

Section 21-08.02 Special Regulations for *Controlled Uses*.

Controlled uses are hereby recognized as having objectionable secondary impacts. A concentration of *controlled uses* in a particular area can increase the impact of those objectionable secondary impacts to the point where a deleterious impact is created on area properties. In order to prevent the concentration of *controlled uses* and to prevent such deleterious impacts from leading to the development of blighted areas, any *controlled use*, in addition to the *permitted use* and *development standard* regulations specified in any applicable Commercial / Mixed Use *District* or Industrial *District*, shall also be subject to the following additional regulations:

(a) Where Permitted:

Controlled uses shall be allowed as *primary uses* or *special exception uses* in Commercial / Mixed Use *Districts*, Industrial *Districts* or PUD *Districts* as specified in the following Table:

<i>Controlled Use</i>	<i>District</i>									
	OB	MU	O	LB	CB	CBD	GB	LI	GI	PUD
<i>Adult Business</i>	-	-	-	-	-	-	-	SE	P	*
<i>Amusement Arcade</i>	-	SE	-	SE	P	P	P	-	-	*
<i>Bar / Tavern</i>	-	SE	-	P	P	P	P	SE	P	*
<i>Nightclub</i>	-	SE	-	P	P	P	P	SE	P	*
<i>Cabaret – 21 and Over</i>	-	SE	-	P	P	P	P	-	-	*
<i>Cabaret – Adult</i>	-	-	-	-	-	-	-	SE	P	*
Gun Shops and Gunsmith Shops	-	-	-	-	SE	-	SE	-	-	*
Pawnshop	-	-	-	P	P	P	P	-	-	*
Billiard Hall	-	SE	-	SE	P	P	P	-	-	*
Public Dance Hall	-	-	-	SE	P	P	P	-	-	*
Off-Track Pari-mutuel wagering facility	-	-	-	-	SE	SE	SE	SE	SE	*
<i>Casinos, Approved Hotels</i> and other areas where gambling games are conducted	-	-	-	-	SE	SE	SE	SE	SE	*
<i>Tattoo, Body Piercing, Scarifying and Branding Establishments</i>	-	-	-	SE	SE	SE	SE	P	P	*
P – Permitted as a <i>Primary Use</i> SE – Permitted only as a <i>Special Exception Use</i> * – Permitted only if specified in the <i>PUD District Ordinance</i> - – Not Permitted										

(b) **Additional Development Standards for Controlled Uses:**

Controlled uses, where permitted, shall be subject to the following additional *development standards*:

(1) Spacing Regulations:

(A) General – No *building* or *lot* may be used and no *building* may be erected, moved, structurally altered or enlarged for any *controlled use*, if such *building* or *lot* is located within one-thousand (1,000) feet of any two (2):

- i. *controlled uses*;
- ii. *family restaurant with lounge*;
- iii. *cabaret – family*; or,
- iv. *Controlled Uses*, as defined and regulated, shall consider the location of any business establishment with four (4) or more amusement devices, to determine and meet the spacing regulations of such *adult businesses*. (Ord. 9760-07)

provided, however, a *controlled use* may be structurally altered for the purposes of constructing, enlarging or refurbishing kitchen, food service, restroom or indoor storage areas, if: (i) such structural alterations are performed within the existing *building*; and, (ii) the seating capacity or patron service area is not increased.

(B) *Adult Businesses* – For the reasons outlined in Ordinance No. 9132-00, of the City of South Bend, Indiana, the Statement of Purpose and Intent of which is hereby incorporated herein by this reference, no *adult business* shall be located within five-hundred (500) feet of any:

- i. *district* within the City of South Bend, St. Joseph County or the City of Mishawaka which allows any residential *use* as a *primary use*;
- ii. *lot* being *legally established* for a *dwelling use*, *religious use*, *school use* or *park use* or,
- iii. any of the following *districts*:
 - a. In the City of South Bend:

1. SF1 – Single Family and Two Family District
2. SF2 – Single Family and Two Family District
3. MF1 – Urban Corridor Multifamily District
4. MF2 – High Density Multifamily District
5. OB – Office / Buffer District
6. MU – Mixed Use District
7. O – Office District
8. LB – Local Business District
9. CB – Community Business District
10. CBD – Central Business District
11. PUD – Planned Unit Development District (that does not specifically include *adult businesses as permitted uses*)
12. U – University District

b. In St. Joseph County:

