

**AN ORDINANCE REGULATING ESTABLISHMENTS OR
COMMERCIAL ENTERPRISES OFFERING ADULT ENTERTAINMENT
AND ADULT ENTERTAINMENT ACTIVITIES**

ORDINANCE NO. 99-_____

Be it ordained by the Fiscal Court of the County of Calloway, Commonwealth of Kentucky:

WHEREAS, the Kentucky General Assembly in 1998 gave the fiscal courts specific statutory authority under HB 432 by amendment to KRS 67.083 to enact regulations of establishments or commercial enterprises offering adult entertainment and adult entertainment activities; and

WHEREAS, the Fiscal Court of the County of Calloway, Commonwealth of Kentucky finds that Chapter 67 of the Kentucky Revised Statutes and KRS 67.083 in particular authorizes fiscal courts to promulgate and enforce ordinances necessary to protect the life, health and property of the public, and to preserve the good government, order and security of counties and their inhabitants. Further, the Fiscal Court finds that the Kentucky Revised Statutes authorizes fiscal courts to establish civil and/or criminal fines, penalties and forfeitures which may be imposed for violations of their ordinances; and

WHEREAS, it is the intent of the Fiscal Court of the County of Calloway, Kentucky, to protect and preserve the life, health and property of the public, and to preserve the good government, order and security of Calloway County and its inhabitants by restricting, to the full extent allowed by the United States and Kentucky Constitutions, establishments or commercial enterprises offering adult entertainment and adult entertainment activities; and

WHEREAS, the City Council of Murray, has adopted Ordinances regulating adult entertainment and public nudity; and

WHEREAS, the Fiscal Court has conducted a public hearing regarding the issues relating to adult entertainment businesses and public nudity and as a result thereof does herein make findings of fact;

NOW, THEREFORE, the Fiscal Court of Calloway County finds the following facts, to wit:

FINDINGS OF FACT:

1. That there is convincing documented evidence that Adult Oriented Businesses, because of their very nature, have a deleterious effect on the surrounding community. Numerous studies, reports and findings concerning the harmful effects of adult entertainment uses on

surrounding land uses and neighborhoods have been reviewed, among which are: Phoenix, Arizona (1979), Tucson, Arizona (1990), Garden Grove, California (1991), Los Angeles, California (1977), Minneapolis, Minnesota (1980); Whittier, California (1978), Indianapolis, Indiana (1983, 1984), Cleveland, Ohio (1977), Oklahoma City, Oklahoma (1986), Amarillo, Texas (1977), Austin, Texas (1986), Beaumont, Texas (1982), Minnesota Attorney General's Report (1988); Evansville, Indiana; and the findings and ordinances of Murray, Kentucky, McCracken County, Kentucky, and Newport, Kentucky.

2. In other communities throughout this country, adult oriented businesses have historically resulted in the increased incidence of crime. Those communities have also had the need for additional law enforcement personnel.

3. Studies from other communities with adult oriented businesses have found that adult oriented businesses lend themselves to ancillary unlawful and unhealthy activities which may be uncontrolled by the operators of such businesses. The secondary effects of related crime have been as large if not larger problems for those communities than the other unhealthy effects of the businesses.

4. The increased crime and unhealthy conduct tend to be aggravated by the presence of adult oriented businesses, including but not limited to prostitution, pandering, exposing minors to harmful or obscene materials, child pornography and violent crimes against persons and property.

5. Several of the studies reviewed demonstrate that the presence of adult entertainment activities or businesses substantially and significantly increases the incidence of sex related crimes and crimes against women. For examples, a study in Indianapolis, Indiana, found that sex-related crimes were 77% higher, and a study in Phoenix, Arizona, found that sex offenses were 506% higher in areas with adult oriented businesses.

6. Studies in other communities have shown a substantial increase in violent crime and street crimes in areas with adult oriented businesses. Local experience in Henry County, Tennessee, and McCracken County, Kentucky, have likewise shown a significant increase in crime in areas with adult oriented businesses.

