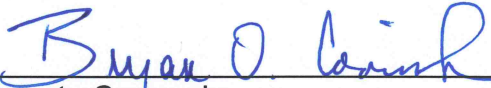
Any person who violates any provision of this Ordinance shall, upon conviction, be subject to punishment pursuant to section 4314., Jackson County Code, 1984.

Effective Date: This ordinance shall be effective immediately upon its signature by the County Executive.

APPROVED AS TO FORM:



Chief Deputy County Counselor



County Counselor

I hereby certify that the attached ordinance, Ordinance No. 5721 introduced on February 28, 2023, was duly passed on March 14, 2023 by the Jackson County Legislature. The votes thereon were as follows:

Yeas 8

Nays 0

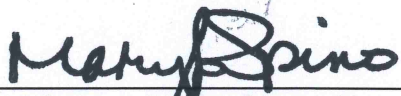
Abstaining 0

Absent 1

This Ordinance is hereby transmitted to the County Executive for his signature.

3-14-2023

Date



Mary Jo Spino, Clerk of Legislature

I hereby approve the attached Ordinance No. 5721.

3/15/2023

Date



Frank White, Jr., County Executive