

TITLE 7

PUBLIC PEACE, SAFETY AND MORALS

Chapters:

- 7.04 State Criminal Statutes and Penalties
- 7.06 Public Reward System
- 7.08 Curfew
- 7.12 Loitering
- 7.16 Prohibited Weapons
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CHAPTER 7.04

STATE CRIMINAL STATUTES AND PENALTIES

Sections:

- 7.04.01 State criminal statutes adopted
- 7.04.02 State penalties adopted

7.04.01 State criminal statutes adopted All criminal statutes of the state relating to misdemeanors and violations and the laws of criminal procedure in connection therewith, three (3) copies of which are on file in the office of the Clerk/Treasurer and are hereby enacted by the City Council to form a part of the laws of the city and any person, firm or corporation being found guilty of the violation of any such laws shall be deemed guilty of the violation of the ordinances of the city and shall be fined or imprisoned or both in the manner set out under the state statutes. (Ord. No. 82-1, Sec. 1) STATE LAW REFERENCE-See A.C.A. 14-55-501

7.04.02 State penalties adopted. The same minimum and maximum penalties for the violation of misdemeanors and violations as are provided in the state statutes are hereby adopted as the minimum and maximum fines for the violation of the same offenses which are prohibited by the ordinances of this city. (Ord. No. 82-1, Sec. 2)

STATE LAW REFERENCE-See A.C.A. 14-55-502

CHAPTER 7.06

PUBLIC REWARD SYSTEM

Sections:

7.06.01 Public reward system

7.06.01 Public reward system. The City Council of the city of Pottsville hereby enacts and makes available funds for rewards to those parties that provide information leading to the arrest and conviction of any person(s) who commit and are found guilty of theft, vandalism, or other acts of criminal mischief resulting in the loss of or damage to city property.

Any persons wishing to claim the reward of Fifty (\$50.00) Dollars shall provide that information available to the Pottsville City Police Department. The caller shall issue their name, address and telephone number for future use of mailing the reward to or making available the reward to that party so identified.

Any and all information provided based on the foregoing shall be considered confidential.

Chapter 7.08

CURFEW

Sections:

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|---------|--|
| 7.08.01 | Civil emergencies |
| 7.08.02 | Congregating during state of emergency |
| 7.08.03 | Penalty |

7.08.01 Civil emergencies. The Mayor, any time a condition has arisen or is imminent which in his judgment constitutes a civil disturbance, riot, insurrection or time of local disaster, may declare a state of emergency and impose a curfew for such time and for such areas as he deems necessary to meet such emergency. Provided, however, such curfew shall not extend for over a period of forty-eight (48) hours unless extended by a majority vote of the members of the governing body.

7.08.02 Congregating during state of emergency. No person shall congregate, operate any businesses or be upon the streets or other public ways, unless on official business for the city or state, in any area or areas designated by the Mayor as curfew areas in the city during the time of any declared emergency.

7.08.03 Penalty. Any person violating any of the provisions of this chapter shall, upon conviction, be deemed guilty of a misdemeanor and may be punished by a fine not to exceed Five Hundred (\$500.00) Dollars or confinement in jail for not more than one (1) year, or both.

Chapter 7.12

LOITERING

Sections:

- | | |
|---------|-------------|
| 7.12.01 | Illegal |
| 7.12.02 | Definitions |
| 7.12.03 | Penalty |

7.12.01 Illegal. It shall be unlawful for any person to loiter upon the sidewalks, streets, highways, alleys or other public places within the city.

7.12.02 Definitions.

A. A person commits the offense of loitering if he:

1. lingers, remains, or prowls in a public place or the premises of another without apparent reason and under circumstances that warrant alarm

or concern for the safety of person or property in the vicinity, and upon inquiry by a law enforcement officer, refuses to identify himself and give a reasonably credible account of his presence and purpose; or

2. lingers, remains, or prowls in or near a school building, not having any reason or relationship involving custody of or responsibility for a student, and not having written permission from anyone authorized to grant the same; or

3. lingers or remains in a public place or on the premises of another for the purpose of begging; or

4. lingers or remains in a public place for the purpose of unlawfully gambling; or

5. lingers or remains in a public place for the purpose of engaging or soliciting another person to engage in prostitution or deviate sexual activity; or

6. lingers or remains in a public place for the purpose of unlawfully buying, distributing, or using a controlled substance; or

7. lingers or remains on or about the premises of another for the purpose of spying upon or invading the privacy of another.

B. Among the circumstances that may be considered in determining whether a person is loitering are that the person:

1. takes flight upon the appearance of a law enforcement officer; or

2. refuses to identify himself; or

3. manifestly endeavors to conceal himself or any object.

C. Unless flight by the actor or other circumstances make it impracticable, a law enforcement officer shall, prior to an arrest for an offense under subsection l(a) of this section, afford the actor an opportunity to dispel any alarm that would otherwise be warranted by requesting him to identify himself and explain his presence and conduct.

D. It shall be a defense to a prosecution under subsection A (1) that the law enforcement officer did not afford the defendant an opportunity to identify himself and explain his presence and conduct, or if it appears at trial that an explanation given by the defendant to the officer was true, and if believed by the officer at that time, would have dispelled the alarm.

STATE LAW REFERENCE-see Ark. Stat. 41-2914

7.12.03 Penalty. As set out in Ark. Stat. 41-2914, loitering is a Class C misdemeanor punishable by a maximum fine of one Hundred (\$100.00) Dollars.

