

**ORDINANCE NO. 2024-186**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF SUPERIOR, ARIZONA, AMENDING THE SUPERIOR TOWN CODE ADDING “SUPERIOR TOWN CODE, ARTICLE 16-1-17. SEXUALLY ORIENTED BUSINESSES” AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the Town Council has determined that it is in the best interest of the Town to enact this amendment to the Town’s Code of Ordinances in order to define Sexually Oriented Businesses, regulate the various types of Sexually Oriented businesses, and locations and enhance the quality of life and to protect the health, safety and welfare of its citizens; and

**BE IT ORDAINED** by the Town Council of the Town of Superior, Arizona, that the Code of Ordinances of the Town of Superior, Arizona, is amended to read as follows:

**SECTION 1.** Chapter 16, of the Superior Town Code, Section 16-1-17, is amended as follows to read:

***ARTICLE 16-1-17. SEXUALLY ORIENTED BUSINESSES***

**Sec. 16-1-17. Sexually oriented business regulation.**

(a) *Purpose and Intent.* It is the purpose and intent of this section to regulate sexually oriented businesses to promote the health, safety, morals, and general welfare of the citizens of the Town of Superior and to establish reasonable and uniform regulations to prevent any deleterious location and concentration of sexually oriented businesses within the Town, thereby reducing or eliminating the adverse secondary effects from such sexually oriented businesses. The provisions of this section 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 or effect of this section 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 section to condone or legitimize the distribution of obscene material.

(b) *Definitions.*

*Adult arcade* means any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show images to five or fewer persons per

machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

*Adult bookstore, adult novelty store or adult video store* means a commercial establishment which, offers for sale or rental, for any form of consideration any one or more of the following:

- a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or
- b. Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities"; and which meets one or more of the following criteria:
  - i. A substantial or significant portion of its inventory, stock or merchandise on hand at any time is comprised of sexually explicit material; or
  - ii. A substantial or significant portion of its gross income for any one month is derived from the sale or rental, in any form of consideration, of sexually explicit material; or
  - iii. A substantial or significant amount of sexually explicit material is displayed in its display area; or
  - iv. Its principal business purpose is the sale or rental of sexually explicit material; or
  - v. Regularly excludes all minors from the premises because of the sexually explicit nature of the items sold, rented or displayed therein.

*Adult cabaret* means a nightclub, bar, restaurant, or similar commercial establishment which features:

- a. Persons who appear in a state of nudity or semi-nude; or
- 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."

*Adult motel* means a hotel, motel 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, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas," and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; or
- b. Offers a sleeping room for rent for a period of time that is less than ten 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 ten hours.

*Adult motion picture theater* means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

*Adult theater* means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

*Employee* means a person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

*Escort* means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

*Escort agency* means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

*Establishment* means and includes 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;
- c. The additions of any sexually oriented business to any other existing sexually oriented business; or
- d. The relocation of any sexually oriented business.

*Licensee* means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business.

*Massage establishment* means an establishment in which a person, firm, association or corporation engages in or permits massage activities, including any method of pressure on, friction against, stroking, kneading, rubbing, tapping, pounding, vibrating or simulating of external soft parts of the body with the hands or with the aid of any mechanical or electrical apparatus or appliance.

- a. This paragraph does not apply to:
  1. Physicians licensed pursuant to A.R.S. title 32, Ch. 7, 8, 13, 14, or 17, as amended.

2. Registered nurses, licensed practical nurses, physical therapists or technicians who are acting under the supervision of a physician licensed pursuant to A.R.S. title 32, Ch. 13, 15, 17, or 19, as amended.
3. Persons who are employed or acting as trainees for a bona fide amateur, semiprofessional athlete or athletic team.
4. Persons who are licensed pursuant to A.R.S. title 32, as amended, or if the activity is limited to the head, face, or neck.
5. Massage therapy which is a non-sexual massage offered by an individual who is licensed by a professionally recognized organization.

