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## ORDINANCE NO. 012010-AEO

### AN ORDINANCE OF THE BOARD OF SUPERVISORS OF PINAL COUNTY, ARIZONA AMENDING THE PINAL COUNTY ZONING ORDINANCE BY ADDING ARTICLE 35 : ADULT ORIENTED BUSINESSES AND ADULT SERVICE PROVIDERS

**WHEREAS**, June 18, 1962 the Pinal County Board of Supervisors adopted Ordinance No. 61862 in the official records of Pinal County creating the Pinal County Zoning Ordinance; and

**WHEREAS**, the Pinal County Board of Supervisors has the authority pursuant to A.R.S. § 11-802 to conserve and promote the public health, safety, convenience and general welfare within the unincorporated areas of the County through the amendment, adoption and repeal of ordinances; and

**WHEREAS**, said ordinance is in need of revision to provide a valid governmental response to the serious problems caused by the secondary effects of adult oriented businesses.

**BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF PINAL COUNTY, ARIZONA:**

**SECTION 1.** Adult Entertainment Ordinance No. 62597-AEO is hereby repealed in its entirety.

**SECTION 2.** Ordinance No. 61862, Article 35 Adult Oriented Businesses and Adult Service Providers, of the Pinal County Zoning Ordinance is hereby added in its entirety to read as follows:

### ARTICLE 35

#### ADULT ORIENTED BUSINESSES AND ADULT SERVICE PROVIDERS

**Sec. 3501 FINDINGS:** Based on public testimony and other evidence before it, including information, studies and court decisions from other jurisdictions, and in accordance with A.R.S. § 11-821, the Board makes the following legislative findings:

1. The Board recognizes that some activities which occur in connection with adult oriented businesses are protected as expression under the First Amendment to the United States Constitution. The Board is aware, however, that adult oriented businesses may and do generate secondary effects which are detrimental to the public health, safety and welfare. Among those secondary effects are:
  - A. Prostitution and other sex related offenses;
  - B. illegal drug use and sale of illegal drugs;
  - C. health risks through the spread of human immunodeficiency virus and acquired immunodeficiency syndrome ("HIV/AIDS") and other sexually transmitted diseases; and

D. infiltration by organized crime for the purpose of drug and sex related business activities, laundering of money and other illicit conduct.

2. The Board finds the foregoing to be true with respect to places where alcohol is served and where it is not.

**Sec. 3502**

**STATEMENT OF PURPOSE:** Based on public testimony and other evidence before it, including information, studies and court decisions from other jurisdictions, and in accordance with A.R.S. § 11-821, the Board makes the following statement of purpose: The purpose of this Article is to provide a valid governmental response to the serious problems caused by the secondary effects of adult oriented businesses. This Article is primarily relegated to regulation of the locations where such activity can conduct business, while satisfying the dictates of the First Amendment, by providing reasonable alternative avenues of communication where such activity can take place. The Board recognizes that First Amendment rights are among our most precious and highly protected. This Article is not intended to interfere with legitimate expression, but to avoid and mitigate the secondary effects by some conduct from adult oriented business activities.

**Sec. 3503**

**DEFINITIONS:** The following words, terms and phrases when used in this Article shall have the meanings ascribed to them below, except when the context clearly indicates a different meaning:

1. **ADULT ARCADE:** Any place to which the public is permitted or invited and in which 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 involving specific sexual activities or specific anatomical areas to persons in booths or viewing rooms.
2. **ADULT BOOKSTORE or ADULT VIDEO STORE:** A commercial establishment that offers for sale or rent any of the following as one of its principal business purposes:
  - A. Books, magazines, periodicals or other printed matter, photographs, films, motion pictures video cassettes or video reproductions or slides or other visual representations that depict or describe specific sexual activities or specific anatomical areas; or
  - B. instruments, devices or paraphernalia that are designed for use in connection with specific sexual activities.
3. **ADULT LIVE ENTERTAINMENT ESTABLISHMENT:** An establishment that features either:
  - A. Persons who appear in a state of nudity or seminude; or
  - B. live performances that are characterized by the exposure of specific anatomical areas or specific sexual activities.