Chapter 7.16

PROHIBITED WEAPONS

Sections:

7.16.01 Unlawful to carry, exchange

7.16.01 Unlawful to carry, exchange. It shall be unlawful for any person to carry any knife, the blade of which is over three (3) inches in length, or to carry any instrument commonly called a crabapple switch, dirk, dagger, pick or any other dangerous or deadly weapon within the city, and it shall further be unlawful for any firm or corporation to sell, barter, exchange or otherwise dispose of such knives, crabapple switches, dirks, daggers or picks, or instruments to be used for a weapon within the corporate limits of the city.

Chapter 7.20

CLAIMS AGAINST CITY

Sections:

7.20.01 Liability coverage
7.20.02 Settlement of claims

7.20.01 Liability coverage. The city shall carry liability coverage on all its motor vehicles in the minimum amounts prescribed in the Motor Vehicle Safety Responsibility Act. (Ark. Stats. 75---1402, et seq.)

STATE LAW REFERENCE-see Ark. Stat. 12-2903; Hdbk. 8-5.3

7.20.02 Settlement of claims. All persons having claims against the cit may file them with the Recorder/Treasurer. The Recorder/ Treasurer shall present them to the Council. The Council may grant a hearing for the claimant and may authorize a settlement.

STATE LAW REFERENCE-see Ark. Stat. 12-2902; Hdbk. 8-5.2

Chapter 7.24

STORAGE AND HANDLING OF VOLATILE COMBUSTIBLES

Sections:

- 7.24.01 Restriction on keeping
- 7.24.02 Volatiles never to be allowed to pass into drainage system
- 7.24.03 Penalty

7.24.01 Restriction on keeping. Gasoline, naphtha, benzine, and other like volatile combustible or their compounds in excess of a total of five (5) gallons, exclusive of that in tanks of automobiles, in combustion engines, or in approved portable wheeled tanks in public garages each not exceeding sixty (60) gallons capacity, shall not be kept within any building. Such total of five (5) gallons or less shall be kept only in cans approved by the chief of the fire department. Any quantity in excess of five (5) gallons shall be kept only in a tank or tanks placed not less than two (2) feet beneath the surface of the ground or in an outside tank or tanks above ground and approved by the chief of the fire department located not less than fifty (50) feet from the line of any adjoining property which may be built upon. The tank or tanks shall be adequately and properly diked with a dike having capacity not less than equal in volume to that of the tank or tanks surrounded. No underground tanks shall be placed, constructed or maintained under a street, public sidewalk or in a sidewalk area.

7.24.02 Volatiles never to be allowed to pass into drainage system. In no instance shall gasoline, naphtha, Benzine and other like volatile combustibles or their compounds be allowed to run upon the floor or fall or pass into the drainage system of the premises. Self-closing metal cans shall be used for all oily waste or waste oils.

7.24.03 Penalty. Any person who shall violate or fail to comply with any provision of this chapter, or who shall violate or fail to comply with any order or regulation, shall upon conviction, be punished by a fine not exceeding One Hundred (\$100.00) Dollars. The imposition of one (1) penalty for violation of this chapter shall not excuse the violator or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and each day that any prohibited condition is maintained shall constitute a separate offense. The application of said penalty shall not be held to prevent the enforced removal of any prohibited condition as provided by this chapter.

Chapter 7.28

OUTSIDE FIRE SERVICE

Sections:

7.28.01	Authority to dispatch
7.28.02	Restrictions
7.28.03	Cost of aid without mutual aid agreement
7.28.04	Mutual aid agreement
7.28.05	Payment of money collected

7.28.01 Authority to dispatch. Fire department apparatus shall be taken beyond the corporate limits of the city to assist at any fire or for any other purpose, by order of the Mayor or Fire Chief or such other person as they may designate, and subject to the restrictions and conditions hereinafter set forth.

7.28.02 Restrictions. The Mayor or Fire Chief or such other person as they may designate are authorized, in their discretion, to aid in the extinguishing of fires in another city, (or town), public institutions, corporation, or other properties within a reasonable distance from the city or on property immediately adjacent to the city in which there is a possibility of fire spreading within the corporate limits, under the following conditions:

A. A request from a city or incorporated town for assistance must come only from the Mayor, Fire Chief or such other person as may be designated by mutual agreement.

B. Calls may be responded to only by such apparatus which in the judgement of the Mayor or Fire Chief or such other person as they may designate can be safely sent without unduly impairing the fire protection within the city, and when highways and weather conditions are favorable.

C. The city, incorporated town, public institution, corporation, or individual requesting assistance must pay the charge for apparatus and service hereinafter provided unless there exists a mutual aid agreement.

D. The city, incorporated town, public institution, corporation or individual must compensate the city for any loss or damage to such apparatus while answering such call, and be responsible to the members of the fire department of the city for any injuries suffered or incurred by them while responding to such calls and while working at such fire, unless otherwise covered by insurance. STATE LAW REFERENCE-see Ark. Stats. 19-2101, et seq; Hdbk. 2-4.7. For statute relating to fire services outside corporate limits, see Ark. Stats. 19-2106.1, 19-2106.2; Hdbk. 2-4.9 and 2-4.10

7.28.03 Cost of aid without mutual aid agreement. Unless there exists a mutual aid agreement, every municipality, institution, corporation or individual requesting and receiving service of the fire department of the city, shall pay for such service and the use of apparatus as follows:

Pumper - \$50.00, within 2 miles of station; \$5.00 additional for each mile or fraction thereof.

Each person, city, firm or corporation receiving service of the fire department, unless there exists a mutual aid agreement, shall pay to the city for each fire driver a sum representing Three Dollars (\$3.00) per hour or part thereof from the time the apparatus leaves the fire house until it returns thereto, and as to each fireman helping at the fire, a sum representing Three Dollars (\$3.00) per hour or part thereof, from the time he reports until the time his service ends. The payments herein stipulated shall be made to the City Treasurer within fifteen (15) days after demand.