*Nude model studio* means any place where a person who appears semi-nude, in a state of nudity, or who displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. "Nude model studio" shall not include a proprietary school licensed by the State of Arizona or a college, junior college or university supported entirely or in part by public taxation; 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:

- a. That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and
- b. Where in order to participate in a class a student must enroll at least three days in advance of the class; and
- c. Where no more than one nude or semi-nude model is on the premises at any one time.

*Nudity or a state of nudity* means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

*Person* means an individual, proprietorship, partnership, corporation, association, or other legal entity.

*Semi-nude or in a semi-nude condition* means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

*Sexual encounter center* means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

- a. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- b. Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

*Sexually explicit material* means any material which depicts or describes "specified sexual activities" or "specified anatomical areas".

*Sexually oriented business* means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

*Specified anatomical areas* means:

- a. The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
- b. Less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola.

*Specified criminal activity* means any of the following offenses:

- a. Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries;
- b. For which:
  1. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
  2. Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
  3. Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.
- c. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

*Specified sexual activities* means any of the following:

- a. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
- b. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or
- c. Excretory functions as part of or in connection with any of the activities set forth in (a) through (b) above.

*Substantial enlargement of a sexually oriented business* means the increase in floor areas occupied by the business by more than 25 percent.

*Transfer of ownership or control of a sexually oriented business* means and includes any of the following:

- a. The sale, lease, or sublease of the business;
  - b. The transfer of securities which constitute a controlling 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.
- (c) *Classification.* Sexually oriented businesses are classified as follows:
- (1) Adult arcades;
  - (2) Adult bookstores, adult novelty stores, or adult video stores;
  - (3) Adult cabarets;
  - (4) Adult motels;
  - (5) Adult motion picture theaters;
  - (6) Adult theaters;
  - (7) Escort agencies;
  - (8) Nude model studios; and
  - (9) Sexual encounter centers.
- (d) *Location of Sexually Oriented Businesses.*
- (1) No person shall operate or cause to be operated a sexually oriented business in any zoning district other than C-2 (General Commercial), Garden Industrial (I-1) or General Industrial (I-2) as defined and described in this chapter, nor shall any person operate or cause to be operated a sexually oriented business without a conditional use permit which meets all of the requirements set forth in Section 3.3, Conditional Use Permits, and this Section.
  - (2) No person shall operate or cause to be operated a sexually oriented business within 500 feet of:
    - a. A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;
    - b. A public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private 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 facilities used primarily for another purpose and only incidentally as a school;
    - c. A boundary of a residential zoning district as defined in this chapter;

- d. A public park or recreational area 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, pedestrian/bicycle paths, wilderness areas, or other similar public land within the Town which is under the control, operation, or management of the Town park and recreation authorities;
  - e. The property line of a lot devoted to a residential use;
  - f. An entertainment business which is oriented primarily towards children or family entertainment; or
  - g. A licensed premise, licensed pursuant to the alcoholic beverage control regulations of the State.
- (3) No person shall cause or permit the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within 200 feet of another sexually oriented business.
- (4) No person shall cause or permit the operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.
- (5) For purposes of the 500-foot restriction referenced in paragraph (2) above, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in subsection (d)(2) above. Presence of a Town, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section.
- (6) For purposes of the 200-foot requirement referenced in paragraph (3) above, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each business is located.
- (e) *Additional Regulations for Adult Motels.*
- (1) Evidence that a sleeping room in a hotel, motel, or a similar commercial establishment has been rented and vacated two or more times in a period of time that is less than ten hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this chapter.
- (2) It shall be unlawful for any person, if as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented license, he or she rents or sub-rents a sleeping room to a person and, within ten hours from the time the room is rented, he or she rents or sub-rents the same sleeping room again.
- (3) For purposes of subsection (e)(2) above, the terms "rent" or "sub-rent" mean the act of permitting a room to be occupied for any form of consideration.

(f) *Regulations Pertaining to Exhibition of Sexually Explicit Films, Videos or Live Entertainment in Viewing Rooms.*

- (1) 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 150 square feet of floor space, a film, video cassette, live entertainment, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:
  - a. Upon application for a conditional use permit for a sexually oriented business, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. 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 of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The Town may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
  - b. The application shall be sworn to be true and correct by the applicant.
  - c. No alteration in the configuration or location of a manager's station may be made without the prior approval of the Town.
  - d. It is the duty of the licensee of the premises to ensure that at least one licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
  - e. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager'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 manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
  - f. It shall be the duty of the licensee to ensure that the view area specified in subsection (e) remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and, at all times, 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 subsection (a) of this subsection (f)(1).

