

**ORDINANCE NO. 2018-22**

**AN ORDINANCE AMENDING CHAPTERS 1, 9, 12, AND 14 THEREBY DELETING ARTICLE III OF CHAPTER 9 ENTITLED “PREMISES CONDUCTIVE TO HIGH RISK SEXUAL CONDUCT,” DELETING A CORRESPONDING REFERENCE IN CHAPTER 1, AND DELETING OUTDATED LANGUAGE FROM CHAPTERS 12 AND 14 RELATED TO DEFINITIONS AND COMMUNICABLE DISEASE.**

The City Council of the City of Bloomington hereby ordains:

Section 1. That Chapter 1 of the City Code is hereby amended by deleting those words that are in ~~striketrough~~ font contained in brackets [ ] and adding those words that are underlined, to read as follows:

**CHAPTER 1: INTERPRETATION AND ENFORCEMENT OF THE CITY CODE**

\* \* \*

**ARTICLE II: CIVIL HEARING PROCESS**

\* \* \*

**§ 1.11 CITY CODE PROVISIONS THAT ARE ADMINISTRATIVE OFFENSES.**

\* \* \*

(6) [~~Chapter 9, Article I, Public Nuisances Affecting Health~~]RESERVED;

\* \* \*

Section 2. That Chapter 9 of the City Code is hereby amended by deleting those words that are in ~~striketrough~~ font contained in brackets [ ] and adding those words that are underlined, to read as follows:

**CHAPTER 9: RESERVED[~~PUBLIC HEALTH~~  
~~ARTICLE I—II: RESERVED~~**

**~~ARTICLE III: PREMISES CONDUCTIVE TO HIGH-RISK SEXUAL CONDUCT~~**

**~~§ 9.11 PURPOSE.~~**

~~—The purpose of this Article III of the city code is to prescribe regulations governing commercial premises, buildings and structures that are conducive, by virtue of design and use, to high-risk sexual conduct which can result in the spread of sexually transmitted diseases to persons frequenting such premises, buildings and structures.~~

**~~§ 9.12 FINDINGS OF THE CITY COUNCIL.~~**

~~—The City Council makes the following findings regarding the need to regulate commercial premises, buildings and structures that are conducive to the spread of communicable disease of danger in order to further the substantial interest of public health.~~

~~—(a) The experience of other cities establishes that certain commercial premises, buildings and structures, or parts thereof, by reason of the design and use of such premises, buildings or structures are conducive to the spread of communicable disease of danger to persons frequenting such premises, buildings or structures, as well as to the general public, and that the risk of spreading infectious and contagious diseases can be minimized by regulating such commercial premises, buildings and structures.~~

~~—(b) The experience of other cities where such commercial premises, buildings and structures are present indicates that the risk of spreading the sexually transmittable disease of acquired immune deficiency syndrome (AIDS) is increased by the presence of such premises, buildings and structures, because the design or use of such premises, buildings and structures, or parts thereof, can facilitate high risk sexual conduct.~~

~~—(c) Medical publications of the Centers for Disease Control of the United States Department of Health and Human Services indicate that the sexually transmittable disease of AIDS is currently irreversible and uniformly fatal. Medical research has further established that the risk factors for obtaining or spreading AIDS are associated with high risk sexual conduct.~~

### **~~§ 9.13 DEFINITIONS.~~**

~~—The following words and phrases when used in this Article III shall have the following meanings unless the context indicates otherwise.~~

~~—*BOOTHES, STALLS OR PARTITIONED PORTIONS OF A ROOM OR INDIVIDUAL ROOM.*~~

~~—(a) Enclosures specifically offered to persons for a fee or as an incident to performing high risk sexual conduct; or~~

~~—(b) Enclosures which are part of a business operated on the premises which offers movies or other entertainment to be viewed within the enclosure, including enclosures wherein movies or other entertainment is dispensed for a fee.~~

~~—The phrase *BOOTHES, STALLS OR PARTITIONED PORTIONS OF A ROOM OR INDIVIDUAL ROOM* does not mean enclosures which are private offices used by the owners, managers or persons employed by the premises for attending to the tasks of their employment, and which are not held out to the public or members of the establishment for hire or for a fee or for the purpose of viewing movies or other entertainment for a fee, and are not open to any persons other than employees.~~

~~—*DOORS, CURTAINS or PORTAL PARTITIONS.* Full, complete, nontransparent closure devices through which one cannot see or view activity taking place within the enclosure.~~