4. **ADULT MOTION PICTURE THEATER:** A commercial establishment in which for any form of consideration films, motion pictures, video cassettes, slides or other similar photographic reproductions that are characterized by the depiction or description of specific sexual activities or specific anatomical areas are predominately shown.
5. **ADULT ORIENTED BUSINESS:** Adult arcades, adult bookstores, adult video stores, cabarets, adult live entertainment establishments, adult motion picture theaters, adult theaters, and massage establishments that offer adult service or nude model studios.
6. **ADULT SERVICE:** Dancing, serving food or beverages, modeling, posing, wrestling, singing, reading, talking, listening or other performances or activities conducted for any consideration in an adult-oriented business, by a person who is nude or seminude during all or part of the time that the person is providing the service.
7. **ADULT SERVICE BUSINESS:** A business establishment or premises where any adult service is provided to patrons in the regular course of business.
8. **ADULT THEATER:** A theater, concert hall, auditorium or similar commercial establishment that predominately features persons who appear in a state of nudity or who engage in live performances that are characterized by the exposure of specific anatomical areas or specific sexual activities.
9. **CABARET:** An adult oriented business licensed to provide alcoholic beverages pursuant to A.R.S. Title 4, Chapter 2, Article 1.
10. **COMPLIANCE REVIEW NUMBER:** A number issued by a Code Compliance Officer indicating that a proposed building, structure, or use of land meets all of the standards and requirements in this Ordinance.
11. **COUNTY SHERIFF:** The elected Pinal County Sheriff or the County Sheriff's designee.
12. **DIRECTOR:** The Director of the Planning and Development Department or his/her designee.
13. **EMPLOYEE:** Any person hired, engaged or authorized to perform any service on the premises of an adult service business, including an adult service provider, whether an employee, independent contractor or otherwise.
14. **ENTERPRISE:** A corporation, association, labor union or other legal entity, as provided in A.R.S. § 13-105.

**15. MESSAGE ESTABLISHMENT:** An establishment in which a person, firm, association or corporation engages in or permits massage activities, including any method of pressure on, friction against, stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating of external soft parts of the body with the hands or with the aid of any mechanical apparatus or electrical apparatus or appliance. This definition shall not apply to:

- A. Physicians licensed pursuant to A.R.S. Title 32, Chapter 7, 8, 13, 14 or 17;
- B. registered nurses, licensed practical nurses or technicians who are acting under the supervision of a physician licensed pursuant to A.R.S. Title 32, Chapter 13 or 17;
- C. persons employed or acting as trainers for any bona fide amateur, semi-professional or professional athlete or athletic team; or
- D. persons who are licensed pursuant to A.R.S. Title 32, Chapter 42.

**16. NUDE MODEL STUDIO:** A place in which a person who appears in the state of nudity or who displays specific anatomical areas is observed, sketched, drawn, painted, sculptured, photographed, filmed or otherwise depicted by other persons who pay money or other consideration. Nude model studio does not include a proprietary school that is licensed by the State of Arizona or a college, community college or university that is supported entirely or in part by taxation, a private college or university that maintains or operates educational programs in which credits are transferable to a college, community college or university supported entirely or partly by taxation, or a structure to which the following apply:

- A. A sign is not visible from the exterior of the structure and no other advertising appears indicating that a nude person is available for viewing;
- B. a student must enroll at least three (3) calendar days in advance of the class in order to participate; and
- C. no more than one nude or seminude model is on the premises at anytime.

**17. NUDE, NUDITY or STATE OF NUDITY:** Any of the following:

- A. The appearance of a human anus, genitals or female breast below a horizontal line across the top of the areola at its highest point. This definition shall include the entire lower portion of the female breast, but shall not include any portion of the cleavage of the female breast exhibited by a dress, blouse, shirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or part.
- B. A state of dress which fails to opaquely cover a human anus, genitals or female breast below a horizontal line across the top of the areola at its highest point. This definition shall include the entire lower portion of the female breast, but shall not include any portion of the cleavage of the female breast exhibited by a dress, blouse, shirt, leotard, bathing suit or other wearing apparel provided the areola is not exposed in whole or in part.

18. **PATRON:** A person invited or permitted to enter and remain upon the premises of an adult oriented business, whether or not for consideration.

19. **PRINCIPAL BUSINESS PURPOSES:** A commercial establishment that devotes forty (40) percent or more of its floor space to the sale or rental of items listed in subparagraphs A and B in paragraph 3503.2, Adult Bookstore or Adult Video Store.

20. **SEMINUDE:** A state of dress in which clothing covers no more than the anus, genitals, pubic region and female breast below a horizontal line across the top of the areola at its highest point, as well as portions of the body that are covered by supporting straps or devices. This definition shall include the entire lower portion of the female breast, but shall not include any portion of the cleavage of the female breast exhibited by a dress, blouse, shirt, leotard, bathing suit or other wearing apparel provided the areola is not exposed in whole or in part.

