

**REGULATING  
COMMUNITY STANDARDS  
ORDINANCE**

**FROM CITY OF DAPHNE ORDINANCE #2013-38**

**(Contact City Clerk for Signed Copy)**

Based on the evidence contained in Jules B. Gerard & Scott D. Bergthold entitled: *Local Regulation of Adult Businesses* (2013 ed.) along with the studies and various court decisions cited therein, the City Council of the City of Daphne has determined that Sexually Oriented Businesses (hereinafter defined) have negative secondary effects and are often associated with crime, downgrading of real property values and sexual exploitation.

City Council of the City of Daphne desires to minimize the negative secondary effects of sexually oriented businesses in order to protect the public health, safety and welfare of the citizens, preserve the quality of life, property values and character of the City of Daphne and deter the spread of urban blight.

It is the intent of the City Council of the City of Daphne to enact a content-neutral ordinance regulating sexually oriented businesses to further a compelling governmental interest of minimizing the negative secondary effects of sexually oriented businesses in the City of Daphne.

It is not the intent of the City Council of the City of Daphne to suppress any speech activities protected by the United States Constitution or the Alabama Constitution.

## I. DEFINITIONS

*As used in this section, the following words and terms shall have the following meanings:*

**Adult Cabaret/Entertainment Facility.** A nightclub, bar, theater, concert hall, auditorium, restaurant or similar establishment which, having entertainment, staff, live performances or appearances by nude or topless females, or entertainment, live performances or appearances characterized by their emphasis on matters depicting, describing or relating to nudity or sexual activity.

**Adult Companionship Establishment.** An establishment of business which provides the service of engaging in or listening to conversation, talk or discussion between an employee of the establishment and a customer, if such service is distinguished or characterized by their emphasis on matters depicting, describing or relating to nudity or sexual activity.

**Adult Novelty/Book Store.** An establishment which, as one of its Profit Centers, offers for sale or rental books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videocassettes, slides, tapes, records, compact disks or other form of visual or audio representations or instruments, devices, games, costumes, props or paraphernalia (excluding contraceptives) which are distinguished or characterized by their emphasis on matters depicting, describing or relating to nudity or sexual activity.

**Adult Theater.** A commercial establishment where films, motion pictures, or other photographic reproductions are regularly shown or created which are distinguished or characterized by their emphasis on matters depicting, describing or relating to nudity or sexual activity.

**Distinguished or characterized by.** To be “distinguished or characterized by” means the essential character or quality of an item. As applied in this ordinance, no business shall be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

**Minor.** Any unmarried person under the age of eighteen (18) years who is not emancipated. An emancipated minor is or has been married or has by court order otherwise been legally freed from the care, custody, and control of his or her parents.

**Nude (Nudity).** The showing, display or appearance of:

- (1) All or any part of the human male or female genitals, pubic area or anus with less than a fully opaque covering;
- (2) More than two-thirds (2/3) of the buttocks of the human male or female with less than a fully opaque covering;
- (3) Any portion of the human female areola or nipple with less than a fully opaque covering; or
- (4) The covered male genitals in a discernibly turgid state.

**Profit Center.** A collection of related products, items or services which could be treated as a separate, stand-alone section of the business generating its own profits and losses.

**Sexual Activity.** Activities consisting of the following:

- (1) The stimulation, fondling or touching of male or female human genital organs or anus;
- (2) The stimulation, fondling or touching of the female breast; or
- (3) Flagellation, torture, fettering, binding or other physical restraint of any persons in a sexual relationship.

**Sexually Oriented Businesses.** Adult cabaret/entertainment facilities, adult companionship establishment, adult novelty/book stores or adult theaters.

**Sexually Oriented Business Permit.** As defined in Section II of this ordinance.

**Tattoo Facility.** The geographic location at which an individual does one or more of the following for compensation:

- (1) Places an indelible mark upon the body of another individual by the insertion of a pigment in or under the skin.
- (2) Places an indelible design upon the body of another individual by production of scars.
- (3) The perforation of human tissue other than ear for a nonmedical purpose.

**Topless.** The exposing of any portion of the human female breast below a horizontal line across the top or the areola at its highest point or simulation thereof excluding any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit or outerwear apparel.

## **II. SEXUALLY ORIENTED BUSINESSES**

### **A. Location Restrictions of Sexually Oriented Businesses**

1. Sexually oriented businesses are prohibited within one thousand (1,000) feet of the following:
  - i. A public or private elementary or secondary school.
  - ii. A family day care, day care center for children, nursery, or preschool.
  - iii. A church or other facility or institution used primarily for religious purposes.
  - iv. A public park or trail system.
  - v. A tattoo facility.
  - vi. Another sexually oriented business.
2. Sexually oriented businesses are prohibited within five hundred (500) feet of a residential zone or any single family or multiple-family residential use.
3. Sexually oriented businesses shall only be permitted in the Commercial/Industrial Zone (C/I) by right and in the General Business Zone (B-2) with Planning Commission approval, as defined in Land Use and Development Ordinance, and shall not be permitted or permitted by special exception in any other district. The table of permitted uses within the Land Use Development Ordinance shall be updated to reflect the location restrictions contained in this section.

4. No more than one sexually oriented business shall be permitted within one unified development or shopping center.
5. The location restrictions and requirements contained in this section shall not apply to sexually oriented businesses existing within the City of Daphne prior to the adoption of this Ordinance or to newly annexed properties where sexually oriented businesses were operating for a period of three (3) months immediately prior to annexation.

