

## **TITLE 7**

### **PUBLIC PEACE, SAFETY AND MORALS**

**Chapters:**

- 7.04 Violations of State Statutes and City Ordinances
- 7.08 Curfew
- 7.12 Disturbing the Peace - Ejection from Place of Business
- 7.16 Storage and Handling of Gasoline, Naptha, Benzine and Other Volatile Combustibles
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### **CHAPTER 7.04**

#### **VIOLATIONS OF STATE STATUTES AND CITY ORDINANCES**

**Sections:**

- 7.04.01 State criminal statutes adopted
- 7.04.02 State penalties adopted
- 7.04.03 Violations of city ordinances

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.

7.04.02 State penalties adopted The same 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 ordinance of the city. STATE LAW REFERENCE-A.C.A. 14-55-502

7.04.03 Violations of city ordinances

- A. For purposes of interpretation and enforcement, a violation of a city code or ordinance means:
1. Doing an act that is prohibited or declared to be unlawful, an offense or a misdemeanor, by ordinance or by rule or regulation authorized by ordinance;
  2. Failure to perform an act that is required to be performed by ordinance or by rule or regulation authorized by ordinance; or
  3. Failure to perform an act if the failure is declared a misdemeanor or an offense or unlawful by ordinance or by rule or regulation authorized by ordinance.
- B. "Violation of this ordinance" or a "violation of this code" does not include the failure of a city officer or city employee to perform an official duty unless it is provided that failure to perform the duty is to be punished as provided in this section.
- C. Except as otherwise provided, a person convicted of a violation of this code or city ordinance shall be punished by a fine not exceeding One Thousand Dollars (\$1,000.00), or double such sum for each repetition thereof. If the violation is, in its nature, continuous in respect to time, the penalty for allowing the continuance is a fine not to exceed Five Hundred Dollars (\$500.00) for each day that the same is unlawfully continued. (Ord. No. 2009-7-2, Sec. 1.)
- D. If a violation of this code is also a misdemeanor under state law, the penalty for the violation shall be as prescribed by state law for the state offense.
- E. The imposition of a penalty does not prevent revocation or suspension of a license, permit or franchise.
- F. Violations of this code that are continuous with respect to time are a public nuisance and may be abated by injunctive or other equitable relief. The imposition of a fine or penalty, however, does not prevent the simultaneous granting of equitable relief in appropriate cases. (Ord. No. 2005-11-1, Sec. 1.)

## CHAPTER 7.08

### CURFEW

Sections:

7.08.01	Curfew
7.08.02	Exceptions
7.08.03	Waiver permit - Authorized
7.08.04	Waiver permit conditions
7.08.05	Penalties

7.08.01 Curfew It shall be unlawful for any person under eighteen (18) years of age to be, or to remain unnecessarily in the city streets or public places at night after the hour of 10:30 p.m., Sunday through Thursday nights and one hour after midnight on Friday and Saturday nights- provided, however, the hours of curfew during the Christmas holidays when the public schools in the city are not in session shall be one hour after midnight on each night on such holidays. It shall further be unlawful if any person under eighteen (18) years of age to be or to remain unnecessarily in the city streets and public places after the times set out herein above and before the hour of 5:30 a.m. on any morning. (Ord. No. 90-4-2, Sec. 1)

7.08.02 Exceptions The curfew imposed by the provisions of this ordinance shall not apply if the minor person:

- A. Is accompanied by a parent, guardian or other person responsible for or having legal custody of such minors; or
- B. Such minor's gainful employment makes it necessary for such minor to be upon the streets, alleys or other public places after the specified hours or
- C. Is on an emergency errand, sanctioned by the parent, guardian or other adult person responsible for or having legal custody of such minor. (Ord. No. 90-4-2, Sec. 2)

7.08.03 Waiver permit - Authorized The Mayor of the city of Batesville, Arkansas, or his assignee, may issue a waiver of curfew permit, which will extend the curfew to a time which is thirty (30) minutes after the scheduled termination time of the activity for which the permit is granted, to any group of persons subject to the provisions of this division which is sponsored by either a public or parochial school or church within the city or is sponsored by adults associated with either a public or parochial school, for the purpose of supervising annual senior day and night activities at public or parochial schools in the city. (Ord. No. 90-4-2, Sec. 3)

7.08.04 Waiver permit conditions A waiver of curfew permit may be issued only when the planned activity complies with the following conditions:

- A. A written application must be filed with the Mayor of the city of Batesville, Arkansas, or his assignee not less than three (3) days prior to the date for which the waiver is requested
- B. The application must be signed by one or more of the adult sponsors of the group;
- C. The application must show the location of the event for which the waiver is requested;
- D. The application must show the type of function or activity for which the waiver is requested;
- E. The application must show the time the activity or function will commence and the time that it will end
- F. The application must show the name and address of the sponsor of the event
- G. The application must show the names of the adult supervisors who will be in attendance at the function
- H. It shall be the responsibility of the adult supervisors to notify the parents of all of the minors that the waiver has been granted, if it is, and the date and hour when the waiver will expire. (Ord. No. 90-4-2, Sec. 4)

7.08.05 Penalties Any minor child under this ordinance or against whom a petition for delinquency is filed, shall be subject to the penalties set out in the Arkansas Juvenile Code. (Ord. No. 90-4-2, Sec. 5)

**CHAPTER 7.12**

**DISTURBING THE PEACE: EJECTION FROM PLACE OF BUSINESS**

Sections:

- 7.12.01 Request to leave
- 7.12.02 Physical ejection
- 7.12.03 Conduct which shall be considered disturbing the peace

7.12.01 Request to leave Owners, managers or their designated employees shall have the right to request any person to leave the place of business or other premises (where such owner, manager or designated employee works) when such person is creating a disturbance so that other persons, patrons or business invitees are distracted or disturbed. (Ord. No. 831, Sec. 1)

7.12.02 Physical ejection If the person does not leave on request, the owner, manager or their designated employees shall have the right to physically eject and remove such person from the place of business or other premises. (Ord. No. 831, Sec. 2)

7.12.03 Conduct which shall be considered disturbing the leave Types of conduct which shall be prima facie to have created a disturbance by a person are as follows:

- A. Drunkenness
- B. The throwing of objects at other persons or if within the confines of a building, the throwing of objects regardless of aim.
- C. Excessive loud talk
- D. Disturbing movements
- E. The use of oaths, profanity, vulgarity or fighting words
- F. obscene gestures  
(Ord. No. 831, Sec. 3)

**CHAPTER 7.16**

**STORAGE AND HANDLING OF GASOLINE, NAPHTHA,**

**BENZINE AND OTHER VOLATILE COMBUSTIBLES**

Sections:

- 7.16.01      Restriction on keeping gasoline, naphtha, benzine, and other volatile combustibles
- 7.16.02      Gasoline or other volatile combustibles never to be allowed to pass into drainage systems
- 7.16.03      Penalty for violation

7.16.01 Restriction on keeping gasoline, naphtha, benzine, and other volatile combustibles Gasoline, naphtha, benzine, and other like volatile combustibles or their compounds in excess of a total of five (5) gallons exclusive of that in tanks of automobiles, in combustion engines, or in approved portable wheeled tanks in public garages each not exceeding sixty (60) gallons capacity, shall not be kept within any building. Such total of five (5) gallons or less shall be kept only in cans approved by the chief of the fire department. Any quantity in excess of five (5) gallons shall be kept only in a tank or tanks placed not less than two (2) feet beneath the surface of the ground and approved by the chief of the fire department; or in an outside tank or tanks above ground and approved by the chief of the fire department located not less than fifty (50) feet from the line of any adjoining property which may be built upon, which tank or tanks shall be adequately and properly diked with a dike having capacity not less than equal in volume to that of the tank or tanks surrounded.

