TITLE 7

PUBLIC PEACE, SAFETY AND MORALS

Chapters:

7.04 State Criminal Statutes and Penalties
7.08 Juvenile Curfew
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CHAPTER 7.04

STATE CRIMINAL STATUTES AND PENALTIES

Sections:

7.04.01 State criminal statutes adopted
7.04.02 State penalties adopted

7.04.01 State criminal statutes adopted All criminal statutes of the state relating to misdemeanors and the laws of criminal procedure in connection therewith, three (3) copies of which are on file in the Clerk/Treasurer's office are hereby enacted by the City Council to form a part of the laws of the city and any person, firm or corporation being found guilty of the violation of any such laws shall be deemed guilty of the violation of the ordinances of the city and shall be

fined or imprisoned or both in the manner set out under the state statutes. (Ord. No. 259, Sec. 1; adopted October 1, 1963)

STATE LAW REFERENCE-A.C.A. 14-55-501

7.04.02 State penalties adopted. The minimum and maximum penalties for the violation of misdemeanors, as are provided in the state statutes, are hereby adopted as the minimum and maximum fines for the violation of the same offenses which are prohibited by the ordinances of this city. (Ord. No. 259, Sec. 2: adopted October 1, 1963)

STATE LAW REFERENCE-A.C.A. 14-55-502

CHAPTER 7.08

CURFEW

Sections:

7.08.01 Definitions
7.08.02 Curfew for juveniles
7.08.03 Parental responsibility
7.08.04 Enforcement procedure
7.08.05 Penalties

7.08.01 Definitions For the purpose of this curfew ordinance the following terms, phrases, words, and deviations shall have the meaning given herein. The word "shall" is always mandatory and not merely directory.

Juvenile or minor is a person under the age of eighteen (18) years.

Parent is any person having custody of a juvenile (a) as a natural or adoptive parent, (b) as a legal guardian, (c) as a person who stands in loco parentis, or (d) as a person to whom legal custody has been given by order of a court of competent jurisdiction. (Ord. No. 2001-5, Sec. 1.)

7.08.02 Curfew for juveniles It shall be unlawful for any juvenile to be walking, standing, sitting, lying, running, or otherwise traveling in or on the sidewalks, street, highways, alleys, or other public places within the city of Atkins, Arkansas, between the hours of 10:30 p.m. on Sunday, Monday, Tuesday, Wednesday, and Thursday and 6:00 a.m. of the next succeeding day and between the hours of 12 midnight on Friday and Saturday night and 6:00 a.m. of the next succeeding day except when:

A. Accompanied by a parent, guardian, or other person having legal custody of such juvenile;

B. Accompanied by an adult at least 21 years of age who is not the parent and is authorized by the parent of such minor to take said parent's place in accompanying said minor for a designated period of time and purpose of specified area;

C. When returning directly home from the termination of a school or city-sponsored activity or an activity of a religious or other voluntary association;

D. When engaging in the duties of bona fide employment or traveling directly without undue delay or detour from home to the lace of employment or from the place of employment to the home. (Ord. No. 2001-5, Sec. 2.)

7.08.03 Parental responsibility It shall be unlawful for a parent of a juvenile to permit or allow a juvenile to be or remain upon any sidewalk, city street, highway, alley or other public place in the city of Atkins during the restricted periods set forth in Section 2 except for the limited purposes as described. (Ord. No. 2001-5, Sec. 3.)

7.08.04 Enforcement procedure If a police officer reasonably believes that a juvenile is in or on the streets, sidewalks, highways, alleys, or other public places in the city of Atkins, in violation of the curfew ordinance, the officer shall take the minor into custody and notify the minor that he or she is in violation of the ordinance and shall require the juvenile to provide his or her name, address, and telephone number and how to contract his or her parent and the officer shall immediately notify the parent of the minor of the curfew violation and thereafter, if appropriate, release the minor to his or her parent. (Ord. No. 2001-5, Sec. 4.)

7.08.05 Penalties In the case of a first violation by a juvenile, the Police Department shall be ordinary mail send or deliver to the parent written notice of the juvenile's violation with a warning that any subsequent violation of the curfew ordinance by the minor will result in full enforcement of the curfew ordinance including enforcement of parental responsibility and of applicable penalties.

A. If after the warning notice pursuant to this section of the first violation by a juvenile, a juvenile commits a second violation, then it shall be treated as a first offense by the parent. For parental offense, a parent shall be fined not less than Twenty-Five Dollars ($25.00) nor more than One Hundred Dollars ($100.00) or be imprisoned in the county jail for a term of not less than one (1) day nor more than ten (10) days, or both so fined and imprisoned for a first offense.

   For any subsequent violation by such minor and subsequent conviction of the minor's parent, the parent shall be fined not less than One Hundred Dollars ($100.00) nor more than Two Hundred Fifty Dollars ($250.00), or be imprisoned in the county jail for a term of not less than one (1) day nor more than thirty (30) days, or both so fined and imprisoned.

B. Any juvenile who shall violate any of the provisions of the curfew ordinance three (3) or more times shall be reported b the Chief of Police to the juvenile authorities, to the Pope County Prosecuting Attorney and/or to the Arkansas Department of Human Services and/or any other appropriate authorities for further disposition. (Ord. No. 2001-5, Sec. 5.)

CHAPTER 7.12

LOITERING

Sections:

7.12.01 Loitering illegal after certain hours
7.12.02 Police Chief may issue permit
7.12.03 Penalty

7.12.01 Loitering illegal after certain hours It shall hereafter be unlawful for any minor of the age of 1 years and under to be found loitering upon any of the streets, alleys, sidewalks and other public places in the city after 10:00 p.m. Sundays through Thursdays and after 11:00 p.m. Friday and Saturday unless accompanied by their parents or person charged with the care of the minor, or en route to see a physician or unless they have special permits issued by the Police Chief as hereinafter provided.

7.12.02 Police Chief may issue permit. The Police Chief or his assistants may issue permits to minors of 16 years and under upon request of the minor's parents or person charged with the care of said minor upon grounds that are sufficient for said minor to be exempt from this chapter.

7.12.03 Penalty Any parent or person charged with the care of a minor of the age of 16 years and under, permitting or allowing their child or ward to violate Section 7.12.01 herein shall be deemed guilty of a misdemeanor.

CHAPTER 7.16

WEAPONS

Sections:

7.16.01 Concealed weapon
7.16.02 Discharging firearms
7.16.03 Throwing objects
7.16.04 Discharging air guns

7.16.01 Concealed weapon Any person who shall wear or carry in any manner whatever, as a weapon, any dirk or sword or spear in a cane, brass or metal knucks, razor, blackjack, billie or sap, ice pick, or any pistol of any kind whatever, shall be guilty of a misdemeanor. Provided, nothing in this section shall be so construed as to prohibit any person from carrying such pistols as are used in the army or navy of the United States when carried uncovered and in the hand, provided, officers whose duties require them to make arrests, or to keep and guard prisoners, together with persons summoned by such officers to aid them in the discharge of such duties, while actually engaged in such duties, are exempt from the provisions of this section. Provided, further, nothing in this section shall be so construed as to prohibit any person from carrying any weapon when upon a journey or upon his premises.

