

**TITLE 4**

**BUSINESS REGULATIONS AND LICENSING**

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### **BUSINESS REGULATIONS AND LICENSING**

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## Chapter 4.25

### TRANSIENT MERCHANTS

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**4.25.010 License required.** Hereafter it shall be unlawful for any person, other than those expressly excluded from the operation of this Ordinance, not operating an established place of business or selling produce regularly to some established business within the corporate limits of the town of Dale, Indiana, to solicit, peddle, sell, offer to sell, barter, or dispose of any wares, produce, merchandise, gadget, item, or thing of any kind or character, within the said corporate limits without first having obtained a license so to do in the form and manner and from the authority hereafter prescribed. (Ord. 100, SI, June 2, 1963) (Ord. 4, February 15, 1892) (Ord. 3, February 15, 1892)

**4.25.020 Application for license.** Such license referred to in Section 4.24.010 of this Ordinance, may be issued to any person, upon application thereof made to the Clerk-Treasurer of the Town of Dale, Indiana, which official may, in his sole discretion, issue, or refuse to issue, such license. (Ord. 100, SII, June 2, 1963) (Ord. 4, February 15, 1892) (Ord. 3, February 15, 1892)

**4.25.030 Fee for license.** The fee for such license shall be the sum of Twenty-five (\$25.00) Dollars which, when issued will entitle the license holder to operate under said permit, within the corporate limits of the town of Dale, Indiana, for a period of one year only from the date of said permit; provided, however, that any permit issued hereunder may be revoked by said issuing official upon the violation by the license holder of any laws of the State of Indiana, the United States of America or ordinance of said town of Dale, Indiana. (Ord. 100, SIII, June 2, 1963) (Ord. 4, February 15, 1892)

**4.25.040 Absence of issuing officer.** During the absence or incapacity of the issuing official mentioned in Section 4.24.020 hereof, any member of the Board of Town Trustees of the town of Dale, Indiana, and the town marshal then in charge at the time of application, may issue and approve such license or reject the same. (Ord. 100, SIV, June 2, 1963)

**4.25.050 Exemptions.** All War Veterans Organizations, public school associations, wholesale distributor, churches, schools, and nonprofit organizations, may be exempted

from the operation of this Ordinance upon approval obtained from the Clerk-Treasurer of the town of Dale, Indiana. (Ord. 100, SV, June 2, 1963) (Ord. 4, S7, February 15, 1892)

**4.25.060 Selling of farm produce.** All farmers and truck farmers residing within a radius of twenty-five (25) miles from the corporate limits of the town of Dale, may sell their farm produce or products, grown and produced by them within such radius, within said corporate limits without obtaining said license, provided they do not buy and resell the same within the said corporate limits. (Ord. 100, SVI, June 2, 1963)

**4.25.070 Penalty for violation.** Any person violating any provision of this ordinance shall upon conviction, be fined in any sum not exceeding Twenty-five (\$25.00) Dollars for each of such violations so committed. (Ord. 100, SVII, June 2, 1963) (Ord. 3, S5, February 15, 1892)

## Chapter 4.30

### LICENSING REQUIREMENTS AND REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES

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**4.30.005 Preamble.** WHEREAS, sexually oriented businesses require special supervision from the public safety agencies of the Town in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the Town; and

WHEREAS, the Town Council finds that sexually oriented businesses, as a category of establishments, are frequently used for unlawful sexual activities, including public indecency, prostitution, and sexual liaisons of a casual nature; and

**WHEREAS**, there is convincing documented evidence that sexually oriented businesses, as a category of establishments, have deleterious secondary effects and are often associated with crime and adverse impacts on surrounding properties; and

**WHEREAS**, the Town Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from crime; preserve the quality of life; protecting nearby properties from adverse impacts; preserve the character of surrounding neighborhoods; and deter the spread of blight; and

**WHEREAS**, the Town recognizes its constitutional duty to interpret, construe, and amend its laws and ordinances to comply with constitutional requirements as they are announced; and

**WHEREAS**, with the passage of any ordinance, the Town and the Town Council accept as binding the applicability of general principles of criminal and civil law and procedure and the rights and obligations under the United States and Indiana Constitutions, Indiana Code, and the Indiana Rules of Civil and Criminal Procedure; and

**WHEREAS**, it is not the intent of this ordinance to suppress any speech activities protected by the U.S. Constitution or the Indiana Constitution, but to enact an ordinance to further the content-neutral governmental interests of the Town, to wit, the controlling of secondary effects of sexually oriented businesses; and

