

COUNTY ORDER: Regulating Nudity in Adult Cabarets

Constitution-Tribune, Thursday, February 11, 2010

Livingston County Order Regulating Nudity in Adult Cabarets

Preamble and Background

ORDER NO. 021110

AN ORDER OF THE LIVINGSTON COUNTY COMMISSION REGULATING ADULT CABARETS; ESTABLISHING STATEMENTS OF PURPOSE AND FINDINGS RELATING TO THE ESTABLISHMENT OF ADULT CABARETS; ESTABLISHING DEFINITIONS; ESTABLISHING A MINIMUM AGE LIMIT FOR ADMISSION INTO AN ADULT CABARET; REQUIRING SECURITY PERSONNEL TO BE PRESENT ON THE PREMISES OF AN ADULT CABARET; REQUIRING RANDOM TESTING FOR ILLEGAL SUBSTANCES; PROHIBITING LIVE PUBLIC NUDITY; PROHIBITING THE PUBLIC DISPLAY OF SEXUAL CONDUCT; ESTABLISHING PROCEDURES FOR ENFORCING VIOLATIONS; PROVIDING FOR THE APPLICABILITY OF THIS ORDER TO OTHER REGULATIONS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Section 573.507, RSMo, authorizes Livingston County to regulate the minimum age limit for admission, require security personnel, require testing for illegal substances, and prohibit nudity and public displays of sexual conduct at adult cabarets.

WHEREAS, The public health, safety and welfare of the County requires the enactment of this Ordinance.

WHEREAS, An adult cabaret is a type of adult business, which has been the subject of numerous studies through the nation and in the State of Missouri that documents the impacts of such businesses.

WHEREAS, The County Commission finds that this Ordinance is necessary in order to protect the County from the potential secondary effects of adult businesses including crime, a decline in the County's retail trade, the blighting of neighborhoods and the deterioration of property values. The County hereby finds that this ordinance is necessary in order to protect and preserve the quality of the County's neighborhoods and the County's commercial districts, to protect the County's quality of life, to diminish the threat of the spread of sexually transmitted diseases, and to protect the peace, welfare and privacy of persons who patronize adult businesses. Experience in this County, as well as in cities and counties within and outside of Missouri, including New Hanover County, North Carolina, Los Angeles County, California; Adams County, Colorado; Manatee County, Florida; and St. Croix County, Wisconsin; and the cities of Kansas City, Missouri; Toledo Ohio; Garden Grove, California; Renton, Washington; Seattle, Washington; Detroit, Michigan; Austin, Texas; Indianapolis, Indiana; Denver, Colorado; St. Mary's, Georgia; and Phoenix, Arizona have demonstrated that such uses have objectionable secondary effects upon immediately adjacent residential and commercial areas. The County recognizes and relies upon the following studies which have documented the adverse secondary impacts of adult businesses:

Kansas City, Missouri (1998-1999); the 1991 report to the City of Garden Grove, California by Drs. McCleary and Meeker on the relationship between crime and adult business operations; Toledo, Ohio (2002); Denver, Colorado (1998); St. Mary's, Georgia (1996); New York City (1994); St. Croix County, Wisconsin (1993); Tucson, Arizona (1990); Adams County, Colorado (1990); New Hanover County, North Carolina (1989); Seattle, Washington (1989); Manatee County,

Florida (1987); Austin, Texas (1986); Indianapolis, Indiana (1984); and Los Angeles, California (1977).