7.28.04 Mutual aid agreement. The Mayor and Chief of the Fire Department, are hereby authorized to enter into mutual aid agreements, with other municipalities, firms, corporations or individuals, for the rendering of fire service, subject to the following conditions:

A. That the parties with whom such mutual aid agreements are entered into shall agree to indemnify the city against any or all loss, cost and damage which it may suffer or sustain by reason of damage to any apparatus arising from any cause whatsoever while such apparatus is going to or from the scene of the fire or while at the scene of the fire. The duty to indemnify shall be performed within fifteen (15) days after demand.

B. As to each fire driver injured while driving to or from the fire, or while at the scene of the fire, and as to each fireman helping at the fire, injured between the time he reports to the foreman of his company and the time his service ends, the person entering into such mutual aid agreements shall pay within fifteen (15) days after demand to the city a sum sufficient to cover the medical and hospital expenses by such injured driver or fireman.

7.28.05 Payment of money collected. Money collected under the terms of Section 1.28.03 of this chapter shall be paid to the respective fire drivers and firemen as to whom such collections were made, and in proportion to the amount of time applicable to them respectively.

Chapter 7.32

MAINTENANCE OF INMATES

Sections:

7.32.01 Payment

7.32.01 Payment. That the City of Pottsville, Arkansas, authorizes and directs the payment upon demand of the sum of Twenty-Five Dollars (\$25.00) per day for the maintenance and upkeep of each inmate incarcerated in the Pope County Detention Center at the direction of the City Court of Pottsville, Arkansas. (Ord. No. 87-1, Sec. 1)

Chapter 7.36

OPEN ALCOHOLIC BEVERAGE CONTAINERS

Sections:

7.36.01 Unlawful
7.36.02 Definitions
7.36.03 Penalty

7.36.01 Unlawful. It shall be unlawful for any person to have in their possession or have within their immediate reach or control while in the public or on the public Right-of-ways within the city limits of the City of Pottsville, Arkansas, any alcoholic beverage which shall be or have been opened. (Ord. No. 89-1, Sec. 1)

7.36.02 Definitions.

- A. "Possession" means: To be held or placed or upon one's person and/or in one's grasp and/or within one's grasp of control.
- B. "Alcoholic Beverage" means: Any vinous, spirituous or malt liquors or beverage or beers which shall include but is not limited to: whiskey, brandy, cordial liquors, ale, beer or any other mixtures thereof containing alcohol.
- C. "Open Container" means: Any alcoholic beverage which has or has had its seal broken or its top opened. (Ord. No. 89-1 Sec. 2)

7.36.03 Penalties. Any person found guilty of the preceding offense shall be fined a sum of money not less than Fifty Dollars (\$50.00) or more than One Hundred Fifty Dollars (\$150.00) and/or imprisoned not more than five (5) days for each offense. (Ord. No. 89-1, Sec. 3)

CHAPTER 7.40

FIREWORKS

Sections:

7.40.01	Sale of fireworks
7.40.02	Discharge of fireworks
7.40.03	Definition
7.40.04	Prohibiting making of fireworks
7.40.05	Limitations
7.40.06	Penalty

7.40.01 Sale of fireworks Fireworks may be sold in commercially zoned areas only. Fireworks sales shall be from June 20th to July 10th at midnight. All federal, state and local fire and safety codes, laws and regulations will be strictly complied with in relation to sales. In particular, only Class C fireworks are allowed to be sold within the city limits of Pottsville, as defined in A.C.A. 20-22-708. (Ord. No. 04-4, Sec. 1.)

7.40.02 Discharge of fireworks Discharge of fireworks will be prohibited within the city limits of Pottsville. The only exceptions to this prohibition are as follows:

- A. The 20th day of June to the 10th day of July at 10:00 p.m. on all nights, except July 4th which shall be 12:00 midnight;
- B. December 31st of each year between the hours of 10:00 a.m. and midnight;
- C. If July 4th falls on a weekday, then fireworks can be discharged the next Saturday night until midnight;
- D. Approval in writing by the Mayor for a date and time certain.

The Mayor, Fire Chief and Chief of Police shall determine when conditions are acceptable for the discharge of fireworks on these dates. In the event those persons determine conditions are such that discharge of fireworks would create a hazardous situation, the Mayor will take all reasonable efforts to notify the residents of the city that all discharge of fireworks shall be prohibited. (Ord. No. 04-4, Sec. 2.)

7.40.03 Definition For the purpose of this ordinance, the definition of fireworks is that which the Arkansas Code has defined in A.C.A. 20-22-708 under Class C fireworks. (Ord. No. 04-4, Sec. 3.)

7.40.04 Prohibiting making of fireworks No person, firm or corporation shall make or attempt to make any fireworks, gunpowder or explosives in any home or on any property located within the city of Pottsville. (Ord. No. 04-4, Sec. 4.)

7.40.05 Limitations It shall be unlawful for retailers to sell any fireworks to children under 12 years of age or to any person known to be intoxicated or irresponsible. It shall also be unlawful to explode or ignite fireworks within 600 feet of any church, hospital, public school or within 200 feet of where fireworks are stored, sold or offered for sale. The discharging of fireworks on the property of another individual, or allowing a fireworks projectile, such as a bottle rocket, to travel on to the property of another, or a public street, shall be a violation of this ordinance. (Ord. No. 04-4, Sec. 5.)

7.40.06 Penalty Any person violating this ordinance shall be fined not less than \$25.00 nor more than \$200.00 for each offense and a separate offense shall be deemed committed on each date during or on which a violation occurs or continues. (Ord. No. 04-4, Sec. 6.)