**WHEREAS**, it is the intent of this ordinance to amend the Town of Dale Zoning Ordinance to continue to preclude the operation of sexually oriented businesses, as defined herein, within one thousand (1,000) feet of the closest property line of any church, school, daycare center or preschool, or any residence, and to add additional regulations for the operation of sexually oriented businesses;

**NOW, THEREFORE, BE IT RESOLVED AND ORDAINED** by the Town Council of the Town of Dale, Indiana, on the sixth day of March, 2006, that the following ordinance be enacted. (Ord. 2006-2, Preamble, Mar. 6, 2006)

**4.30.010 Rationale and findings.**

- (1) Purpose. It is the purpose of this ordinance to regulate sexually oriented businesses in order to promote the health, safety, moral, and general welfare of the citizens of the Town and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the Town. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither 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.

(2) Findings and Rationale. Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Town Council, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 124 S. Ct. 2219 (June 7, 2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *Pap's A.M. v. City of Erie*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); and *Schultz v. City of Cumberland*, 26 F. Supp.2d 1128 (W.D. Wisc. 1998), *aff'd in part, rev'd in part*, 228 F.3d 831 (7<sup>th</sup> Cir. 2000); *Blue Canary Corp. v. City of Milwaukee*, 270 F.3d 1156 (7<sup>th</sup> Cir. 2001); *Matney v. County of Kenosha*, 86 F.3d 692 (7<sup>th</sup> Cir. 1996); *Berg v. Health & Hospital Corp.*, 865 F.2d 797 (1989); *DiMa Corp. v. Town of Hallie*, 185 F.3d 823 (1999); *Graff v. City of Chicago*, 9 F.3d 1309 (1993); *North Avenue Novelties, Inc. v. City of Chicago*, 88 F.3d 441 (1996); *Chulchian v. City of Indianapolis*, 663 F.2d 27 (7<sup>th</sup> Cir. 1980); *Bigg Wolf Discount Video v. Montgomery County*, 256 F. Supp. 2d 385 (D. Md. 2003); *County of Cook v. Renaissance Arcade and Bookstore*, 122 Ill. 2d 123 (1988) (including cases cited therein); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9<sup>th</sup> Cir. 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7<sup>th</sup> Cir. 2003); *People ex rel Deters v. Effingham Retail 27, Inc.*, No. 04-CH-26 (4<sup>th</sup> Judicial Circuit, Effingham County, Ill., June 13, 2005); *Annex Books, Inc. v. City of Indianapolis*, No. 1:03-V-918, Summary Judgment Order, Aug. 27, 2004 and Order Denying Motion to Alter or Amend, Mar. 31, 2005 (S.D. Ind.); *Andy's Lounge et al. v. City of Gary*, No. 2: 01-CV-327, Order Granting Summary Judgment, Mar. 31, 2005 (N.D. Ind.); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5<sup>th</sup> Cir. 2002); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9<sup>th</sup> Cir. 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7<sup>th</sup> Cir. 2003); *Abilene Retail #30, Inc. v. Board of Commissioners*, 2005 U.S. Dist. LEXIS 30491 (D. Kan., Dec. 1, 2005); *Casanova Entm't Group, Inc. v. City of New Rochelle*, 2006 U.S. App. LEXIS 2589 (2d Cir., Jan. 31, 2006); *Heideman v. South Salt Lake City*, 2006 U.S. App. LEXIS 2745 (Feb. 2, 2006); and based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Grove, California - 1991; Houston, Texas - 1983, 1997; Phoenix, Arizona - 1979, 1995-98; Chattanooga, Tennessee - 1999-2003; Minneapolis, Minnesota - 1980; Los Angeles, California - 1977; Whittier, California - 1978; Spokane, Washington - 2001; St. Cloud, Minnesota - 1994; Littleton, Colorado - 2004; Oklahoma City, Oklahoma - 1986; Dallas, Texas - 1997; Greensboro, North Carolina - 2003; Amarillo, Texas - 1977; New York, New York Times Square - 1994; and the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the Town Council finds:

- A. Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution,

potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.

- B. Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.
- C. Each of the foregoing negative secondary effects constitutes a harm which the Town has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the Town's rationale for this ordinance, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the Town's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the Town. The Town finds that the cases and documentation relied on in this ordinance are reasonably believed to be relevant to said secondary effects. (Ord. 2006-2, S1, Mar. 6, 2006)

**4.30.020 Definitions.** For purposes of this ordinance, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context. For terms defined in both this ordinance and any other prior Town Ordinance, the definition in this ordinance shall control.