No underground tanks shall be placed, constructed or maintained under a street, public sidewalk or in a sidewalk area. (Ord. No. 66, Sec. 1)

After the effective date of the Code, there will be no new storage in tanks above ground.

7.16.02 Gasoline or other volatile combustibles never to be allowed to pass into drainage system It shall be unlawful for any person, persons, firm, company or corporation to place or deposit or cause to be placed or deposited in any storm drain, ditch, gutter or other drain, whether natural or artificial, that carries storm or other surface water within the city of Batesville, Arkansas, any gasoline, fuel oil or other flammable or explosive liquid. (Ord. No. 914, Sec. 1)

7.16.03 Penalty for violation Any person, persons, firm, company or corporation who shall violate Section 7.16.02 shall be deemed guilty of a misdemeanor and upon conviction, shall be fined in any sum not less than Ten Dollars (\$10.00) nor more than Two Hundred Dollars (\$200.00) with each day of violation of this ordinance being a separate offense of said ordinance. (Ord. No. 914, Sec. 2)

## **CHAPTER 7.20**

### **FISHING PROHIBITED**

#### Sections:

7.20.01	Definition
7.20.02	Age limit on fishing in Row Lake
7.20.03	Assisting persons under 17 years of age
7.20.04	Penalty for violation

7.20.01 Definition Fishing shall be construed to mean the attempt to take or the taking of fish from Row Lake by any means whatsoever. It shall be a prima facie case that a person is fishing if fishing apparatus is displayed and a person is in control of the apparatus. (Ord. No. 834, Sec. 3)

7.20.02 Age limit on fishing in Row Lake It shall be unlawful for any person to fish in and or about Row Lake if the person is seventeen (17) years of age or older except those persons who have attained sixty-two (62) years of age, and those individuals who suffer from physical disabilities that prevent them from being gainfully employed. (Ord. No. 834, Sec. 1 as amended by Ord. No. 89-3-1, Sec. 1)

7.20.03 Assisting persons under 17 years of age Persons seventeen (17) years of age or older may assist persons under seventeen (17) years of age but at no time will a person seventeen (17) years of age or older be allowed to be

in control of the fishing apparatus. If such person is in control then such persons shall be considered fishing within the meaning of the ordinance and punished accordingly. (Ord. No. 834, Sec. 3)

7.20.04 Penalty for violation. A violation of this ordinance shall be a misdemeanor and punishable by a fine of not less than Five Dollars (\$5.00) nor more than One Hundred Dollars (\$100.00). (Ord. No. 834, Sec. 5)

## **CHAPTER 7.24**

### **USE OF COUNTY JAIL**

Section:

7.24.01 City of Batesville use of county jail

7.24.01 City of Batesville use of county jail The city of Batesville, Arkansas, shall use the Independence County, Arkansas jail in the usual manner and to the exclusive extent a jail is needed and utilized by a city in its full and complete law enforcement functions. For the use of such facilities, and in full satisfaction thereof, the city shall pay to the county sheriff and/or the county jailer the current rate for each and every city prisoner who may be kept, fed and confined therein, payable monthly. Bills shall be rendered the city on or before the fifth day of each month covering itemized charges for the preceding month. (Ord. No. 648, Sec. 1)

STATE LAW REFERENCE-Ark. Stats. 19-2414

## **CHAPTER 7.28**

### **FIREARMS**

Sections:

7.28.01 Unlawful to discharge  
7.28.02 Exception  
7.28.03 Penalty

7.28.01 Unlawful to discharge It shall be unlawful for any person to purposely, knowingly or recklessly discharge or fire or cause to be discharged or fired any firearm including rifles, shotguns and handguns within the city limits of Batesville. (Ord. No. 929, Sec. 1)



7.28.02 Exception

- A. It shall not be unlawful for any duly elected or appointed law enforcement officer or person employed as a law enforcement officer to fire or discharge a firearm within the city limits when done in the line of duty and said firing or discharge is necessary and reasonable under the circumstances, and such discharge of a firearm is not otherwise prohibited by any state or federal law; the reasonableness of such action shall be determined by state or federal law where applicable.
- B. It shall not be unlawful for a person to fire or discharge a firearm in the city limits when upon an approved firing range; an approved firing range shall meet the following requirements:
1. Each person or corporation desiring to open a firing range shall make written application to the City Clerk and the City Clerk upon receipt of a Ten Dollar (\$10.00) application fee shall submit a copy of the application to the Chief of Police and Chief of the Fire Department for a physical inspection of facility.
  2. All firing ranges must be in a location approved by the Batesville Planning Commission according to the standards set out in the Batesville Zoning ordinance, a written copy of the Planning Commission's approval of location must be submitted to the City Clerk with each application.
  3. The city of Batesville does not approve ranges in the sense that it guarantees the safety of the range; the city's approval is intended to set minimum guidelines only for purpose of sound control, location and safety of persons outside of the range; the city assumes no liability to any person for accidents or intentional misconduct on the range owner or participants; the range owner and/or operator is responsible for the safe operation and design of the range and he shall obtain and maintain liability insurance in an amount sufficient to cover damage or injury to persons or their property resulting from the operation of the firing range.
  4. The firing range must be located in a building with walls at least eight (8) inches thick, and made of solid concrete, solid masonry units or other material capable of preventing any bullet or part of any bullet fired within the range from escaping the confines of the range.
  5. All doors and windows downrange must be shut and covered with bullet proof material when the range is in use.