WHEREAS, The County recognizes and relies upon the experience of other cities and counties in adopting adult business regulations as described in reported case law in support of this ordinance. These include the following:

Kansas City, Missouri (see *Walker v. City of Kansas City*, 911 F.2d 80 (8th Cir. 1990)).
St. Louis, Missouri (as discussed in *Thames Enterprises, Inc. v. City of St. Louis*, 851 F.2d 199 (8th Cir. 1988)).
St. Louis County, Missouri (as discussed in *St. Louis County v. B.A.P.*, 18 S.W.3d 397 (Mo.App. 2000) and *St. Louis County v. B.A.P., Inc.*, 25 S.W.3d 629 (Mo.App. 2000))
Johnson County, Kansas (as discussed in *Dodger's Bar & Grill, Inc. v. Johnson County Board of County Commissioners*, 32 F.3d 1436 (10th Cir. 1994) and *Dodger's Bar & Grill, Inc. v. Johnson County Board of County Commissioners*, 98 F.3d 1262 (10th Cir. 1996)).
Shawnee County, Kansas (as discussed in *Moody v. Board of County Commissioners*, 237 Kan. 67, 697 P.2d 1310 (1985)).
Adams County, Colorado (as discussed in *7520 Corp. v. Board of County Commissioners*, 799 P.2d 917 (Colo. 1990)).
Arlington, Texas (as discussed in *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995)).
Atlanta, Georgia (as discussed in *Airport Book Store, Inc. v. Jackson*, 242 Ga. 214, 248 S.E.2d 623 (1978)).
Bellevue, Washington (as discussed in *Ino Ino, Inc. v. City of Bellevue*, 937 P.2d 154 (Wash. 1997), and *City of Bellevue v. Factoria Center Investments*, 958 P.2d 313 (Wash. App. 1997)).
Benton County, Minnesota (as discussed in *SOB, Inc. v. County of Benton*, 317 F.3d 856 (8th Cir. 2003)).
Biloxi, Mississippi (see *Star Satellite, Inc. v. City of Biloxi*, 779 F.2d 1074 (5th Cir. 1986)).
Boynton Beach, Florida (as described in *Southern Entertainment Company v. City of Boynton Beach*, 736 F.Supp. 1094 (S.D. Fla. 1990)).
Broward County, Florida (as discussed in *International Eateries of America, Inc. v. Broward County*, 941 F.2d 1157 (11th Cir. 1991), cert. denied, 503 U.S. 920 (1992)).
Chicago, Illinois (as discussed in *North Avenue Novelties v. City of Chicago*, 88 F.3d 441 (7th Cir. 1996)).
Crystal, Minnesota (as reported in *City of Crystal v. Fantasy House, Inc.*, 569 N.W.2d 225 (Minn.App. 1997)).
Chattanooga, Tennessee (as discussed in *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997)).
Clinton Township, Michigan (as discussed in *Jott, Inc. v. Charter Township of Clinton*, 224 Mich.App. 513, 569 N.W.2d 841 (1996)).
Coates, Minnesota (as discussed in *Jake's Ltd. Inc. v. City of Coates*, 284 F.3d 884 (8th Cir. 2002)).
Cook County, Illinois (as discussed in *Cook County v. Renaissance Arcade*, 122 Ill.2d 123, 118 Ill.Dec. 618, 522 N.E.2d 73 (1988)).
Daytona Beach, Florida (as discussed in *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007), cert. denied, 128 S.Ct. 1246, 170 L.Ed.2d 66 (2008), and *Function Junction, Inc. v. City of Daytona Beach*, 705 F.Supp. 544 (M.D. Fla. 1987)).
Delafield, Wisconsin (see *Suburban Video, Inc. v. City of Delafield*, 694 F.Supp. 585 (E.D. Wis. 1988)).
The State of Delaware (see *Mitchell v. Commission on Adult Entertainment*, 10 F.3d 123 (3d Cir. 1993)).
Denver, Colorado (see *O'Connor v. City and County of Denver*, 894 F.2d 1210 (10th Cir. 1990)).
Detroit, Michigan (as discussed in *Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1975)).
El Paso, Texas (see *Woodall v. City of El Paso*, 49 F.3d 1120, reh'g denied, 59 F.3d 1244 (5th Cir. 1995)).

Fort Lauderdale, Florida (as discussed in *International Food & Beverage Systems v. City of Fort Lauderdale*, 794 F.2d 1520 (11th Cir. 1986)).

Houston, Texas (see *SDJ, Inc. v. City of Houston*, 837 F.2d 1268 (5th Cir. 1988) and *Stansberry v. Holmes*, 613 F.2d 1285 (5th Cir. 1980)).