- (1) "Administrator" means the Town of Dale Zoning Administrator.
- (2) "Adult Bookstore" - means a commercial establishment which, as a principal part of its business, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas".
- (3) A "principal part of its business" means that the commercial establishment:
  - A. has at least 35% of its displayed merchandise which consists of said items, or
  - B. has at least 35% of the wholesale value of its displayed merchandise which consists of said items, or

- C. has at least 35% of the retail value of its displayed merchandise which consists of said items, or
  - D. derives at least 35% of its revenues from the sale or rental, for any form of consideration of said items, or
  - E. maintains a section of at least 35% of its interior business space for the sale or rental of said items; or
  - F. maintains an "adult arcade," which means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting "specified sexual activities" or "specified anatomical areas."
- (4) "Adult Cabaret" means a nightclub, bar, juice bar, restaurant, bottle club, or other commercial establishment, whether or not alcoholic beverages are served, which regularly features persons who appear semi-nude.
  - (5) "Adult Mini Motion Picture Theater" means any commercial establishment which regularly offers rooms with a capacity of more than 5 but less than 50 persons, wherein films, motion pictures, video cassettes, slides, or similar visual images that are distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas" are regularly presented for observation by patrons therein.
  - (6) "Adult Motel" means a motel, hotel, or similar commercial establishment which:
    - A. offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, other photographic reproductions, or live performances which are characterized by the display of "specified sexual activities" or "specified anatomical areas", and which advertises the availability of such material by means of a sign visible from the public right-of-way, or by means of any on or off-premises advertising, including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or
    - B. offers a sleeping room for rent for a period of time that is less than 10 hours; or
    - C. allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than 10 hours.

- (7) "Adult Motion Picture Theater" means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas" are regularly shown to more than five persons for any form of consideration.
- (8) "Adult Service Establishment " means any building, premises, structure, or other facility that uses at least 35% of the building, premises, structure, or other facility for commercial activities involving the display of "specified sexual activities" or "specified anatomical areas."
- (9) "Town Council" means the Town Council of Dale, Indiana.
- (10) "Characterized by" means describing 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.
- (11) "Town " means Dale, Indiana.
- (12) "Employ, Employee, and Employment" describe and pertain to any person who performs any service on the premises of a sexually oriented business, on a full time, part time, or contract basis, whether or not the person is denominated an employee, independent contractor agent, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.
- (13) "Establish or Establishment" shall mean and include any of the following:
  - A. The opening or commencement of any sexually oriented business as a new business;
  - B. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or
  - C. The addition of any sexually oriented business to any other existing sexually oriented business.
- (14) "Hearing Body " shall mean the Town Council of Dale, Indiana.
- (15) "Influential Interest" means any of the following: (1) the actual power to operate the sexually oriented business or control the operation, management or policies of the sexually oriented business or legal entity which operates the sexually oriented business, (2) ownership of a financial interest of thirty percent (30%) or more of a business or of any class of voting securities of a business, or (3) holding an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the sexually oriented business.

- (16) "Licensee" shall mean a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In case of an "employee," it shall mean the person in whose name the sexually oriented business employee license has been issued.
- (17) "Nudity or a 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 the showing of the female breast with less than a fully opaque covering of any part of the nipple.
- (18) "Operate or Cause to Operate " shall mean to cause to function or to put or keep in a state of doing business. "Operator" means any person on the premises of a sexually oriented business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.
- (19) "Person " shall mean individual, proprietorship, partnership, corporation, association, or other legal entity.
- (20) "Premises " means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, any trailers, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control or supervision of the licensee, as described in the application for a business license pursuant to Section 4.30.040 of this ordinance.
- (21) "Regularly" means and refers to the consistent and repeated doing of the act so described.
- (22) "Semi-Nude or State of Semi-Nudity " means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.
- (23) "Semi-Nude Model Studio " means a place where persons regularly appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

This definition does not apply to any place where persons appearing in a state of semi-nudity did so in a modeling class operated:

- A. By a college, junior college, or university supported entirely or partly by taxation;
  - B. By a private college or university which maintains and operates educational programs in which credits are transferable to college, junior college, or university supported entirely or partly by taxation; or
  - C. In a structure:
    - 1. Which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; and
    - 2. Where, in order to participate in a class a student must enroll at least three days in advance of the class.
- (24) "Sexual Device" means any three (3) dimensional object designed and marketed for stimulation of the male or female human genital organ or anus or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.
- (25) "Sexual Device Shop" means a commercial establishment that regularly features sexual devices. Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing medical or healthcare products or services nor shall this definition be construed to include commercial establishments which do not restrict access to any portion of their premises by reason of age.
- (26) "Sexual Encounter Center" shall mean a business or commercial enterprise that, as one of its principal business purposes, purports to offer for any form of consideration, physical contact in the form of wrestling or tumbling between persons of the opposite sex when one or more of the persons is semi-nude.
- (27) "Sexually Oriented Business " means an "adult bookstore," an "adult cabaret," an "adult mini motion picture theater," an "adult motel," an "adult motion picture theater," an "adult service establishment," a "semi-nude model studio," a "sexual device shop," or a "sexual encounter center," as defined in this ordinance. The term "sexually oriented business" shall also

include an "adult drive-in theater," and "adult live entertainment arcade," and an "adult motion picture arcade."

- (28) "Specified Anatomical Areas " means and includes:
- A. Less than completely and opaquely covered: human genitals; pubic region; buttock; and female breast below a point immediately above the top of the areola; and
  - B. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- (29) "Specified Criminal Activity" means:
- A. any of the following specified crimes for which less than five years elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:
    - 1. rape, sexual assault, public indecency, statutory rape, rape of a child, sexual exploitation of a minor, indecent exposure;
    - 2. prostitution, patronizing prostitution, promoting prostitution;
    - 3. obscenity;
    - 4. dealing in controlled substances;
    - 5. racketeering, tax evasion, money laundering;
  - B. any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; or
  - C. any offense in another jurisdiction that, had the predicate act(s) been committed in Indiana, would have constituted any of the foregoing offenses.
- (30) "Specified Sexual Activity" means any of the following:
- A. intercourse, oral copulation, masturbation or sodomy; or
  - B. excretory functions as a part of or in connection with any of the activities described in (A.) above.
- (31) "Substantial" means at least thirty-five percent (35%) of the items(s) so modified.
- (32) "Transfer of Ownership or Control" of a sexually oriented business shall mean any of the following:

- A. the sale, lease, or sublease of the business;
  - B. the transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or
  - C. the establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.
- (33) "Viewing Room " shall mean the room, booth, or area where a patron of sexually oriented business would ordinarily be positioned while watching a film, videocassette, or other video reproduction. (Ord. 2006-2, S2, Mar. 6, 2006)

**4.30.030 Classifications.** The classifications for sexually oriented businesses shall be as follows:

- (1) Adult bookstore;
- (2) Adult cabaret;
- (3) Adult motel;
- (4) Adult mini motion picture theater;
- (5) Adult motion picture theater;
- (6) Adult service establishment;
- (7) Semi-nude model studio;
- (8) Sexual device shop;
- (9) Sexual encounter center. (Ord. 2006-2, S3, Mar. 6, 2006)

**4.30.040. License required.**

- (1) It shall be unlawful for any person to operate a sexually oriented business in the Town of Dale without a valid sexually oriented business license.
- (2) It shall be unlawful for any person to be an "employee," as defined in this ordinance, of a sexually oriented business in the Town of Dale without a valid sexually oriented business employee license.
- (3) An applicant for sexually oriented business license or a sexually oriented business employee license shall file in person at the office of the Administrator a completed application made on a form provided by the

Administrator. The application shall be signed as required by subsection 5. herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in Paragraphs A. through G. below, accompanied by the appropriate fee identified in Section 4.30.060:

- A. The applicant's full true name and any other names used by the applicants in the preceding five (5) years.
- B. Current business address or another mailing address of the applicant.
- C. Written proof of age, in the form of a driver's license or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.
- D. If the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number of the sexually oriented business.
- E. If the application is for a sexually oriented business license, the name and business address of the statutory agent or other agent authorized to receive service of process.
- F. A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this ordinance, and if so, each specified criminal activity involved, including the date, place and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.
- G. A statement of whether any sexually oriented business in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
  - 1. Been declared by a court of law to be a nuisance; or
  - 2. Been subject to a court order of closure or padlocking.

The information provided pursuant to Paragraphs A. through G. of this subsection shall be supplemented in writing by certified mail, return receipt requested, to the Administrator within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

- (5) An application for a sexually oriented business license shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a

statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Applicants who are required to comply with Sections 4.30.140 and 4.30.180 of this ordinance shall submit a diagram indicating that the interior configuration meets the requirements of those sections.