6. The walls, floors and ceiling must be bullet proof.
7. An air exhaust system must be supplied and said system shall be built to prevent toxic lead and other contaminants generated by firing from settling on or being inhaled by the shooter or any other occupant of the range; furthermore, the exhaust system shall not cause unsafe deposits of lead or other contaminants to settle upon persons or property surrounding the range.
8. The firing range must be equipped with a suitable backstop and bullet trap; the thickness, design and material used in the backstop and the depth of the trap must be adequate to safely withstand and contain the velocity and energy of the ammunition in use.
9. Any service equipment that is exposed downrange of the firing line must be protected. This includes electrical wiring, lighting, heating and ventilation ducts and exhaust fans.
10. Noise Reduction:
  - a. Persons using the range must be provided adequate ear protection to prevent hearing damage.
  - b. In order to prevent sound disturbances outside the firing range the range must be equipped with effective sound absorbent materials, all air leaks from the range must be closed and when possible, the air intake and exhaust system must be designed by use of muffling chambers; the noise resulting from the range cannot exceed that of other uses in the same area and must be compatible with other uses in the zoning area.
11. All carpeting, insulation and materials capable of absorbing lead particles and unburned gun powder and all surfaces upon which these substances settle must be cleaned regularly to prevent fire and health hazards.
12. The firing range must comply with all state and federal laws and regulations including those of the Environmental Protection Agency, Occupational Safety and Health Act (OSHA), General Services Administration and National Institute of Occupational Health (NIOSH). If the laws and regulations named above differ or conflict with this ordinance and if those standards or regulations are more strict then they shall apply.

13. The range must be supervised at all times when in use; beginning shooters must receive adequate safety instructions prior to actual use of the range.
14. Prior to actual use of the range, it must be inspected and approved in writing by the Chief of Police and the Fire Chief and they shall determine if all of the requirements of this ordinance, state and federal laws are complied with. (Ord. No. 960, Sec. 1)

7.28.03 Penalty Any person violating this ordinance shall upon conviction thereof, be adjudged guilty of a violation and fined in a sum not to exceed One Hundred Dollars (\$100.00) for each offense. (Ord. No. 929, Sec. 5)

## **CHAPTER 7.32**

### **FIREWORKS**

**Sections:**

7.32.01	Unlawful to discharge
7.32.02	Exception
7.32.03	Penalty
7.32.04	Unlawful to sell

7.32.01 Unlawful to discharge It shall be unlawful for any person to set off or cause to explode any Roman candle, firecracker, sky rocket, fountain or other fireworks within the city limits of Batesville, Arkansas. (Ord. No. 935, Sec. 1)

7.32.02 Exception It shall not be a violation of this ordinance if said Roman candle, firecracker, sky rocket or other firework is exploded or set off in order to scare off or prevent the roosting of blackbirds or other birds in the city limits provided that the Mayor or his designated agent has declared an emergency situation to exist and the user of said fireworks has obtained authorization from the Mayor or his designated agent to use the fireworks; said authorization shall state specific times, dates and places on which the fireworks may be used. (Ord. No. 935, Sec. 2)

7.32.03 Penalty. Any person violating this ordinance shall be guilty of a violation and fined in an amount not to exceed One Hundred Dollars (\$100.00) for each offense. (Ord. No. 935, Sec. 5)

7.32.04 Unlawful to sell

- A. It shall be unlawful for any person, firm or corporation to sell, have for sale or expose for sale any Roman candle, firecracker or other fireworks within the city limits of the city of Batesville, Arkansas. (Ord. No. 925, Sec. 1)
- B. Any person, firm or corporation violating Section (A) of this ordinance shall be guilty of a violation and fined in a sum not to exceed One Hundred Dollars (\$100.00) for each offense. (Ord. No. 925, Sec. 2)

It shall not be a violation of this ordinance if said Roman candle, firecracker, sky rocket or other firework is exploded or set off in order to scare off or prevent the roosting of blackbirds or other birds in the city limits provided that the Mayor or his designated agent has declared an emergency situation to exist and the user of said fireworks has obtained authorization from the Mayor or his designated agent to use the fireworks; said authorization shall state specific times, dates, and places on which the fireworks may be used.

Further, the Mayor is hereby authorized to issue other exemptions if there is a reasonable need which will benefit the city of Batesville. The Mayor shall proceed with caution in a limited manner and this exception is to be truly an exception and not the general rule. (Ord. No. 03-11-1, Sec. 2.)

- C. That each day that fireworks shall be exposed for sale or offered for sale shall constitute a separate offense. (Ord. No. 925, Sec. 3)

**CHAPTER 7.36****SKATEBOARDS****Sections:**

7.36.01	Unlawful
7.36.02	Violation and penalties

**7.36.01 Unlawful.** It shall be unlawful for any person to ride or operate a skateboard on the following streets or on any adjacent sidewalks:

- A. Main Street from Central Avenue to 7th Street
- B. College Street from Central Avenue to 7th Street
- C. Boswell Street from Central Avenue to 7th Street
- D. Harrison Street from Boswell Street to Sidney Street
- E. Broad Street from Boswell Street to Charles Street
- F. Central Avenue from Boswell Street to Wycough Street
- G. Third Street from Main Street to Boswell Street
- H. Fourth Street from Main Street to Boswell Street
- I. Fifth Street from Main Street to Boswell Street
- J. Sixth Street from Main Street to Boswell Street
- K. Seventh Street from Water Street to Baker Street
- L. Bayou Street from Water Street to Baker Street
- M. Cherry Street from Central Avenue to Bayou Street
- N. Charles Street from Central Avenue to Bayou Street
- O. Chestnut Street from Central Avenue to Bayou Street
- P. Carter Street from Central Avenue to Bayou Street
- Q. Pine Street from Central Avenue to Bayou Street
- R. Ross Street from Central Avenue to Bayou Street
- S. Baker Street from Central Avenue to Bayou Street  
(Ord. No. 91-2-1, Sec. 1)

**7.36.02 Violation and penalties** Violation of this ordinance shall be a misdemeanor and any person found guilty of violating this ordinance shall be subject to a fine not to exceed One Hundred Dollars (\$100.00). (Ord. No. 91-2-1, Sec. 2)

**CHAPTER 7.40**

**KEEP ARKANSAS BEAUTIFUL**

Sections:

- 7.40.01 Participation
- 7.40.02 Membership fee
- 7.40.03 Ordinances repealed

7.40.01 Participation Pursuant to provisions of Act 145 of 2001 of the Arkansas General Assembly, the Mayor is hereby authorized and directed to make application and to take necessary actions for the purpose of qualifying the city of Batesville as a certified affiliate of the Keep Arkansas Beautiful (KARB) organization.

Act 145 of 2001 provides that local governments affiliating with this organization are enabled to participate in litter control programs conducted by KARB and to receive fines for littering collected in its jurisdiction. (Ord. No. 2003-6-1, Sec. 1.)

7.40.02 Membership fee The Mayor is further authorized to remit \$50.00 to the Keep Arkansas Beautiful organization as a membership fee in said organization, with the remittance to be charged to the Mayor's City General Discretionary Fund. (Ord. No. 2003-6-1, Sec. 2.)