CHAPTER 7.44

SIGNS

Sections:

7.44.01 Signs to conform

7.44.01 Signs to conform All signs, billboards or other advertising structures shall comply fully with the provisions of this ordinance and all other sign control regulations established by the city of Pottsville.

Signs and billboards to be erected and maintained in areas within 660 feet of the nearest edge of the right-of-way of the Interstate Highway system designated as Interstate-40 shall be located in a zoning area classified as Industrial or commercial by the city of Pottsville Zoning Ordinance. These signs shall have a maximum area on one facing of 1,200 square feet and a maximum length of 60 feet and a maximum height of 25 feet inclusive of any border and trim but excluding ornamental base or apron supports and other structural members. (Ord. No. 01-6, Sec. 1.)

CHAPTER 7.48

PUBLIC CITY PLACES

Sections:

7.48.01 Public places

7.48.01 Public places The following five places are designated the most public places in the city for the purposes of complying with A.C.A. 14-55-206:

1. Pottsville City Hall
2. Pottsville Police Department
3. Pottsville Fire Department
4. United States Post Office
5. Pottsville Shell/Texaco gas station
(Ord. No. 03-5, Sec. 1.)

CHAPTER 7.52

SEXUALLY ORIENTED BUSINESSES

Sections:

- 7.52.01 Rationale and findings
- 7.26.02 Definitions
- 7.52.03 Classifications
- 7.52.04 License required
- 7.52.05 Issuance of license
- 7.52.06 Fees
- 7.52.07 Inspection
- 7.52.08 Expiration of license
- 7.52.09 Suspension
- 7.52.10 Revocation
- 7.52.11 Hearing; license denial, suspension, revocation; appeal
- 7.52.12 Transfer of license
- 7.52.13 Hours of operation

- 7.52.14 Regulations pertaining to exhibition of sexually explicit films on premises
- 7.52.15 Loitering and exterior lighting and monitoring requirements
- 7.52.16 Penalties and enforcement
- 7.52.17 Applicability of ordinance to existing businesses
- 7.52.18 Prohibited activities
- 7.52.19 Scienler required to prove violation or business licensee liability
- 7.52.20 Failure of city of Atkins, Arkansas to meet time frame not to risk applicant/licensee rights
- 7.52.21 Location of sexually oriented businesses

7.52.01 Rationale and findings

- A. Purpose It is the purpose of this section to regulate sexually oriented businesses to promote the health, safety and general welfare of the citizens of the city of Pottsville, Arkansas, and to establish reasonable and uniform regulation to prevent the deleterious secondary effects of sexually oriented businesses within the city of Pottsville, Arkansas. 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 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 this ordinance to condone or legitimize the distribution of obscene material.
- B. Findings and rationale Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Pottsville City Council, and on findings, interpretation, and narrowing constructions incorporated in the cases of city of Littleton b. 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 World Wide Video of Washington, Inc. v. city of Spokane, 368 F. 3d 1186 (9th Cir. 2004); Ben's Bar, Inc. c. Village of Somerset, 316 F. 3d 702 (7th Cir. 2003);

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 – 1997; 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 – 1997; New York New York Times Square – 1994; and Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989, state of Minnesota).

The Pottsville City 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 rug 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 business, 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 city of Pottsville, Arkansas, has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the city of Pottsville, Arkansas's rationale for this ordinance, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the city of Pottsville, Arkansas'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 city of Pottsville, Arkansas finds that the cases and documentation relied on in this ordinance are reasonably believed to be relevant to said secondary effects. (Ord. No. 06-3, Sec. 1.)

7.26.02 Definitions For the purposes of this ordinance, the words and phrases defined in the sections hereunder shall have the meanings herein respectively ascribed to them unless a different meaning is clearly indicated by the context.

Adult bookstore or Adult video store means a commercial establishment which as one of its principal business purposes, 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."

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.

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 sub-rent the room for a period of time that is less than 10 hours.

Adult motion picture theater means a commercial establishment where films, motion pictures, video cassettes, 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.

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-18 or R by the Motion Picture Association of America.

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 or 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.

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.

Hearing body shall mean the City Council of the city of Pottsville, Arkansas.

Influential interest means any of the following

- A. 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,
- B. 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
- C. 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.

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.

Municipality body means the City Council of the city of Pottsville, Arkansas.

Municipality type means city of Pottsville, Arkansas.

Nudity or a state of nudity means the showing of the human male or female genitals, public 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 and areola.

Operate of 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 that 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.

Person shall mean individual, proprietorship, partnership, corporation, association, or other legal entity.

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, 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 7.52.04 of this ordinance.

Principal purpose means that the commercial establishment:

- A. has a substantial portion of its displayed merchandise which consists of said items, or
- B. has a substantial portion of the wholesale value of its displayed merchandise which consists of said items, or
- C. has a substantial portion of the retail value of its displayed merchandise which consists of said items, or
- D. derives a substantial portion of its revenues from the sale or rental, for any form of consideration of said items; or
- E. maintains a substantial section of its interior business space for the sale or rental or 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."

Regularly means and refers to the consistent and repeated doing of the act so described.

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.

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 the 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.

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.

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 service, 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.

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.

Sexually oriented business means an "adult bookstore or adult video store," and "adult cabaret," an "adult motel," an "adult motion picture theater," a "semi-nude model studio," "sexual device shop," or a "sexual encounter center."

Specified anatomical areas means and includes:

- A. Less than completely and opaquely covered; human genitals, public 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.

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. Sex crimes as defined in A.C.A. 5-14-101, *et seq.*
 - 2. Prostitution crimes as defined in A.C.A. 5-70-101, *et seq.*
 - 3. Obscenity crimes as defined in A.C.A. 5-68-101, *et seq.*
 - 4. Drug crimes as defined in A.C.A. 5-64-101, *et seq.*
 - 5. Racketeering as defined in A.C.A. 5-74-101, *et seq.*
- 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 Arkansas, would have constituted any of the foregoing offenses.