21. **SPECIFIC ANATOMICAL AREAS:** Any of the following:

- A. A human anus, genitals, pubic region or a female breast below a horizontal line across the tip of the areola at its highest point that is less than completely and opaquely covered. This definition shall include the entire lower portion of the female breast, but shall not include any portion of the cleavage of the female breast exhibited by a dress, blouse, shirt, leotard, bathing suite or other wearing apparel provided the areola is not exposed in whole or in part.
- B. Male genitals in a discernible turgid state even if completely or opaquely covered.

22. **SPECIFIC SEXUAL ACTIVITIES:** Intercourse, oral copulation, masturbation or sodomy on the premises of an adult oriented business.

**Sec.3504**

**ESTABLISHMENT AND LOCATION OF ADULT ORIENTED BUSINESSES:**

The establishment of an adult oriented business shall be permitted only in the CI-1 Light Industry and Warehouse Zone and CI-2 Industrial Zone and shall be subject to the following spacing restriction:

- 1. No person shall cause or permit the establishment of any adult oriented business as defined in this Article, within 1,000 feet of another adult oriented business.
- 2. No person shall cause or permit the establishment of any adult oriented business as defined in this Article, within 2,000 feet of any religious institution, nursery school, school, YMCA, YWCA, Boys Club, Girls Club or similar existing youth organization, public park, public building, or properties zoned for residential use or used for residential purposes.

3. Adult oriented business shall be conducted solely within an enclosed structure or building.

**Sec. 3505 MEASUREMENT OF DISTANCE:** For the purpose of measuring separation of distances in this Article:

1. The distance between any two adult oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest property line of each business.
2. The distance between any adult oriented business and any religious institution, nursery school, school, YMCA, YWCA, Boys Club, Girls Club or similar existing youth organization, public park, public building, or properties zoned for residential use or used for residential purposes shall be measured in a straight line, without regard to intervening structures or objects, from the nearest property line of the premises where the adult oriented business is conducted, to the nearest property line of the premises of a religious institution, nursery school, school, YMCA, YWCA, Boys Club, Girls Club or similar existing youth organization, public park, public building, or properties zoned for residential use or used for residential purposes.

**Sec. 3506 REGULATIONS GOVERNING EXISTING ADULT ORIENTED BUSINESS:**

1. Any adult oriented business lawfully operating on the effective date of this Ordinance that is in violation of this Article shall be deemed a non-conforming use. Non-conforming uses shall be governed by Article 3 of this Ordinance. If two or more adult oriented businesses are within 1,000 feet of one another or otherwise in a permissible location, the adult oriented business which was first established and continually operating at a particular location is the conforming use, and the later established business is non-conforming.
2. An adult oriented business lawfully operating as a conforming use is not rendered a non-conforming use by the subsequent location of a religious institution, nursery school, school, YMCA, YWCA, Boys Club, Girls Club or similar existing youth organization, public park, public building, or properties zoned for residential use within 2,000 feet of the adult oriented business.

**Sec. 3507 REGULATIONS PERTAINING TO ADULT ARCADES, ADULT BOOKSTORES OR VIDEO STORES, CABARETS, ADULT LIVE ENTERTAINMENT ESTABLISHMENTS, ADULT MOTION PICTURE THEATERS, ADULT THEATERS AND MESSAGE ESTABLISHMENTS THAT OFFER ADULT SERVICE OR NUDE MODEL STUDIOS:** A Compliance Review Number shall be required to ensure that the aforementioned adult oriented businesses are in compliance with the zone, location and separation distance(s) requirements.


**Sec. 3508 ADVERTISING REGULATIONS:**

1. No person shall exhibit, post or display on a sign, wall, or window any statement, symbol or picture of an obscene nature.
2. No depiction of specified sexual activities or specified anatomical areas shall be visible from the exterior of the premises.

**Sec. 3509 APPLICABILITY:** This Ordinance shall apply to all persons engaging in the activities described herein, whether or not such activities were commenced prior to the effective date of this Ordinance. Persons so engaged as of the effective date of this Ordinance shall be in full compliance with this Ordinance.

**SECTION 3.** This Ordinance shall become effective on the 31<sup>st</sup> day after the date of its adoption.

**PASSED AND ADOPTED** by the Board of Supervisors, Pinal County, Arizona, this 20<sup>th</sup> day of January, 2010.

  
Pinal County Board of Supervisors  
(Chairman)

**ATTEST:**

  
Clerk of the Board