

ORDINANCE NO 2009-14

AN ORDINANCE TO AMEND SECTION 918 EXCLUSIVE USE OVERLAY DISTRICT(EUD) WASTE FACILITIES AND SECTION 936 EXCLUSIVE USE OVERLAY DISTRICT (EUD) ADULT BUSINESSES IN THE HUNTINGTON COUNTY ZONING ORDINANCE.

WHEREAS, it is in the best interest of the Huntington County as a whole to amend the Huntington County Zoning Ordinance Section 918 Exclusive Use Overlay District (EUD) Waste Facilities and Section 936 Exclusive Use Overlay District (EUD) Adult Businesses to better clarify permitted uses and restrictions within the district.

WHEREAS, the Huntington County Plan Commission considered Docket PC-09-004 , a petition to amend the text of the Zoning Ordinance. A record of the petition and Plan Commission action recommending approval of the text amendment is attached hereto and incorporated by reference as "Exhibit A".

NOW, THEREFORE BE IT ORDAINED, by the County Commissioners for the County of Huntington, Indiana, that the Zoning Ordinance for Huntington County, be, and is hereby, amended by executing the following **attached** changes:

SECTION 918: EXCLUSIVE USE OVERLAY DISTRICT (EUD) WASTE FACILITIES

- A. The Exclusive Use Overlay District is intended to be a district established for uses that do not readily permit classification in the agricultural, residential, commercial, or industrial districts. The development standards of other districts do not adequately address the specific and unusual characteristics of certain uses. However, such uses may contribute to the livability or economic health of the County or are of such character that their specific control is necessary.
- B. The Exclusive Use District is an overlay district. The existing zoning classification of the lot will remain with the lot, and all Permitted Uses and Special Exceptions for the existing classification will be allowed after a EUD classification is obtained.
- C. The permitted principal uses are:
 - 1. Sanitary landfill
 - 2. Recycling facility
 - 3. Incinerator
 - 4. Salvage yard
 - ~~5. Adult entertainment establishment~~
- D. The following minimum standards and requirements shall apply:
 - 1. Sanitary Landfill
 - a. No building shall be located within one hundred (100) feet of any lot line.
 - b. No portion of the landfill operation shall be located within one hundred fifty (150) feet of any lot line. Except for any building and component of use associated with the landfill, the 150-foot buffer shall be landscaped.
 - c. Minimum separation from a dwelling unit - Three hundred (300) feet.
 - d. No portion of the landfill operation shall be located within three hundred (300) feet of any stream or watercourse.
 - e. Screening with a minimum height above grade of ten (10) feet shall be provided around the perimeter of the lot.
 - f. One (1) tree shall be provided for each fifty (50) lineal feet of frontage along any street adjacent to the landfill. These trees shall be located within the 150-foot buffer.
 - 2. Recycling Facility
 - a. No building shall be located within one hundred (100) feet of any lot line
 - b. Minimum Lot Size - Two (2) acres
 - 3. Incinerator
 - a. No building shall be located within one hundred (100) feet of any lot line
 - b. Minimum Lot Size - Two (2) acres
 - 4. Salvage Yard
 - a. No building shall be located within one hundred (100) feet of any lot line
 - b. Screening with a minimum height above grade of ten (10) feet shall be provided around the perimeter of the lot. No salvage material, nor any portion of the operation, shall be stored or conducted outside of the fenced-in area.
 - c. One (1) tree shall be provided for each fifty (50) lineal feet of frontage along any street adjacent to the salvage yard. These trees shall be located between the street and the screening.
 - ~~5. Adult Entertainment Establishment~~
 - ~~a. Minimum separation from dwelling unit - Five hundred (500) feet~~
 - ~~b. Minimum separation from house of worship or school - One thousand (1,000) feet~~
 - ~~c. Minimum separation from another adult entertainment establishment - One thousand (1,000) feet~~