7. There is substantial evidence that in the event adult oriented businesses and public nudity are not regulated or prohibited and hereafter locate in this County the Calloway County Sheriff's Department will be in immediate need of significantly more personnel and will be in immediate need of significantly more budgetary funds for the protection of the public. The Calloway County Sheriff's Department is not currently fiscally or physically able to adequately protect the public or police adult oriented businesses under current budget constraints.

8. The non-regulation of adult entertainment within the County may encourage commercial entities, other entities and persons to advertise outside of the County and the

Commonwealth of Kentucky by billboard, radio, television, print and other media, the availability of adult entertainment activities within Calloway County. This will likely encourage the influx into the County of Persons seeking to observe and/or participate in such activities, to participate in the disorderly, harmful, and illegal conduct that is associated therewith, and thereby increase injuries and damages to the citizens of this County who will be victims of such increased disorderly, harmful and unlawful conduct.

9. The Fiscal Court finds that competitive commercial advertising and/or exploitation of adult entertainment activities and public nudity encourages escalation of lewd conduct within competing commercial establishments, exploiting such conduct thereby increases the adverse effects upon public order and the public health.

10. That persons often frequent adult oriented businesses for the purpose of engaging in Specified Sexual Activities and the viewing of Specified Anatomical Areas, both as hereafter defined, within the premises of such Adult Oriented Businesses. That sexual acts, including, but not limited to masturbation, oral sex and anal sex, occur at Adult Oriented Businesses, especially those which provide private or semi-private booths, rooms and/or cubicles for viewing films, videos, or live sex shows.

11. At least one study has shown that most of the customers for adult oriented businesses are likely to be non-residents of the local neighborhood or this County. Other studies conducted in other cities and states throughout the country have shown a decline in neighborhoods and neighborhood oriented facilities when exposed to Adult Oriented Businesses. The Fiscal Court finds in light of the other evidence that the influx of persons seeking such activities would adversely affect a residential neighborhood through the secondary effects otherwise described herein.

12. Sanitary conditions in some Adult Oriented Businesses are unhealthy, in part, because the activities conducted there are unhealthy and, in part, because of the unregulated nature of the activities and the failure of the owners and operators of the facilities to self-regulate those activities and maintain those facilities. Studies and reports have indicated that semen is found on the floors of and in the areas of some Adult Oriented Businesses.

13. That at least fifty (50) communicable diseases may be spread by activities which may occur in Adult Oriented Businesses, including, but not limited to syphilis, gonorrhea, human immunodeficiency virus infection (HIV), acquired immune deficiency syndrome (AIDS), genital herpes, human papilloma virus, hepatitis B, and chlamydia. According to the best scientific evidence, AIDS, HIV, human papilloma virus, syphilis, chlamydia and gonorrhea are principally transmitted by sexual acts.

14. That, since 1981, and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by HIV in the United States. Through December 31, 1996, there have been 581,429 reported cases of AIDS in the United States. The Center for

Disease Control and Prevention estimates that there are between 650,000 to 900,000 Americans currently living with AIDS. As of January 1, 1998, there have been 2,583 reported cases of AIDS in the Commonwealth of Kentucky.

15. That concern over sexually transmitted diseases, including AIDS, is a legitimate health concern which the Fiscal Court determines demands reasonable regulations of adult oriented businesses in order to protect the health and well-being of the citizens.

16. The Fiscal Court finds that there is a need to protect the public from the secondary effects and impacts of public nudity and its associated adult entertainment activities. The Fiscal Court finds that sexually transmitted diseases is a legitimate health concern. The Fiscal Court further finds that there is convincing documented evidence that adult oriented businesses, because of their very nature, have a deleterious effect on both existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime, the down-grading of property values, and a detrimental effect on the character and safety of surrounding neighborhoods.

17. Studies from other communities have found a significantly greater secondary impact on residential areas from adult oriented businesses. For example, one study found a 56% greater crime rate increase in residential areas as opposed to commercial areas. Several studies concluded that adult oriented businesses should not be located in residential areas and should be located a significant distance from residential areas because of the secondary effects of such businesses.