- (6) If a person who wishes to operate a sexually oriented business is an individual, he shall sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each person with an influential interest in the business shall sign the application for a license as applicant. Each applicant must be qualified under Section 4.30.050 and each applicant shall be considered a licensee if a license is granted.
- (7) The information provided by an applicant in connection with an application for a license under this ordinance shall be maintained by the office of the Administrator on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by law or court order. (Ord. 2006-2, S4, Mar. 6, 2006)

#### **4.30.050 Issuance of license.**

- (1) Upon the filing of a completed application under Section 4.30.040(3) for a sexually oriented business license, the Administrator shall immediately issue a Temporary License if the completed application is from a business that is seeking renewal of a current license that was previously issued under this ordinance. The Temporary License shall expire upon the final decision of the Town to deny or grant an annual license. Within twenty (20) days of the filing date of a completed sexually oriented business license application, the Administrator shall issue a license to the applicant or issue to the applicant a letter of intent to deny the application. The Administrator shall issue a license unless:
  - A. An applicant is less than eighteen (18) years of age.
  - B. An applicant has failed to provide information as required by Section 4.30.040 for issuance of a license or has falsely answered a question or request for information on the application form.
  - C. The license application fee required by this ordinance has not been paid.
  - D. The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this ordinance or is not in compliance with locational requirements of this

ordinance or the locational requirements of any other Town ordinance.

- E. Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
    - 1. Been declared by a court of law to be a nuisance; or
    - 2. Been subject to an order of closure or padlocking.
  - E. An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this ordinance.
- (2) Upon the filing of a completed application under Section 4.30.040(3) for a sexually oriented business employee license, the Administrator shall immediately issue a Temporary License to the applicant, which Temporary License shall expire upon the final decision of the Town to deny or grant an annual license. Within twenty (20) days of the filing date of a completed sexually oriented business employee license application, the Administrator shall either issue a license or issue a written notice of intent to deny a license to the applicant. The Administrator shall approve the issuance of a license unless:
- A. The applicant is less than eighteen (18) years of age.
  - B. The applicant has failed to provide information as required by Section 4.30.040 for the issuance of a license or has falsely answered a question or request for information on the application form.
  - C. The license application fee required by this ordinance has not been paid.
  - D. Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
    - 1. Been declared by a court of law to be a nuisance; or
    - 2. Been subject to an order of closure or padlocking.
  - E. The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this ordinance.
- (3) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for a sexually oriented

business, the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing. (Ord. 2006-2, S5, Mar. 6, 2006)

#### **4.30.060. Fees.**

- (1) The initial license and annual renewal fees for sexually oriented business licenses and sexually oriented business employee licenses shall be as follows: one hundred dollars (\$100) for the initial fee for a sexually oriented business license and fifty dollars (\$50) for annual renewal; fifty dollars (\$50) for the initial sexually oriented business employee license and twenty-five (\$25) for annual renewal. (Ord. 2006-2, S6, Mar. 6, 2006)

**4.30.070 Inspection.** Sexually oriented business and sexually oriented business employees shall permit the Administrator and his or her agents to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this ordinance, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed by the Town to authorize reasonable inspections of the licensed premises pursuant to this ordinance, but not to authorize a harassing or excessive pattern of inspection. (Ord. 2006-2, S7, Mar. 6, 2006)

#### **4.30.080 Expiration of license.**

- (1) Each license shall remain valid for a period of one calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in Section 4.30.040 and Section 4.30.060.
- (2) Application for renewal should be made pursuant to the procedures set forth in Section 4.30.040 at least ninety (90) days before the expiration date, and when made less than ninety (90) days before the expiration of the license will not be affected. (Ord. 2006-2, S8, Mar. 6, 2006)

#### **4.30.090 Suspension.**

- (1) The Town shall issue a written letter of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if the sexually oriented business licensee has knowingly violated this ordinance or has knowingly allowed an employee to violate this ordinance.
- (2) The Town shall issue a written letter of intent to suspend a sexually oriented business employee license if the employee has knowingly violated this ordinance. (Ord. 2006-2, S9, Mar. 6, 2006)

#### **4.30.100 Revocation.**

- (1) The Town shall issue a letter of intent to revoke a sexually oriented business license or sexually oriented business employee license, as applicable, if the licensee knowingly violates this ordinance or has knowingly allowed an employee to violate this ordinance and the licensee's license has been suspended within the previous twelve (12) month period.
- (2) The Town shall issue a written intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if
  - A. The licensee has knowingly given false information in the application for the sexually oriented business license;
  - B. The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises;
  - C. The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises;
  - D. The licensee knowingly or recklessly operated the sexually oriented business during a period of time when the license was finally suspended or revoked; or
  - E. The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity to occur in or on the licensed premises.
- (3) The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.
- (4) When, after the notice and hearing procedure described in Section 4.30.110, the Town Council revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for one (1) year from the date revocation becomes effective. (Ord. 2006-2, S10, Mar. 6, 2006)

#### **4.30.110 Hearing; License denial, revocation and suspension; Appeal.**

- (1) When the Administrator issues a written notice of intent to deny, suspend, or revoke a license, the Administrator shall immediately send such notice, which shall include the specific grounds under this ordinance for such action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the Administrator for the respondent. The notice shall specify a date, not less than ten (10) days nor more than twenty (20) days

after the date the notice is issued, on which the Town Council shall conduct a hearing on the Administrator's intent to deny, suspend or revoke the license.