State of Iowa (as discussed in *Farkas v. Miller*, 151 F.3d 900 (8th Cir. 1998)).

Islip, New York (as discussed in *Town of Islip v. Caviglia*, 73 N.Y.2d 544, 540 N.E.2d 215 (1989)).

Jackson, Mississippi (as reported in *Lakeland Lounge of Jackson, Inc. v. City of Jackson*, 973 F.2d 1255 (5th Cir. 1992)).

Jacksonville, Florida (discussed in *Lady J Lingerie, Inc. v. City of Jacksonville*, 973 F.Supp. 1428 (M.D. Fla. 1997), *aff'd in part, rev'd in part*, 176 F.3d 1358 (11th Cir.1999)).

Kitsap County, Washington (see *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986)).

Los Angeles County, California (as discussed in *Smith v. County of Los Angeles*, 211 Cal.App.3d 188 (1989));

Little Rock, Arkansas (as discussed in *Ambassador Books & Video v. City of Little Rock*, 20 F.3d 858 (8th Cir. 1994)).

Littleton, Colorado (as discussed in *City of Littleton, Colorado v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774, 124 S.Ct. 2219, 159 L.Ed.2d 84 (2004)).

Mankato, Minnesota (as discussed in *BZAPS, Inc. v. City of Mankato*, 268 F.3d 603 (8th Cir. 2001)).

Minneapolis, Minnesota (as discussed in *Alexander v. City of Minneapolis*, 928 F.2d 278 (8th Cir. 1991) and *Excalibur Group, Inc. v. City of Minneapolis*, 116 F.3d 1216 (8th Cir. 1997), *cert. denied* 522 U.S. 1077 (1998)).

Myrtle Beach, South Carolina (as discussed in *D.G. Restaurant Corp. v. City of Myrtle Beach*, 953 F.2d 140 (4th Cir. 1991)).

New Castle County, Delaware (as discussed in *State v. Huddleston*, 412 A.2d 1148 (Del. 1979), and *Amico v. New Castle County*, 101 F.R.D. 472 (D. Delaware 1984), in which the County established a factual basis for setbacks between adult uses and schools and churches.)

New York, New York (as discussed in *Stringfellow's of New York, Ltd. v. City of New York*, 98 NY Int. 0014 (1998); and *Plaza Health Clubs v. City of New York* 76 A.D.2d 509, 430 N.Y.S.2d 815 (1980)).

Palm Beach County, Florida (as discussed in *Movie & Video World v. Board of County Commissioners*, 723 F.Supp. 695 (S.D. Fla. 1989)).

Phoenix, Arizona (as reported in *Ellwest Stereo Theatres, Inc. v. Wenner*, 681 F.2d 1243 (9th Cir. 1982)).

Pinellas County, Florida (see *T-Marc, Inc. v. Pinellas County*, 804 F.Supp. 1500 (M.D. Fla. 1992)).

Ramsey, Minnesota (see *City of Ramsey v. Holmberg*, 548 N.W.2d 302 (Minn.App. 1996); *Schneider v. City of Ramsey*, 800 F.Supp. 815 (D.Minn. 1992), *aff'd sub nom, Holmberg v. City of Ramsey*, 12 F.3d 140 (8th Cir. 1993), *cert. denied*, 115 S.Ct. 59, 130 L.Ed.2d 17 (1994)).

Renton, Washington (as discussed in *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1976));

Rochester, Minnesota (as discussed in *ILQ Investments, Inc. v. City of Rochester*, 25 F.3d 1413 (8th Cir.), *cert. denied*, 513 U.S. 1017 (1994)).

Salt Lake City, Utah (see *Mini Spas, Inc. v. South Salt Lake City Corporation*, 810 F.2d 939 (10th Cir. 1987)).

Seattle, Washington (as discussed in *Northend Cinema v. City of Seattle*, 90 Wash.2d 709, 585 P.2d 1153 (1978), *cert. denied sub nom., Apple Theatre, Inc. v. Seattle*, 441 U.S. 946 (1979)).