18. The Fiscal Court finds that property values and in particular, housing values, are significantly lower in areas with adult oriented businesses. The Fiscal Court further finds that the presence of adult oriented businesses, particularly in residential areas, will have substantial detrimental effects on communities and family oriented neighborhoods.

19. It is hereby found by the Fiscal Court that the acts prohibited in this Ordinance encourage and or create the potential for the conduct of prostitution, attempted rape, rape, and assault and battery, that actual and simulated nudity and/or sexual conduct begets and has the potential for resulting in undesirable and unlawful behavior; that sexual, lewd, lascivious and salacious conduct may result in violation of law and creates dangers to the health, safety, welfare and morals of the public and those who engage in such conduct.

20. The local law enforcement have substantial cause to believe that with the adoption of the ordinances by the City of Murray concerning adult oriented businesses and public nudity, such activities may become established outside the City, but within the County, which would significantly affect the community of the City and County as a whole.

21. The Fiscal Court desires to protect and preserve the unique character of Calloway County as a family oriented location for families, businesses and tourists.

22. That the Fiscal Court has considered the decisions of the United States Supreme Court, Kentucky Supreme Court and other courts regarding local regulation of Adult Oriented Businesses.

23. The Fiscal Court finds and determines that individuals seeking adult entertainment or desiring to operate adult oriented businesses have adequate opportunities for and access to such activities and businesses in reasonable proximity to the unincorporated sections of Calloway County, in that adult entertainment or adult oriented businesses are permitted to operate in the following places in reasonable proximity to Calloway County, to wit:

a. Henry County, Tennessee, which is immediately adjacent with the southern boundary of Calloway County, Kentucky, currently has and permits adult oriented businesses. The historical culture of Calloway County includes citizens going to Henry County, Tennessee, for the purchase or consumption of alcoholic beverages and the continuation of those habits for other adult activities would not be an undue or unreasonable burden on the citizens desiring access to said activities nor an undue inconvenience to those seeking to provide such activities as a commercial enterprise.

b. The City of Murray, Kentucky, which is the County Seat of Calloway County, and is the primary commercial and entertainment center of Calloway County, currently permits the licensing and zoning of adult entertainment businesses within the city limits of the City of Murray. Therefore, there are opportunities within the City of Murray, which is in Calloway County, to open or operate commercial enterprises for adult oriented businesses. The City of Murray is the only true commercial area in this County. As a result, the unique character of this community is that the areas outside the city limits are primarily residential areas.

c. The City of Paducah, Kentucky, a second class city, is less than thirty-five miles from Calloway County, and McCracken County, Kentucky, is approximately twenty miles from Calloway County. Both the City of Paducah and McCracken County currently permit the licensing of adult entertainment businesses. The citizens of Calloway County historically have used and enjoyed on a regular and frequent basis both the commercial and entertainment opportunities that are provided in the City of Paducah and McCracken County. The culture of Western Kentucky has been that the City of Paducah and McCracken County are the commercial and entertainment center of the region. The Fiscal Court further finds that the continuation of those habits for other activities would not be an undue or unreasonable burden on the citizens desiring access to said activities nor an undue inconvenience to those seeking to provide such activities as a commercial enterprise.

d. There are no ordinances at the present time that prohibit adult oriented businesses in the other counties adjacent to Calloway County, to wit: Graves County, Marshall County and Trigg County. Each of these counties are in reasonable proximity and easily accessible to Calloway County.

e. Studies from other communities have shown that adult oriented activities should not be located in residential areas because of the severe secondary effects upon residential neighborhoods in particular. Therefore, the Fiscal Court finds as a fact that permitting adult entertainment activities in Calloway County, outside the City of Murray, would have a detrimental impact upon the rural and residential character of this community. The Fiscal Court further finds that it would not unreasonably restrict those persons seeking or desiring to provide adult entertainment activities to provide those activities in the aforementioned locations immediately adjacent to or within Calloway County.

23. The Fiscal Court finds that the following types of businesses as defined in this ordinance are not speech related activities and are not entitled to special protections under the First Amendment, to wit: "Adult cabaret", "Adult Motel", "Escort agency", "Escort", "Adult Personal Service Business", "Nude Model Studio", "Sexual Encounter Center", and "Adult Arcade".