STATE LAW REFERENCE-Ark. Stats. 41-4501. For penalty, see Ark. Stats. 41-4503

7.16.02 Discharging firearms If any person shall be found guilty of discharging firearms of any kind within the city, unless in self-defense or in the execution of legal process, he shall be deemed guilty of a misdemeanor.

STATE LAW REFERENCE-Discharging firearm as disturbance of the peace, Ark. Stat. 41-1401

7.16.03 Throwing objects Any person found throwing stones, sticks or missiles of any kind whatever at or upon any public or private building or at any person in the street, alley, place or unenclosed or enclosed ground within the city shall be deemed guilty of a misdemeanor.

7.16.04 Discharging air guns No person shall use or discharge any type of a pellet, AB-B", air rifle or pistol, or any other such weapon which is gas, air or spring operated within this city.

CHAPTER 7.24

CLAIMS AGAINST CITY

Sections:

7.24.01 Liability insurance
7.24.02 Settlement of claims

7.24.01 Liability insurance The city shall carry liability insurance on all its motor vehicles in the minimum amounts prescribed in the Motor Vehicle Safety Responsibility Act. (Ark. Stats. 75-1402, et seq)

STATE LAW REFERENCE-Ark. Stat. 12-2903

7.24.02 Settlement of claims All persons having claims against the city may file them with the clerk/treasurer. The clerk/treasurer shall present them to the council. The council may grant a hearing for the claimant and authorize a settlement.

STATE LAW REFERENCE-Ark. Stat. 12-2902

CHAPTER 7.28

RAILROAD CROSSING LIGHTS

Sections:

7.28.01 Duty to provide lighting
7.28.02 Penalty

7.28.01 Duty to provide lighting It is hereby made the duty of the St. Louis Iron Mountain & Southern Railway Company or any other company operating a railroad on the right of way where the Little Rock and Fort Smith railroad now passes through the city to keep and maintain sufficient electric lights or lights not less than sixty (60) watts at said street crossings in the city, so as to accommodate the traveling public, said lights to be kept and maintained from dark until daylight each night. (Ord. No. 150, Sec. 1; Adopted November 4, 1913)

7.28.01 Penalty Failure to comply with this chapter is hereby declared to be a misdemeanor. Every railroad or railway company or the agents or the servants of either violating Section 7.28.01 shall be fined in any sum not less than Five Dollars ($5.00) for each and every offense and each night failure to keep such street crossings so lighted shall be a separate offense. (Ord. No. 150, Sec. 1; Adopted November, 1913)

CHAPTER 7.32

TRAIN SPEED

Sections:

7.32.01 Train speed allowed

7.32.01 Train speed allowed Any railroad conductor or engineer or other person in charge-of any train running through the city, who shall run or permit the said train to run or permit the train to run through the said city at a greater rate of speed than twenty (20) miles per hour, shall be deemed guilty of a misdemeanor. (Ord. No. 202, Sec. 2; Adopted March 1, 1927)

7.32.02 Penalty Upon conviction in violation of Section 7.32.01, the railroad conductor or engineer shall be fined in any sum not less than Five Dollars ($5.00) nor more than Twenty-five Dollars ($25.00). (Ord. No. 202, Sec. 2; Adopted March 1, 1927)

CHAPTER 7.36

MAYOR′S AUTHORITY CONCERNING CITY PRISONERS

Sections:

7.36.01 Mayor's authority concerning city prisoners

7.36.01 Mayor's authority concerning city prisoners If any person who has been or may hereafter be convicted of the violation of any law of the city in District Court and who fails or refuses to pay the fine and costs imposed by the District Court, the Court, by order made and entered on its Docket, may direct that any such prisoner shall be confined in the county jail of Pope County or may require prisoner to work out such fine and costs on the streets of the city or other public improvements, or said Court, may by said order, transfer such prisoner to any other city or county in the state of Arkansas, to be held in confinement and compelled to work out such fine and costs. (Ord. No. 219, Sec. 1; Adopted November 17, 1936)

CHAPTER 7.40

OUTSIDE FIRE SERVICE

Sections:

7.40.01	Mutual aid
7.40.02	Legal description of the Atkins Fire Protection District
7.40.03	Fire protection and containment of hazardous materials and substances for the Atkins Fire Protection District and the city of Atkins
7.40.04	Atkins Fire Protection District Annual Fees
7.40.05	Charges assessed for fires or fire-related incidents or for assisting in the containment or extinguishing of hazardous materials, substances, or waste or extremely hazardous substances within the Atkins Fire Protection District
7.40.06	Charges assessed for fires or fire-related incidents within the city of Atkins or for assisting in the containment or extinguishing of hazardous materials, substances or waste, or extremely hazardous substances within the city of Atkins
7.40.07	Inspection fees
7.40.08	Penalties for false fire alarms

7.40.01 Mutual aid The Mayor and the Fire Chief of the city of Atkins are authorized to enter into mutual aid agreements with other cities, towns, communities or fire protection districts upon the following conditions:

A. Each party, upon proper authorized request of the other, will lend to the other aid and assistance in any fire, natural disaster or other emergency falling within the capabilities and missions of the parties, such aid and assistance to include, but not be necessarily limited to the providing of supplemental and/or standby personnel and equipment for such periods of time and at such places within the territory of the aided party as shall be requested and mutually agreed upon, from time to time.

B. Such assistance is intended to be reciprocal and will be extended on this basis and in accordance herewith unless and until such time as either party hereto shall give notice to the other of a withdrawal from the agreement.

C. If either party joins in a similar agreement with other like protection agencies, that such agreements shall be construed in connection with this agreement and the obligations of either party thereunder shall be considered as proper basis for assistance by the other party under this agreement.

D. All members of the fire departments of the reciprocating parties when rendering such services shall be considered to be acting within their line of duty and in discharge thereof, and no member of the department shall lose or forfeit any right or benefit in rank, pay, disability or retirement payments and benefits on account of the out of the city or town activities.

E. A request for such assistance from a city, town, community or fire protection district previously entering into a mutual aid agreement with the city of Atkins must come only from the Mayor, Fire Chief, Assistant Fire Chief or such other person as may be designated with approval of the city of Atkins.