E. Procedure for establishing EUD:

1. Applications shall be filed in accordance with the Rules of Procedure of the Commission.
2. The following information shall be submitted with a EUD application:
 - a. Survey and legal description of the lot
 - b. A drawing on one or more sheets of paper measuring not more than twenty-four (24) inches by thirty-six (36) inches, drawn to a scale as large as practical, and including the following information:
 1. Scale, date, north arrow, vicinity map, and title of the project.
 2. The boundaries, dimensions, and total gross acreage of the lot.
 3. The relationship of the project to the surrounding road system, including the width of adjacent roadways.
 4. The location and dimensions of existing manmade features such as roads, utilities, and structures, with indication as to which are to be removed, relocated, or altered.
 5. The location and dimensions of existing easements, watercourses, county drains, water and sewer lines, well and septic tank location, and other existing important physical features in and adjoining the project.
 6. The location and delineation of existing trees (12" in diameter or larger) and information as to which trees will be removed. Existing woods may be indicated as such on the plan.
 7. Identification of land use and zoning classification of adjacent lots.
 8. Location of the different land uses proposed.
 9. Location of proposed signs and lighting fixtures.
 10. Existing land use within a two (2) mile radius.
 - c. Proposal for providing sanitary sewer, potable water, storm water, gas, electricity, and any other utility service.
 - d. Statement of the proposed phasing of construction for the project.
 - e. The Director, or Commission, may require:
 1. Topographic maps, including contours with elevations of the pre-developed lot and proposed finished grade
 2. Soils report, prepared and certified by a qualified geologist or a registered civil engineer. Report must include:
 - a. Name of soil type
 - b. Soil drainage class
 - c. Flood hazard potential
 - d. Permeability of soils
 - e. Dominant soil texture
 - f. Suitability of soil as cover material
3. Geologic report, prepared by a qualified geologist. Report must include:
 - a. The nature of the terrain including slope, topography, and surface drainage
 - b. The nature of bedrock materials including type, thickness, and physical characteristics
 - c. Maps or data showing residuum thickness, composition of materials, and hydrologic properties
 - d. Porosity and permeability of bedrock
 - e. Thickness of strata or zone in which waste materials are to be deposited
 - f. Depth to water table
 - g. Distance to nearby permanent water bodies
4. Operation plan for landfill indicating:

- a. Proposed fill area
- b. Any borrow area
- c. Access Roads
- d. On-site drive
- e. Grades for proper drainage of each lift required, and a typical cross-section of a lift
- f. Special drainage devices, if necessary
- g. Location and type of fencing
- h. Structures existing or to be located on the site
- i. Existing wooded areas, trees, ponds, or other natural features to be preserved
- j. Existing and proposed utilities
- k. Phasing of landfill operations on the lot
- l. A plan and schedule for site restoration and completion
- m. A plan for the ultimate land use of the lot if possible
- n. Method of operation including weighing of wastes, cross-sectioning the site at definite time intervals, thickness of cover material, depth of cells and lifts, compaction, wet weather procedures, cold weather procedures, amount, type and size of equipment and personnel
- o. And all other pertinent information to indicate clearly the orderly development operation and completion of the sanitary landfill.
5. Drainage plan, including the following information:
 - a. Contours with elevations of the pre-developed lot and proposed finished grade
 - b. Size of the watershed
 - c. Method of calculation of stormwater
 - d. Proposal for the management of stormwater
6. Traffic impact analysis
7. Identification of streets to be used as hauls routes for transportation of product
8. Market study or need assessment showing need within the County for the use
9. Air quality impact analysis
10. Erosion control plan
- F. The application shall be reviewed as an amendment to the zone map in accordance with IC 36-7-4-600. In addition to the criteria established in IC 36-7-4-603, the Commission and Board of County Commissioners shall pay reasonable regard to the following criteria:
 1. The importance of the service provided by the proposed facility to the community
 2. The availability of alternative locations for the proposed facility
 3. The compatibility of the proposed use with existing uses and permitted uses

