ORDINANCE 17-35
TO AMEND TITLE 20 (UNIFIED DEVELOPMENT ORDINANCE) OF THE BLOOMINGTON MUNICIPAL CODE
- Re: Amending Section 20.02.300 to allow Sexually Oriented Businesses as a Permitted Use in Commercial General (CG) Zoning Districts and Deleting and Replacing Section 20.05.078 "Sexually Oriented Businesses -- General"

WHEREAS, the City of Bloomington began regulating sexually-oriented businesses ("SOB") in 2006 with the adoption of the Unified Development Ordinance ("UDO"); and

WHEREAS, in 2006 the City of Bloomington Plan Commission made findings documenting the harmful secondary effects of SOBs and these finding were ratified, accepted, and adopted as their own by the Common Council *via* Ordinance 06-24, the measure adopting the UDO; and

WHEREAS, under the current UDO, a SOB shall not be located on a property within five hundred (500) feet of (1) Place of worship; (2) School (preschool, K-12); (3) Day care center, child or adult; (4) Park; (5) Library; (6) Residential district, including any portion of a Planned Unit Development designated for residential use; (7) Large-scale Multi-tenant nonresidential center; (8) Cemetery; and (9) Another sexually oriented business; and

WHEREAS, under the current UDO, the distance between a SOB and established uses outlined above shall be measured from the nearest property line of the property from which spacing is required to the nearest property line on which the sexually oriented business use will be located, using a straight line, without regard to intervening structures or public rights-of-way; and

WHEREAS, in 1986, in the case of *City of Renton vs. Playtime Theatres Inc.*, the U.S. Supreme Court held that a zoning ordinance that provided approximately five percent (5%) of the entire land area of the City for sexually-oriented businesses was constitutional and provided adequate land area for First Amendment free speech and expression; and

WHEREAS, under the current UDO, only 4.13 Acres or 0.045% of Bloomington land area is available for SOB; and

WHEREAS, the City of Bloomington wishes to change the UDO to align with the Supreme Court holding; and

WHEREAS, On August 14, 2017, the Plan Commission considered ZO-20-17, and made a positive recommendation in favor of the amendments to the UDO, as described herein;

NOW THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION 1. Section 20.02.300, entitled Commercial General (CG); Permitted Uses, shall be amended by adding "Sexually Oriented Businesses" as a permitted use.

SECTION 2. Section 20.05.078, entitled SX-01 (Sexually Oriented Businesses – General), shall be deleted and replaced with the following:

20.05.078 SX-01 (Sexually oriented businesses -- General).

Purpose. Within the city it is acknowledged that there are some uses, often referred to as sexually oriented businesses, which because of their nature can have a negative impact on nearby property, particularly when these sexually oriented businesses are concentrated together or located in direct proximity to residential uses, child care centers, churches, cemeteries, schools, libraries, playgrounds, and/or parks. Special regulations for these sexually oriented businesses are necessary to insure that these adverse impacts will not contribute to the blighting of

surrounding areas. The primary goal of these regulations is to prevent the concentration or location of these uses in a manner that would exacerbate their adverse effects.

This sexually oriented business standards section applies to the following zoning districts:

CA IG CG

(a) Location. A sexually oriented business shall not be located on a property within five hundred (500) feet of any of the following:
   (1) Place of worship;
   (2) School (preschool, K-12);
   (3) Day care center, child or adult;
   (4) Park (for purposes of this section, publicly owned multiuse trails shall be deemed to be a park);
   (5) Library;
   (6) Homeless Shelter;
   (7) Single Family district, including any portion of a planned unit development designated for single family use;
   (8) Multi-Family district, including any portion of a planned unit development designated for multi-family use; and
   (9) Another sexually oriented business.

(b) PUDs. For the purposes of this section, sexually oriented businesses shall be considered permitted uses in any Planned Unit Development created before February 12, 2007 where the underlying zoning is CA, CG or IG.

(c) Distance Measurements. The distance between a sexually oriented business and established uses outlined in 20.05.078(a) shall be measured from the nearest property line of the property from which spacing is required to the nearest wall of the building or tenant space that houses the sexually oriented business use using a straight line, without regard to intervening structures or public rights-of-way.

(d) Exterior Display. No sexually oriented business shall be conducted in any manner that permits the observation from any right-of-way of material depicting specified sexual activities or specified anatomical areas by display, decoration, sign, show window or other opening.