24. The Fiscal Court finds and determines that the prohibitions contained herein are the most reasonable and minimal restrictions required so as to protect the public from the secondary effects described herein and to regulate conduct which is adverse to public order, health, morality and decency within Calloway County. In the alternative, the use of 1000 yards by the General Assembly as a reasonable proximity from schools for the trafficking of drugs provides the Fiscal Court with appropriate guidance of a reasonable area and space restriction if such activities are required to be permitted by a Court of competent jurisdiction. The Fiscal Court further finds that the residential and rural character of the County, outside the city limits, requires distances of at least 1000 yards to achieve the intent and purposes of this ordinance. As a result, in the event the restrictions provided herein are not upheld by a Court of competent jurisdiction, the alternative restrictions provided herein are the most reasonable and minimal alternative restrictions to protect against the secondary effects on residential areas, churches, schools and to further preserve the character, public order, health, morality and decency within Calloway County.

25. Studies have further shown that adult entertainment activities should be separated from each other to reduce the harmful secondary effects of such businesses.

26. The Fiscal Court is not hereby prohibiting nudity in truly private places or prohibiting nudity which is protected by the United States and Kentucky Constitutions; therefore, the Fiscal Court further finds and determines that the express exemptions contained in this Ordinance provides adequate protection to Persons who, without such express exemption, might otherwise be prevented or discouraged by the Ordinance from exercising constitutionally protected rights.

NOW, THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF THE COUNTY OF CALLOWAY, COMMONWEALTH OF KENTUCKY:

SECTION 1. INTENT AND PURPOSES:

A. It is the intent of this Ordinance to promote the health, safety, and general welfare of the citizens of the County, and further to protect the life, health and property of the public, and to preserve the good government, order and security of Calloway County and its inhabitants by regulating establishments or commercial enterprises offering adult entertainment and adult entertainment activities

B. It is the Fiscal Court's further intention to accomplish those intents and purposes expressed herein in the Findings of Fact and as may be otherwise expressed in other provisions of this Ordinance, each of which are incorporated by reference.

SECTION 2. DEFINITIONS:

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

A. "Adult Oriented Businesses" or "Adult Oriented Business" are unless the context provides otherwise means those business(es) defined as:

(1) "Adult Bookstore," "Adult Novelty Store", or "Adult Video Store" means a commercial enterprise which has as a significant or substantial portion of its stock-in-trade or derives a significant or substantial portion of its individual sales or devotes a significant or substantial portion of its interior business or advertising to the sale or rental, for any form of consideration, of any one or more of the following:

(a) Books, magazines, newspapers, periodicals or other printed matter, or drawings, photographs, films, motion pictures, video cassettes, slides, compact discs, laser discs, computer driven video productions, or other visual representations which are characterized by the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas" as defined herein;

(b) Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse.

For the purposes of this definition, "significant or substantial portion" shall mean at least twenty-five percent (25%) of the business sales, interior business premises or advertising is devoted to an Adult Oriented Business purpose.

- (2) "Adult cabaret" means a nightclub, bar, restaurant, "bottle club," adult dancing business, or similar commercial enterprise, whether or not alcoholic beverages are served, which regularly features:
- (a) Persons who appear nude, semi-nude, or in a state of nudity; or
 - (b) Live performances which are characterized by the exposure of "Specified Anatomical Areas" and/or the exhibition of "Specified Sexual Activities," or
 - (c) Photographs, films, motion pictures, video cassettes, slides, compact discs, laser discs, computer driven video productions, or other visual representations which are characterized by the depiction or description of "Specified Sexual Activities" and/or "Specified Anatomical Areas" as defined herein; or
 - (d) "Adult dancing." "Adult Dancing" shall mean and include, but not be limited to the following: any dancing which exposes to view by patrons, spectators or persons on the premises at any time the "Specified Anatomical Areas" and/or consists of "Specified Sexual Activities."
- (3) "Adult Motel" means a motel, hotel or similar commercial enterprise which offers public accommodations, for any form of consideration, which provides patrons with closed-circuit television transmissions, photographs, films, motion pictures, video cassettes, slides, compact discs, laser discs, computer driven video productions, or other visual representations which are characterized by the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas" as defined herein, and which advertises the availability of this adult oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television.
- (4) "Adult movie theater" means a commercial enterprise where photographs, films, motion pictures, video cassettes, slides, compact discs, laser discs, computer driven video productions, or other visual representations which are characterized by the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas" as defined herein are shown for any form of consideration.
- (5) "Adult theater" means a theater, concert hall, auditorium, or similar commercial enterprise which, for any form of consideration, regularly features persons who appear in a state of nudity or live performances which are characterized by an emphasis on and/or exposure of "Specified Anatomical Areas" or by "Specified Sexual Activities."