SECTION 936: EXCLUSIVE USE OVERLAY DISTRICT (EUD) ADULT BUSINESSES

A. Purpose and Intent

The following are provided as guidelines for the construction, interpretation and enforcement of this Article:

1. It is the purpose and intent of this Article to regulate sexually oriented business establishments so as to protect and promote the health, safety, and general welfare of the citizens of Huntington County and visitors thereto, and to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within Huntington County.
2. This Article intends a balance of the right of individuals to express themselves freely in accordance with the guidelines of the Constitution of the United States and U.S. Supreme Court rulings pursuant thereto.
3. This Article is also intended to deter property uses and activities conducted thereon which, directly or indirectly, cause or would cause adverse effects on the stability of the immediate neighborhood surrounding the sexually oriented business.
4. This Article has neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials.
5. Similarly, it is not the purpose or intent of this Article to restrict or deny lawful access by adults to sexually oriented materials nor to deny access by the distributors and exhibitors of sexually oriented materials to their intended market.
6. Similarly, it is not the purpose or intent of this Article to impose judgment on the content or merits of any Constitutionally protected form of speech or expression.
7. It is the purpose of this Article to generally charge operators of sexually oriented businesses to comply with a policy of "keep it indoors and under control" and to hold all operators first line answerability, directly or indirectly, for all uses of the premises and activities conducted thereon.

B. Classifications

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. Escort Agencies;
7. Adult Model Studios; and
8. Sexual Encounter Centers

C. Prohibited Locations of Any Type of Sexually Oriented Business

1. Any person, including an operator of a sexually oriented business, commits an offense if he/she operates or permits the operation, or establishment of a sexually oriented business in a zoning district that does not expressly permit that type of use in said zoning district.
2. In addition to being located in a proper zoning district, a person, including an operator, commits an offense if he/she causes or permits the operation or establishment of a sexually oriented business in or within 1,000 feet of an existing:
 - a. religious institution

- b. daycare or childcare facility
 - c. school
 - d. public park
 - e. residential district
 - f. downtown district
 - g. locally or nationally registered historic site or district
 - h. areas that currently are, or within the last ten years were, designated as a tax increment finance (TIF) district
3. In addition to being located in the proper zoning district, a person, including an operator, commits an offense if he/she causes or permits the operation or establishment of a sexually oriented business in or within 1,500 feet of an existing sexually oriented business located within Huntington County.
 4. For the purpose of Paragraph 2 and 3 above, measurements of the distance shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the property line of an existing religious institution, daycare or childcare facility, school or sexually oriented business, or from the boundary line of a public park, residential district, downtown district, locally or nationally registered historic site or district or tax increment finance (TIF) district to the nearest property line of the property being sought to be used as a sexually oriented business.
 5. Also for the purposes of Paragraph 2 above, measurement of the 1,000 foot distance shall also include religious institutions, daycare or childcare facilities, schools, public parks, residential districts, downtown districts, locally or nationally registered historic sites and tax increment finance (TIF) districts which may be located in an adjacent city, township or rural land area.
 6. Also for the purpose of Paragraph 3 above, measurement of the 1,500 foot separation between sexually oriented businesses to be located within Huntington County shall also include those sexually oriented businesses that may be established in an adjacent city, town, township or county.
 7. A certified survey shall be prepared by a licensed surveyor or licensed engineer showing the distance measurements in accordance with this section and shall be submitted to the Huntington Countywide Department of Community Development as part of the application for a Certificate of Occupancy. Any Certificate of Occupancy issued for a building or facility used to conduct a sexually oriented business without submission of the required survey shall be null and void.
 8. A person commits a violation if he/she causes or permits the establishment or operation of more than one sexually oriented business on the same property, in the same building or structure, or any portion thereof.
 9. A sexually oriented business lawfully operating as a conforming use after July 2009 is not rendered a nonconforming use by the subsequent location of a religious institution, daycare or childcare facility, school, public park, residential district, downtown district, locally or nationally registered historic site, or tax increment finance (TIF) district within 1,000 feet of the sexually oriented business.
 10. A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the change in zoning districts that expressly permit sexually