F. If there is a present need for the Fire Department of the city of Atkins to render assistance in the extinguishing of fire within the corporate limits of the city of Atkins or such need develops after a call for fire service outside the corporate limits of the city of Atkins, Arkansas, then the first obligation of the said Fire Department shall be to render aid to the extinguishing of fire within the corporate limits of the city of Atkins. (Ord. No. 83-9, Sec. 1)

7.40.02 Legal description of the Atkins Fire Protection District The Atkins Fire Protection District is described as follows:

All of Section 1 through Section 12 of Township 6 North, Range 18 West.
All of Township 7 North, Range 18 West.
South 2/3 of Township 8 North, Range 18 West.
All of Sections 1 and 2, East 2 of Section 3, East 2 of Section 10.
All of Sections 11, 12, 13, 14 and East 2 of Section 15, North of Arkansas River,
Township 6 North, Range 19 West.
All of Sections 1 and 2 East 2 of Sections 3, East 2 of Section 10.
All of Sections 11, 12, 13, 14 and East 2 of Sections 15,
East 2 of Sections 22, Sections 23 through 26,
East 2 of Section 27, East 2 of Section 34.
All of Sections 35 and 36 of Township 7 North, Range 19 West.
All of Sections 13 and 14, East 2 of 15, East 2 of 22.
All of 23 through 26, East 2 of 27, East 2 of 34.
All of 35 and 36 of Township 8 North, Range 19 West

EXCLUDING THE AREA LOCATED IN THE INCORPORATED CITY LIMITS OF ATKINS
(Ord. No. 2001-04, Sec. 1.)

7.40.03 Fire protection and containment of hazardous materials and substances for the Atkins Fire Protection District and the city of Atkins

Hazardous materials, substances or waste are any chemical, substance, material or waste material, capable of causing harm to the health or safety of any person, plant, animal, or the environment to whom or to which it could be exposed.

Extremely hazardous substances are any chemical, substance, or other product that has a high degree to toxicity.

The city of Atkins Fire Department shall provide aid in the containment and extinguishing of fires and in assisting in the containment or extinguishing of hazardous materials, substances, waste, and extremely hazardous substances for those individuals, firms, corporations, partnership, or other entities who own or possess real or personal property located within the Atkins Fire Protection District and the corporate limits of the city of Atkins.

The Atkins Fire Department shall respond to all such fires or situations as described above with equipment and men sufficient to meet the minimum requirements of the Arkansas Insurance Services Office for the class of fire protection approved for the city of Atkins or the Atkins Fire Protection District at the time of the fire or other situation. (Ord. No. 2004-5, Sec. 1.)

7.40.04 Atkins Fire Protection District annual fees Any individual, firm, corporation, partnership or other entity owning or possessing real property described in 7.40.02 above shall pay an annual fee of Forty-Five Dollars ($45.00) to the City Clerk of the city of Atkins, Arkansas, for the services so described. Each year the annual fee shall be payable on or before April 1. (Ord. No. 2012-7, Sec. 1.)

7.40.05 Charges assessed for fires or fire-related incidents or for assisting in the containment or extinguishing of hazardous materials, substances, or waste, or extremely hazardous substances within the Atkins Fire Protection District The following rates shall be charged by the Atkins Fire Department when its assistance is required within the Atkins Fire Protection District by the owner or possessor of the affected land or personal property located within the Atkins Fire Protection District during instances in which such owner or possessor of the land or personal property has not paid the annual fees as set forth above at the time of the incident, to-wit:

A. All fires or fire-related incidents A minimum of Two Hundred Fifty Dollars ($250.00), provided however the total charges assessed for any fire or fire-related incident involving only personal property and which was not insured against loss, the total charges assessed shall be limited to no more than Three Hundred Dollars ($300.00).

B. Containment of hazardous materials, substances, or waste or extremely hazardous substances A minimum of Five Hundred Dollars ($500.00). (Ord. No. 2004-5, Sec. 2.)

7.40.06 Charges assessed for fires or fire-related incidents within the city of Atkins or for assisting in the containment or extinguishing of hazardous materials, substances or waste, or extremely hazardous substances within the city of Atkins Charges will be assessed to those who are not residents of the city of Atkins and who do not own real property within the city limits of the city of Atkins but who own or possess personal property which was involved in a fire or fire-related incident or in assisting in the containment or extinguishing of hazardous materials, substances or waste, or extremely hazardous substances within the boundaries of the city of Atkins at the same rates as specified in 7.40.05 except that there are no limitations on the maximum charges to be assessed for fires involving personal property only. (Ord. No. 2004-5, Sec. 3.)

7.40.07 Inspection fees A charge of Twenty-Five Dollars ($25.00) shall be assessed to the owner or possessor of any structure located within the Atkins Fire Protection District or the city of Atkins for inspections performed by the Atkins Fire Department, required by law or performed at the request of the owner or possessor of the structure. (Ord. No. 2004-5, Sec. 4.)

7.40.08 Penalties for false fire alarms A false fire alarm whether inside the city of Atkins or inside the Atkins Fire Protection District shall occur when a mechanical or electrical fire alarm system defaults or otherwise fails because of mechanical or electrical problems or lack of maintenance causing the Atkins Fire Department to respond to the call. In such an instance when an owner or possessor of real property in the Atkins Fire Protection District has failed to pay the annual dues, the Atkins Fire Department shall assess a penalty of Two Hundred Fifty Dollars ($250.00) against the offender when a false fire alarm occurs. In the instance where such an event occurs in the city of Atkins or in the Atkins Fire Protection District and the member has paid annual dues for that year, there shall be assessed a penalty of One Hundred Dollars ($100.00) for each false alarm exceeding three (3) annually. (Ord. No. 2004-5, Sec. 5.)

CHAPTER 7.44

CRIMINAL JUSTICE FUND

Sections:

7.44.01 Additional court costs
7.44.02 Usage of funds

7.44.01 Additional court costs. In addition to all other fees or costs now or hereafter levied, there shall be levied and collected from each defendant upon each plea of guilty, plea of *nolo contendere* or forfeiture of bond or determination of guilt for misdemeanor or traffic violations in the Atkins Police Court additional court costs in the sum of Five Dollars ($5.00). (Ord. No. 87-4, Sec. 1)

7.44.02 Usage of funds. The moneys collected by the levy of the additional court costs authorized by Section 7.44.01 above shall be deposited into the Atkins City Treasury to the credit of the Fund to be known as the "Criminal Justice Fund" and such moneys shall be used solely for reimbursing the county for expenses in incarcerating Atkins city prisoners. (Ord. No. 87-4, Sec. 2)

CHAPTER 7.48

FIREWORKS

Sections:

7.48.01 Definition of fireworks
7.48.02 Unlawful to sell, explode or use fireworks
7.48.03 Penalty

7.48.01 Definition of fireworks Fireworks shall mean and include any combustible or explosive composition or any substance or combination of substances or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, and shall include blank cartridges, the type of balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, roman candles, daygo bombs, sparklers or other devices of like construction and any devices containing any explosive or flammable compound or any tablets or other devices containing any explosive substance except that the term "fireworks" shall not include auto flares, paper caps containing not in excess of an average of twenty-five hundredths (.25) of a grain of explosive content per cap and toy pistols, toy canes, toy guns or other devices for use of such caps, the sale and use of which shall be permitted at all times. (Ord. No. 87-17, Sec. 1)

7.48.02 Unlawful to sell, explode or use fireworks It shall be unlawful for any person, firm, corporation, partnership or organization to use, explode or sell directly to the public at large any fireworks as described herein within the city limits of Atkins except as provided for in the following instances:

A. The Fire Chief shall adopt reasonable rules and regulations for the granting of permits for supervised public displays of fireworks by the city, fair associations, amusement parks and other such organizations. Every such display shall be handled by a competent operator approved by the Fire Chief and shall be of such character and so located, discharged or fired as in the opinion of the Fire Chief, after proper inspection, shall not be hazardous to property or endanger any person..

B. Fireworks may be sold within the city limits directly to the public at large between the hours of 8:00 a.m. and 10:00 p.m. on the days set forth pursuant to Ark. Code Ann. 20-22-711(a)(1) as amended from time to time.

C. Fireworks may be used and exploded by the public at large only between the hours of 8:00 a.m. and 10:00 p.m. on such days as retailers are authorized to sell fireworks pursuant to Ark. Code Ann. 20-22-711(a)(1) as amended from time to time. (Ord. No. 2019-11, Sec. 1.)

7.48.03 Penalty Any person, firm, corporation, partnership or organization violating any provision of this ordinance shall be deemed guilty of a misdemeanor and upon conviction, shall be fined in an amount not less than Twenty-Five Dollars ($25.00) nor more than One Hundred Dollars ($100.00). (Ord. No. 87-17, Sec. 3)

CHAPTER 7.52

ALCOHOLIC BEVERAGES IN PUBLIC PLACES

Sections:

7.52.01 Unlawful
7.52.02 Definitions
7.52.03 Penalties

7.52.01 Unlawful It shall be unlawful for a person to have in that person's possession or within that person's immediate reach or control while on or about public places or thoroughfares within the city of Atkins, any open containers of any alcoholic beverage. (Ord. No. 89-2, Sec. 1)

7.52.02 Definitions

Possession means to be held or placed or upon one's person and/or in one's grasp and/or within one's grasp or control.

Alcoholic beverage means any vinous, spirituous or malt liquors or beverages or beers and also including but not limited to whiskey, brandy, cordials, liquors, ales, beers or other liquids containing alcohol as these terms are defined by Arkansas State Law.

Open container means any container of alcoholic beverage which has or has had its seal broken or its top opened. (Ord. No. 89-2, Sec. 2)

7.52.03 Penalties Any person found guilty of this offense shall be deemed guilty of a misdemeanor and shall be fined in a sum not less than Fifty Dollars ($50.00) nor more than One Hundred Fifty Dollars ($150.00) and/or imprisonment in the County Jail for not more than five (5) days for each offense. (Ord. No. 89-2, Sec. 3)

CHAPTER 7.56

SEXUALLY ORIENTED BUSINESSES

Sections:

7.56.01 Rationale and findings
7.56.02 Definitions
7.56.03 Classifications
7.56.04 License required
7.56.05 Issuance of license
7.56.06 Fees
7.56.07 Inspection
7.56.08 Expiration of license
7.56.09 Suspension
7.56.10 Revocation
7.56.11 Hearing; license denial, suspension, revocation; appeal
7.56.12 Transfer of license
7.56.13 Hours of operation
7.56.14 Regulations pertaining to exhibition of sexually explicit films on premises
7.56.15 Loitering and exterior lighting and monitoring requirements
7.56.16 Penalties and enforcement
7.56.17 Applicability of ordinance to existing businesses
7.56.18 Prohibited activities
7.56.19 Scienter required to prove violation or business licensee liability
7.56.20 Failure of city of Atkins, Arkansas to meet time frame not to risk applicant/licensee rights
7.56.21 Location of sexually oriented businesses

7.56.01 Rationale and findings

A. Purpose It is the purpose of this section to regulate sexually oriented businesses to promote the health, safety and general welfare of the citizens of the city of Atkins, Arkansas, and to establish reasonable and uniform regulation to prevent the deleterious secondary effects of sexually oriented businesses within the city of Atkins, Arkansas. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this ordinance to restrict or deny access by adults to

sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material.

B. Findings and rationale Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Atkins City Council, and on findings, interpretation, and narrowing constructions incorporated in the cases of city of Littleton b. Z.J. Gifts D-4, L.L.C. 124 S.Ct. 2219 (June 7, 2004); city of Los Angeles v. Alameda Books, Inc., 535 U.S. 425 (2002); Pap's A.M. v. city of Erie, 529 U.S. 277 (2000); 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); California v. LaRue, 409 U.S. 109 (1972); and World Wide Video of Washington, Inc. v. city of Spokane, 368 F. 3d 1186 (9th Cir. 2004); Ben's Bar, Inc. c. Village of Somerset, 316 F. 3d 702 (7th Cir. 2003);

And based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to Austin, Texas – 1986; Indianapolis, Indiana – 1984; Garden Grove, California – 1991; Houston, Texas – 1983, 1997; Phoenix, Arizona – 1979, 1995-98; Chattanooga Tennessee – 1999-2003; Minneapolis, Minnesota – 1980; Los Angeles, California – 1997; Whittier, California – 1978; Spokane, Washington – 2001; St. Cloud, Minnesota – 1994; Littleton, Colorado 2004; Oklahoma City, Oklahoma – 1986; Dallas, Texas – 1997; Greensboro, North Carolina – 2003; Amarillo, Texas – 1997; New York New York Times Square – 1994; and Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989, state of Minnesota).

The Atkins City Council finds:

A. Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.

B. Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented business, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.

C. Each of the foregoing negative secondary effects constitutes a harm which the city of Atkins, Arkansas, has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the city of Atkins, Arkansas's rationale for this ordinance, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the city of Atkins, Arkansas's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the city of Atkins, Arkansas finds that the cases and documentation relied on in this ordinance are reasonably believed to be relevant to said secondary effects. (Ord. No. 2006-3, Sec. 1.)

7.56.02 Definitions For the purposes of this ordinance, the words and phrases defined in the sections hereunder shall have the meanings herein respectively ascribed to them unless a different meaning is clearly indicated by the context.

Adult bookstore or Adult video store means a commercial establishment which as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following: books magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides or other visual representations which are characterized by their emphasis upon the display of "specified sexual activities or specified anatomical areas."