7.40.03 Ordinances repealed Batesville city Ord. No. 721 and 2003-4-2 are hereby repealed. (Ord. No. 2003-6-1, Sec. 3.)

**CHAPTER 7.44**

**NOISE**

Sections:

- 7.44.01 Audible noise
- 7.44.02 Motor vehicles
- 7.44.03 Special permit
- 7.44.04 Fine

7.44.01 Audible noise No person operating or occupying a motor vehicle on any street, alley, parking lot, or driveway, either public or private property, shall operate or permit the operation of any sound amplification system, including but not limited to, any radio, tape player, compact disc player, loud speaker, or any other electrical device used for the amplification of sound from a motor vehicle so that the sound is plainly audible at a distance of fifty or more feet from the vehicle. For the purpose of clarification, "plainly audible" means any sound described herein which clearly can be heard, by unimpaired auditory senses based on a direct line of fifty or more feet, however, words or phrases need not be discernible and said sound shall include bass reverberation. (Ord. No. 2003-7-1, Sec. 1.)

7.44.02 Motor vehicles This ordinance is expressly limited to motor vehicles with sound amplification systems. Motor vehicles are herein described, for purposes of this ordinance, as vehicles, which transport passengers. (Ord. No. 2003-7-1, Sec. 2.)

7.44.03 Special permits In the event of situations unforeseen and requiring special attention, the Mayor or his or her designated agent may issue a special permit. In granting relief, consideration shall only be given within the intent of this ordinance and this is defined as disturbing the peace and public welfare from a motor vehicle within reasonable issues. (Ord. No. 2003-7-1, Sec. 3.)

7.44.04 Fine Any person violating any provision of this ordinance shall be deemed guilty of a misdemeanor and punished by a fine of not less than \$100.00 and not more than \$250.00 and if such violation continues, each day's violation shall be a separate offense by the appropriate court. (Ord. No. 2003-7-1, Sec. 4.)

## CHAPTER 7.52

### SEXUALLY ORIENTED BUSINESSES

Sections:

7.52.01	Definitions
7.52.02	Classification
7.52.03	License required
7.52.04	Issuance of license
7.52.05	Fees
7.52.06	Inspection
7.52.07	Expiration of license
7.52.08	Assessment of fines
7.52.09	Suspension
7.52.10	Revocation
7.52.11	Judicial review
7.52.12	No transfer of license
7.52.13	Location restrictions
7.52.14	Additional regulations for adult motels
7.52.15	Additional regulations for escort agencies
7.52.16	Additional regulations for nude model studios
7.52.17	Additional regulations concerning public nudity
7.52.18	Regulations pertaining to exhibition of sexually explicit films and videos
7.52.19	Exterior portions of and signage for sexually oriented businesses
7.52.20	Sale, use or consumption of alcoholic beverages prohibited
7.52.21	Persons younger than eighteen (18) prohibited from entry; attendant required
7.52.22	Massages or baths
7.52.23	Hours of operation
7.52.24	Exemptions
7.52.25	Notices
7.52.26	Injunction

7.52.01 Definitions

**Adult arcade** 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 maintained to show



images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.

**Adult bookstore or adult video store** means a commercial establishment that, as its principal business purpose, offers for sale or rental for any form of consideration any one (1) or more of the following:

- A. Books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video cassettes or video reproductions, slides, or other visual representations that depict or describe specified sexual activities or specified anatomical areas; or
- B. Instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities. The determination of the principal business purpose of an establishment is based on the visual inventory or commercial activity of the establishment; provided, there shall be a rebuttable presumption that any commercial establishment which utilizes more than ten (10) percent of total display area for merchandise of any type described in this definition shall be deemed to be engaged in the business of an adult bookstore or adult video store as its principal business purpose.

**Adult cabaret** means a nightclub, bar, restaurant, or similar commercial establishment that presents:

- A. Persons who appear in a state of nudity or semi-nudity; or
- B. Live performances that are characterized by the display of any portion of the female breast or any portion of the human buttocks, or which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or
- C. Films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

**Adult motel** means a hotel, motel or similar commercial establishment that:

- A. Offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of specified sexual activities or specified anatomical areas, and has a sign visible from the public right of way that advertises the availability of this type of adult photographic reproductions; or

- B. Offers a sleeping room for rent for a period of time that is less than twenty-four (24) hours; or
- C. Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than twenty-four (24) hours.

**Adult motion picture theater** means a commercial establishment where, as its principal business purpose, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are presented that are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

**Adult theater** means a theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear, in person, in a state of nudity, semi-nudity and/or live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities.

**Clear and convincing** means evidence so clear, direct and convincing as to enable the Enforcement officer to come to a clear conviction as to the allegations sought to be established.

**Enforcement Officer** means the Code Enforcement Officer of the city, and such other employee(s) of the city as he may designate to perform the duties of the Enforcement officer under this ordinance or in the context of criminal violations the chief law enforcement officer for the city.

**Employee** means a person who performs any service on the premises of a sexually oriented business on a full time, part time, contract basis, or independent basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not the said person is paid a salary, wage, or other compensation by the operator of said business. "Employee" does not include a person on the premises for repair, maintenance or cleaning of the premises or equipment on the premises, or for the delivery of goods to the premises, nor does "employee" include a person exclusively on the premises as a patron or customer.

**Escort** means a person who, for monetary consideration, agrees or offers to act as a companion, guide, or date for another person, or who, for monetary consideration, agrees or offers to model lingerie or to engage in a specified sexual activity and/or perform in a state of nudity or semi-nudity for another person off the premises of a sexually oriented business.

**Escort agency** means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

**Establishment** means and includes 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;
- C. The additions of any sexually oriented business to any other existing sexually oriented business; or
- D. The relocation of any sexually oriented business.

**Intentionally** means that it was the conscious object of the person to engage in the conduct alleged, or to cause the result alleged.

**Knowingly** means that the person was aware that his conduct was of the nature alleged, or that he was aware that it was practically certain that his conduct would cause the result alleged, or that he consciously disregarded a substantial risk that his conduct would cause the result alleged or that the result alleged would occur.

**Licensed day-care center** means a facility licensed by the state, whether situated within the city or not, that provides care, training, education, custody, treatment or supervision for more than twelve (12) children under fourteen (14) years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than twenty-four (24) hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

**Licensee** means a person in whose name a license has been issued, as well as the individual listed as an applicant on the application for a license.

**Nude model studio** means any place where a person who appears in a state of nudity or semi-nudity, or who displays specified anatomical areas, is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons for consideration, with the exception of those persons and places exempted by “ARTICLE XXIV. Exemptions” of this ordinance.