10. The operator shall maintain on the premises at all times a current copy of all local ordinances regarding or regulating sexually oriented business activity so as to keep all managers, employees and entertainment personnel duly advised of the applicable ordinances regarding the sexually oriented business, and its permitted, as well as prohibited activities, so as to minimize prospective violations and offenses on the premises.

F. Conduct of Employees

1. No employee, while in a state of nudity in a sexually oriented business shall receive directly any pay or gratuity from any patron or customer or allow any patron or customer to pay or give gratuity directly to any employee while that employee is in a state of nudity in a sexually oriented business other than by means of hand or garter tipping, a tip receptacle or paid as part of the customer's bill.
2. No manager, owner, or operator shall allow any patron or customer to pay or give any gratuity directly to any employee while that employee is in a state of nudity in a sexually oriented business other than by means of hand or garter tipping, a tip receptacle or paid as part of the customer's bill.
3. All garters shall be located mid-thigh or lower.

G. Hours of Operation

1. A sexually oriented business shall not be open to the public or allow customers or patrons to enter or remain within the premises of a sexually oriented business during the following hours:
 - a. Sunday – Thursday: 3:00 a.m. to 10:00 a.m.
 - b. Friday and Saturday: 3:00 a.m. to 10:00 a.m.; 4:00 a.m. to 10:00 a.m. if the sexually oriented business holds a valid food establishment permit issued by the Huntington County Health Department.
2. Hours of operation may not conflict with any other federal, state, or city laws, rules or regulations.

H. Interior of the Sexually Oriented Business

1. Subject to reasonable accommodations for legitimate security measures, including approved internal surveillance video systems, the operator shall maintain the entire premises so as to permit walk-through inspections without interference by local enforcement personnel.
2. The interior of the premises shall be arranged in such a manner that there is an unobstructed view into every area of the premises to which any customer is permitted access for any purpose, excluding restrooms. The operator shall ensure that the ability to view into any area where customers are allowed remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials. This regulation shall not apply to adult motels.
3. If the premises contains two or more separate rooms, the operator shall maintain each room with at least one wall or door equipped with clear windows or openings of at least three feet in width and two feet in height located no less than three feet above the floor but no less than two feet below the ceiling for viewing into the entire area and all activity therein. This regulation shall not apply to adult motels.

4. The operator shall maintain every portion of the premises where customers are permitted access equipped throughout and illuminated at all times with overhead lighting fixtures of sufficient illumination to provide reasonably safe lighting conditions for patrons, employees or local enforcement personnel walking through the premises.
 5. During hours of darkness when a sexually oriented business is in operation, the operator shall maintain all parking and pedestrian areas of the premises equipped and illuminated by overhead lighting fixtures of sufficient illumination to provide reasonably safe lighting conditions for persons or vehicles traveling into, on and out of the property. Said lighting fixtures shall be directed onto the property as much as is possible so as to avoid being directed onto neighboring properties.
 6. The operator shall not utilize or allow restroom or employee dressing rooms to be utilized for sexually oriented business purposes, video equipment or for the offering of any sexually oriented merchandise to customers.
- I. Exterior Appearance of Sexually Oriented Business
1. No exterior portions of a sexually oriented business shall have flashing lights or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by the provisions of this Article.
 2. No merchandise or activities of a sexually oriented business shall be visible from any point outside the establishment.
 3. All exterior portions and/or facades, including the roof, that to be painted shall be a single achromatic color with a single achromatic color trim, both colors consisting of a neutral earth tone color only, however, the trim and the building may be a different neutral earth tone color. Nothing in this section requires the painting of an otherwise unpainted exterior portion of a sexually oriented business. All sexually oriented businesses with a current Certificate of Occupancy that are not in compliance with the regulations of this Article and other applicable codes will have two (2) years from the date of adoption of this ordinance to comply with this subsection, however if any portion of the exterior of the building is painted or repainted before this two (2) year period expires, all portions of the exterior must be painted a single achromatic color with a single achromatic color trim as provided by the subsection. This provision shall not apply to an enterprise if the following conditions are met:
 - a. The enterprise is part of a commercial multi-unit center; and
 - b. The exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the enterprise, are painted the same color as one another or are painted in such a way to be a component of the overall architectural style or pattern of the commercial multi-center unit.
- J. Sign Requirements
1. Signs required at each public entrance