Adult cabaret means a nightclub, bar, juice bar, restaurant, bottle club, or other commercial establishment, whether or not alcoholic beverages are served, which regularly features persons who appear semi-nude.

Adult motel means a motel, hotel, or similar commercial establishment which:

A. offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, other photographic reproductions, or live performances which are characterized by the display of "specified sexual activities" or "specified anatomical areas"; and which advertises the availability of such material by means of a sign visible from the public right-of-way, or by means of any on or off-premises advertising, including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or

B. offers a sleeping room for rent for a period of time that is less than 10 hours; or

C. allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than 10 hours.

Adult motion picture theater means a commercial establishment where films, motion pictures, video cassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas" are regularly shown to more than five persons for any form of consideration.

Characterized by means describing the essential character or quality of an item. As applied in this ordinance, no business shall b e classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-18 or R by the Motion Picture Association of America.

Employ, employee and employment describe and pertain to any person who performs any service on the premises of a sexually oriented business, on a full time or part time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

Enforcement Officer means the city of Atkins, Arkansas' Police Chief.

Establish or establishment shall mean and include any of the following:

A. The opening or commencement of any sexually oriented business as a new business;

B. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or

C. The addition of any sexually oriented business to any other existing sexually oriented business.

Hearing body shall mean the City Council of the city of Atkins, Arkansas.

Influential interest means any of the following

A. the actual power to operate the sexually oriented business or control the operation, management or policies of the sexually oriented business or legal entity which operates the sexually oriented business,

B. ownership of a financial interest of thirty percent (30%) or more of a business or of any class of voting securities of a business, or

C. holding an office (e.g., president, vice-president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the sexually oriented business.

Licensee shall mean a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In case of an "employee," it shall mean the person in whose name the sexually oriented business employee license has been issued.

Municipality body means the City Council of the city of Atkins, Arkansas.

Municipality type means city of Atkins, Arkansas.

Nudity or a state of nudity means the showing of the human male or female genitals, public area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

Operate or cause to operate shall mean to cause to function or to put or keep in a state of doing business. "Operator" means any person on the premises of a sexually oriented business who causes that business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part-owner, or licensee of the business.

Person shall mean individual, proprietorship, partnership, corporation, association, or other legal entity.

Premises means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a business license pursuant to 7.40.04 of this ordinance.

Principal purpose means that the commercial establishment:

A. has a substantial portion of its displayed merchandise which consists of said items, or

B. has a substantial portion of the wholesale value of its displayed merchandise which consists of said items, or

C. has a substantial portion of the retail value of its displayed merchandise which consists of said items, or

D. derives a substantial portion of its revenues from the sale or rental, for any form of consideration of said items; or

E. maintains a substantial section of its interior business space for the sale or rental or said items; or

F. maintains an "adult arcade," which means any place to which the public is permitted or invited wherein coin-operated or slug-operated or 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, and where the images so displayed are characterized by their emphasis upon matter exhibiting "specified sexual activities" or "specified anatomical areas."

Regularly means and refers to the consistent and repeated doing of the act so described.

Semi-nude model studio means a place where persons regularly appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

This definition does not apply to any place where persons appearing in a state of semi-nudity did so in a modeling class operated:

A. By a college, junior college, or university supported entirely or partly by taxation;

B. By a private college or university which maintains and operates educational programs in which credited are transferable to college, junior college, or university supported entirely or partly by taxation; or

C. In a structure:

1. Which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; and
2. Where, in order to participate in a class a student must enroll at least three days in advance of the class.

Semi-nude or state of semi-nudity means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at the point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

Sexual device means any three (3) dimensional object designed and marketed for stimulation of the male or female human genital organ or anus or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

Sexual device shop manes a commercial establishment that regularly features sexual devices. Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing medical or healthcare products or service, nor shall this definition be construed to include commercial establishments which do not restrict access to any portion of their premises by reason of age.

Sexual encounter center shall mean a business or commercial enterprise that, as one of its principal business purposes, purports to offer for any form of consideration, physical contact in the form of wrestling or tumbling between persons of the opposite sex when one or more of the persons is semi-nude.

Sexually oriented business means an "adult bookstore or adult video store," and "adult cabaret," an "adult motel," an "adult motion picture theater," a "semi-nude model studio," "sexual device shop," or a "sexual encounter center."

Specified anatomical areas means and includes:

A. Less than completely and opaquely covered; human genitals, public region, buttock; and female breast below a point immediately above the top of the areola; and

B. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified criminal activity means:

A. any of the following specified crimes for which less than five years elapsed since

the date of conviction or the date of release from confinement for the conviction, whichever is the later date:

1. Sex crimes as defined in A.C.A. 5-14-101, *et seq.*
2. Prostitution crimes as defined in A.C.A. 5-70-101, *et seq.*
3. Obscenity crimes as defined in A.C.A. 5-68-101, *et seq.*
4. Drug crimes as defined in A.C.A. 5-64-101, *et seq.*
5. Racketeering as defined in A.C.A. 5-74-101, *et seq.*

B. any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; or

C. any offense in another jurisdiction that, had the predicate act(s) been committed in Arkansas, would have constituted any of the foregoing offenses.

Specified sexual activity means any of the following:

A. intercourse, oral copulation, masturbation or sodomy; or

B. excretory functions as a part of or in connection with any of the activities described in (A) above.

Substantial means at least thirty-five percent (35%) of the item(s) so modified.

Transfer of ownership or control of a sexually oriented business shall mean any of the following:

A. the sale, lease, or sub-lease of the business;

B. The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means, or

C. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

Viewing room shall mean the room, booth, or area where a patrol of sexually oriented business would ordinarily be positioned while watching a film, video cassette, or other video reproduction. (Ord. No. 2006-3, Sec. 2.)

7.56.03 Classification The classifications for sexually oriented businesses shall be as follows:

A. Adult bookstores or adult video stores;
B. Adult cabarets;
C. Adult motel;
D. Adult motion picture theater;
E. Semi-nude model studio;
F. Sexual device shop;
G. Sexual encounter center.

(Ord. No. 2006-3, Sec. 3.)

7.56.04 License required

A. It shall be unlawful for any person to operate a sexually oriented business in the city of Atkins without a valid sexually oriented business license.

B. It shall be unlawful for any person to be an "employee" as defined in this ordinance, of a sexually oriented business in the city of Atkins without a valid sexually oriented business employee license.

C. An applicant for a sexually oriented business license or sexually oriented business employee license shall be filed in person at the office of the city of Atkins Police Chief. Application will be made on a form provided by the Chief of Police. The application shall be signed as required by subsection (3) herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in section 1 through 7 below, accompanied by the appropriate fee identified in section 6.

