

**Sec. 732-215. Special exception provisions.**

**Statement of purpose:** Because of the exceptional land use characteristics and locational impacts of certain commercial uses which, if inappropriately located within commercial zoning districts, may have a deleterious effect upon other land uses and values within the county, it is recognized that the further classification, subclassification or subdivision and regulation of such uses is essential in order to preserve property values, as well as to promote the public health, safety, comfort, morals, convenience and general welfare within Marion County.

**(a) Uses permitted by special exception.** The following uses shall be permitted in the applicable commercial zoning districts only upon the grant of a special exception by the Board of Zoning Appeals:

- (1) Amusement arcade; or similar amusement, recreation or entertainment center or facility (except any such arcade, center or facility having four (4) or less amusement machines).
- (2) Massage parlor, service, or facility (except any therapeutic, medical or surgical services or facilities or regularly licensed hospital or dispensary, or the professional services of a physician, osteopath or chiropractor duly registered with and licensed by the state).
- (3) Methadone clinic or treatment facility.
- (4) Tattoo parlor.

**(b) Special regulations for uses permitted by special exception.** In whatever commercial zoning district within Marion County the uses designated in section 732-215(a) are included as permitted uses, such uses shall be subject to the following special regulations. These special regulations shall be in addition to the applicable district's standards and requirements and, in case of any conflict, the more stringent regulations shall control:

- (1) No use of any land, structure, or premises, as designated in section 732-215(a), shall be permitted except upon the grant of a special exception by the Board of Zoning Appeals to permit such a use.
- (2) No use of any land, structure or premises, as designated in section 732-215(a), shall be permitted if any portion of the perimeter of the subject lot is located within five hundred (500) feet of the following zoning districts:
  - a. Dwelling districts.
  - b. Historic preservation districts.
  - c. Market square district.
  - d. Park districts.
  - e. University quarter districts.
  - f. SU-1 District (church).
  - g. SU-2 District (school).
  - h. SU-37 District (library).
  - i. SU-38 District (community center).

In addition to the zoning districts noted above, this regulation shall also apply to any portion of the perimeter of a lot containing an elementary school, junior high school or high school, as defined in IC 20-10.1-1, regardless of zoning classification. If such use is a part of or included within an integrated center, the perimeter of the portion thereof or leased spaces occupied by such use shall be deemed the perimeter of the lot for purposes of the above distance computation and as required for section 732-215(c)(2).

**(c) Grant of special exception.** The Board of Zoning Appeals is hereby authorized to grant special exceptions to permit uses designated in section 732-215(a), subject to the following requirements:

- (1) A petition for special exception to permit any use designated in section 732-215(a) shall be filed with the Board of Zoning Appeals in accordance with the Board's rules of procedure. In addition to the site plan and area map filing requirements of the Board's rules of procedure or special exception petition forms, the petitioner shall file with the special exception petition:
  - a. An area map, drawn to scale, indicating the existing zoning classification of all land within five hundred (500) feet of the perimeter of the subject lot and any elementary school, junior high school, or high school, as defined in IC 20-10.1-1, located within such distance.
  - b. Proposed detailed findings of fact in support of the four (4) determinations by the Board (hereinafter specified in section 732-215(c)(2) of this chapter), required for the grant of a special exception.

The petition, or evidence presented to the Board at the public hearing, may include any additional pertinent exhibits, such as photographs depicting the subject site or other land uses and properties in the subject area; neighborhood or community economic, social, land use or environmental impact statements; or other relevant evidence.

- (2) **Findings of fact:** A special exception shall be granted following public hearing of the petition and upon the Board's determination that:
  - a. The proposed use will not be injurious to the public health, safety, comfort, morals, convenience or general welfare;
  - b. The perimeter of any portion of the subject lot is not located within five hundred (500) feet of the following districts:
    1. Dwelling districts.
    2. Historic preservation districts.
    3. Market square district.
    4. Park districts.
    5. University quarter districts.
    6. SU-1 District (church).
    7. SU-2 District (school).
    8. SU-37 District (library).
    9. SU-38 District (community center).

In addition to the zoning districts noted above, this finding shall also apply to any portion of the perimeter of a lot containing an elementary school, junior high school or high school, as defined in IC 20-10.1-1, regardless of zoning classification.