- (6) "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, including but not limited to a out-call service in the form of nude or semi-nude dancing or exhibition.
- (7) "Escort" means a person who, for any form of consideration, agrees to offer to act as a companion, guide, or date for another person, who agrees or offers to privately model lingerie or to perform a striptease for another person or group of persons and who appears in a state of nudity, displays "Specified Anatomical Areas", or engages in "Specified Sexual Activities." This definition shall be included in the definition of "Employee," as if fully set forth therein.
- (8) "Adult Personal Service Business" means any commercial enterprise where, either on or off the business premises, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatments, hair care, manicures, pedicures, exotic rubs, and/or any other treatment manipulation of the human body, occurs as a part of or in connection with "Specified Sexual Activities," or where any person providing such treatment, manipulation, or service related thereto, exposes any of his or her "Specified Anatomical Areas" for another person, who may or may not appear in a state of nudity or display "Specified Anatomical Areas." The definition of Adult Personal Service Business or Adult Oriented Business shall not include the practice of any treatment manipulation in any licensed hospital, nor by a licensed hospital, nor by a licensed physician, surgeon, chiropractor or osteopath, nor by any nurse or technician working under the supervision of a licensed physician, surgeon, chiropractor or osteopath, nor by trainers for any amateur, semiprofessional or professional athlete or athletic team or school athletic program.
- (9) "Nude Model Studio" means any place where a person, who regularly appears in a state of nudity or displays "Specified Anatomical Areas" is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. This definition does not include a modeling class offered by a college, junior college, or university supported in whole or in part by taxation; by a private college or university which maintains and operates educational programs in which credits are transferrable to a college, junior college, or university supported entirely or partly by taxation; or in a structure: (a) 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 where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class.
- (10) "Sexual Encounter Center" means a business or commercial enterprise, that as one of its primary business purposes, offers for any form of consideration, a place

where two or more persons may congregate, associate, or consort for the purpose of "Specified Sexual Activities", or the exposure of "Specified Anatomical Areas", or activities when one or more of the persons is in a state of nudity or semi-nudity. The definition of Sexual Encounter Center shall not include a business where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

- (11) "Adult Arcade" shall mean any place to which the public is permitted or invited wherein coin-operated, slug-operated, 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, where the images so displayed are distinguished or characterized by the depicting or describing of "Specified Sexual Activities" or "Specified Anatomical Areas".

A business may have other principal business purposes that do not involve any of the aforementioned "Adult Oriented Businesses" and still be categorized as an "Adult Oriented Business." Such other business purposes will not serve to exempt such businesses from being categorized as an "Adult Oriented Business" so long as one of its principal business purposes, in form or substance, is an "Adult Oriented Business" as defined by this ordinance.

B. "Nonspeech Related Adult Oriented Business" are defined (except for those activities exempt under this Ordinance) as the following businesses or activities as otherwise defined in this Ordinance, to wit: "Adult cabaret", "Adult Motel", "Escort agency", "Escort", "Adult Personal Service Business", "Nude Model Studio", "Sexual Encounter Center", and "Adult Arcade".