**B. Hours of Operation**

No sexually oriented businesses shall be open to do business before eight o'clock a.m. (8:00 a.m.), and no sexually oriented businesses shall be open to do business after twelve o'clock (12:00) midnight. No sexually oriented businesses shall be open to do business on Sunday.

**C. Permitting**

1. It shall be unlawful to operate a sexually oriented business in the City of Daphne without a valid sexually oriented business permit.
2. An applicant for a sexually oriented business permit shall file in person with the Department of Community Development a completed application made on a form provided by the Department of Community Development accompanied by an application fee of fifty dollars (\$50.00).
3. An application for an sexually oriented business permit shall contain:
  - i. Applicant's full name and any other names used by the applicant in the past five (5) years;
  - ii. Written proof of the age of the applicant in the form of a driver's license or other picture identification document issued by a governmental agency;
  - iii. Current business or mailing address of the applicant;
  - iv. The proposed name of the proposed sexually oriented business;
  - v. The proposed location of the proposed sexually oriented business; and,

- vi. A legal description of the property where the sexually oriented business is proposed to be located.
4. An application containing all items required by this section shall be considered complete. Within thirty (30) days of the submission of a completed application, the Department of Community Development shall issue a permit unless:
  - i. The applicant is a minor;
  - ii. The location of the proposed sexually oriented business is not in compliance with the locational requirement of this ordinance; or,
  - iii. The application fee required by the Department of Community Development has not been paid.
5. The sexually oriented business permit shall not, and does not, relieve the applicant of other relevant licensing or permitting requirements.

**D. Alcoholic Beverages**

1. An establishment dealing in alcoholic beverages shall not offer for sale or rental books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videocassettes, slides, tapes, records, compact disks or other form of visual or audio representations or instruments, devices, games, costumes, props or paraphernalia which are distinguished or characterized by their emphasis on matters depicting, describing or relating to nudity or sexual activity.
2. An establishment dealing in alcoholic beverages shall not show or create films, motion pictures, or other photographic reproductions which are distinguished or characterized by their emphasis on matters depicting, describing or relating to nudity or sexual activity.
3. An adult cabaret/entertainment facilities and adult companionship establishment shall not deal in alcoholic beverages.

**E. Restrictions on Minors**

1. A sexually oriented business shall not employ a minor.
2. A sexually oriented business shall not permit minors within its commercial establishment unless the sexually oriented business obtains the prior written informed consent of the parent or legal guardian of the minor. The parent or legal guardian of the minor shall execute the written informed consent required under this subsection in the presence of an employee or agent of that sexually oriented business.

**III. TATTOO FACILITIES**

(1) Location Restrictions of Tattoo Facilities

- a. Tattoo facilities are prohibited within five hundred (500) feet of the following:
  - i. a public or private elementary or secondary school.
  - ii. a family day care, day care center for children, nursery, or preschool.
  - iii. a church or other facility or institution used primarily for religious purposes not located in a commercial building or facility.
  - iv. a public park or trail system.
  - v. a sexually oriented business.
  - vi. another tattoo facility.
- b. Tattoo facilities are prohibited within two hundred and fifty (250) feet of a residential zone or any single family or multiple-family residential use.

- c. Tattoo facilities shall only be permitted in the General Business Zone (B-2) by right and in the Local Business Zone (B-1) with Planning Commission Approval, as defined in Land Use and Development Ordinance. The table of permitted uses within the Land Use Development Ordinance shall be updated to reflect the location restrictions contained in this section.
  - d. No more than two tattoo facilities shall be permitted within one unified development or shopping center.
  - e. The location restrictions and requirements contained in this section shall not apply to tattoo facilities existing within the City of Daphne prior to the adoption of this ordinance or to newly annexed properties where sexually oriented businesses were operating for a period of 3 months immediately prior to annexation.
- (2) Hours of Operation. No tattoo facilities shall be open to do business before eight o'clock a.m. (8:00 a.m.), and no tattoo facilities shall be open to do business after twelve o'clock (12:00 p.m.) midnight.
  - (3) Alcoholic Beverages. A tattoo facility shall not deal in alcoholic beverages.

#### **IV. MISCELLANEOUS**

- (1) Distance Measurement. The distances provided in this Ordinance shall be measured by following a straight line, without regard to intervening buildings, from the nearest point of the property parcel upon which the proposed use is to be located, to the nearest point of the parcel of property or the land use district boundary line from which the proposed land use is to be separated.
- (2) City or State Regulation. Nothing in this Ordinance is intended to authorize, legalize or permit the establishment, operation or maintenance of any business, building or use which violates any city regulation or statute of the State of Alabama.

- (3) Penalty. Any person found guilty of violating any provision of this Ordinance shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than the maximum amount permitted under state law per day a violation has occurred, or by imprisonment for a period not exceeding six (6) months, or both, in the discretion of the municipal judge. Any violation of this section shall be a basis for suspension or revocation of any permits or licenses granted to the person found in violation of this section.
- (4) Severability. The provisions of this Ordinance are severable. If any provision, section, paragraph, sentence or part thereof shall be held to be unconstitutional or invalid, such decision shall not affect or impair the remainder of this Ordinance, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence and part thereof separately and independently of each other.
- (5) Headings. All headings contained in this Ordinance are for reference only and shall no limit, modify or affect the meaning or interpretation of this Ordinance in any matter.
- (6) Repealer. This Ordinance shall lift the moratorium placed on the “establishment of adult entertainment stores and tattoo parlors in the City of Daphne” enacted on February 4, 2013.
- (7) Effective Date. This Ordinance shall take effect and be in force from and after the date of its approval by the City Council of the City of Daphne and publication as required by law.