1. The applicant's full true name and any other names used by the applicants in the preceding five (5) years.

2. Current business address or another mailing address of the applicant.

3. Written proof of age, in the form of a driver's license or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.

4. If the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number of the sexually oriented business.

5. If the application is for a sexually oriented business license, the name and business address of the statutory agent or other agent authorized to receive service of process.

6. A statement of whether an applicant has been convicted of or has pled guilty or *nolo contendere* to a specified criminal activity as defined in this ordinance, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.

7. A statement of whether any sexually oriented business in which applicant has had an influential interest, has, in the previous five (5) years (and at the time during which the applicant had the influential interest):

    a. been declared by a court of law to be a nuisance; or
    b. been subject to a court order of closure or padlocking.

The information provided pursuant to section 1 through 7 of this subsection shall be supplemented in writing by certified mail, return receipt requested, to the Atkins Police Chief within ten (10) working days of change of circumstances which would render the information originally submitted false or incomplete.

D. An application for a sexually oriented business license shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Applicants who are required to comply with section 14 and 18 of this ordinance shall submit a diagram indicating that the interior configuration meets the requirements of those sections.

E. If a person who wishes to operate a sexually oriented business is an individual, he shall sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each person with an influential interest in the business shall sign the application for a license as

applicant. Each applicant must be qualified under section 5 and each applicant shall be considered a licensee if a license is granted.

F. The information provided by an applicant in connection with an application for a license under this ordinance shall be maintained by the office of the Atkins Police Chief on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by court order. (Ord. No. 2006-3, Sec. 4.)

7.56.05 Issuance of license

A. Upon the filing of a completed application under 7.56.04 (C) sexually oriented business license, the Atkins Police Chief shall immediately issue a temporary license to the applicant, which temporary license shall expire upon the final decision of the city of Atkins, Arkansas, to deny or grant an annual license. Within twenty (20) days of the filing date of a completed sexually oriented business license application, the Atkins Chief of Police shall issue a license to the applicant or issue to the applicant a letter of intent to deny the application. The Atkins Chief of Police shall issue a license unless:

1. An applicant is less than eighteen (18) years of age.

2. An applicant has failed to provide information as required by 7.56.04 for issuance of a license or has falsely answered a question or request for information on the application form.

3. The license application fee required by this ordinance has not been paid.

4. The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this ordinance or is not in compliance with locational requirements of this ordinance or the locational requirements of any other part of the city of Atkins code.

5. Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):

   a. been declared by a court of law to be a nuisance; or
   b. been subject to an order of closure or padlocking.

6. An applicant has been convicted of or pled guilty or *nolo contendere* to a specified criminal activity, as defined in this ordinance.

B. Upon the filing of a completed application under 7.56.04 (C) for a sexually oriented business employee license, the Atkins Police Chief shall immediately issue a temporary license to the applicant, which temporary license shall expire upon the final decision of the city of Atkins, Arkansas, to deny or grant an annual license. Within twenty (20) days of the filing date of a completed sexually oriented business employee license application, the Chief of Police shall either issue a license or issue a written notice of intent to deny a license to the applicant. The Chief of Police shall approve the issuance of a license unless:

1. The applicant is less than eighteen (18) years of age.

2. The applicant has failed to provide information as required by 7.56.04 for issuance of a license or has falsely answered a question or request for information of the application form.

3. The license application fee required by this ordinance has not been paid.

4. Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest).

   a. been declared by a court of law to be a nuisance; or
   b. been subject to an order of closure or padlocking.

5. The applicant has been convicted of or pled guilty or *nolo contendere* to a specified criminal activity, as defined in this ordinance.

C. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing. (Ord. No. 2006-3, Sec. 5.)

7.56.06 Fees The initial license and annual renewal fees for sexually oriented business licenses and sexually oriented business employee licenses shall be as follows: Three Hundred Dollars ($300.00) for the initial fee for a sexually oriented business license and Three Hundred Dollars ($300.00) for annual renewal; Seventy-Five Dollars ($75.00) for the initially sexually oriented business employee license and Seventy-Five Dollars ($75.00) for the annual renewal. All fees to be paid on or before January 31st of each year. (Ord. No. 06-3, Sec. 6.)

7.56.07 Inspection

A. Sexually oriented businesses and sexually oriented business employees shall permit the Chief of Police and his or her agents to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this ordinance, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed by the city of Atkins, Arkansas, to authorize reasonable inspections of the licensed premises pursuant to this ordinance, but not to authorize a harassing or excessive pattern of inspections.

B. The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation. (Ord. No. 2006-3, Sec. 7.)

7.56.08 Expiration of license

A. Each license shall remain valid for one calendar year unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in 7.56.04 and 7.56.06.

B. Application for renewal should be made pursuant to the procedures set forth in 7.56.04 at least ninety (90) days before the expiration date, and when made less than ninety (90) days before the expiration date, the expiration of the license will not be affected. (Ord. No. 2006-3, Sec. 8.)

7.56.09 Suspension

A. The city of Atkins, Arkansas, shall issue a written letter of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if the sexually oriented business license has knowingly violated this ordinance or has knowingly allowed an employee to violate this ordinance.

B. The city of Atkins, Arkansas, shall issue a written letter of intent to suspend a sexually oriented business employee license if the employee has knowingly violated this ordinance. (Ord. No. 2006-3, Sec. 9.)

7.56.10 Revocation

A. The city of Atkins, Arkansas, shall issue a letter of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if the licensee knowingly violated this ordinance or has knowingly allowed an employee to violate this ordinance and the licensee's license has been suspended within the previous twelve-month (12) period.

B. The city of Atkins, Arkansas, shall issue written intent to revoke a sexually oriented business license or a sexually oriented business employee license as applicable, if:

1. The licensee has knowingly given false information in the application for the sexually oriented business license.

2. The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises.

3. The licensee has knowingly or reckless engaged in or allowed prostitution on the premises.

4. The licensee knowingly or recklessly operated the sexually oriented business during a period of time when the license was finally suspended or revoked; or

5. The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity to occur in or on the licensed premises.

C. The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.

D. When, after the notice and hearing procedure described in 7.56.11, the Atkins City Council revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for one (1) year from the date revocation becomes effective. (Ord. No. 2006-3, Sec. 10.)

7.56.11 Hearing: denial, revocation, and suspension; appeal

A. When the Chief of Police issues a written notice of intent to deny, suspend, or revoke a license, the Chief of Police shall immediately send such notice, which shall include the specific grounds under this ordinance for such action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the Chief of Police for the respondent. The notice shall specify a date, not less than ten (10) days nor more than twenty(20) days after the date the notice is issued on which the Atkins City Council shall conduct a hearing on the Chief of Police's intent to deny, suspend, or revoke the license.

