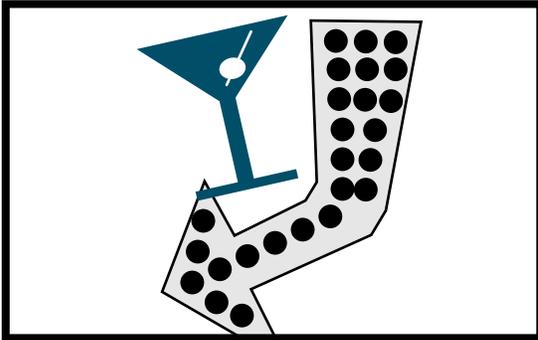


## CHAPTER 65



## Sexually Oriented Businesses

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### **17.65.010 Purpose and Intent**

- A. It is the purpose and intent of this Ordinance to regulate sexually oriented businesses to promote the health, safety, morals, and general welfare of the citizens of Woodlake and to establish reasonable and uniform regulations to prevent any deleterious location and concentration of sexually oriented businesses within the City, thereby reducing or eliminating the adverse secondary effects from such sexually oriented businesses. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not 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 the ordinance to condone or legitimize the distribution of obscene material.
- B. "One of the important purposes of the regulations set forth in this Chapter is to discourage and to minimize the opportunity for criminal conduct. As such,

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nothing in this Chapter shall permit or be interpreted to permit to be interpreted to permit any use, conduct, and/or activity that is specifically prohibited under the following California Penal Code sections:

1. Receipt of money for placement of person for purposes of cohabitation (Penal Code 266d);
  2. Purchase of person for purposes of prostitution or placement of person for immoral purposes (Penal Code 266e);
  3. Sale of person for immoral purposes (Penal Code 266f);
  4. Pimping (Penal Code 266h);
  5. Pandering (Penal Code 266i);
  6. Lewd or obscene conduct (Penal Code 314);
  7. Houses of ill-fame (Penal Code 315);
  8. Disorderly houses that disturb the immediate neighborhood (Penal Code 316);
  9. Places of prostitution (Penal Code 317);
  10. Place of prostitution; place of lewdness; place used as bathhouse permitting conduct capable of transmitting AIDS (Penal Code 11225).
- C. "Nothing in this Chapter shall be interpreted to permit or permit any use, conduct, and/or activity which violates any federal, state or local law of regulation."

**17.65.020 Definitions**

For the purposes of this Chapter, certain terms and words are defined as follows:

- A. "Sexually oriented businesses" are those businesses defined as follows:
1. "Adult arcade" means an establishment where, for any form of consideration, one or more still or motion picture projectors, slide projectors, or similar machines, or other image producing machines, for viewing by five or fewer persons each, are regularly available or used to show 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."

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2. "Adult Bookstore", "Adult Novelty Store" or "Adult Video Store" means a commercial establishment which (1) has as a significant or substantial portion of its stock-in-trade or (2) derives a significant or substantial portion of its revenues or (3) devotes a significant or substantial portion of its interior floor or display space or (4) devotes a significant or substantial portion of its business activities or employees' time, or advertising, to the sale, rental or viewing for any for any form of consideration, of any one or more of the following:
  - a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, or other visual representations which are characterized by the depiction of description of "specified sexual activities" or "specified anatomical areas";
  - b. Instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities."
  - c. An establishment may have other significant or substantial business purposes that do not involve the offering for sale, rental or viewing of materials, depicting or describing "specified sexual activities" or "specified anatomical areas", and still be categorized as adult bookstore, adult novelty store, or adult video store. Such other business purposes will not serve to exempt such establishments from being categorized as an adult bookstore, adult novelty store or adult video store so long as one of its significant or substantial business purposes is offering for sale or rental, for some form of consideration, the specified materials which depict or describe "specified anatomical areas" or "specified sexual activities."
3. "Adult cabaret" means a nightclub, bar, restaurant, "bottle club", or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features: (a) persons who appear nude or in a state of nudity or semi-nude; (b) live performances which are characterized by the exposure of "specified anatomical areas", or by "specified sexual activities", or (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."
4. "Adult motel" means a motel, hotel or similar commercial establishment which: (a) offers public accommodations, for any form of consideration, and which regularly provides or makes available to patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the