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.

Substantial means at least thirty-five percent (35%) of the item(s) so modified.

Transfer of ownership or control of a sexually oriented business shall mean any of the following:

- A. the sale, lease, or sub-lease 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.

Viewing room shall mean the room, booth, or area where a patrol of sexually oriented business would ordinarily be positioned while watching a film, video cassette, or other video reproduction. (Ord. No. 06-3, Sec. 2.)

7.52.03 Classification The classifications for sexually oriented businesses shall be as follows:

- A. Adult bookstores or adult video stores;
- B. Adult cabarets;
- C. Adult motel;
- D. Adult motion picture theater;
- E. Semi-nude model studio;
- F. Sexual device shop;
- G. Sexual encounter center.

(Ord. No. 06-3, Sec. 3.)

7.52.04 License required

- A. It shall be unlawful for any person to operate a sexually oriented business in the city of Pottsville without a valid sexually oriented business license.
- B. It shall be unlawful for any person to be an "employee" as defined in this ordinance, of a sexually oriented business in the city of Pottsville without a valid sexually oriented business employee license.

C. An applicant for a sexually oriented business license or sexually oriented business employee license shall be filed in person at the office of the city of Pottsville Police Chief. Application will be made on a form provided by the Chief of Police. The application shall be signed as required by subsection (3) 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 section 1 through 7 below, accompanied by the appropriate fee identified in section 6.

1. The applicant's full true name and any other names used by the applicants in the preceding five (5) years.
2. Current business address or another mailing address of the applicant.
3. 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.
4. 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.
5. 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.
6. 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.
7. A statement of whether any sexually oriented business in which applicant has had an influential interest, has, in the previous five (5) years (and at the time during which the applicant had the influential interest):
 - a. been declared by a court of law to be a nuisance; or
 - b. been subject to a court order of closure or padlocking.

The information provided pursuant to section 1 through 7 of this subsection shall be supplemented in writing by certified mail, return receipt requested, to the

Pottsville Police Chief within ten (10) working days of change of circumstances which would render the information originally submitted false or incomplete.

- D. 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 section 14 and 18 of this ordinance shall submit a diagram indicating that the interior configuration meets the requirements of those sections.
- E. 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 5 and each applicant shall be considered a licensee if a license is granted.
- F. 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 Pottsville Police Chief on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by court order. (Ord. No. 06-3, Sec. 4.)

7.52.05 Issuance of license

- A. Upon the filing of a completed application under 7.52.04 (C) sexually oriented business license, the Pottsville Police Chief shall immediately issue a temporary license to the applicant, which temporary license shall expire upon the final decision of the city of Pottsville, Arkansas, to deny or grant an annual license. Within twenty (20) days of the filing date of a completed sexually oriented business license application, the Pottsville Chief of Police shall issue a license to the applicant or issue to the applicant a letter of intent to deny the application. The Pottsville Chief of Police shall issue a license unless:
 - 1. An applicant is less than eighteen (18) years of age.
 - 2. An applicant has failed to provide information as required by 7.52.04 for issuance of a license or has falsely answered a question or request for information on the application form.
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 - 3. The license application fee required by this ordinance has not been paid.

4. 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 part of the city of Pottsville Code.
 5. 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):
 - a. been declared by a court of law to be a nuisance; or
 - b. been subject to an order of closure or padlocking.
 6. An applicant has been convicted of or pled guilty or *nolo contendere* to a specified criminal activity, as defined in this ordinance.
- B. Upon the filing of a completed application under 7.52.04 (C) for a sexually oriented business employee license, the Pottsville Police Chief shall immediately issue a temporary license to the applicant, which temporary license shall expire upon the final decision of the city of Pottsville, Arkansas, 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 Chief of Police shall either issue a license or issue a written notice of intent to deny a license to the applicant. The Chief of Police shall approve the issuance of a license unless:
1. The applicant is less than eighteen (18) years of age.
 2. The applicant has failed to provide information as required by 7.52.04 for issuance of a license or has falsely answered a question or request for information of the application form.
 3. The license application fee required by this ordinance has not been paid.
 4. 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).
 - a. been declared by a court of law to be a nuisance; or
 - b. been subject to an order of closure or padlocking.
 5. The applicant has been convicted of or pled guilty or *nolo contendere* to a specified criminal activity, as defined in this ordinance.

- C. 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 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. No. 06-3, Sec. 5.)

7.52.06 Fees The initial license and annual renewal fees for sexually oriented business licenses and sexually oriented business employee licenses shall be as follows: Three Hundred Dollars (\$300.00) for the initial fee for a sexually oriented business license and Three Hundred Dollars (\$300.00) for annual renewal; Seventy-Five Dollars (\$75.00) for the initially sexually oriented business employee license and Seventy-Five Dollars (\$75.00) for the annual renewal. All fees to be paid on or before January 31st of each year. (Ord. No. 06-3, Sec. 6.)

7.52.07 Inspection

- A. Sexually oriented businesses and sexually oriented business employees shall permit the Chief of Police 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 city of Pottsville, Arkansas, to authorize reasonable inspections of the licensed premises pursuant to this ordinance, but not to authorize a harassing or excessive pattern of inspections.
- B. The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation. (Ord. No. 06-3, Sec. 7.)

7.52.08 Expiration of license

- A. Each license shall remain valid for one calendar year unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in 7.52.04 and 7.52.06.
- B. Application for renewal should be made pursuant to the procedures set forth in 7.52.04 at least ninety (90) days before the expiration date, and when made less

than ninety (90) days before the expiration date, the expiration of the license will not be affected. (Ord. No. 06-3, Sec. 8.)