**Nudity or a state of nudity** means the showing of any specified anatomical area.

**Operator** means any person in a supervisory capacity over employees and/or contractors, excluding maintenance, delivery or cleaning personnel, at the sexually oriented business, and any person responsible for security and/or any entrance/exit of the sexually oriented business.

**Person** means an individual, proprietorship, limited partnership, general partnership, corporation, association, limited liability company, 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 “ARTICLE IV. Issuance of License” of this ordinance;

**Semi-nude or semi-nudity means** the appearance of any part of the female areola or nipple, or the showing of the perineum anal region, in anything less than a fully opaque covering.

**Sexual encounter center** means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

- A. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- B. Activities between male and female persons and/or persons of the same sex when one (1) or more of the persons are in a state of nudity.

**Sexually oriented business** means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

**Specified anatomical areas** means:

- A. The human male genitals in a discernibly turgid state, even if fully and opaquely covered;
- B. Less than completely and opaquely covered human genitals or anus.

**Specified criminal activity** means carnal abuse, rape, sexual abuse, violation of a minor, sexual misconduct, sexual solicitation of a minor, sodomy, prostitution, promotion of prostitution, sale, distribution, or display of harmful material to a minor, sexual performance by a child, possession or distribution of child pornography, and/or patronizing prostitution; in the case of any such conviction, it will constitute specified criminal activity if:

- A. Less than one (1) year has elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense; or

- B. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a felony offense.  
The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant, with the exception of a de novo appeal from municipal to circuit court. In the case of a de novo appeal from municipal court to circuit court, a disqualification is not effective until such time as there is a conviction in circuit court. Should a conviction be reversed on appeal, or in the case of a de novo appeal from municipal court to circuit court, should the circuit court fail to convict, then there is no "conviction" for purposes of this ordinance.

**Specified sexual activities** means and includes any of the following:

- A. Any act of sexual gratification involving the touching by one person, either directly or through clothing, of the sex organs, or buttocks, or anus of another person;
- B. Any act of sexual gratification involving the touching by one person, either directly or through clothing, of the female breast of another person;
- C. Intercourse, oral copulation, or sodomy, whether actual or simulated;
- D. Masturbation, actual or simulated; or
- E. Excretory functions as part of or in connection with any of the activities set forth in (1) through (4) above.

**Substantial enlargement of a sexually oriented business** means the increase in floor areas occupied by the business by more than twenty-five (25) percent, as the floor areas exist on the effective date of this ordinance.

**Transfer of ownership or control of a sexually oriented business** means and includes any of the following:

- A. The sale, lease, or sublease of the business;
- B. The transfer of securities that form a controlling interest in the business, whether by sale, exchange, or similar means; or
- C. The establishment of a trust, gift, or other similar legal device that 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. (Ord. No. 2006-3-3, Sec. 1.)

7.52.02 Classification Sexually oriented businesses are classified as follows:

- A. Adult arcades;
  - B. Adult bookstores or adult video stores;
  - C. Adult cabarets;
  - D. Adult motels;
  - E. Adult motion picture theaters;
  - F. Adult theaters;
  - G. Escort agencies;
  - H. Nude model studios; and
  - I. Sexual encounter centers
- (Ord. No. 2006-3-3, Sec. 2.)

7.52.03 License required

- A. It shall be unlawful:
  - 1. For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the Enforcement Officer pursuant to this ordinance.
  - 2. For any person who operates a sexually oriented business to employ a person to work and/or perform services on the premises of the sexually oriented business, if such employee is not in possession of a valid sexually oriented business employee license issued to such employee by the Enforcement Officer pursuant to this ordinance;
  - 3. For any person to obtain employment with a sexually oriented business if such person is not in possession of a valid sexually oriented business employee license issued to such person by the Enforcement Officer pursuant to this ordinance.
  - 4. It shall be a defense to subsections (2) and (3) of this section if the employment is of limited duration and for the sole purpose of repair, maintenance and/or cleaning of machinery, equipment, or the premises.
  - 5. Any person convicted of the violation of any provision within this subsection shall be subject to the misdemeanor penalties as set out in the Batesville Municipal Code.

- B. An application for a sexually oriented business license must be made on a form provided by the city. Except for a sexually oriented business lawfully operating on the date this ordinance is enacted, the application must be accompanied by a sketch or a 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 must 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. Prior to issuance of a license, the premises must be inspected by the fire department and code enforcement department.
- C. An application for a sexually oriented business employee license must be made on a form provided by the city.
- D. All applicants for a license must be qualified according to the provisions of this ordinance. The application may request, and the applicant shall provide, such information as to enable the city to determine whether the applicant meets the qualifications established under this ordinance. The applicant has an affirmative duty to supplement an application with new information received subsequent to the date the application was deemed completed.
- E. If a person who wishes to own or operate a sexually oriented business is an individual, he must sign the application for a business license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, a representative/registered agent of the partnership, corporation or limited liability company must sign the application for a business license as applicant.
- F. Applications for a business license, whether original or renewal, must be made to the Enforcement Officer. Applications must be submitted to the office of the Enforcement Officer or the Enforcement Officer's designee during regular working hours. Application forms shall be supplied by the Enforcement Officer, and shall only request the following information:
1. The name, street address (and mailing address if different) of the applicant(s);
  2. A recent photograph of the individual or representative submitting the application form;
  3. The applicant's driver's license number, Social Security number, and/or his/her state or federally issued tax identification number;

4. The name under which the establishment is to be operated and a general description of the services to be provided;

If the applicant intends to operate the sexually oriented business under a name other than that of the applicant; he or she must state the sexually oriented business's fictitious name;

5. Whether the applicant has been convicted, or is awaiting trial on pending charges, of a specified criminal activity as defined in “ARTICLE I. Definitions”, and, if so, the specified criminal activity involved, the date, place, and jurisdiction of each;
6. Whether the applicant has had a previous license under this ordinance or other similar sexually oriented business ordinance from another city, county or state or political subdivision denied, suspended or revoked, including the name and location of the sexually oriented business for which the business license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant is or has been a partner in a partnership or an officer, Enforcement Officer or principal stockholder of a corporation or a member of a limited liability company that is or was licensed under a sexually oriented business ordinance whose business license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the business license was denied, suspended or revoked as well as the date of denial, suspension or revocation;
7. Whether the applicant holds any other licenses under this ordinance or other similar sexually oriented business ordinance from another city or county in this or any other state and, if so, the names and locations of such other licensed businesses;
8. The single classification of license, as found in “ARTICLE II. Classification”, for which the applicant is filing;
9. The telephone number of the establishment;
10. The address, and legal description of the tract of land on which the establishment is to be located;
11. If the establishment is in operation, the date on which the owner(s) acquired the establishment for which the business license is sought, and



the date on which the establishment began operations as a sexually oriented business at the location for which the business license is sought;

12. If the establishment is not in operation, the expected startup date (which shall be expressed in number of days from the date of issuance of the business license). If the expected startup date is to be more than ten days (10 days) following the date of issuance of the business license, then a detailed explanation of the construction, repair or remodeling work or other cause of the expected delay and a statement of the owner's time schedule and plan for accomplishing the same;
13. If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty (150) square feet of floor space, films, video cassettes, or other video reproductions, which depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth in "ARTICLE XVIII, Regulations pertaining to exhibition of sexually explicit films and videos." hereunder.