1. C-2 – Planned Shopping Center District
2. R – Single Family Residence
3. R-1 – Mobile Home Park
4. R-2 – Multifamily
5. A – Agriculture District
6. O – Office District
7. O/B – Office / Buffer District
8. B – Business District

c. In the City of Mishawaka:

1. R-1 – Single Family
2. R-2 – Single and Multifamily
3. R-3 – Preference for Multifamily
4. R-4 – Mobile Home
5. C-2 – Shopping Center
6. PUD – Planned Unit Development

(C) *Tattoo, Body Piercing, Scarifying and Branding Establishments* – No *tattoo, body piercing, scarifying and branding establishment* shall be located within five-hundred (500) feet of: (i) any *religious use*; or, (ii) any public or parochial school for children in any grades from K through 12.

(D) Gun Sales or Gunsmith Shops – No firearms or ammunition shall be sold in any gun sales or gunsmith shops within two-hundred (200) feet of any:

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(i) any public or parochial school for children in any grades from K through 12; (ii) *child care center*; or, (iii) *child care ministry*.

- (E) Exemption: In order to promote the use of the downtown and East Bank area as a regional retail business and convention center, any Class A cabaret or restaurant which sells beer or intoxicating liquor for consumption on the premises, any pool hall or billiard hall, and any wagering, off-track pari-mutual wagering facility is exempt, for the purpose of this chapter, from the locational restrictions in section 21-08.02(b)(1)(A) herein, in the area bounded by a line drawn as follows:

Beginning at a point formed by the intersection of the north right-of-way line of Madison Avenue and the west right-of-way line of William Street; thence south along the west right-of-way line of William Street to the first alley south of Western Avenue; thence west along said alley to the west right-of-way line of Taylor Street; thence south along said right-of-way to the north right-of-way line of South Street; thence east along said right-of-way to the west right-of-way line of William Street; thence south along said right-of-way, extended to the south right-of-way of the Conrail property; thence southeasterly along said right-of-way to the west right-of-way of Lafayette Boulevard; thence north along said right-of-way to the south right-of-way line of Monroe Street; thence east along said right-of-way to the southwest right-of-way line of Lincolnway East; thence southeasterly along said right-of-way to the southeast right-of-way line of the portion of Monroe Street between Lincolnway East and the St. Joseph River; thence northeasterly along said right-of-way to its intersection with the centerline of the St. Joseph River; thence northwesterly along said centerline to the north right-of-way line of Jefferson Boulevard; thence east along said right-of-way to the first alley east of Niles Avenue; thence north along said alley, extended, to the north right-of-way line, extended, of Sorin Street; thence west along said right-of-way to the east right-of-way line of Niles Avenue; thence north along said right-of-way to the second alley north of Sorin Street; thence west along said alley, extended, to the centerline of the St. Joseph River; thence southwesterly along said centerline to the north right-of-way line, extended, of Madison Avenue; thence west along said right-of-way to the west right-of-way line of William Street, which is the point of beginning, all in the City of South Bend, St. Joseph County, State of Indiana. (Ord. No. 9513-04)

- (2) Measurement of distance for *controlled uses* shall be as follows:
- (A) *Single Use Sites* – All measurements shall be from the *lot lines* of the *lot* or *out lot* occupied by the *controlled use*.
 - (B) *Integrated Centers* – All measurements shall be from the perimeter walls of the tenant space occupied by the *controlled use*.
 - (C) *Straight Line* – All distance measurements shall be measured in a straight line, without regard to intervening *buildings, structures* or objects.
- (3) Exterior Display for *Adult Businesses*.

Notwithstanding any other provisions of this Ordinance to the contrary, all exterior displays for an *adult business* shall comply with the following regulations.