7.52.09 Suspension

- A. The city of Pottsville, Arkansas, 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 license has knowingly violated this ordinance or has knowingly allowed an employee to violate this ordinance.
- B. The city of Pottsville, Arkansas, shall issue a written letter of intent to suspend a sexually oriented business employee license if the employee has knowingly violated this ordinance. (Ord. No. 06-3, Sec. 9.)

7.52.10 Revocation

- A. The city of Pottsville, Arkansas, shall issue a letter of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if the licensee knowingly violated this ordinance or has knowingly allowed an employee to violate this ordinance and the licensee's license has been suspended within the previous twelve-month (12) period.
- B. The city of Pottsville, Arkansas, shall issue written intent to revoke a sexually oriented business license or a sexually oriented business employee license as applicable, if:
 - 1. The licensee has knowingly given false information in the application for the sexually oriented business license.
 - 2. The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises.
 - 3. The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises.
 - 4. The licensee knowingly or recklessly operated the sexually oriented business during a period of time when the license was finally suspended or revoked; or
 - 5. The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity to occur in or on the licensed premises.

- C. 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.
- D. When, after the notice and hearing procedure described in 7.52.11, the Pottsville City 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. No. 06-3, Sec. 10.)

7.52.11 Hearing: denial, revocation, and suspension; appeal.

- A. When the Chief of Police issues a written notice of intent to deny, suspend, or revoke a license, the Chief of Police 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 Chief of Police 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 Pottsville City Council shall conduct a hearing on the Chief of Police'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 Chief of Police's witnesses. The Chief of Police 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 Pottsville City 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.

If the decision is to deny, suspend, or revoke the license, the decision shall not become effective until the thirtieth (30th) day after it is rendered, and the decision shall include a statement advising the respondent of the right to appeal such decision to a court of competent jurisdiction. If the Pottsville City Council's decision finds that no ground exist for denial, suspension, or revocation of the license, the Pottsville City Council shall, contemporaneously with the issuance of the decision, order the Chief of Police 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 Chief of Police shall contemporaneously therewith issue the license to the applicant.

- B. If any court action challenging the Pottsville City Council's decision is initiated, the Pottsville City 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 Pottsville City 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 in operation as of the effective date of this ordinance. Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the city of Pottsville, Arkansas' enforcement of the denial, suspension or revocation, the city of Pottsville, Arkansas, shall immediately issue 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 city of Pottsville, Arkansas' enforcement. (Ord. No. 06-3, Sec. 11.)

7.52.12 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. No. 06-3, Sec. 12.)

7.52.13 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. No. 06-3, Sec. 13.)

7.52.14 Regulations pertaining to exhibition of sexually explicit films or videos

- A. A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.
1. 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 or the premises to an accuracy of plus or minus six (6) inches. The Chief of Police 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.

2. 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 1 of this subsection.
3. 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 five (5) 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.
4. It shall be the duty of the operator, and of any employees present on the premises, to ensure that no sexual activity occurs in or on the licensed premises.
5. 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:
 - a. That the occupancy of viewing rooms is limited to one person
 - b. That sexual activity on the premises is prohibited.
 - c. That the making of openings between viewing rooms is prohibited.
 - d. That violators will be required to leave the premises.
 - e. That violations of subparagraphs (a), (b) and (c) of this paragraph are unlawful

6. It shall be the duty of the operator to enforce the regulations articulated in (5) (a) through (e) above.
7. 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 station. It is 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.

It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty. (Ord. No.06-3, Sec. 14.)

7.52.15 Loitering, exterior lighting, visibility, and monitoring requirements

- A. 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.
- B. It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

- C. 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. No. 06-3, Sec. 15.)

7.52.16 Penalties and enforcement

- A. A person who knowingly violates, disobeys, omits, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this ordinance shall be guilty of a Class A misdemeanor, and, upon conviction, shall be punishable by 0 days to 1 years in jail and/or 0 to \$1,000.00 fine. Each day a violation is committed, or permitted to continue, shall constitute a separate offense and shall be fined as such.
- B. The city of Pottsville, Arkansas' 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 city of Pottsville, Arkansas, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this ordinance, or any of the laws or ordinances in force in the city of Pottsville, Arkansas, or to exempt anyone violating this code or any part of the said laws from any penalty which may be incurred. (Ord. No. 06-3, Sec. 16.)

7.52.17 Applicability of ordinance to existing businesses 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.

- A. 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.
- B. 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.
- C. 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.

- D. 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.
- E. A sign in a form to be prescribed by the Chief of Police, and summarizing the provisions of paragraphs (A), (B), (C) and (D) 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. No. 06-3, Sec. 17.)

7.52.19 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 the 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 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. No. 06-3, Sec. 19.)

7.52.20 Failure of the city of Pottsville, Arkansas, to meet deadline not to risk applicant/licensee rights In the event that a city of Pottsville, Arkansas, 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 city of Pottsville, Arkansas, official under this ordinance, and not completed in the time prescribed, includes approval of condition(s) necessary for approval by the city of Pottsville, Arkansas, of an applicant or licensee's application for sexually oriented business license or a sexually oriented business employee's license (including a renewal), the license shall be deemed granted and the business or employee allowed to commence operations or employment the day after the deadline for the city of Pottsville, Arkansas' action has passed. (Ord. No. 06-3, Sec. 20.)