~~—*HAZARDOUS SITE.* Any commercial premises, building or structure, or any part thereof, which is a site of high risk sexual conduct as defined herein.~~

~~—*HIGH RISK SEXUAL CONDUCT.*~~

~~—(a) Fellatio;~~

~~—(b) Anal intercourse; and/or~~

~~—(c) Vaginal intercourse with persons who engage in sexual acts in exchange for money.~~

~~—*OPEN TO AN ADJACENT PUBLIC ROOM SO THAT THE AREA INSIDE IS VISIBLE TO PERSONS IN THE ADJACENT PUBLIC ROOM.* Either the absence of any entire door, curtain or portal partition or a door or other device which is made of clear, transparent material such as glass, plexi-glass or other similar material meeting Building Code and safety standards, which~~

permits the activity inside the enclosure to be entirely viewed or seen by persons outside the enclosure.

~~—PUBLIC HEALTH OFFICIAL. An agent or employee of the city charged with the enforcement of the state or local health laws.~~

#### **§ 9.14 PUBLIC HEALTH REGULATIONS.**

~~—(a) No commercial building, structure, premises or part thereof, or facilities therein shall be so constructed, used, designed or operated in the city for the purpose of engaging in, or permitting persons to engage in, sexual activities which include high risk sexual conduct.~~

~~—(b) No person shall own, operate, manage, rent, lease or exercise control of any commercial building, structure, premises or portion or part thereof in the city, which contains:~~

~~—(1) Partitions between subdivisions of a room, portion or part of a building, structure or premises having an aperture which is designed or constructed to facilitate sexual activity, including, but not limited to, vaginal intercourse, anal intercourse or fellatio, between persons on either side of the partition; and~~

~~—(2) Booths, stalls or partitioned portions of a room or individual room as defined herein which have doors, curtains or portal partitions as defined herein unless such booths, stalls, partitioned portions of a room or individual room have at least one side open to an adjacent public room so that the area inside is visible to persons in the adjacent public room as defined herein. Booths, stalls and/or partitioned portions of a room or individual room that are so open to an adjacent public room shall be lighted in a manner that the persons in the area used for viewing motion pictures or other forms of entertainment are visible from the adjacent public rooms, but such lighting shall not be of such intensity as to prevent the viewing of the motion pictures or other offered entertainment.~~

#### **§ 9.15 EXCEPTIONS.**

~~—The regulations set forth in § 9.14 of this Article III shall not apply to premises, buildings or structures that are lawfully operating and licensed as hotels, motels, apartment complexes, condominiums, townhomes or boarding houses which are subject to other general health and sanitation requirements under state and local law.~~

#### **§ 9.16 HEALTH ENFORCEMENT POWERS.**

~~—(a) In exercising powers conferred by this or any other section of this code relating to communicable diseases, the public health official shall be guided by the most recent instructions, opinions and guidelines of the Centers for Disease Control of the United States Department of Health and Human Services which relate to the spread of infectious diseases.~~

~~—(b) In order to ascertain the source of infection and reduce its spread, the public health official, and persons under the public health official's direction and control, shall have full power and authority to inspect or cause to be inspected, and to issue orders regarding any commercial building, structure or premises, or any part thereof, which may be a site of high risk sexual conduct. If the public health official determines that a hazardous site as defined herein exists, the public health official shall declare it to be a public health hazard and public health nuisance and shall then:~~

~~—(1) Notify the manager, owner or tenant of the hazardous site that the public health official has reasonable belief that the premises, building or structure is a hazardous site as defined herein;~~

~~—(2) Issue two written warnings at least ten days apart to the manager, owner or tenant of the premises stating the specific reasons for the public health official's opinion that the premises, building, or structure is a hazardous site as defined herein; and~~

~~—(3) Once such notices and warnings have been issued, the public health official or the public health official's appointee shall proceed as follows.~~

~~—(A) After the manager, owner or tenant of the premises has been notified in writing as to the basis of the public health official's determination, the manager, owner or tenant shall have ten days from the date of the last warning to request a hearing before the public health official or the public health official's appointee for the determination as to the existence of such hazardous site. If the manager, owner or tenant of the premises does not request a hearing within ten days of the date of the last warning notice, the public health official shall then cause the premises to be posted with a warning advising the public that the premises have been declared a hazardous site, and the public health official shall cause orders to be issued to the manager, owner or tenant of the premises constituting the hazardous site to take specified corrective measures to prevent high risk sexual conduct from taking place within the premises.~~