The operator shall maintain at least one conspicuous permanently mounted sign, presented at each public entrance in accordance with applicable local sign codes and regulations, of a size of at least 18 inches in height and 24 inches in width, easily visible and legible to all persons prior to entry into the establishment, with all letters at least one-half inch in height and three-quarters of an inch in width for each letter on the sign which contains a statement to the effect:

2. A person commits an offense if he/she knowingly allows a person under the age of eighteen (18) to appear in a state of nudity in or on the premises of an adult motion picture theater.
3. A person under the age of eighteen (18) commits an offense if he/she appears in a "state of nudity" or "simulated nudity" for customers on the premises of an adult theater or adult motion picture theater.
4. It is a defense to prosecution under this subsection if the person under eighteen (18) years was in a restroom not open to public view or persons of the opposite sex.

P. Additional Regulations for Adult Motel

1. Evidence that a sleeping room in a hotel, motel or similar commercial establishment has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as defined in this Article.
2. An operator, manager or the person otherwise in control of a sleeping room in a hotel, motel, or similar commercial establishment, commits an offense if he/she rents or subrents a sleeping room to a person and, within ten (10) hours from the time the room is first rented, he/she rents or subrents the same sleeping room again.

Q. Additional Regulations for Adult Arcades

1. View from manager's station
 - a. If an adult arcade or adult mini-theater has one (1) manager's station designated pursuant to this Article, then the interior of the adult arcade or adult mini-theater shall be configured in such a manner that this is an unobstructed view of every area of the adult arcade or adult mini-theater to which any patron or customer is permitted access for any purpose from that manager's station. If an adult arcade or adult mini-theater has two (2) or more manager's stations designated pursuant to this Article, then the interior of the adult arcade or adult mini-theater shall be configured in such a manner that there is an unobstructed view of each area of the adult arcade or adult mini-theater to which any patron is permitted access for any purpose from at least one (1) of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
 - b. It shall be the duty of the owners and/or operators, and it shall also be the duty of any agents and employees present in an adult arcade or adult mini-theater, to ensure that the view area specified in the above subsection remains unobstructed by any merchandise, display racks or other materials at all times that any patron or customer is present in the adult arcade or adult mini-theater and to ensure that no patron or customer is permitted access to any of the adult arcade or adult mini-theater which has been designated as an area in which patrons and customers will not be permitted in the plan filed pursuant to this Article.
2. Wall penetrations
 - a. In addition to any other requirements of this article, no adult arcade or adult mini-theater shall be configured in such a manner as to have any opening in any partition, screen, wall or other barrier that separates viewing areas for arcade devices or adult mini-theater devices from other viewing areas for arcade devices or adult mini-theater devices. This provision shall not apply to conduits or

plumbing, heating, air conditioning, ventilation or electrical service provided that such conduits shall be so screened or otherwise configured as to prevent their use as openings that would permit any portion of a human body to penetrate the wall or barrier separating viewing areas.

- b. It shall be the duty of the owners and/or operators and it shall also be the duty of any agents and employees present in an adult arcade or adult mini-theater to ensure that the premises is monitored to assure that no openings are allowed to exist in violations with the subsection above and to ensure that no patron or customer is allowed access to any portion of the premises where any openings exists in violation with the subsection above until the opening(s) have been repaired.