7.52.21 Location of sexually oriented businesses

- A. Sexually oriented businesses shall not be required to obtain a conditional use permit. Sexually oriented businesses shall be permitted subject to the following limitations:
- B. It shall be unlawful to establish, operate, or cause to be operated a sexually oriented business in the city of Pottsville, unless said sexually oriented business is at least:

1. Seven hundred fifty (750) feet from any parcel occupied by another sexually oriented business or by a business licensed by the state of Arkansas to sell alcohol at the premises; and
 2. Seven hundred fifty (750) feet from any parcel occupied by a house of worship, licensed day-care center, public or private elementary or secondary school, public bar, or any residence or public park.
- C. 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 closest part of any structure, including signs and roof overhangs, used in conjunction with the sexually oriented business to the closest point on a property boundary or right-of-way associated with any of the land use(s) identified in section A(1) – A(2) above.
- D. Exterior portions of sexually oriented businesses.
1. It shall be unlawful for an owner or operator of a sexually oriented business to allow the merchandise or activities of the establishment to be visible from a point outside the establishment.
 2. It shall be unlawful for the owner or operator of a sexually oriented business to allow the exterior portion of the sexually lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by the provisions of this ordinance. The owner or employees of the business cannot circumvent these rules by parking or having located on the premises any vehicle that violates this portion of the ordinance or any other portion of this ordinance.
 3. It shall be unlawful for the owner or operator of a sexually oriented business to allow exterior portions of the establishment to be painted any color other than a single achromatic color.
 4. Nothing in this article shall be construed to require the painting of an otherwise unpainted exterior portion of a sexually oriented business.
- E. Signage
1. Notwithstanding any other city ordinance, code, or regulation to the contrary, it shall be unlawful for the operator of any sexually oriented business or any other person to erect, construct, or maintain any sign for

- (1) secondary sign, as provided herein.
2. Primary signs shall have no more than two (2) display surfaces. Each such display surface shall:
 - a. not contain any flashing lights;
 - b. be a flat plane, rectangular in shape;
 - c. not exceed seventy-five (75) square feet in area; and
 - d. not exceed ten (10) feet in height or ten (10) feet in length.
3. Primary signs shall contain no photographs, silhouettes, drawings or pictorial representations in any manner, and may contain only the name of the enterprise.
4. Each letter forming a word on a primary sign shall be of solid color, and each such letter shall be the same print-type, size and color. The background behind such lettering on the display surface of a primary sign shall be of a uniform and solid color.
5. Secondary signs shall have only one (1) display surface. Such display surface shall:
 - a. be a flat plane, rectangular in shape;
 - b. not exceed twenty (20) square feet in area;
 - c. not exceed five (5) feet in height and four (4) feet in width; and
 - d. be affixed or attached to any wall or door of the enterprise.
6. The provisions of item (a) of subsection (2) and subsection (3) and (4) shall also apply to secondary signs. (Ord. No. 06-3, Sec. 21.)

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CHAPTER 7.56

NOISE

Sections:

7.56.01	Noise in city limits
7.56.02	Unnecessary noises
7.56.03	Exemptions
7.56.04	Penalty

7.56.01 Noise in city limits It shall be unlawful to make, continue or cause to be made or continued any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health peace or safety of others, within the city limits of the city of Pottsville. (Ord. No. 2007-3, Sec. 1.)

7.56.02 Unnecessary noises The following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this ordinance, but said enumeration shall not be deemed to be exclusive. The city or District Court reserves the right to determine whether someone's behavior is in violation of this ordinance, separate and apart from the enumerated list of behavior which is deemed to be in violation of this ordinance:

- A. Horns etc. The sounding of any horn or device on any automobile, motorcycle, bus or other vehicle while not in motion, except as a danger signal; the creation by means of any such signaling device of any unreasonable period of time.

- B. Radios, musical instruments, etc. The playing of any radio or musical instrument or other musical device for producing or reproducing of sound, in such a manner or with such volume, particularly during the hours between 10:00 p.m. and 6:00 a.m. as to disturb the quiet or comfort of persons in any office, hospital or in any dwelling, hotel or other type of residence or of any persons in the vicinity. The operation of any such instrument, machine or device between the hours of 10:00 p.m. and 6:00 a.m. in such a manner as to be plainly audible at a distance of fifty (50) feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this ordinance. If the city of Pottsville has in the past or in the future does pass an ordinance that allows this type of behavior in certain circumstances, then that ordinance shall supersede this ordinance for those limited purposes.

- C. Singing, shouting etc. Yelling, shouting, whistling or singing on the public streets, particularly between he hours of 10:00 p.m. and 6:00 a.m. or at any time or

place so as to annoy or disturb the quiet or comfort of persons in any office,

hospital or in any dwelling, hotel or other type of residence, or of any persons in the vicinity shall be prohibited. If the city of Pottsville has in the past or in the future does pass an ordinance that allows this type of behavior in certain circumstances, then that ordinance shall supersede this ordinance for those limited purposes.

- D. Animals and fowl, etc. The keeping of any animal or fowl which by causing frequent or long continued noise shall disturb the quiet or comfort or any person in the vicinity.
- E. Vehicles The use of any automobile, motorcycle, or other vehicle which creates loud and unnecessary grating, grinding, rattling or other noise shall be a violation of this ordinance. This would include, but not be limited to, exhaust assisted braking, otherwise known as improper used jake brakes or engine retarder or braking.
- F. Near schools, courts, churches, hospitals, etc. The creating of any excessive and unnecessary noise on any street adjacent to any school, church, court, while the same are in session, or adjacent to any hospital, which unreasonably interferes with the working of sessions thereof. (Ord. No. 2007-3, Sec. 2.)