C. "Employee" means a person who works, performs, entertains or performs any services in and/or for an Adult Oriented Business, regardless of whether or not said person is paid a salary, wage or other compensation by the operator of said business or is full-time, part-time, an independent contractor, or on a contract or sub-contract basis. This definition includes any person who provides services on behalf of any Adult Oriented Business to the patrons of such business, whether or not the individual receives any remuneration, gratuity or tips of any kind, or pays the owner/operator for the right to work, perform or entertain in the Adult Oriented Business. This definition shall also include the definition of "Escort," as if fully set forth herein. Unless the Person is under 18 years of age, this definition shall not include a Person who works in and/or for an Adult Oriented Business and does not, as a part of his/her job, have contact or interact with patrons of the Adult Oriented Business (Examples: VCR repair person, janitor).

D. "Establishment" means and includes any of the following:

- (1) The opening or commencement of any Adult Oriented Business as a new

business;

- (2) The conversion of an existing business, whether or not a Adult Oriented Business, to any of the Adult Oriented Businesses defined in this Ordinance;
- (3) The addition of any of the Adult Oriented Businesses defined in this Ordinance to any other existing Adult Oriented Business; or
- (4) The relocation of any such Adult Oriented Business.

E. "Nudity" or "State of Nudity" means:

- (1) The appearance of the human bare buttocks, anus, male genitals, female genitals, or the areola or nipple of the female breast; or
- (2) A state of dress which fails to opaquely and fully cover human buttocks, anus, male or female genitals or any portion of the human female breast below a horizontal line across the top of the areola at its highest point. 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, shirt, leotard, bathing suit or other wearing apparel provided that the areola and/or nipple is not exposed in whole or in part. This definition shall include the cleavage of the human buttocks, but shall not include any portion of the cleavage of the human buttocks exhibited by a bathing suit, thong, g-string or other wearing apparel.

F. "Person" means an individual, proprietorship, partnership, corporation, association or other legal entity recognized by the Kentucky Revised Statutes or any other state.

G. "Specified Anatomical Areas" as used in this Ordinance means and includes any of the following:

- (1) Less than completely and opaquely covered human genitals, buttocks, the anus, the human female breast below a horizontal line across the top of the areola at its highest point. 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, shirt, leotard, bathing suit or other wearing apparel provided that the areola and/or nipple is not exposed in whole or in part. This definition shall include the cleavage of the human buttocks, but shall not include any portion of the cleavage of the human buttocks exhibited by a bathing suit, thong, g-string or other wearing apparel; or
- (2) Human male genitals in a clearly discernible turgid state, even if

completely and opaquely covered.

H. "Specified Sexual Activities" as used in this Ordinance means and includes any of the following:

- (1) The fondling or other intentional touching of human genitals, buttocks, anus, or female breasts; or
- (2) Sex acts, normal, deviant, or perverted, actual or simulated; including, but not limited to sexual intercourse, oral copulation, anilingus, cunnilingus, fellatio, flagellation, sadism or sadomasochism;
- (3) Erotic or sexual stimulation with objects or mechanical devices; or
- (4) Masturbation, actual or simulated; or
- (5) Human genitals in a state of sexual stimulation, arousal or tumescence; or
- (6) Bestiality; or
- (7) Excretory functions as part of or in connection with any of the activities set forth in subdivisions (1) through (6) of this subsection.

I. "Specified Criminal Acts" are sexual crimes against children, sexual abuse, rape, gross sexual imposition, sexual exploitation of a minor, prostitution, promoting prostitution, permitting prostitution and/or other crimes connected with Adult Oriented Businesses, including, but not limited to: distribution of obscenity or other material harmful to minors, pandering and prostitution. This includes any and all other substantially similar crimes recognized by the Kentucky Revised Statutes and/or Federal Law on the effective date of this Ordinance as well as those later enacted.

J. "City" shall mean the City of Murray, Kentucky.

K. "County" shall mean Calloway County, Kentucky.

L. "Public Place" as used herein means the same as "Public Place" as defined in Kentucky Revised Statute 525.010.

M. "Commercial purpose" as used in this Ordinance shall have its ordinary meaning and usage and shall include engaging in conduct or acts for profit, commercial gain, money, compensation or remuneration of any kind.

N. "Intentionally", "Knowingly" and "Recklessly" as used herein mean the same as those terms are defined in Kentucky Revised Statute 501.020.