3. Lighting

- a. Each adult arcade or adult mini-theater 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 one (1.0) foot-candle as measured at four feet above the floor level.
- b. It shall be the duty of the owners and/or operator and it shall also be the duty of any agents and employees present in an adult arcade or adult mini-theater to ensure that the illumination described above is maintained at all times that any patron or customer is present in the adult arcade or adult mini-theater.

4. Occupancy of booths, rooms and cubicles

Only one individual shall occupy a booth, room or cubicle at any time. No occupant of a booth, room or cubicle shall engage in any type of sexually activity, cause any bodily discharge or litter while in the booth.

R. Display of Sexually Explicit Materials to Minors

1. A person commits an offense if, in a business establishment open to persons under the age of seventeen (17) years, he/she displays a book, pamphlet, newspaper, magazine, film, or video cassette, the cover of which depicts, in a manner calculated to arouse sexual lust or passion for commercial gain or to exploit sexual lust or perversion for commercial gain, any of the following:
 - a. Human sexual intercourse, masturbation, or sodomy;
 - b. Fondling or other erotic touching of human genitals, buttocks, or that portion of the female breast below the top of the areola; or
 - c. Human male genitals in a discernibly turgid state, whether covered or uncovered.
2. In this section "display" means to locate an item in such a manner that, without obtaining assistance from an employee of the business establishment:
 - a. It is available to the general public for handling and inspection; or
 - b. The cover or outside packaging on the item is visible to members of the general public.

S. Enforcement

Any local enforcement personnel may enforce the provisions of this Article. Additionally, the local police department may enforce applicable laws, statues, or ordinances for offenses which occur on the premises of a sexually oriented business at any time the establishment is occupied or open for business.

T. Revocation

Revocation or suspension of any permit shall not prohibit imposition of a criminal penalty and imposition of a criminal penalty shall not prevent revocation or suspension of a permit.

U. Injunction

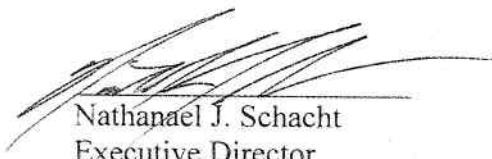
A person who operates or causes to be operated a sexually oriented business without a valid certificate of occupancy or in violation of this Article is subject to a suit for injunction as well a prosecution for criminal violations.

"EXHIBIT A"

PLAN COMMISSION CERTIFICATION

On 8th day of July 2009 the Huntington County Plan Commission held a public hearing on the proposed zoning code text amendment. After hearing from all interested parties, and paying reasonable regard to the five criteria in IC 36-7-4-603, the Plan Commission, by a 7-0 vote certified Docket PC-09-004 with a favorable recommendation to the Town Council.

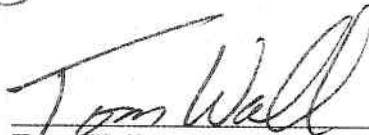
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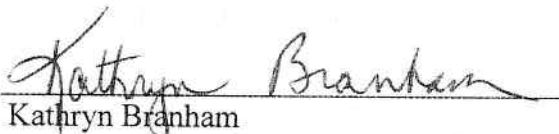
Nathanael J. Schacht
Executive Director
Community Development

Approved by the County Commissioners for Huntington County, Indiana, this

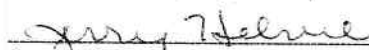
27 day of July 2009.



Tom Wall



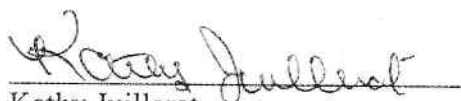
Kathryn Branham



Jerry Helvie

County Commissioners
Huntington, Indiana

ATTEST:



Kathy Juillerat
County Auditor