At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the Administrator's witnesses. The Administrator shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two (2) days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The Town Council shall issue a written decision, including specific reasons for the decision pursuant to this ordinance to the respondent within five (5) days after the hearing. Ten (10) days after the Town Council issues its written decision, said decision shall be deemed final and any Temporary License shall expire.

If the decision is to deny, suspend, or revoke the license, the decision shall include a statement advising the respondent of the right to appeal or challenge such decision in a court of competent jurisdiction. If the Town Council's decision finds that no grounds exist for denial, suspension, or revocation of the license, the Town Council shall, contemporaneously with the issuance of the decision, order the Administrator to immediately withdraw the intent to deny, suspend or revoke the license and to notify the respondent in writing by certified mail of such action. If the Respondent is not yet licensed, the Administrator shall contemporaneously therewith issue the license to the applicant.

- (2) If any court action challenging the Town Council's decision is initiated, the Town Council shall prepare and transmit to the court a transcript of the hearing within ten (10) days after receiving written notice of the filing of the court action. The Town Council shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any sexually oriented business that is lawfully in operation, in all respects, as of the effective date of this ordinance. Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the Town's enforcement of the denial, suspension, or revocation, the Town shall immediately issue the respondent a Provisional License. The Provisional License shall allow the respondent to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the Town's enforcement. (Ord. 2006-2, S11, Mar. 6, 2006)

**4.30.120 Transfer of license.** A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any

place other than the address designated in the sexually oriented business license application. (Ord. 2006-2, S12, Mar. 6, 2006)

**4.30.130 Hours of operation.** No sexually oriented business shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day. (Ord. 2006-2, S13, Mar. 6, 2006)

**4.30.140 Regulations pertaining to exhibition of sexually explicit films or videos.**

- (1) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises, through any mechanical or electronic image-producing device, a film, video cassette, or other visual reproduction characterized by an emphasis on the display of "specified sexual activities" or "specified anatomical areas" shall comply with the following requirements.
  - A. Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all operator's stations, viewing rooms, overhead lighting fixtures, video cameras and monitors installed for monitoring purposes and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain video reproduction equipment. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The Administrator may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
  - B. It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Paragraph 4.30.030 (7) of this subsection.
  - C. The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than fifteen (15.0) foot candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.

- D. It shall be the duty of the operator, and of any employees present on the premises, to ensure that no specified sexual activity occurs in or on the licensed premises.
  - E. It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:
    - 1. That the occupancy of viewing rooms is limited to one person;
    - 2. That sexual activity on the premises is prohibited;
    - 3. That the making of openings between viewing rooms is prohibited;
    - 4. That violators will be required to leave the premises; and
    - 5. That violations of Subparagraphs (E1.), (E2.) and (E3.) of this paragraph are unlawful.
  - F. It shall be the duty of the operator to enforce the regulations articulated in (E1.) through (E5.) above.
  - G. The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.
- (2) It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty. (Ord. 2006-2, S14, Mar. 6, 2006)

#### **4.30.150 Loitering, exterior lighting, visibility, and monitoring requirements.**

- (1) It shall be the duty of the operator of a sexually oriented business to: (1) post conspicuous signs stating that no loitering is permitted on such property; (2) designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every ninety (90) minutes or inspecting such property by use of video cameras and monitors; and (3) provide lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.
- (2) It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.
- (3) No sexually oriented business shall erect a fence, wall or other barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right of way. (Ord. 2006-2, S15, Mar. 6, 2006)

#### **4.30160 Enforcement.**

- (1) Any sexually oriented business which engages in repeated or continuing violations of this ordinance shall constitute a public nuisance. For purposes of this ordinance, "repeated violations" shall mean three or more violations of this ordinance within a one (1) year period dating from the time of any violation, and a "continuing violation" shall mean a violation of this ordinance lasting for three or more consecutive days.
- (2) The Town's legal counsel is hereby authorized to institute civil proceedings necessary for the enforcement of this ordinance to prosecute, restrain, or correct violations hereof. Such proceedings, including injunction, shall be brought in the name of the Town provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such proceedings as may be authorized by other provisions of this ordinance, or any of the laws or ordinances in force in the Town or to exempt anyone violating this ordinance or any part of the said laws from any penalty which may be incurred. (Ord. 2006-2, S16, Mar. 6, 2006)