~~—(B) If the manager, owner or tenant of the premises requests a hearing, the hearing shall be held before the public health official or the public health official's appointee at a date not more than 30 days after demand for a hearing. After considering all evidence, the public health official or the public health official's appointee shall make a determination as to whether the premises constitute a hazardous site, as defined herein and issue a decision based upon all hearing evidence presented. If the public health official or the public health official's appointee makes a determination that the premises constitute a hazardous site, the public health official shall then issue orders to the manager, owner or tenant of the premises to take corrective measures to prevent high risk sexual conduct from taking place within the premises and cause the premises to be posted with a warning advising the public that the premises have been declared a hazardous site.~~

~~—(C) If, within 30 days from issuance of the orders to the manager, owner or tenant of the hazardous site, the public health official determines that such corrective measures have not been undertaken, the public health official may order the abatement of the hazardous site as a public nuisance, which shall be enforced by mandatory or prohibitory injunction in a court of competent jurisdiction; or may secure a court order for the closure of the premises constituting the hazardous site until the premises, building, or structure is in compliance with the regulations set forth in § 9.14 of this Article III.~~

#### **~~§ 9.17 CRIMINAL PENALTIES.~~**

~~—(a) Any person who removes, destroys or defaces warnings posted on premises by the public health official pursuant to § 9.16 of this Article III shall be guilty of a misdemeanor.~~

~~—(b) A violation of this Article III and its regulations is a misdemeanor under state law.~~

#### **~~§ 9.18 SEVERABILITY.~~**

~~—If any section, subsection, sentence, clause or phrase of this Article III is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Article III. The City Council hereby declares that it would have adopted the Article III and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.]~~

\* \* \*

Section 3. That Chapter 12 of the City Code is hereby amended by deleting those words that are in ~~striketrough~~ font contained in brackets [ ] and adding those words that are underlined, to read as follows:

## **CHAPTER 12: PUBLIC PEACE AND SAFETY**

\* \* \*

### **ARTICLE II: NUISANCE CONDUCT AND CONDITIONS**

\* \* \*

#### **DIVISION E: IMPROPER DISPLAY OF SEXUALLY-ORIENTED MATERIALS**

\* \* \*

##### **§ 12.23 DEFINITIONS.**

The following words and terms when used in this Division E shall have the following meanings, unless the context clearly indicates otherwise.

\* \* \*

**SEXUAL CONDUCT.** Acts of masturbation, [~~homosexuality~~,] sexual intercourse or physical contact with a person's unclothed genitals, pubic area, buttocks or, if such a person be a female, her breast.

\* \* \*

Section 4. That Chapter 14 of the City Code is hereby amended by deleting those words that are in ~~striketrough~~ font contained in brackets [ ] and adding those words that are underlined, to read as follows:

## **CHAPTER 14: LICENSES AND PERMITS**

\* \* \*

### **ARTICLE IV: BUSINESS LICENSES AND REGULATIONS**

\* \* \*

#### **DIVISION D: ESCORT SERVICES AND ESCORTS**

\* \* \*

##### **§ 14.167 FINDINGS OF THE CITY COUNCIL.**

The City Council finds that escort services can be used as fronts for prostitution and other criminal activity including, but not limited to, prostitution, thereby taxing city law-enforcement resources. The Council finds that escort services used as fronts for illegal sexual activity can also increase the risk of the spread of sexually transmitted diseases[~~including, but not limited to, acquired immune deficiency syndrome (AIDS) for which currently there is no cure~~].

\* \* \*

#### **DIVISION Q: SEXUALLY-ORIENTED BUSINESSES**

\* \* \*

##### **§ 14.333 FINDINGS OF THE CITY COUNCIL.**

\* \* \*

(c) Sexually-oriented businesses can increase the risk of exposure to communicable diseases [~~including, but not limited to, acquired immune deficiency syndrome (AIDS) for which currently there is no cure~~]. Experiences of other cities indicate that such businesses can facilitate the spread of communicable diseases by virtue of the design and use of the premises, thereby endangering not only the patrons of such establishments but also the general public.

Passed and adopted this 23<sup>rd</sup> day of July, 2018.

/s/ Gene Winstead  
Mayor

ATTEST:

/s/ Denise M. Christenson  
Secretary to the Council

APPROVED:

/s/ Melissa J. Manderschied  
City Attorney