- g. No viewing room may be occupied by more than one person at any time.
- h. The 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 foot-candles as measured at the floor level.
- i. It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
- j. No licensee shall allow openings of any kind to exist between viewing rooms or booths.
- k. No person shall make or attempt to make an opening of any kind between viewing booths or rooms.
- l. The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.
- m. The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
- n. The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within 48 inches of the floor.

(g) *Additional Regulations for Escort Agencies.*

- (1) An escort agency shall not employ any person under the age of 18 years.
- (2) No person shall act as an escort or agree to act as an escort for any person under the age of 18 years.

(h) *Additional Regulations for Nude Model Studios.*

- (1) A nude model studio shall not employ any person under the age of 18 years.
- (2) No person under the age of 18 years shall appear semi-nude or in a state of nudity in or on the premises of a nude model studio. No employee shall allow a person under the age of 18 years to appear semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under 18 years was in a restroom not open to public view or visible to any other person.
- (3) No person shall appear in a state of nudity, or knowingly allow another person to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right-of-way.
- (4) A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

(i) *Additional Regulations Concerning Public Nudity.*

- (1) No person shall knowingly or intentionally, in a sexually oriented business, appear in a state of nudity or depict specified sexual activities.

- (2) No person shall knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least ten feet from any patron or customer and on a stage at least two feet from the floor.
- (3) No employee shall, while in a semi-nude condition in a sexually oriented business, solicit any pay or gratuity from any patron or customer nor shall any patron or customer pay or give any gratuity to any employee, while said employee is in a semi-nude condition in a sexually oriented business.
- (4) No employee of a sexually oriented business shall, while in a semi-nude condition, touch a customer or the clothing of a customer.
- (j) *Prohibition Against Children.* No person shall knowingly allow a person under the age of 18 years on the premises of a sexually oriented business.
- (k) *Prohibition Against Serving Alcohol.* No alcoholic beverages shall be sold, served, or consumed on the premises of any sexually oriented business.
- (l) *Hours of Operation.* No sexually oriented business, except for an adult motel, may remain open at any time between the hours of 12:00 a.m. and 8:00 a.m.
- (m) *Exemptions.*
  - (1) It is a defense to prosecution under this Section that a person appearing in a state of nudity did so in a modeling class operated:
    - a. By a proprietary school, licensed by the State of Arizona; 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 days in advance of the class; and
      3. Where no more than one nude model is on the premises at any one time.
- (n) *Injunction.* A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of any part of this Section is subject to a suit for injunction and shall be guilty of a class 1 misdemeanor, a criminal violation punishable as provided in Section 1-8 of the Superior Town Code. Each day a sexually oriented business operates in violation of any part of this section is a separate offense or violation.

**SECTION 2.** The above established fees shall be collected effective May 1, 2024.

**SECTION 3.** Any provision of the Town of Superior Municipal Code, all Ordinances and/or parts of Ordinances in conflict with the provisions of this Ordinance or any part thereof adopted herein by this reference or here by repeal.

**SECTION 4.** If any section, subsection, sentence, clause, phrase or portions of this Ordinance or any part of the code adopted here in by this reference, is for any reason held to be invalid or unconstitutional the decision of any Court or competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

**PASSED AND ADOPTED THIS 9<sup>th</sup> DAY OF MAY 2024.**

**TOWN OF SUPERIOR:**

**FORM APPROVED BY**

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Mila Besich, Mayor

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Steve Cooper, Town Attorney

**CERTIFICATION**

I, Ruby Cervantes, hereby certify that the foregoing Ordinance No. 2024-186 was passed and adopted by the Town Council of the Town of Superior at a regularly scheduled public hearing on the 9<sup>th</sup> day of May 2024, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTENTIONS:**

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Ruby Cervantes, Town Clerk