- (A) No *adult business* shall be conducted in any manner that permits the observation of any material depicting, describing or relating to *specified sexual activities* or *specified anatomical areas* by display, decorations, *sign*, show window or other opening from any *public right-of-way*.
- (B) Number of *Signs*. Not more than one (1) *business wall sign* shall be permitted for an *adult business* and said *business wall sign* shall be permitted only on the front facade of the *building*. In addition to the one (1) permitted *business wall sign*, an *adult business* may be permitted not more than one (1) *freestanding sign structure* (i.e., a *pole sign*, a *pylon sign* or a *ground sign*) if permitted by Section 21-07.03 – Sign Regulations of this Ordinance, and any amendments thereto, and if such *freestanding sign* meets all of the requirements of the *district* in which it is located. All other *sign structures* shall be prohibited.
- (C) *Sign Surface Area*. The *sign surface area* of a *business wall sign* for an *adult business* shall not exceed sixteen (16) square feet. The maximum *sign surface area* of a *freestanding sign structure* (i.e., a *pole sign*, a *pylon sign* or a *ground sign*), where permitted, shall not forty-eight (48) square feet.
- (D) *Lighting*. *Signs* and *sign structures* may be illuminated, provided, however, such illumination shall not be by way of exposed neon, exterior lighting (e.g., spot or flood lights) or any flashing or animated lights (either interior to the *sign*, on the exterior of the *sign*, or as a border to the *sign*).

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- (4) Continuation of *Nonconforming Use*.

This Section 21.08.02 is subject to the provisions of Section 21-01.03 – Nonconforming Lots, Uses, Buildings, Structures or Signs.

(c) Definitions for *Adult Businesses*.

The following terms related to *adult businesses* shall be defined as set forth below. All other terms shall have the meaning set forth in Section 21-11 – Definitions of this Ordinance.

- (1) **Adult Bookstore:** An establishment having as a preponderance of its stock in trade or its dollar volume in trade, books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records or other forms of visual or audio representations which are distinguished or characterized by their emphasis on matter depicting, describing or relating to *specified sexual activities or specified anatomical areas*.
- (2) **Adult Cabaret (a.k.a. Class B Cabaret):** Any *cabaret, nightclub, bar, tavern, restaurant* or similar establishment, not including a *21 & over cabaret, a family cabaret, family restaurant, or family restaurant with lounge*, which features:
- a. Persons who appear in a state of semi-nudity;
 - b. Live performances by topless or bottomless dancers, go-go dancers, exotic dancers, strippers, or similar entertainers where such performances are distinguished or characterized by the exposure of specified anatomical areas or by emphasis on specified sexual activities;
 - c. Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons; or,
 - d. Persons who engage in lewd, lascivious or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.
- (3) **Adult Drive-In Theater:** An open *lot* or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions and other forms of visual productions, for any form of consideration, to persons in motor vehicles or on outdoor seats in which a preponderance of the total presentation time is devoted to the showing of materials distinguished or characterized by an emphasis on matter depicting, describing or relating to

specified sexual activities or specified anatomical areas for observation by patrons.

- (4) Adult Business: An *Adult Bookstore, Adult Motion Picture Theater, Adult Mini Motion Picture Theater, Adult Motion Picture Arcade, Adult Cabaret* (a.k.a. Class B Cabaret), *Adult Drive-in Theater, Adult Live Entertainment Arcade, Adult Motel* or *Adult Service Establishment*.
- (5) Adult Live Entertainment Arcade: Any *building or structure* which contains or is used for commercial entertainment where the patron directly or indirectly is charged a fee to view from an enclosed or screened area or booth a series of live dance routines, strip performances or other gyrational choreography which performances are distinguished or characterized by an emphasis on *specified sexual activities* or by exposure of *specified anatomical areas*.
- (6) Adult Mini Motion Picture Theater: An enclosed *building* with a capacity of more than five (5) but less than fifty (50) persons, used for presenting films, motion pictures, video cassettes, slides or similar photographic reproductions in which a preponderance of the total presentation time is devoted to the showing of materials which are distinguished or characterized by an, emphasis on matter depicting, describing, or relating to *specified sexual activities* or *specified anatomical areas* for observation by patrons therein.
- (7) Adult Motel: A *hotel, motel* or similar establishment offering public accommodations for any form of consideration which provides patrons, upon request, with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of *specified sexual activities* or *specified anatomical areas*.
- (8) Adult Motion Picture Arcade: Any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-reducing devices are maintained to show images to five (5) or fewer persons per machine at one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing *specified sexual activities* or *specified anatomical areas*.