West Allis, Wisconsin (see *Tee & Bee, Inc. v. City of West Allis*, 936 F.Supp. 1479 (E.D. Wis. 1996)).

WHEREAS, prior to the adoption of this Ordinance, the County Commission considered the detailed studies prepared by other jurisdictions regarding the public health, social and economic effects on persons and properties surrounding established adult use facilities. The County Commission believes the statements in this preamble are true, in part based upon its understanding of the experiences of the various jurisdictions identified and its local knowledge of Livingston County.

WHEREAS, There is substantial evidence that an increase in crime tends to accompany, concentrate around, and be aggravated by adult businesses, including but not limited to an increase in the crimes of narcotics distribution and use, prostitution, pandering, and violence against persons and property. The studies from other cities establish convincing evidence that adult businesses which are not regulated as to permissible locations often have a deleterious effect on nearby businesses in residential areas, causing, among other adverse secondary effects, an increase in crime and a decrease in property values. Regulations for adult use businesses should be developed to prevent deterioration and/or degradation of the vitality of the community before the problem exists, rather than waiting for problems to be created.

WHEREAS, The County Commission also finds that certain requirements with respect to the operation of adult businesses are in the public interest. In addition to the findings and studies conducted in other cities regarding increases in crime rates, decreases in property values and the blighting of areas in which such businesses are located, the County Commission also takes legislative notice of the facts recited in the cases of *Moody v. Board of County Commissioners of Shawnee County*, 237 Kan. 67, 697 P.2d 1310 (1985); *Mitchell v. Commission on Adult Entertainment*, 10 F.3d 123 (3d Cir. 1993); *BSA, Inc. v. King County*, 804 F.2d 1104, 1111 (9th Cir. 1986); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053, 1061 (9th Cir. 1986); *Colacurcio v. Kent*, 944 F.Supp. 1470, 1477 (W.D. Wash. 1996); *Zanganeh v. Hymes*, 844 F.Supp. 1087, 1091 (D. Md. 1994); *T Marc, Inc. v. Pinellas County*, 804 F. Supp. 1500, 1506 (M.D. Fla. 1992); *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996); and *Ino Ino, Inc. v. City of Bellevue*, 937 P.2d 154 (Wa. 1997) regarding how live adult entertainment results in secondary effects such as prostitution, drug dealing, and other law enforcement problems.

WHEREAS, It is not the intent of the County Commission in adopting this Ordinance to suppress any activities protected by the First Amendment, but rather to enact a content neutral Ordinance which addresses the secondary effects that adult businesses have on the County and provides for reasonable objective standards for all expressive uses. In developing this Ordinance, the County Commission has been mindful of legal principles relating to regulation of adult businesses and all expressive uses and does not intend to suppress or infringe upon any expressive activities protected by the First Amendments of the United States and Missouri Constitutions, but instead desires to enact reasonable time, place, and manner regulations that address the adverse secondary effects of adult businesses and which do not operate as an unconstitutional prior restraint. The County Commission has considered decisions of the United States Supreme Court regarding local regulation of adult businesses, including but not limited to: *Young v. American Mini Theaters, Inc.*, 427 U.S. 50 (1976); *City of Renton v. Playtime Theaters*, 475 U.S. 41 (1986); *FW/PBS, Inc. v. Dallas*, 493 U.S. 215 (1990); *Barnes v. Glen Theater*, 501 U.S. 560 (1991); *City of Littleton, CO v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); and United States Court of Appeals decisions, including but not limited to: *ILQ Investments, Inc. v. City of Rochester*, 25 F.3d 1413 (8th Cir.), cert. denied, 513 U.S. 1017 (1994); *Walker v. City of Kansas City*, 911 F.2d 80 (8th Cir. 1990); *Thames Enterprises, Inc. v. City of St. Louis*, 851 F.2d 199 (8th Cir. 1988); *Alexander v. City of Minneapolis*, 928 F.2d 278 (8th Cir. 1991) and *Excalibur Group, Inc. v. City of Minneapolis*, 116 F.3d 1216 (8th Cir. 1997), cert. denied 522 U.S. 1077 (1998); *BZAPS, Inc. v. City of Mankato*, 268 F.3d 603 (8th Cir. 2001); *Farkas v. Miller*, 151 F.3d 900 (8th Cir. 1998); *Jake's Ltd. Inc. v. City of Coates*, 284 F.3d 884 (8th Cir. 2002); in *SOB, Inc. v. County of Benton*, 317 F.3d 856 (8th Cir. 2003); and Missouri cases including but not limited to *St. Louis County v. B.A.P.*, 18 S.W.3d 397 (Mo.App. 2000) and *St. Louis County v. B.A.P., Inc.*, 25 S.W.3d 629 (Mo.App. 2000).