SECTION 3. NONSPEECH RELATED ADULT ORIENTED BUSINESSES PROHIBITED:

It shall be unlawful for any Person to knowingly, intentionally, or recklessly:

(1) Operate an Establishment that engages or operates any "Nonspeech Related Adult Oriented Businesses" within Calloway County, Kentucky.

(2) To engage in any acts defined as "Nonspeech Related Adult Oriented Business" within Calloway County, Kentucky.

(3) To act as an Employer of a Person or Employee of any Establishment or to encourage, suffer or allow any Person for commercial purposes to engage in any acts defined as "Nonspeech Related Adult Oriented Business" within Calloway County, Kentucky.

SECTION 4. CERTAIN SPECIFIED ACTS PROHIBITED:

A. It shall be unlawful for any Person to knowingly, intentionally, or recklessly expose or exhibit for commercial purposes "Specified Anatomical Areas" within Calloway County, Kentucky.

B. It shall be unlawful for any Person to knowingly, intentionally, or recklessly expose, exhibit or engage in "Specified Sexual Activities" for commercial purposes within Calloway County, Kentucky.

C. It shall be unlawful for any Person to knowingly, intentionally, or recklessly expose, exhibit or engage in "Specified Sexual Activities" in a public place within Calloway County, Kentucky.

D. It shall be unlawful for any Person to knowingly, intentionally, or recklessly act as an Employer of a Person or Employee under the age of 18 years of age in any Adult Oriented Business.

E. It shall be unlawful for any Person to knowingly, intentionally, or recklessly act as an Employer of a Person or Employee or otherwise compensate a person under the age of 18 years of age to perform or engage in "Specified Sexual Activities" or expose "Specified Anatomical Areas" within Calloway County, Kentucky.

F. It shall be unlawful for any Person under the age of 18 years of age to be an Employee in any Adult Oriented Business, or to perform or engage in "Specified Sexual Activities" for commercial purposes or expose "Specified Anatomical Areas" for commercial purposes within Calloway County, Kentucky.

SECTION 5. OTHER ADULT ORIENTED BUSINESSES PROHIBITIONS:

A. It shall be unlawful for any Person to knowingly, intentionally, or recklessly:

(1) Operate an Establishment that engages or operates any Adult Oriented

Business within Calloway County, Kentucky.

(2) To engage in any acts defined as Adult Oriented Business within Calloway County, Kentucky.

(3) To act as an Employer of a Person or Employee of any Establishment or to encourage, suffer or allow any Person for commercial purposes to engage in any acts defined as Adult Oriented Business within Calloway County, Kentucky.

B. In the event a court of competent jurisdiction renders a final judgment that any provision of this Ordinance is unconstitutional or unenforceable, then in that event, the following alternative provisions shall become immediately applicable in lieu of that portion that is held unconstitutional.

C. It shall be unlawful for a Person to knowingly, intentionally, or recklessly operate or cause to be operated any Adult Oriented Business(es) in Calloway County, Kentucky, within 1000 yards of:

- (a.) a church or synagog;
- (b.) a public or private elementary or secondary school or educational institution;
- (c.) a public park;
- (d.) the property line of a lot devoted to residential use; or
- (e.) another Adult Oriented Business.

D. It shall be unlawful for a Person to knowingly, intentionally, or recklessly engage in any acts defined as Adult Oriented Business(es) in Calloway County, Kentucky, within 1000 yards of:

- (a.) a church or synagog;
- (b.) a public or private elementary or secondary school or educational institution;
- (c.) a public park;
- (d.) the property line of a lot devoted to residential use; or
- (e.) another Adult Oriented Business.

E. It shall be unlawful for any Person maintaining, owning, operating, or acting as an Employer of a Person or Employee of any Establishment to encourage, suffer or allow any Person to engage in any acts defined as Adult Oriented Business(es) in Calloway County, Kentucky, within 1000 yards of:

- (a.) a church or synagog;
- (b.) a public or private elementary or secondary school or educational institution;
- (c.) a public park;
- (d.) the property line of a lot devoted to residential use; or
- (e.) another Adult Oriented Business.