At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the Chief of Police's witnesses. The Chief of Police shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two (2) days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The Atkins City Council shall issue a written decision, including specific reasons for the decision pursuant to this ordinance, to the respondent within five (5) days after the hearing.

If the decision is to deny, suspend, or revoke the license, the decision shall not become effective until the thirtieth (30^{th}) day after it is rendered, and the decision shall include a statement advising the respondent of the right to appeal such decision to a court of competent jurisdiction. If the Atkins City Council's decision finds that no ground exist for denial, suspension, or revocation of the license, the Atkins City Council shall, contemporaneously with the issuance of the decision, order the Chief of Police to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the Chief of Police shall contemporaneously therewith issue the license to the applicant.

B. If any court action challenging the Atkins city council's decision is initiated, the Atkins City Council shall prepare and transmit to the court a transcript of the hearing within ten (10) days after receiving written notice of the filing of the court action. The Atkins City Council shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any sexually oriented business that is in operation as of

the effective date of this ordinance. Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the city of Atkins, Arkansas' enforcement of the denial, suspension or revocation, the city of Atkins, Arkansas, shall immediately issue the respondent to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the city of Atkins, Arkansas' enforcement. (Ord. No. 2006-3, Sec. 11.)

7.56.12 Transfer of license A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application. (Ord. No. 2006-3, Sec. 12.)

7.56.13 Hours of operation No sexually oriented business shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day. (Ord. No. 2006-3, Sec. 13.)

7.56.14 Regulations pertaining to exhibition of sexually explicit films or videos

A. A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.

1. Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all operator's stations, viewing rooms, overhead lighting fixtures, video cameras and monitors installed for monitoring purposes and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain video reproduction equipment. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior or the premises to an accuracy of plus or minus six (6) inches. The Chief of Police may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and

certifies that the configuration of the premises has not been altered since it was prepared.

2. It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to paragraph 1 of this subsection.

3. The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5) foot candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.

4. It shall be the duty of the operator, and of any employees present on the premises, to ensure that no sexual activity occurs in or on the licensed premises.

5. It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:

   a. That the occupancy of viewing rooms is limited to one person
   b. That sexual activity on the premises is prohibited.
   c. That the making of openings between viewing rooms is prohibited.
   d. That violators will be required to leave the premises.
   e. That violations of subparagraphs (a), (b) and (c) of this paragraph are unlawful

6. It shall be the duty of the operator to enforce the regulations articulated in (5) (a) through (e) above.

7. The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is

an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty. (Ord. No. 2006-3, Sec. 14.)

7.56.15 Loitering, exterior lighting, visibility, and monitoring requirements

A. It shall be the duty of the operator of a sexually oriented business to:

1. post conspicuous signs stating that no loitering is permitted on such property;

2. designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every ninety (90) minutes or inspecting such property by use of video cameras and monitors; and

3. provide lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.

B. It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

C. No sexually oriented business shall erect a fence, wall, or other barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right-of-way. (Ord. No. 2006-3, Sec. 15.)

7.56.16 Penalties and enforcement

A. A person who knowingly violates, disobeys, omits, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this ordinance shall be guilty of a Class A misdemeanor, and, upon conviction, shall be punishable by 0 days to 1 years in jail and/or 0 to $1,000.00 fine. Each day a violation is committed, or permitted to continue, shall constitute a separate offense and shall be fined as such.

B. The city of Atkins, Arkansas' legal counsel is hereby authorized to institute civil proceedings necessary for the enforcement of this ordinance to prosecute, restrain, or correct violations hereof. Such proceedings, including injunction, shall be brought in the name of the city of Atkins, Arkansas, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this ordinance, or any of the laws or ordinances in force in the city of Atkins, Arkansas, or to exempt anyone violating this code or any part of the said laws from any penalty which may be incurred. (Ord. No. 2006-3, Sec. 16.)

7.56.17 Applicability of ordinance to existing businesses It is unlawful for a sexually oriented business to knowingly violate the following regulations or to knowingly allow an employee or any other person to violate the following regulations.

A. It shall be a violation of this ordinance for a patron, employee, or any other person to knowingly or intentionally, in a sexually oriented business, appear in a state of nudity, regardless of whether such public nudity is expressive in nature.

B. It shall be a violation of this ordinance for a person to knowingly or intentionally, in a sexually oriented business, appeal in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six (6) feet from any patron or customer and on a stage at least eighteen (18) inches from the floor in a room of at least one thousand (1,000) square feet.

C. It shall be a violation of this ordinance for any employee who regularly appears semi-nude in a sexually oriented business to knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business.

D. It shall be a violation of this ordinance for any person to sell, use, or consume alcoholic beverages on the premises of a sexually oriented business.

E. A sign in a form to be prescribed by the Chief of Police, and summarizing the provisions of paragraphs (A), (B), (C) and (D) of this section, shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry. (Ord. No. 2006-3, Sec. 18.)

7.56.19 Scienter required to prove violation or business licensee liability This ordinance does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this ordinance. Notwithstanding anything to the contrary, for the purposes of this ordinance, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the sexually oriented business licensee for the purposes of finding a violation of this ordinance, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act. (Ord. No. 2006-3, Sec. 19.)

7.56.20 Failure of the city of Atkins, Arkansas, to meet deadline not to risk applicant/licensee rights In the event that a city of Atkins, Arkansas, official is required to take an act or do a thing pursuant to this ordinance within a prescribed time, and fails to take such act or do such thing within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the city of Atkins, Arkansas, official under this ordinance, and not completed in the time prescribed, includes approval of condition(s) necessary for approval by the city of Atkins, Arkansas, of an applicant or licensee's application for sexually oriented business license or a sexually oriented business employee's license (including a renewal), the license shall be deemed granted and the business or employee allowed to commence operations or employment the day after the deadline for the city of Atkins, Arkansas' action has passed. (Ord. No. 2006-3, Sec. 20.)

7.56.21 Location of sexually oriented businesses

A. Sexually oriented businesses shall not be required to obtain a conditional use permit. Sexually oriented businesses shall be permitted subject to the following limitations:

B. It shall be unlawful to establish, operate, or cause to be operated a sexually oriented business in the city of Atkins, unless said sexually oriented business is at least:

1. Seven hundred fifty (750) feet from any parcel occupied by another sexually oriented business or by a business licensed by the state of Arkansas to sell alcohol at the premises; and

2. Seven hundred fifty (750) feet from any parcel occupied by a house of worship, licensed day-care center, public or private elementary or secondary school, public bar, or any residence.

C. For the purpose of this section, measurements shall be made in a straight line in all directions without regard to intervening structures or objects, from the closest part of any structure, including signs and roof overhangs, used in conjunction with the sexually oriented business to the closest point on a property boundary or right-of-way associated with any of the land use(s) identified in section A(1) – A(2) above.