G. Each application for a business license shall be accompanied by the following:

1. Payment of the application fee in full;
2. If the establishment is an Arkansas corporation, limited liability company or limited partnership, a certificate of good standing issued by the office of the Secretary of State of Arkansas;
3. If the establishment is a foreign corporation, a certified copy of the certificate of authority to transact business in this state;
4. Except for a sexually oriented business lawfully operating on the date this ordinance is enacted, a current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within one thousand (1,000) feet of the property lines of the following types of property: any established church; public or private elementary, secondary or post-secondary school; public park; licensed day care center; and entertainment business that is oriented primarily towards children within one thousand (1,000) feet of the property to be certified and; the property lines of any established

residential district within one thousand (1000) feet of the property to be certified. For purposes of this section a use shall be considered existing or established if it is in existence at the time an application is submitted.

5. Any of items (2) through (4) shall not be required for a renewal application if the sexually oriented business was lawfully operating at the time this ordinance was enacted or the applicant states that the documents previously furnished the Enforcement Officer with the original application or previous renewals thereof remain correct and current.
- H. Applications for an employee license to work and/or perform services in a sexually oriented business, whether original or renewal, must be made to the Enforcement officer by the person or a designated representative of the person to whom the employee license shall issue, except as otherwise provided in this ordinance. Applications transmitted by facsimile will be accepted for this purpose. Each application for an employee license shall be accompanied by proof of payment of the application fee in full. A photocopy of the check or money order will be accepted for this purpose if transmitting the application by facsimile, so long as payment is actually received within five (5) working days. Application forms shall be supplied by the Enforcement Officer. Applications must be submitted to the office of the Enforcement Officer or the Enforcement Officer's designee. Each applicant shall be required to give only the following information on the application form:
1. The applicant's given name, and any other names by which the applicant is or has been known, including "stage" names and/or aliases;
  2. Age, and date and place of birth;
  3. Height, weight, hair color and eye color;
  4. Present residence address and telephone number;
  5. Present business address and telephone number;
  6. Date, issuing state, and number of driver's license, or other identification card information;
  7. Social Security number; and
  8. Proof that the individual is at least eighteen (18) years old.
- I. Attached to the application form for an employee license to work and/or perform services in a sexually oriented business shall be the following:
1. A color photograph of the applicant clearly showing the applicant's face. If application is made by facsimile the photograph does not have to be a color photograph, but the color photograph shall be submitted within five (5) days.

2. A statement whether the applicant has been convicted of a specified criminal activity as defined in “ARTICLE I, Definitions”, and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.
- J. Every application for a license shall contain a statement under oath that the applicant has personal knowledge of the information contained in the application, that the information contained therein and furnished therewith is true and correct, and that the applicant is aware of the requirements of this ordinance.
- K. A separate application and business license shall be required for each sexually oriented business classification as set forth in “ARTICLE II, Classifications” .
- L. The fact that a person possesses other types of state or city permits and/or licenses does not exempt him from the requirement of obtaining a sexually oriented business or employee license. (Ord. No. 2006-3-3, Sec. 3.)

7.52.04 Issuance of license

- A. Upon the filing of an application for a sexually oriented business employee license, the Enforcement Officer shall issue a temporary license to said applicant. In the case of an application filed by facsimile transmission, proof of the facsimile transmittal shall suffice as a temporary license until the actual temporary license is issued. The application shall then be referred to the appropriate city departments for investigation to be made on the information contained in the application. The application process shall be completed within thirty (30) days from the date of the completed application. After the investigation, the Enforcement Officer shall issue an employee license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:
  1. The applicant and/or the applicant's representative has intentionally failed to provide the information reasonably necessary for issuance of the license or has intentionally answered falsely a material question or request for information on the application form;
  2. The applicant is under the age of eighteen (18) years;
  3. The applicant has been convicted of a "specified criminal activity" as defined in “ARTICLE I, Definitions” of this ordinance;

4. The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule, or regulation, or prohibited by a particular provision of this ordinance; or
  5. The applicant has had a sexually oriented business employee license revoked by the city within one (1) year of the date of the current application. In the event that the Enforcement Officer determines preliminarily that an applicant is not eligible for a sexually oriented business employee license, the applicant shall be given notice in writing as set forth in "ARTICLE XXV, Notices" by certified mail, return receipt requested, of each of the above reasons which support such preliminary denial within thirty (30) days of the receipt of the completed application by the Enforcement Officer. The applicant shall have ten (10) days after receipt of the notice to make modifications necessary for purposes of complying with this section and to reapply for a sexually oriented business employee license. After ten (10) days, the denial will become final unless such modification and reapplication is made by the applicant. However, if additional time is shown by the applicant to be reasonably necessary to comply with this section, the Enforcement Officer may grant an extension, not to exceed an additional thirty (30) days. Upon receipt of modifications and reapplication by the Enforcement Officer, the Enforcement Officer shall issue an employee license, unless it is determined by a preponderance of the evidence that the modifications fail to remedy the original basis for the preliminary denial by the Enforcement Officer. If such determination is made by the Enforcement Officer, the Enforcement Officer again must give notice in writing as set forth in "ARTICLE XXV, Notices" by certified mail, return receipt requested, to the applicant of the reasons for the denial, and said denial is final and appealable. A final denial, suspension, or revocation by the Enforcement Officer of a license issued pursuant to this section shall be subject to the same rights as those set forth in subsection (i) of this section.
- B. A license issued pursuant to subsection (a) of this section, if granted, shall state on its face the name of the person to whom it is granted, the expiration date, and the address of the sexually oriented business. The employee shall keep the license available for inspection at the establishment upon lawful request at all times while engaged in employment or performing services on the sexually oriented business premises.
- C. A license issued pursuant to subsection (a) of this section shall be subject to annual renewal upon the written application of the applicant and a written finding determined by a preponderance of the evidence by the Enforcement Officer that

the applicant has not been convicted of any "specified criminal activity" as defined in this ordinance, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew an employee license shall be made within thirty (30) days of the completed application. The renewal of a license shall be subject to the fee as set forth in "ARTICLE V, Fees". The non-renewal of a license shall be subject to the same notice, modification and reapplication, and appeal rights as set forth elsewhere in this section.

