

**ORDINANCE NO. 00-02**

**BE IT ENACTED BY THE CITY OF LAKEVIEW, BAXTER COUNTY, ARKANSAS,  
AN ORDINANCE TO BE ENTITLED:**

**AN ORDINANCE RESTRICTING SEXUALLY ORIENTED BUSINESSES;  
PRESCRIBING DEFINITIONS OF SEXUALLY ORIENTED BUSINESSES; AND  
FOR OTHER PURPOSES.**

**WHEREAS**, the City of Lakeview finds that the secondary effects of sexually oriented businesses are detrimental to the area surrounding the sexually oriented businesses; and

**WHEREAS**, sexually oriented businesses require special restrictions in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the county, and

**WHEREAS**, it is not the intent of this ordinance to suppress any speech activities protected by the first amendment, but to enact a content neutral ordinance which addresses the secondary effects of sexually oriented businesses.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF LAKEVIEW,  
BAXTER COUNTY, ARKANSAS, THAT:**

**SECTION 1: PURPOSE AND FINDINGS**

**A. Purpose:** It is the purpose of this ordinance to restrict sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the city, and to establish reasonable and uniform restrictions to prevent the deleterious location and concentration of sexually oriented businesses within the city. The provisions of this ordinance have neither the purpose nor the effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this ordinance 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. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material.

**SECTION 2: DEFINITIONS**

A. "Adult Cabaret, Theater, Arcade, or Motion Picture Theater" means a club, bar, theater, restaurant, auditorium, or similar sommercial establishment which regularly features:

- (1) Persons who appear in a state of nudity or semi-nude, either in person or by film; or
- (2) Live performances which are characterized by the exposure of "specified anatomical area or by "specified sexual activities".

B. "Establishment" means and 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.

C. "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 State of Arkansas or a college, junior 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:

- (1) 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
- (2) where in order to participate in a class a student must enroll at least three (3) days in advance of a class.

**D. "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 or any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

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

**F. "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.

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

- (1) Physical 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.

**H. "Sexually Oriented business"** means an adult cabaret, adult motion picture theater, adult theater, nude model studio, sexual encounter center, adult arcade, adult bookstore, adult novelty store, or adult video store.

**L. "Specified Anatomical Areas"** means:

- (1) The human male genitals in a discernibly turgid state, even if completely or opaquely covered; or,
- (2) less than completely and opaquely covered human genitals, pubic region, buttocks, or a female breast below a point immediately above the top of the areola.

**J. "Specified Sexual Activities"** means any of the following:

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts; or,
- (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy.

### **SECTION 3. CLASSIFICATION**

Sexually oriented businesses are classified as follows:

- A. Adult arcades;
- B. Adult bookstores, adult novelty stores, or adult video stores;
- C. Adult cabarets;
- D. Adult motion picture theaters;
- E. Adult theaters;
- F. Nude model studios; and
- G. Sexual encounter centers.

### **SECTION 4. APPLICABILITY**

This ordinance shall be applicable to all of the incorporated areas of Lakeview, Baxter County, Arkansas.

### **SECTION 5. PERMITS**

Every owner of a sexually oriented business shall apply for a permit from the Lakeview City Council prior to the opening of any new sexually oriented business in the City of Lakeview, Baxter County, Arkansas. The permit application shall be accompanied by a one thousand dollar (\$1,000) non-refundable permit and investigation fee. The permit application and fee shall be delivered to the office of the mayor of Lakeview. The mayor of Lakeview shall issue the permit within ten (10) business days from the receipt of the application and fee unless the mayor determines that the owner's proposed business location is in conflict with this ordinance. If the proposed business location is in conflict with this ordinance, the mayor shall notify the applicant of the conflict within ten (10) business days from the receipt of the application and fee. The applicant shall have the right to appeal any adverse decision to the city council at its next regularly scheduled monthly meeting. The decision of the city council shall be final.

### **SECTION 6. LOCATION OF SEXUALLY ORIENTED BUSINESSES**

A. A person commits an offense if the person operates or causes to be operated a sexually oriented business within two thousand (2000) feet of:

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

- (2) 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; or,
- (3) a public 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 city of Lakeview which is under the control, operation, or management of any city authority; or,
- (4) the property line of a lot devoted to residential use when said lot is in a platted subdivision; if said residential use is not a platted subdivision, then for purposes of this ordinance, the property line shall be five hundred (500) feet in any direction from a residence.

**B. A person commits an offense if that person owns, operates, or establishes a sexually oriented business within one (1) mile of another sexually oriented business.**

**C. For the purpose of subsections A and B of this section, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in subsection A and B. Presence of a city, county, or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this section.**

**D. A sexually oriented business lawfully operating in accordance with this ordinance will not be considered as a violation of this ordinance by the subsequent location of those uses outlined in subsections A and B of this section.**

**SECTION 7. ADDITIONAL RESTRICTIONS FOR NUDE MODEL STUDIOS  
AND SEXUALLY ORIENTED BUSINESSES**

A. No person under the age of twenty-one (21) years shall be employed by a person to appear semi-nude or in a state of nudity in a sexually oriented business or in a nude model studio. Any person who knowingly violates this subsection shall be guilty of an offense.

B. A person under the age of twenty-one (21) years commits an offense if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio or a sexually oriented business. It is a defense to prosecution under this subsection if the person under twenty-one (21) years was in a restroom not open to public view or visible to any other person.

C. A person commits an offense if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in an area of a nude model studio or a sexually oriented business premise which can be viewed from the public right-of-way.

**SECTION 8. ADDITIONAL RESTRICTIONS CONCERNING PUBLIC NUDITY**

It shall be an offense for a person who knowingly and intentionally, in a sexually oriented business, appears in a state of nudity or depicts specified sexual activities.

**SECTION 9. EXEMPTIONS**

A. It is a defense to prosecution under Section 7 that a person appearing in a state of nudity did so in a modeling class operated by:

- (1) a proprietary school, licensed by the State of Arkansas, a college, junior college, or university supported entirely or partly by taxation;
- (2) 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 (3) days in advance of the class.

**SECTION 10. INJUNCTION**

A person who operates or causes to be operated a sexually oriented business in violation of this ordinance will be subject to a suit for injunction as well as prosecution for criminal violations.

**SECTION 11. CRIMINAL PENALTIES**

A person who operates or causes to be operated a sexually oriented business in violation of any provision of this ordinance shall be guilty of a misdemeanor and shall be fined in an amount not to exceed two hundred fifty dollars (\$250). Each day or part of a day during which a violation is continued or repeated shall constitute a separate offense.

**SECTION 12. 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.

**SECTION 13. CONFLICTING ORDINANCES REPEALED**

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

**SECTION 14. EMERGENCY CLAUSE**

This ordinance being necessary for the preservation of the public health, convenience and welfare of the City of Lakeview, Baxter County, Arkansas, an emergency is declared to exist and this ordinance shall be in full force and effect from the date of its adoption.

**PASSED:** February 8, 2000

**APPROVED:**

Lloyd Dean  
**MAYOR**

**ATTEST:**

Robert White  
**Recorder/Treasurer**