- c. The proposed use will not injure or adversely affect the adjacent area or property values therein; and
    - d. The proposed use will be consistent with the character of the district, land use authorized therein and the Comprehensive Plan for Marion County.
- (3) The grant of a special exception shall be subject to the following requirements:
  - a. The proposed use shall conform to all performance and development standards of the applicable zoning district.

b. The proposed use shall conform to all conditions attached to the grant of the special exception by the Board. All such conditions shall be imposed by the Board to ensure compliance with standards a., c., and d. of section 732-215(c)(2) above. Such conditions may include any reasonable site, development, operational and performance standards, requirements and restrictions. The grant of the special exception may be for a limited period of time, as specified by the Board.

**Sec. 732-216. Special regulations, adult entertainment business.**

**Statement of purpose.** It is the purpose of this chapter to regulate adult entertainment businesses and related activities, to promote the health, safety, morals, and general welfare of the citizens of Marion County, and to establish reasonable and uniform provisions to prevent the deleterious effects of adult entertainment businesses within Marion County. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this chapter to restrict or deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Further, it is not the intent nor effect of this chapter to condone or legitimize the distribution of obscene materials. It is not the intent nor effect of this chapter to limit or restrict the lawful activities permitted under Indiana Code 7.1.

**Findings.** Based on evidence concerning the adverse secondary effects of adult entertainment businesses on the community presented in hearing(s) and in reports made available to the City-County Council, and on findings incorporated in the cases of *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), *Arcara v. Cloud Books, Inc.*, 478 U.S.697 (1986), *California v. LaRue*, 409 U.S.109 (1972), *Iacobucci v. City of Newport, KY*, 479 U.S.92 (1986), *United States v. O'Brien*, 391 U.S.367 (1968), *City of Erie v. Pap's A.M.*, 120 S.Ct. 1382 (2000), *City of Los Angeles v. Alameda Books, Inc.*, 122 S.Ct. 1728 (2002), *Broadway Books, Inc. v. Roberts*, 642 F. Supp. 486 (E.D. Tenn. 1986), *DLS, Inc. v. City of Chattanooga*, 107F.3d403 (6th Cir. 1997), *Pleasureland Museum, Inc. v. Beutter*, 2002 WL 818791 (7th Cir. 2002), *Kev, Inc. v. Kitsap County*, 793F.2d1053 (9th Cir. 1986), *Hang On, Inc. v. City of Arlington*, 65F.2d1248 (5th Cir. 1995), *South Florida Free Beaches, Inc. v. City of Miami*, 734F.2d608 (11th Cir. 1984), and *Mitchell et al v. Commission on Adult Entertainment Establishments of the State of Delaware et al*, 10F.3d123 (3rd Cir. 1993), *Ellwest Stereo Theatre, Inc. v. Boner*, 718 F. Supp. 1553 (M.D. Tenn. 1989), *City of Lincoln Nebraska v. ABC Books, Inc.*, 470 N.W. 2d 760 (Neb. 1991), *Berg v. Health & Hosp. Corp. of Marion County*, 865 F.2d 797 (7th Cir. 1989), *Shultz v. Cumberland*, 228 F.3d 831 (7th Cir. 2000), as well as studies conducted in communities including, but not limited to Indianapolis, Indiana; Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; findings reported in the Final Report of the Attorney General's Commission on Pornography (1986), the Report of the Attorney General's Working Group On the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota); and statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, the city-county council finds:

- (1) Adult entertainment businesses lend themselves to ancillary unlawful and unhealthy activities that are presently insufficiently controlled by the operators of the establishments.
- (2) Crime statistics show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods where adult entertainment businesses are located.
- (3) Sexual acts, including masturbation, oral sex and anal sex, occur at adult entertainment businesses, especially those which provide booths or cubicles for viewing films, videos, or live sex shows.
- (4) Acts of prostitution commonly occur at adult entertainment businesses.
- (5) Persons frequent certain adult theaters and other adult entertainment businesses for the purpose of engaging in sex within the premises.
- (6) At least fifty (50) communicable diseases may be spread by activities that occur in adult entertainment businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, salmonella infections and shigella infections.