- D. If application is made for a sexually oriented business license, the Enforcement Officer shall approve or deny issuance of the license within forty-five (45) days of receipt of the completed application. The Enforcement Officer shall issue a license to an applicant unless it is determined by a preponderance of the evidence that one (1) or more of the following findings is true:
1. An applicant has intentionally failed to provide the information reasonably necessary for issuance of the license or has intentionally answered falsely a material question or request for information on the application form;
  2. An applicant is under the age of eighteen (18) years;
  3. An applicant is overdue in payment to the city of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business. An applicant denied a license on this basis will have all rights and remedies set forth in subsection (h) of ARTICLE III, Issuance of License" to attempt to remedy any such deficiency and reapply for a license;
  4. An applicant has been convicted of a specified criminal activity as defined in "ARTICLE I, Definitions";
  5. Except for a sexually business lawfully operating on the date this ordinance is enacted, the premises to be used for the sexually oriented business do not comply with the location restrictions set forth in "ARTICLE XI, Location Restrictions";
  6. The premises to be used for the sexually oriented business have not been approved by the fire department and the code enforcement department as being in compliance with applicable laws and ordinances;

7. An applicant has been finally denied, after opportunity to exercise due process rights, a license by the city to operate a sexually oriented business for any of the above listed reasons within the preceding (12) twelve months, or his license to operate a sexually oriented business has been finally revoked, after opportunity to exercise due process rights, for any of the reasons listed in “ARTICLE VII, Suspension” and “ARTICLE VIII, Revocation” within the preceding twelve (12) months.
- E. A license issued pursuant to subsection (d) of this section, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business, and the section “ARTICLE II, Classification” classification for which the license is issued. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.
  - F. The Fire Department and Code Enforcement Department shall complete their certification that the premises are in compliance or not in compliance within twenty (20) days of receipt of the completed application by the Enforcement Officer. The certification shall be promptly presented to the Enforcement Officer.
  - G. A sexually oriented business license shall issue for only one classification, as set forth in “ARTICLE II, Classification”.
  - H. In the event that the Enforcement Officer determines preliminarily that an applicant is not eligible for a sexually oriented business license, the applicant shall be given notice in writing by certified mail, return receipt requested, of each of the above reasons which support such preliminary denial within forty-five (45) days of the receipt of the completed application by the Enforcement Officer. The applicant shall have ten (10) days after receipt of the notice to make modifications necessary for purposes of complying with this section and to reapply for a sexually oriented business license. After ten (10) days, the denial will become final unless such modification and reapplication is made by the applicant. However, if additional time is shown by the applicant to be reasonably necessary to comply with this section, the Enforcement Officer may grant an extension, not to exceed an additional thirty (30) days. Upon receipt of modifications and reapplication by the Enforcement Officer, the Enforcement Officer shall issue a license, unless it is determined by a preponderance of the evidence that the modifications fail to remedy the original basis for the preliminary denial by the Enforcement Officer. If such determination is made by the Enforcement Officer, the Enforcement Officer again must give notice in writing by certified mail, return receipt requested, to the applicant of the reasons for the denial, and said denial is final and appealable.

- I. An applicant may appeal the decision of the Enforcement Officer regarding a final denial to the Board of Enforcement Officers by filing a written notice of appeal with the City Clerk within fifteen (15) days after service of notice upon the applicant of the Enforcement Officer's decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The Enforcement Officer may, within fifteen (15) days of service upon him of the applicant's memorandum, submit a memorandum in response to the memorandum filed by the applicant on appeal to the Board of Enforcement Officers. After reviewing such memoranda, as well as the Enforcement Officer's written decision, if any, and exhibits submitted to the Enforcement Officer, the Board of Enforcement Officers shall vote either to uphold or overrule the Enforcement Officer's decision. Such vote shall be taken within twenty-one (21) calendar days after the date on which the city clerk receives the notice of appeal. Judicial review of a denial by the Enforcement Officer and Board of Enforcement Officers may be made pursuant to section "ARTICLE IX, Judicial Review" During the pendency of any appeal, the parties shall maintain the status quo unless in the interim, a court issues an injunction pursuant to "ARTICLE XXIV, Injunction".
- J. A license issued pursuant to subsection (d) of this section shall be subject to annual renewal upon the written application of the applicant and a written finding determined by a preponderance of the evidence by the Enforcement Officer that the applicant has not been convicted of any "specified criminal activity" as defined in this ordinance, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a business license shall be made within forty-five (45) days of the completed application. The renewal of a license shall be subject to the fee as set forth in "ARTICLE III, Fees".

Any determination by the Enforcement Officer with respect to the renewal of a sexually oriented business license must conform to the duties and rights set forth in "ARTICLE III, Issuance of License" (h). Furthermore, the applicant for a renewal of a license shall have the same rights with respect to renewal as those set forth in "ARTICLE III, Issuance of License" (i). During the pendency of any appeal, the parties shall maintain the status quo unless in the interim, a court issues an injunction pursuant to "ARTICLE XXIV, Injunction".  
(Ord. No. 2006-3-3, Sec. 4.)

7.52.05 Fees The annual fee for a sexually oriented business license, whether new or renewal, is Two Hundred Fifty Dollars (\$250.00). The annual fee for a sexually oriented business employee license, whether new or renewal, is Twenty-Five Dollars (\$25.00). These fees are to be used to pay for the cost of the administration and enforcement of this ordinance. (Ord. No. 2006-3-3, Sec. 5.)

7.52.06 Inspection

- A. An applicant or licensee shall permit representatives of the Police Department, Fire Department, Code Enforcement department, or other city or state departments or agencies to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time it is open for business.
- B. No person who operates a sexually oriented business nor his agents or employees shall refuse to promptly permit such lawful inspection of the premises.
- C. A person convicted of violation of this section shall be subject to the misdemeanor penalties as set out in the Batesville Municipal Code. (Ord. No. 2006-3-3, Sec. 6.)

7.52.07 Expiration of license

- A. Each business license shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in “ARTICLE III, License Required”, and by payment of the fee set forth in “ARTICLE III, Fees”. Upon filing of an application for renewal of a business license, the existing business license shall remain in effect until a final determination on the application for renewal is made as set forth in “ARTICLE IV, Issuance of License” (j).
- B. Each sexually oriented business employee license shall expire one year from the date of issuance and may be renewed only by making application as provided in “ARTICLE III, License Required” , and by payment of the fee set forth in “ARTICLE V, Fees”. Upon filing an application for renewal of a business employee license, the existing license shall remain in effect until a final determination on the application for renewal is made as set forth in “ARTICLE IV, Issuance of License”(j).
- C. The applicant shall not be issued a license for one (1) year from the date of a final denial if such denial is not appealed, or for one (1) year from the date of a final determination by the appropriate appeals tribunal if the denial is appealed and is upheld on that appeal.