D. Exterior portions of sexually oriented businesses.

1. It shall be unlawful for an owner or operator of a sexually oriented business to allow the merchandise or activities of the establishment to be visible from a point outside the establishment

2. It shall be unlawful for the owner or operator of a sexually oriented business to allow the exterior portion of the sexually oriented business to 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 ordinance.

3. It shall be unlawful for the owner or operator of a sexually oriented business to allow exterior portions of the establishment to be painted any color other than a single achromatic color.

4. Nothing in this article shall be construed to require the painting of an otherwise unpainted exterior portion of a sexually oriented business.

E. Signage

1. Notwithstanding any other city ordinance, code, or regulation to the contrary, it shall be unlawful for the operator of any sexually oriented business or any other person to erect, construct, or maintain any sign for the sexually oriented business other than the one (1) primary sign and one (1) secondary sign, as provided herein.

2. Primary signs shall have no more than two (2) display surfaces. Each such display surface shall:

a. not contain any flashing lights;
b. be a flat plane, rectangular in shape;
c. not exceed seventy-five (75) square feet in area; and
d. not exceed ten (10) feet in height or ten (10) feet in length.

3. Primary signs shall contain no photographs, silhouettes, drawings or pictorial representations in any manner, and may contain only the name of the enterprise.

4. Each letter forming a word on a primary sign shall be of solid color, and each such letter shall be the same print-type, size and color. The background behind such lettering on the display surface of a primary sign shall be of a uniform and solid color.

5. Secondary signs shall have only one (1) display surface. Such display surface shall:

a. be a flat plane, rectangular in shape;
b. not exceed twenty (20) square feet in area;
c. not exceed five (5) feet in height and four (4) feet in width; and
d. be affixed or attached to any wall or door of the enterprise.

6. The provisions of item (A) of subsection (2) and subsection (3) and (4) shall also apply to secondary signs. (Ord. No. 2006-3, Sec. 21.)

CHAPTER 7.60

NOVELTY LIGHTERS

Sections:

7.60.01 Sale prohibited
7.60.02 Definition
7.60.03 Exceptions
7.60.04 Penalty

7.60.01 Sale prohibited The retail sale, offer of retail sale, gift or distribution of any novelty lighter within the territorial jurisdiction of Atkins, Arkansas, is prohibited. This prohibition is inapplicable to:

A. Novelty lighters which are only being actively transported through Atkins, Arkansas; or

B. Novelty lighters located in a warehouse or distribution center closed to the public for purposes of retail sales. (Ord. No. 2008-1, Sec. 1.)

7.60.02 Definition

Novelty lighter means a lighter that has entertaining audio or visual effect, or that depicts, through the use of logos, decals, art work, or by other means, or that resembles in physical form or function articles commonly recognized as appealing to or intended for use by children ten (10) years of age or younger, including but not limited to, lighters that depict or resemble cartoon characters, toys, guns, watches, instruments, vehicles, toy animals, food or beverages or that play musical notes or have flashing lights or other entertaining features. A novelty lighter may operate on any fuel, including butane or liquid fuel. (Ord. No. 2008-1, Sec. 2.)

7.60.03 Exceptions The term novelty lighter excludes:

A. any lighter manufactured prior to 1980; and

B. any lighter which lacks fuel and or a device necessary to produce combustion or a flame; or

C. any lighter which lacks a device necessary to produce combustion of a flame. (Ord. No. 2008-1, Sec. 3.)

7.60.04 Penalty Any person violating any provision of this ordinance is guilty of an infraction and upon conviction thereof, shall be subject to a fine or penalty of not less than Twenty-Five Dollars ($25.00) nor more than Five Hundred Dollars ($500.00) plus court costs. (Ord. No. 2008-1, Sec. 4.)

CHAPTER 7.64

SALE OF CERTAIN HARMFUL SUBSTANCES

Sections:

7.64.01 Unlawful
7.64.02 Possession
7.64.03 Exception
7.64.04 Medical purposes
7.64.05 Fine
7.64.06 Superseded

7.64.01 Unlawful It is hereby declared to be unlawful for any person, corporation, partnership, wholesaler or retailer to use, possess, purchase, attempt to purchase, sell, publicly display for sale or attempt to sell, give or barter any one or more of the following chemicals within the city limits of the city of Atkins, Arkansas:

A. Salviadivinorum or salvinorum A: All parts of the plant presently classified botanically as salvia divinorum, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts derivative, mixture or preparation of such plant, its seeds or extracts.

B. (6aR, 10aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10, 10a-tetrahydrobenzo(c)chromen-1-o1…….
Some trade or other names: HU-210

C. 1-Pentyl-3-(1-naphthoyl) indole…….
Some trade or other names: JWH-018/spice

D. 1-Butyl-3-(1-naphthoyl) indole……..
Some trade or other names: JWH-073

E. N-BENZYLPIPERAZINE…….
Some trade or other names: BZP

F. 1-(3[triflouromethylphenyl]) piperazine.
Some trade or other names: TFMPP

G. Or any similar substance.

Which products are sometimes known as “K2” or “Spice.”
(Ord. No. 2010-4, Sec. 1.)

7.64.02 Possession If any of the aforementioned substances are found in the possession of any person, corporation, partnership, wholesaler or retailer, the substances may be confiscated and destroyed by law enforcement officials. (Ord. No. 2010-4, Sec. 2.)

7.64.03 Exception It is not an offense under 7.64.02 of this ordinance if the person was acting at the direction of an authorized agent of the city of Atkins to enforce or ensure compliance with this law prohibiting the sale, use, possession or ingestion of the aforementioned substances. (Ord. No. 2010-4, Sec. 3.)

7.64.04 Medical purposes This ordinance does not apply to any person who commits any act described in this ordinance pursuant to the direction or prescription of a licensed physician or dentist authorized to direct or prescribe such act. This ordinance likewise does not apply to the inhalation of anesthesia for a medical purpose or dental purpose. (Ord. No. 2010-4, Sec. 5.)

7.64.05 Fine Any person to be in violation of this ordinance will be guilty of a misdemeanor and subject to a fine of not less than One Hundred Dollars ($100.00) and not to exceed Five Hundred Dollars ($500.00), or by imprisonment not exceeding one (1) month, or both. Each day of a continuing violation shall constitute a separate offense. (Ord. No. 2010-4, Sec. 6.)

7.64.06 Superseded If the Arkansas Legislature adopts a statute enacting criminal penalties for the possession, sale or delivery of any illegal product, as defined in this ordinance, then upon the effective date of such statute, this ordinance shall be superseded said statute. However, any violation of this ordinance occurring prior to the effective date of such a state statute may be prosecuted after the effective date of such a state statute. (Ord. No. 2010-4, Sec. 7.)