**4.30.170 Applicability of ordinance to existing businesses.** This ordinance is necessary to the immediate preservation of the public health and safety, to prevent the negative secondary effects of sexually oriented businesses, and therefore shall become effective immediately upon passage. All sexually oriented businesses lawfully operating in all respects, and all sexually oriented business employees working in a lawfully operating sexually oriented business, on the effective date of this ordinance, are hereby granted a *De Facto* Temporary License to continue operation or employment without a license for a period of thirty (30) days following the effective date of this ordinance. By the end of said thirty (30) days, all sexually oriented businesses and sexually oriented business employees shall apply

for a license under this ordinance. During said thirty (30) days, all requirements of this ordinance, except for the requirement of obtaining a license, shall be in full force and effect. (Ord. 2006-2, S17, Mar. 6, 2006)

**4.30.180 Prohibited activities.** It is unlawful for a sexually oriented business to knowingly violate the following regulations or to knowingly allow an employee or any other person to violate the following regulations.

- (1) It shall be a violation of this ordinance for a patron, employee or any other person to knowingly or intentionally, in a sexually oriented business, appear in a state of nudity, regardless of whether such public nudity is expressive in nature.
- (2) It shall be a violation of this ordinance for a person to knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six (6) feet from any patron or customer and on a stage at least eighteen (18) inches from the floor in a room of at least one thousand (1,000) square feet.
- (3) It shall be a violation of this ordinance for any employee who regularly appears semi-nude in a sexually oriented business to knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business.
- (4) It shall be a violation of this ordinance for any person to sell, use, or consume alcoholic beverages on the premises of a sexually oriented business.
- (5) It shall be a violation of this ordinance for any person to knowingly allow a person under 18 years of age to be or remain on the premises of a sexually oriented business.

A sign in a form to be prescribed by the Administrator, and summarizing the provisions of Paragraphs (1), (2), (3), (4), and (5) of this Section, shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry. (Ord. 2006-2, S18, Mar. 6, 2006)

**4.30.190 Scienter required to prove violation or business licensee liability.** This ordinance does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this ordinance. Notwithstanding anything to the contrary, for the purposes of this ordinance, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the sexually oriented business licensee for purposes of finding a violation of this ordinance, or for purposes of license denial, suspension, or revocation, only if an officer, director or general partner, or a person who managed, supervised or controlled the operation of the business premises, knowingly or recklessly allowed such an act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act. (Ord. 2006-2, S19, Mar. 6, 2006)

**4.30.200 Failure of Town to meet deadline not to risk applicant/licensee rights.** In the event that a Town official is required to take an act or do a thing pursuant to this ordinance within a prescribed time, and fails to take such act or do such thing, within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the Town official under this ordinance, and not completed in the time prescribed, includes approval of condition(2) necessary for approval by the Town of an applicant or licensee's application for sexually oriented business license or a sexually oriented business employee's license (including a renewal), the condition shall be deemed met the day after the deadline for the Town's action has passed. (Ord. 2006-2, S20, Mar. 6, 2006)

**4.30.210 Location of sexually oriented businesses.**

- (1) Sexually oriented businesses shall not be required to obtain a special exception permit. It shall be unlawful to operate a sexually oriented business except in the B1, B2, 11 or 12 zoning districts.
- (2) It shall be unlawful to establish, operate, or cause to be operated a sexually oriented business in the Town of Dale, unless said sexually oriented business is at least:
  - A. One thousand (1,000) feet from any parcel occupied by another sexually oriented business or by a business licensed by the State of Indiana to sell alcohol at the premises; and
  - B. One thousand (1,000) feet from any parcel occupied by any church, public or private elementary or secondary school, daycare center or preschool, public park, or any residence.
- (3) For the purpose of this section, measurements shall be made in a straight line in all directions without regard to intervening structures or objects, from the nearest portion of any building or structure on the premises where the sexually oriented business is located to the closest property line of the property containing the church, public or private elementary or secondary school, daycare center or preschool, public park, or any residence.
- (4) Notwithstanding anything to the contrary in any Town ordinance, a nonconforming sexually oriented business, lawfully existing in all respects under law prior to the effective date of this ordinance, may continue to operate for one (1) year following that date in order to make a reasonable recoupment of its investment in its current location. At the conclusion of said one (1) year, the use will no longer be recognized as a lawful nonconforming use, provided that a nonconforming sexually oriented business may apply for one or more six-month extensions of the original one-year period upon a showing of financial hardship. An application for an initial extension based upon a showing of financial hardship ("hardship exception") shall be made at least sixty (60) days before the conclusion of the

aforementioned one (1) year period. If a hardship extension is granted, subsequent applications for hardship extensions shall be made at least sixty (60) days before the conclusion of the nonconforming sexually oriented business's current extension period.