- (7) Prostitution, sexual assaults and other criminal activity occur at adult entertainment businesses.
- (8) Prostitution is connected to the spread of sexually transmitted diseases.
- (9) Adult entertainment businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.
- (10) The general welfare, health, morals and safety of the citizens of the city will be promoted by the enactment of this chapter.

**(a) Prohibitions.** The establishment, enlargement, reconstruction, resumption or structural alteration of any adult entertainment business shall be prohibited if such business is within five hundred (500) feet of another such business or within five hundred (500) feet of any existing church, church zoning district, public, private or parochial school for kindergarten through twelfth grade, school zoning district, park, park zoning district, locally designated historic preservation area established by, and under the jurisdiction of, the Indianapolis Historic Preservation Commission, day care center, day care home or any existing dwelling zoning district within Marion County, Indiana.

Provided further, that no adult entertainment business shall be established, enlarged, reconstructed, resumed or structurally altered unless the site or proposed site is located in a C-4 (Community-Regional Commercial) Zoning District, C-5 (General Commercial) Zoning District, C-6 (Thoroughfare Service) Zoning District, C-7 (High Intensity Commercial) Zoning District or C-ID (Commercial-Industrial) Zoning District.

Provided further, that no adult entertainment business shall be established, enlarged, reconstructed, resumed or structurally altered in a C-4 (Community-Regional Commercial) Zoning District unless the site or proposed site is located within an integrated center.

**(b) Measurement of distances.** The distance between one (1) adult entertainment business and another adult entertainment business shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior structural wall of each such business. The distance between an adult entertainment business and any church, church zoning district, public, private or parochial school for kindergarten through twelfth grade, school zoning district, park, park zoning district, locally designated historic preservation area established by, and under the jurisdiction of, the Indianapolis Historic Preservation Commission, day care center, day care home or dwelling zoning district shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior structural wall of the adult entertainment business to the nearest property line of the church, church zoning district, public, private or parochial school for kindergarten through twelfth grade, school zoning district, park, park zoning district, locally designated historic preservation area established by, and under the jurisdiction of, the Indianapolis Historic Preservation Commission, day care center, day care home or dwelling zoning district. If an adult entertainment business is part of or included within an integrated center, only the portion of such center or leased space occupied by such adult entertainment business shall be included in determining the closest exterior structural wall of such establishment.

**(c) Exterior display.**

- (1) No adult entertainment establishment shall be conducted in any manner that permits the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas by display, decorations, sign, show window or other opening from any public view.
- (2) Number of signs. Not more than one (1) business wall sign shall be permitted for an adult entertainment business and such sign shall be permitted only on the front facade. In addition to the one (1) permitted business wall sign, an adult entertainment business not located within an integrated center shall be permitted not more than one (1) pole or ground sign structure if it is an entity of commercial development held in either private ownership

or long-term lease, and which meets all of the requirements of the zoning district in which it is located. Such requirements shall include direct access to a public street from that property and a full amount of required parking on the site with the use. All other sign structures shall be prohibited.

- (3) Sign surface area. The sign surface areas of a business wall sign for an adult entertainment business shall not exceed an amount equal to five (5) percent of the front building facade of the first floor elevation (first ten (10) feet) of the premises occupied by the adult entertainment business, or one hundred (100) square feet, whichever is the lesser. The maximum sign surface area of a ground or pole sign structure, where permitted, shall not exceed one (1) square foot for each lineal foot of frontage of the lot, or thirty-six (36) square feet, whichever is the lesser.
- (4) Lighting. Signs and sign structures may be illuminated, provided, however, such illumination shall not be by way of exposed neon, exterior lighting (e.g., spot or floodlights), or any flashing or animated lights (either interior to the sign, on the exterior of the sign, or as a border to the sign).

**(d) Parking.** Parking for an adult entertainment business shall be provided on the site with the use. There shall be at least one (1) parking space for each two hundred eighty-five (285) square feet of floor area or one (1) parking space for every two (2) seats of seating capacity, whichever standard results in the higher requirement.

**(e) Continuation of nonconforming use.** The lawful use of land or buildings existing at the times of the adoption of this chapter may continue although such use does not conform to the regulations specified herein, subject to the provisions set forth in subsection (a) above.

(G.O. 92, 2002, § 1)