WHEREAS, The County Commission finds the following, in part based upon its understanding of the documents and judicial decisions in the public record:

(1) Evidence indicates that some dancers, models and other persons who publicly perform specified sexual activities or publicly display specified anatomical parts in adult businesses (collectively referred to as "performers") have been found to engage in sexual activities with patrons of adult businesses on the site of the adult business;

(2) Evidence has demonstrated that performers employed by adult businesses have been found to offer and provide private shows to patrons who, for a price, are permitted to observe and participate with the performers in live sex shows;

(3) Evidence indicates that performers at adult businesses have been found to engage in acts of prostitution with patrons of the establishment; and

WHEREAS, As a result of the above, and the increase in incidents of AIDS and Hepatitis B, which are both sexually transmitted diseases, the County has a substantial interest in adopting regulations which will reduce, to the greatest extent possible, the possibility for the occurrence of prostitution and casual sex acts at adult businesses.

WHEREAS, The County Commission finds that requiring separations between entertainers and patrons also reduces the likelihood that such persons will negotiate narcotics sales and/or transact sexual favors within the adult business.

WHEREAS, The County Commission does not intend to regulate in any area preempted by Missouri law.

WHEREAS, The County Commission desires to protect the rights conferred by the United States Constitution to adult businesses in a manner that ensures the continued and orderly development of property within the County and diminishes those undesirable negative secondary effects the previously mentioned studies have shown to be associated with the development and operation of adult uses.

WHEREAS, The County Commission and Planning Commission have held duly noticed public hearings, to receive input and testimony from the public concerning the subject of regulation of adult businesses.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF LIVINGSTON COUNTY, MISSOURI:

Livingston County Order 021110 Regulating Nudity in Adult Cabarets

Section 1. Purpose

The purpose of this Section is to provide standards to regulate the time, place and manner of the operation of adult cabarets in order to minimize their negative secondary effects. The specific purposes of this Order are to:

Establish reasonable and uniform regulations that will reduce possible adverse secondary effects that adult cabarets may have upon the County's residents, businesses and institutions.

To protect the rights conferred by the United States Constitution to adult cabarets in a manner that diminishes their undesirable negative secondary effects that recognized studies have shown to be associated with the development and operation of adult businesses.

To serve a legitimate governmental interest of reducing possible secondary adverse effects, while allowing for alternative means of communication and free expression.

To promote the health, safety and welfare of the County.

Section 2. Definitions

As used in this Order, the following terms mean:

“Adult Cabaret”, a nightclub, bar, restaurant, or similar establishment in which persons appear in a state of nudity in the performance of their duties;

“Employee”, a direct employee or contract labor;

“Nudity”, the showing of either:

The human male or female genitals or pubic area with less than a fully opaque covering; or
The female breast with less than a fully opaque covering on any part of the nipple.

(Source: RSMo § 573.500)

Section 3. Background Checks

The employer shall conduct a background check on all employees of any Adult Cabaret to ascertain whether any such employees have been convicted of or have pled guilty to any misdemeanor or felony involving prostitution or aiding or abetting prostitution, drug possession or trafficking, money laundering, tax evasion, or illegal gambling activity.