- (5) Procedure for seeking hardship extension. An application for a hardship extension shall be filed in writing with the Administrator, and shall include evidence of purchase and improvement costs, income earned and lost, depreciation, and costs of relocation. Within ten (10) days after receiving the application, the Administrator shall schedule a public hearing on the application before the Plan Commission, which public hearing shall be conducted within thirty (30) days after the Administrator's receipt of the application. Notice of the time and place of such public hearing shall be published at least ten (10) days before the hearing in a newspaper of general circulation published within the Town and shall contain the particular location for which the hardship extension is requested.

The Plan Commission shall issue a written decision within ten (10) days after the public hearing on the application for a hardship extension. The hardship extension shall be granted upon a showing that the nonconforming sexually oriented business is unable, absent the extension, to make a reasonable recoupment of its investment in its currently lawful, nonconforming use location. (Ord. 2006-2, S21, Mar. 6, 2006)

#### **4.30.220 Fines and Penalties.**

- (1) A first violation of any provision contained in this ordinance, as amended from time to time, shall be punishable by a fine in an amount up to Two Thousand Five Hundred Dollars (\$2,500.00).
- (2) A second subsequent violation of any provision contained in this ordinance, as amended from time to time, shall be punishable by a fine in an amount up to Seven Thousand Five Hundred Dollars (\$7,500.00).
- (3) Each day of violation of any provision contained in this ordinance, as amended from time to time, shall constitute a separate violation. (Ord. 2006-2, S22, Mar. 6, 2006)

**4.30.230 Severability.** This ordinance and each section and provision of said ordinance hereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding, any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said ordinance, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid. Should any procedural

aspect of this ordinance be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this ordinance. (Ord. 2006-2, S23, Mar. 6, 2006)

**4.30.240 Conflicting code provisions.** In the event of any conflict between any provisions of this ordinance and any provision(s) in another Town ordinance, the provisions of this ordinance shall prevail. (Ord. 2006-2, S24, Mar. 6, 2006)

**4.30.250 Effective date.** This ordinance shall be in full force and effect immediately upon passage. Dated this sixth day of March, 2006. (Ord. 2006-2, S25, Mar. 6, 2006)

## Chapter 4.42

### GARAGE SALES AND YARD SALES

#### Sections:

- 4.42.010 Definition
- 4.42.020 Location and manner of Yard Sale
- 4.42.030 Number and duration
- 4.42.040 Display area
- 4.42.050 Penalty

**4.42.010 Definition.** A garage sale or yard sale is hereby defined as the sale or trading of clothing, furniture, household items, food, dishes, antiques or similar goods or merchandise, other than in the normal course of business or the sale or trading of such goods, as outlined in this definition by a person not regularly engaged in such business. Such goods or merchandise do not need to be attended for a sale to be deemed to be in existence. The term “yard sale” shall include garage sales, carport sales and similar types of sales or events. (Ord. 2015-16, S1, Oct. 5, 2015)

**4.42.020 Location and manner of Yard Sale.** Yard Sales may be held on a lot or parcel of land upon which there is situated a house, apartment or other structure which is utilized primarily for residential purposes. (Ord. 2015-16, S2, Oct. 5, 2015)

**4.42.030 Number and duration.** Yard Sales shall be allowed not more than three (3) times in any calendar year for any premises. No sale may run more than four (4) consecutive days. (Ord. 2015-16, S3, Oct. 5, 2015)

**4.42.040 Display area.** All displays of yard sale merchandise shall be limited to that portion of the front yard area which is at least five (5) feet back from the property line on all sides, and at least ten (10) feet back from any curb or road edge. (Ord. 2015-16, S4, Oct. 5, 2015)

**4.42.050 Penalty.** Any person who violates this Ordinance shall be fined in the sum of Twenty Dollars (\$20.00) per day for the first offense, Fifty Dollars (\$50.00) per day for the second and subsequent offenses. (Ord. 2015-16, S5, Oct. 5, 2015)