F. The alternative provisions of this Ordinance shall apply only to those portions of

the Ordinance that are found to be unconstitutional. For example, in the event Section 3 of this Ordinance is upheld by a court of competent jurisdiction, but other provisions of this Ordinance are found to be unconstitutional, it is the intent of the Fiscal Court that Section 3 be enforced as well as other provisions of this Ordinance that are upheld by a court of competent jurisdiction, and that the alternative provisions be applicable to the unconstitutional provisions.

SECTION 6. SEVERABILITY:

If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 7. EXEMPTIONS:

The provisions of this Ordinance shall not apply to the following:

A. To acts or omissions that occur within the regulatory and/or city limits of the City of Murray, Kentucky.

B. When a Person appears Nude in a Place Provided or Set Apart for Nudity, provided that:

- (1) such Person is Nude for the sole purpose of performing the legal function(s) that is customarily intended to be performed within such Place Provided or Set Apart for Nudity, and
- (2) such Person is not Nude for the purpose of obtaining money or other financial gain for such Person or for another Person or Entity, or

C. When the conduct of being Nude cannot legally be prohibited by this Ordinance because:

- (1) it constitutes a part of a bona fide live communication, demonstration or performance by a Person wherein such nudity is expressive conduct incidental to and necessary for the conveyance or communication of a genuine message or public expression and is not a mere guise or pretense utilized to exploit the conduct of being Nude for profit or commercial gain, and as such is protected by the United States or Kentucky Constitution or
- (2) it is otherwise protected by the United States or Kentucky Constitution.

D. Notwithstanding any other provision of this Ordinance, a mother may breast feed her baby or babies, in any location, public or private, where the mother is otherwise authorized to be, irrespective of whether the nipple and/or areola of the mother's breast is uncovered during or incidental to the breast feeding.

E. This Ordinance does not apply to a "Nudist Society," which is recognized and licensed by the Commonwealth of Kentucky in accordance with Chapter 232 of the Kentucky Revised Statutes.

SECTION 8. ENFORCEMENT AND PENALTIES:

Any person who violates any provision of this Ordinance shall be guilty of a Class B Misdemeanor, which, under the Kentucky Revised Statutes, is punishable by a term of imprisonment not to exceed 90 days and/or a fine not to exceed \$250.00. Each incident or separate occurrence of an act that violates this Ordinance shall be deemed a separate offense. Nothing contained in this Ordinance shall exclude or prohibit any other penalties or remedies provided by the Kentucky Revised Statutes.

SECTION 9. INJUNCTIVE RELIEF:

In addition to the procedures provided herein, the Calloway Fiscal Court may take any such lawful action to prevent or remedy any violation or non-compliance, including but not limited to an equitable action for injunctive relief or an action at law for damages. In such action, attorneys fees and costs of the Calloway Fiscal Court or the Calloway County Sheriff's Office shall be assessed against the Defendant(s).

SECTION 10. TERRITORY EMBRACED:

All territory within the legal boundaries of Calloway County, Kentucky, shall be embraced by the provisions of this Ordinance except for that territory that is regulated by the City of Murray, Kentucky.

SECTION 11. EFFECTIVE DATE:

This Ordinance shall become effective upon passage by the Fiscal Court of Calloway County and upon its publication or a summary thereof, in accordance with the requirements of the Kentucky Revised Statutes.

Approved by the Calloway County Fiscal Court on First Reading:


LARRY ELKINS

06-15-99
DATE

CALLOWAY COUNTY-JUDGE EXECUTIVE

Attest:

Ray Coursey Jr
RAY COURSEY, JR.
CALLOWAY COUNTY CLERK

6-15-99
DATE

Adopted by the Calloway County Fiscal Court on Second Reading:

Larry Elkins
LARRY ELKINS,
CALLOWAY COUNTY-JUDGE EXECUTIVE

7-20-99
DATE

Attest:

Ray Coursey Jr
RAY COURSEY, JR.
CALLOWAY COUNTY CLERK

7-26-99
DATE