7.56.03 Exemptions None of the terms or prohibitions shall apply to or be enforced against:

- A. Any vehicle of the city of Pottsville, Arkansas, while engaged upon necessary public business.
- B. Excavations or repairs of bridges, streets or highways by or on behalf of the city of Pottsville, Arkansas, or the state of Arkansas, during the night time, when the public welfare and convenience renders it impossible to perform such work during the day. The city of Pottsville specifically states that state and local employees have the right to engage in conduct while acting in that capacity that could possibly be in violation of other provisions of this ordinance.
- C. The reasonable use of amplifiers or loudspeakers in the course of public addresses which are non-commercial in character.
- D. Necessary warning signals given by any vehicle.
(Ord. No. 2007-3, Sec. 3.)

7.56.04 Penalty Any person, firm and/or corporation violating any of the provisions of

this ordinance shall, except as provided for, be guilty of a misdemeanor and upon conviction shall be fined not less than Ten Dollars (\$10.00) nor more than One Hundred Dollars (\$100.00) for each offense. Each day that this conduct occurs is another separate violation of this ordinance. (Ord. No. 2007-3, Sec. 4.)

CHAPTER 7.60

NOVELTY LIGHTERS

Sections:

7.60.01	Title and authority
7.60.02	Definition
7.60.03	Sale prohibited
7.60.04	Exclusions
7.60.05	Enforcement
7.60.06	Fine

7.60.01 Title and authority The title of this ordinance shall be “The Novelty Lighter Prohibition Ordinance. This ordinance is passed pursuant to the power granted to the city of Pottsville by Arkansas code Annotated. (Ord. No. 2008-4, Secs. 1-2.)

7.60.02 Definition

Novelty lighter means a lighter that has entertaining audio or visual effects, or that depicts (logs, decals, art work, etc.) or resembles in physical form or function articles commonly recognized as appealing to or intended for use by children ten years of age or younger. This includes, but is not limited to, lighters that depict or resemble cartoon characters, toys, guns, watches, musical instruments, vehicles, toy animals, food or beverages, or that play musical notes or have flashing lights or other entertaining features. A novelty lighter may operate on any fuel, including butane or liquid fuel. (Ord. No. 2008-4, Sec. 3.)

7.60.03 Sale prohibited The retail sale, offer of retail sale, gift or distribution of any novelty lighter within the territorial jurisdiction of the city of Pottsville, Arkansas, is prohibited. This prohibition is inapplicable to

- A. novelty lighters which are only being actively transported through the city; or

- B. novelty lighters located in a warehouse closed to the public for purposes of retail sales. (Ord. No. 2008-4, Sec. 4.)

7.60.04 Exclusions The term “novelty lighter” excludes

- A. any lighter manufactured prior to 1980; and/or
- B. any lighter which lacks fuel or a device necessary to produce combustion or a flame. (Ord. No. 2008-4, Sec. 5.)

7.60.05 Enforcement The provisions of this ordinance shall be enforced by the city of Pottsville’s Fire Chief or his designated agent, law enforcement officers, Code Enforcement Officers and/or any other city official authorized to enforce any provision of the city of Pottsville ordinances. (Ord. No. 2008-4, Sec. 6.)

7.60.06 Fine Any person or entity violating any provision of this ordinance is guilty of a misdemeanor and upon conviction therefore shall be subject to a fine or penalty of not less than Twenty-Five Dollars (\$25.00) nor more than Five Hundred Dollars (\$500.00) plus court costs. (Ord. No. 2008-4, Sec. 7.)

CHAPTER 7.64

SALE OF CERTAIN HARMFUL SUBSTANCES

Sections:

- 7.64.01 Banned substances
- 7.64.02 Possession
- 7.64.03 Exception
- 7.64.04 Medical reasons
- 7.64.05 Fine

7.64.01 Banned substances It is hereby declared to be unlawful for any person to use, possess, purchase, attempt to purchase, sell, publicly display for sale or attempt to sell, give or barter any one or more of the following chemicals within the city limits of the city of Pottsville, Arkansas:

- A. Salviadinorum or salvinorum A: All parts of the plant presently classified botanically as salvia divinorum, whether growing or not, the seeds thereof, any

extract from any part of such plant, and every compound, manufacture, salts derivative, mixture or preparation of such plant, its seeds or extracts.

- B. (6aR, 10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10a-tetrahydrobenzo(c)chromen-1-ol.....
Some trade or other names: HU-210
- C. 1-Pentyl-3-(1-naphthoyl) indole.....
Some trade or other names: JWH-018/spice.
- D. 1-Butyl-3-(1-naphthoyl) indole.....
Some trade or other names: JWH-073
- E. N-BENZYLPIPERAZINE.....
Some trade or other names: BZP
- F. Or any similar structural analogs.
(Ord. No. 2010-2, Sec. 1.)

7.64.02 Possession If any of the aforementioned substances are found in the possession of any person, they may be confiscated and destroyed by law enforcement officials. (Ord. No. 2010-2, Sec. 2.)

7.64.03 Exception It is not an offense under 7.64.01 above of this ordinance if the person was acting at the direction of an authorized agent of the city of Pottsville to enforce or ensure compliance with this law prohibiting the sale of the aforementioned substance. (Ord. No. 2010-2, Sec. 3.)

7.64.04 Medical reasons This ordinance does not apply to any person who commits any act described in this ordinance pursuant to the direction or prescription of a licensed physician or dentist authorized to direct or prescribe such act. This ordinance likewise does not apply to the inhalation of anesthesia for a medical purpose or dental purpose. (Ord. No. 2010, Sec. 4.)

7.64.05 Fine Any person found to be in violation of this ordinance will be guilty of a misdemeanor and subject to a fine of not less than Two Hundred Dollars (\$200.00) and not to exceed One Thousand Dollars (\$1,000.00). (Ord. No. 2010, Sec. 5.)