SECTION 3. If any section, sentence or provision of this ordinance, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 4. This ordinance shall be in full force and effect from and after its passage by the Common Council of the City of Bloomington and approval of the Mayor, and after any required waiting and/or notice periods under Indiana law.

PASSED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 1st day of November, 2017.

Susan Sandberg
SUSAN SANDBERG, President
Bloomington Common Council

ATTEST:

N Bolden
NICOLE BOLDEN, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 16th day of November, 2017.

NICOLE BOLDEN, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this 16th day of November, 2017.

JOHN HAMILTON, Mayor
City of Bloomington

SYNOPSIS

This ordinance amends Title 20 (the Unified Development Ordinance) of the Bloomington Municipal Code. The ordinance modifies Section 20.02.300, Commercial General (CG) by adding Sexually Oriented Businesses as a permitted use. The ordinance also modifies the locations from which Sexually Oriented Businesses must be sited a minimum of 500 feet by removing large scale multi-tenant nonresidential centers and cemeteries from the list and by breaking out the residential components into "Single Family district" and "Multi-Family district." The ordinance also makes clear that Sexually Oriented Businesses are permitted in Planned Unit Developments created before the 2007 effective date of the UDO where the underlying zoning district is CA, CG, or IG. Lastly, by the ordinance changes existing code by modifying the way that distance is measured such that the 500-foot distance requirement is measured from the line of the property of the protected use to the wall of the Sexually Oriented Business.

Note: At the November 1, 2017 Regular Session, the Council adopted Am 01, which amended Section 2 of this ordinance to add homeless shelters to the list of uses or districts which must be located at least 500 feet from a sexually oriented business.

Also, as an amendment to the text of the Unified Development Ordinance (Title 20), the effective date of the ordinance is governed by IC 36-7-4-607 and IC 36-7-4-609.

Distributed to: Mayor, Clerk, Council Administrator, Legal, Planning and Transportation

****ORDINANCE CERTIFICATION****

In accordance with IC 36-7-4-605 I hereby certify that the attached Ordinance Number 17-35 is a true and complete copy of Plan Commission Case Number ZO-20-17 which was given a recommendation of approval by a vote of 6 Ayes, 0 Nays, and 0 Abstentions by the Bloomington City Plan Commission at a public hearing held on August 14, 2017.

Date: August 22, 2017

Terri Porter, Secretary
Plan Commission

Received by the Common Council Office this 22nd day of August, 2017.

Nicole Bolden, City Clerk

Appropriation Ordinance # _____

Fiscal Impact Statement Ordinance # _____

Resolution # _____

Type of Legislation:

Appropriation	End of Program	Penal Ordinance
Budget Transfer	New Program	Grant Approval
Salary Change	Bonding	Administrative Change
Zoning Change	Investments	Short-Term Borrowing
New Fees	Annexation	Other_____

If the legislation directly affects City funds, the following must be completed by the City Controller:

Cause of Request:

Planned Expenditure___ ____ Emergency

Unforeseen Need _____ Other _____

Funds Affected by Request:

Fund(s) Affected_		
Fund Balance as of January 1_	$	$
Revenue to Date_	$	$
Revenue Expected for Rest of year_	$	$
Appropriations to Date_	$	$
Unappropriated Balance_	$	$
Effect of Proposed Legislation (+/-)_	$	$
Projected Balance_	$	$

Signature of Controller

Will the legislation have a major impact on existing City appropriations, fiscal liability or revenues?

Yes _____ No _____

If the legislation will not have a major fiscal impact, explain briefly the reason for your conclusion.

If the legislation will have a major fiscal impact, explain briefly what the effect on City costs and revenues will be and include factors which could lead to significant additional expenditures in the future. Be as specific as possible. (Continue on second sheet if necessary.)

****ORDINANCE REPORT****

In accordance with IC 36-7-4-607(e) I hereby certify that the attached Ordinance Number 17-35 and amendment 01 to said Ordinance is a true and complete copy of Plan Commission Case Number ZO-20-17 which was passed on a consent agenda by a unanimous vote of 7 Ayes by the Bloomington City Plan Commission at a public hearing held on November 13, 2017.

The City of Bloomington Council ("Council") amended Ordinance Number 17-35 on November 1, 2017 and pursuant to IC 36-7-4-607(e), the Council returned the amendment to the Plan Commission for its consideration, accompanied by a written statement of the reasons for the amendment of the original proposal.

Date: November 15, 2017

Terri Porter, Secretary Plan Commission

Received by the Common Council Office this 15th day of November, 2017.

Nicole Bolden, City Clerk