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- (9) Adult Motion Picture Theater: An enclosed *building* with a capacity of fifty (50) or more persons used for presenting films, motion pictures, video cassettes, slide or similar photographic reproductions in which a preponderance of the total presentation time is devoted to showing of materials which are distinguished or characterized by an emphasis on matter depicting, describing or relating to *specified sexual activities* or *specified anatomical areas* for observation by patrons therein.
- (10) Adult Service Establishment: Any *building, structure*, premises or other facility, or any part thereof, under common ownership or control which provides a preponderance of services involving *specified sexual activities* or display of *specified anatomical areas*.
- (11) Enlargement Of An Adult Business: An increase in the size of the *building, structure* or premises in which the *adult business* is conducted by either construction or *use* of: (1) an adjacent *building*; (2) an additional *building*; or, (3) the construction or *use* of any portion of an adjacent *building* or additional *building*, whether located on the same or an adjacent *lot* or parcel of land.
- (12) Establishing An Adult Business: Any of the following:
- (A) The opening or commencement of an *adult business* as a new business;
 - (B) The conversion of an existing business, whether or not an *adult business*, to any of the *adult businesses* defined herein;
 - (C) The addition of any of the features of one or more of the *adult businesses* defined herein to an existing business;
 - (D) The addition of any of the *adult businesses* defined herein to any other existing *adult business*; or
 - (E) The relocation of any *adult business*.
- (13) Nonconforming Adult Use: Any *building, structure* or land legally established as an *adult business* prior to the effective date of this Ordinance, but which would be prohibited, regulated or restricted under the provisions of this Ordinance.
- (14) Reconstruction Of An Adult Business: The rebuilding or restoration of any nonconforming *adult business* use which was damaged or partially destroyed by an exercise of the power of eminent domain, or by fire, flood, wind, explosion or other calamity or act of God if the damage or destruction exceeds fifty (50) percent of the fair market value of the *building, structure* or the facilities affected.

- (15) Resumption: The reuse or reoccupation of a nonconforming *adult business* use which has been discontinued for a period of six (6) or more consecutive months.

- (16) Services Involving Specified Sexual Activities Or Display Of Specified Anatomical Areas (as used to define an *Adult Service Establishment*): Any combination of two (2) or more of the following activities:
 - (A) The sale or display of books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records or other forms of visual or audio representations which are characterized by an emphasis upon the depiction or description of *specified sexual activities* or *specified anatomical areas*;
 - (B) The presentation of films, motion pictures, video cassettes, slides, or similar photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of *specified sexual activities* or *specified anatomical areas* for observation by patrons;
 - (C) The operation of coin or slug operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image producing devices to show images to five (5) or fewer persons per machine at any one time and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing *specified sexual activities* or *specified anatomical areas*; or
 - (D) Live performances by topless or bottomless dances, go-go dancers, exotic dancers, strippers, or similar entertainers, where such performances are distinguished or characterized by an emphasis on *specified sexual activities* or *specified anatomical areas*.

- (17) Specified Anatomical Areas: Any of the following:
 - (A) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the areolae; or,
 - (B) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

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- (18) Specified Sexual Activities: Any of the following:
- (A) Human genitals in a state of sexual stimulation or arousal;
 - (B) Acts of human masturbation, sexual intercourse or sodomy;
 - (C) Fondling or other erotic touching of human genitals, pubic regions, buttocks or female breasts;
 - (D) Flagellation or torture in the context of a sexual relationship;
 - (E) Masochism, erotic or sexually oriented torture, beating or the infliction of pain;
 - (F) Erotic touching, fondling or other such contact with an animal by a human being; or,
 - (G) Human excretion, urination, menstruation, vaginal or anal irrigation as part of or in connection with any of the activities set forth in (A) through (F) above.
- (19) Structural Alteration Of An Adult Business: Any change which would prolong the life of the supporting members of a *building* or *structure* such as bearing walls, columns, beams or girders, except such changes as are ordered made pursuant to the provisions of the Unsafe Building Law, IC 36-7-9-1, and any amendments thereto.