The background check shall be delivered to the Livingston County Sheriff's Office within ten (10) calendar days prior to each person's employment.

(Source: RSMo § 573.503)

Section 4. Minimum Age Limit for Admission.

No employee, owner, operator, responsible managing employee, manager or permittee of an adult business shall allow any person below the age of twenty-one (21) years upon the premises or within the confines of any Adult Cabaret.

Every person entering an adult cabaret shall produce a state photo drivers license or a state photo identification card to verify their age. All patrons within an adult cabaret are required to produce their state photo drivers license or a state photo identification card upon demand of any law enforcement officer while they are on the premise. Any person found on the premises of an Adult Cabaret that is underage, or who is not in possession of a state photo drivers license or a state photo identification card, or refuses to produce a state photo drivers license or a state photo identification card upon the demand of a law enforcement officer is in violation of this section.

(Source: RSMo § 573.507.1)

Section 5. Security Personnel

No person shall engage in, conduct or carry on, or permit to be engaged in, conducted or carried on the operation of an Adult Cabaret unless each and all of the following requirements are met:

All adult businesses shall have a person who shall be at least 21 years of age and shall be on the premises to act as manager at all times during which the business is open. The Adult Cabaret shall register with the County Sheriff any and all individual(s) designated as the on-site manager

by the owner to receive all complaints and be responsible for all violations taking place on the premises.

The adult business shall provide uniformed security guards to patrol and monitor the premises and parking lot areas during all business hours.

The security personnel shall meet the same requirements for Missouri POST certification and training as that of a Livingston County Missouri Sheriff's Deputy. These security personnel shall present their credentials to the Livingston County Sheriff who must verify Missouri POST certification prior to the employment of any security personnel.

(Source: RSMo § 573.507.2)

Section 6. Random Testing for the Presence of Illegal Substances

Employers of any adult cabaret within the county shall conduct random testing on a monthly basis for the presence of illegal substances within the blood or urine of any or all employees of such adult cabaret.

The testing agency must be licensed with the State of Missouri and approved by the Livingston County Health Department, and must certify to the Livingston County Sheriff monthly, that the employees have been tested and the results of those tests.

Any employer/employee of an adult cabaret testing positive for illegal substances in their blood or urine will be prohibited from working in an adult cabaret for two (2) consecutive months and until they have presented certified proof to the Livingston County Sheriff's Office of a negative random test for illegal substances.

The employee upon returning to work at the adult cabaret shall be randomly tested for illegal substances on a monthly basis. Testing shall be certified to the Livingston County Sheriff's Office.

All cost of random drug testing shall be borne by the employer/employee of the Adult Cabaret.

(Source: RSMo § 573.507.3)

Section 7. Public Display of Sexual Acts

The public display of sexual intercourse, deviate sexual intercourse or appearing in a state of nudity in any Adult Cabaret is prohibited.

(Source: RSMo § 573.507.5)

Section 8. Violations

The County may enforce a violation of this Order as provided in RSMo § 573.070, and as otherwise allowed by law.

Section 9. Applicability to Other Regulations

This Section does not provide exclusive regulation of Adult Cabarets. Adult Cabarets shall comply with any and all applicable regulations imposed in the Livingston County Zoning Ordinance, other County ordinances and state and federal law.

Section 10. Severability

If any section, subsection, sentence, clause, phrase or word of this Order is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Order. The County Commission hereby declares that it would have passed and adopted this Order, and each and all provisions hereof, irrespective of the fact that one or more provisions may be declared invalid.

Section 11. Effective Date.

This Order shall be in full force and effect from and after its passage by the Board of County Commissioners.

PASSED AND APPROVED THIS 11th DAY OF FEBRUARY, 2010.

Eva Danner, Presiding Commissioner
Ken Lauhoff, Eastern District Commissioner
Todd Rodenberg, Western District Commissioner

ATTEST:

Kelly Christopher
County Clerk

Livingston County Order Regulating Nudity in Adult Cabarets