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- depiction or description of "specified sexual activities" or "specified anatomical areas" and which advertises the availability of this sexually oriented type of material by means of a sign visible from the public right-of-way, or by means of any 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 less than ten (10) hours; or (c) allows a tenant or occupant to rent or sub-rent the sleeping room for a time period of less than ten (10) hours.
5. "Adult motion picture theater" means a commercial establishment where films, motion pictures, video cassettes, slides or similar photographic reproductions depicting or describing "specified sexual activities" or "specified anatomical areas" are regularly shown for any form of consideration.
  6. "Adult theater" means a theater, concert hall, auditorium, or similar commercial establishment which, for any form or consideration, regularly features persons who appear in a state of nudity or live performances which are characterized by exposure of "specified anatomical areas" or by "specified sexual activities."
  7. "Nude Model Studio" means any place where a person, who appears in a state of nudity or displays "specified anatomical areas" is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. This term does not include a modeling class operated by a proprietary school, licensed by the State of California; a college, junior college, or university supported entirely or partly by taxation; by a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing, where in order to participate in a class a student must enroll at least three (3) days in advance of the class, and where no more than one nude model is on the premises at any one time.
  8. "Regularly Features or Regularly Shown" with respect to an adult cabaret, adult theater, or adult motion picture theater means at least three (3) times within any thirty (30) day period; or carried on as part of the business's routine scheduling of events or activities and not so infrequently as to constitute a single, rare or unusual event or occurrence.
  9. "Significant or Substantial Portion" means such a percentage of its activities, space allocation, revenues, advertising targeting, stock in trade,

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floor or display space, business receipts, revenues, or other business undertakings as to indicate to a reasonable person that a sexually oriented portion of the business is one of its important activities, though not necessarily its only or even primary activity; for this purpose, evidence that 25% or more of its revenues are derived from such sexually oriented activities or materials, or that 25% or more of its interior floor space or display space is devoted to such sexually oriented activities or materials, or that 25% or more of its actual stock in trade regularly displayed and immediately available for use, rental, purchase, viewing or perusal is comprised of such sexually oriented materials, all as defined in Section 17.65.02 of this Chapter, Definitions, shall be evidence that a "significant or substantial portion" of the business is devoted to such uses.

- B. "Employee" means a person who works or performs in and/or for a sexually oriented business, regardless of whether or not said person is paid a salary, wage or other compensation by the operation of said business.
- C. "Establishment" means and includes any of the following:
  - 1. The opening or commencement of any such business as a new business;
  - 2. The conversion of an existing business, whether or not a sexually oriented business, to any of the sexually oriented businesses defined in this chapter;
  - 3. The addition of a any of the sexually oriented businesses defined in this chapter to any other existing sexually oriented business; or
  - 4. The relocation of any such sexually oriented business; or
  - 5. The substantial enlargement of any such sexually oriented business.
- D. "Nudity or State of Nudity" means: (a) the appearance or display of human bare buttock, anus, male genitals, female genitals, or the areola or nipple of the female breast; or (b) a state of dress which fails to opaquely and fully cover a human buttock, anus, male or female genitals, pubic region or areola or nipple of the female breast.
- E. "Operator" means and includes the owner, permit holder, custodian manager, operator or person in charge of any permitted or licensed premises.
- F. "Permitted or "Unlicensed Premises" means any premises that requires a license and/or permit that is classified as a sexually oriented business.

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- G. "Permittee and/or Licensee" means a person in whose name a permit and/or license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.
- H. "Person" means an individual, proprietorship, partnership, corporation, association or other legal entity.
- I. "Public Building Regularly Frequented By Children" means any building owned, leased or held by the United States, the state, the county, the city, any special district, school district, or any other agency or political subdivision of the state or the United States, which building is used as a library, community center, children's center, or any other use having special attraction to children, or which building is often visited by children for social activities unaccompanied by their parents or other adult custodian.
- J. "Public Park" or "Recreation Area" means public land which has been designated for park or recreational activities including, but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, open space wilderness areas, or similar public land within the city which is under the control, operation, or management of the city park and recreation authorities.
- K. "Religious Institution" means any church, synagogue, mosque, temple or building which is primarily for religious worship and related religious activities, as identified on the latest equalized tax roll.
- L. "School" means any public or private educational facility including, but not limited to nursery schools, preschools, kindergartens, elementary schools, primary schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities. School includes the school grounds, but does not include the facilities used primarily for another purpose and only incidentally as a school.
- M. "Semi-Nude" means a state of dress in which clothing covers no more than the genitals, pubic region and areolae of the female breast, as well as portions of the body covered by supporting straps or devices.
- N. "Sensitive land uses" means residences and residential neighborhoods, child day care facilities, cemeteries, religious institutions, schools, boys' clubs, girls' clubs, or similar existing youth organizations, or public parks, or any public building regularly frequented by children.
- O. "Sexually Oriented Business" means an adult arcade, adult bookstore, adult novelty shop, adult video store, adult cabaret, adult motel, adult motion picture

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theater, adult theater, massage parlor, sexual encounter establishment, and escort agency or nude model studio.

- P. "Specified Anatomical Areas" as used in this Chapter means and includes any of the following:
1. 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
  2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- Q. "Specified Sexual Activities" as used in this Chapter, means and includes any of the following
1. The fondling or other intentional touching of buttocks for purpose of sexual arousal, or fondling or other intentional touching of human genitals, pubic region, anus, or female breasts.
  2. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
  3. Masturbation, actual or simulated;
  4. Human genitals in a state of sexual stimulation, arousal or tumescence;
  5. Excretory functions as part of or in connection with any of the activities set forth in sub-sections a through d of this subsection.
- R. "Substantial Enlargement of a Sexually Oriented Business" means an increase in the floor areas occupied by the business as the floor areas existed on the affected date of this ordinance.
- S. "Transfer of Ownership or Control of a Sexually Oriented Business" means and includes any of the following:
1. The sale, lease or sublease of the business; or
  2. The transfer of securities that constitute a controlling interest in the business, whether by sale, exchange or similar means.

**17.65.030 Establishment and Classification of Businesses Regulated**

The establishment of any sexually oriented business shall be permitted only in the zone district permitted, and shall be subject to the following restrictions: No person shall cause or permit the establishment of any sexually oriented businesses, as defined above, within 1000 feet of any sensitive land use, as defined above. These limitations apply to sexually oriented businesses classified as follows:

- A. adult arcade
- B. adult bookstore, adult novelty store, or adult video store
- C. adult cabaret
- D. adult motel
- E. adult motion picture theater
- F. adult theater
- G. nude model studio.

**17.65.040 Measurement of Distance**

The distance between any sexually oriented business and any sensitive land use shall be measured in a straight line, without regard to intervening structures or objects from property line to property line.

**17.65.050 Location of Sexually Oriented Business**

The City of Woodlake's Zoning Ordinance requires that sexually oriented businesses shall be allowed only in a zone where such uses are specifically permitted -- the ML (light industrial) zone, at the time of adoption of this ordinance. Permits for sexually oriented businesses shall be required and governed by the procedures and policies specified in the City of Woodlake Municipal Code. In addition, any sexually oriented business shall be subject to the following restrictions:

- A. The person commits a misdemeanor, if he operates or causes to be operated, a sexually oriented business outside of the permitted zone.
- B. The person commits a misdemeanor if he operates or causes to be operated a sexually oriented business within 1000 feet of any sensitive land use, as defined above.

**17.65.060 Non-Conforming Uses**

- A. Any sexually oriented businesses operating on (effective date of this Ordinance) that are in violation of Sections .01 through .05 shall be deemed a non-conforming use. A non-conforming use will be permitted to continue for a two (2) year period with possible extensions for extenuating circumstances to be granted by the City Council only upon a convincing showing of extreme financial

- hardship. Such extensions shall not exceed a total of three (3) years in addition to the initial amortization period. Any such non-conforming business loses its right to operate as a non conforming use, if, for any reason, it voluntarily discontinues its business operation for a period of thirty (30) days or more or if its license to operate is revoked, and such revocation is not overturned by a court of competent jurisdiction. Such non-conforming uses, while non-conforming, shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use.
- B. A sexually oriented business lawfully operating as a conforming use is not rendered a non-conforming use by the location, subsequent to the grant or renewal of the sexually oriented business permit and/or license, within 1,000 feet, of a sensitive land use. This provision applies only to the renewal of a valid permit and/or license, but this provision does not apply when an application for a permit and/or license is submitted after a permit and/or license has expired or has been revoked.
- C. Abandonment. Notwithstanding the above, any discontinuance or abandonment of the use of any lot or structure as an Adult-Oriented Business shall result in a loss of legal nonconforming status of such use.
- D. Amortization -- annexed property. Any Adult-Oriented Business which was a legal use at the time of annexation of the property and which is located in the City, but which does not conform to the provisions of Section 17.65.030-17.65.050 shall be terminated within two (2) years of the date of annexation unless an extension of time has been approved by the City Council in accordance with the provisions of Section 17.65.060(A).

**17.65.070 Injunction**

A person who operates or causes to be operated a sexually oriented business without having a valid permit due to location restrictions is subject to a suit for injunction as well as prosecution for the misdemeanor punishable by a fine of \$1,000.00 and/or one hundred eighty (180) days imprisonment, or by both such fine and imprisonment. If an injunction is sought and granted, the sexually oriented business shall be obligated to pay the City, attorneys' fees and costs of the City, at the discretion of the Court.

**17.65.080 Exception for Certain Nude Modeling**

It is a defense to prosecution under this ordinance if a person appearing in a state of nudity did so in a modeling class operated:

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- A. By a proprietary school, licensed by the State of California; 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 a 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 nude person is available for viewing; and
  - 2. Where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and
  - 3. Where no more than one nude model is on the premises at any one time.