Any determination with respect to the renewal of a license must conform to the duties and rights set forth in “ARTICLE IV, Issuance of License” of this Ordinance. (Ord. No. 2006-3-3, Sec. 7.)



7.52.08 Assessment of fines The Enforcement Officer shall fine a business licensee and/or any person who is an operator as the case may be, in accordance with city ordinance #2005-11-1 for each offense where he determines by clear and convincing evidence that:

- A. A business licensee or an individual operator knew or should have known of the possession, use or sale of controlled substances in the establishment;
- B. A business licensee or an individual operator knew or should have known of the sale, use or consumption of alcoholic beverages in the establishment;
- C. A business licensee or an individual operator knew or should have known of nudity or specified sexual activities occurring in the establishment; or
- D. A business licensee or an individual operator knew or should have known of a person under eighteen (18) years of age entering the establishment.

It is not the intent of this ordinance for the Enforcement Officer to impose a fine upon a business licensee for the occurrence of incidents outside the actual knowledge of the business licensee.

If the business licensee or the same individual operator of a sexually oriented business is fined (and such fine(s) are upheld after judicial review pursuant to "ARTICLE XXI, Judicial Review" for the same offense three (3) times or more, and the dates of these offenses have occurred within a twelve (12) month period, the business licensee or the individual operator, as the case may be, shall be suspended in accordance with "ARTICLE XIV, Suspension". For purposes of ARTICLE VIII, ARTICLE IX, and ARTICLE X, multiple incidents of the same nature which would constitute a violation of any of the provisions set forth in (1) through (4) above, shall be considered as only one (1) offense if they occur within the same business day.

In the event that the Enforcement Officer determines that one of the above described offenses has occurred and determines that the assessment of a fine against the business licensee or an individual operator is appropriate, the Enforcement Officer must give notice in writing by certified mail, return receipt requested, of each of the above reasons which support the assessment of a fine, including the date or dates when each such incident occurred. Such notice shall be given within thirty (30) days of the incident or incidences for which the business is being cited, or within thirty (30) days of the conclusion of the Enforcement Officer's investigation, whichever is earlier.

A licensee may appeal the decision of the Enforcement Officer regarding the assessment of a fine to the City Council by filing a written notice of appeal with the City Clerk within fifteen (15) days after service of notice upon the licensee of the Enforcement Officer's decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The Enforcement Officer may,

within fifteen (15) days of service upon him of the licensee's memorandum, submit a memorandum in response to the memorandum filed by the licensee on appeal to the City Council. After reviewing such memoranda, as well as the Enforcement Officer's written decision, if any, and exhibits submitted to the Enforcement Officer, the City Council shall vote either to uphold or overrule the Enforcement Officer's decision. Such a vote shall be taken within twenty-one (21) calendar days after the date on which the City Clerk receives the notice of appeal. Judicial review of a fine by the Enforcement Officer and the City Council may be made pursuant to "ARTICLE XI, Judicial Review" of this ordinance.

Furthermore, judicial review of a suspension by the Enforcement Officer and the City Council may be made pursuant to "ARTICLE XI, Judicial Review" of this ordinance. During the pendency of the appeal, the status quo shall be maintained such that the licensee shall continue to be allowed to operate its business pursuant to its license and pursuant to this ordinance. This section in no way is intended to replace or substitute for other criminal penalties which may apply under local, state or federal law for any of the activities enumerated above. (Ord. No. 2006-3-3, Sec. 8.)

7.52.09 Suspension The Enforcement Officer shall suspend the license of a business licensee and/or any person who is an operator, as the case may be, for a period not to exceed thirty (30) days if he determines by clear and convincing evidence that:

- A. A business licensee intentionally answered falsely a material question or request for information during the application process;
- B. A business licensee or an individual operator is convicted of a "specified criminal activity" on a charge that was pending prior to the issuance of the license;
- C. A business licensee or an individual operator has, with knowledge, permitted prostitution on the premises;
- D. A business licensee or an individual operator has been fined for the same offense, of those offenses listed in "ARTICLE VIII. Assessment of fines", three (3) times or more, and the dates of those offenses occurred within a twelve-month period;  
or
- E. A business licensee or an individual operator is overdue in payment to the city of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business. A licensee found in violation in this regard will have all rights and remedies set forth in "ARTICLE IV, Issuance of License" (h) to attempt to remedy any such deficiency before any suspension of the license may occur.

If a business licensee is suspended by the Enforcement Officer more than one time in a twelve-month period, the license shall be revoked in accordance with “ARTICLE X, Revocation”.

In the event that the Enforcement Officer determines that one (1) of the above described incidents has occurred, and determines that suspension of the business license is appropriate, the Enforcement Officer must give notice in writing by certified mail, return receipt requested, of each of the above reasons which support the suspension of the business license, including the date or dates when each such incident occurred. Such notice shall be given within thirty (30) days of the incident or incidences for which the business is being cited, or within thirty (30) days of the conclusion of the Enforcement Officer's investigation, whichever is earlier.

A licensee may appeal the decision of the Enforcement Officer regarding a suspension to the City Council by filing a written notice of appeal with the city clerk within fifteen (15) days after service of notice upon the licensee of the Enforcement Officer's decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The Enforcement Officer may, within fifteen (15) days of service upon him of the licensee's memorandum, submit a memorandum in response to the memorandum filed by the licensee on appeal to the City Council. After reviewing such memoranda, as well as the Enforcement Officer's written decision, if any, and exhibits submitted to the Enforcement officer, the City Council shall vote either to uphold or overrule the Enforcement officer's decision. Such a vote shall be taken within twenty-one (21) calendar days after the date on which the city clerk receives the notice of appeal.

Judicial review of a suspension by the Enforcement Officer and the City Council may be made pursuant to “ARTICLE XI, Judicial Review” of this ordinance. During the pendency of the appeal, the status quo shall be maintained such that the licensee shall continue to be allowed to operate its business pursuant to its license and pursuant to this ordinance. (Ord. No. 2006-3-3, Sec. 9.)

7.52.10 Revocation The Enforcement Officer shall revoke a license for one (1) year from the date the revocation becomes effective if he determines that any of the grounds for suspension set forth in “ARTICLE IX, Suspension”, is proven by clear and convincing evidence, and that the license has already been suspended within the preceding twelve (12) months; or that the business operated while its license was suspended.

A licensee may appeal the decision of the Enforcement Officer regarding a revocation to the City Council by filing a written notice of appeal with the City Clerk within fifteen (15) days after service of notice upon the licensee of the Enforcement Officer's decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The Enforcement Officer may, within fifteen (15) days of service upon him of the licensee's memorandum, submit a memorandum in response to

the memorandum filed by the licensee on appeal to the City Council. After reviewing such memoranda, as well as the Enforcement Officer's written decision, if any, and exhibits submitted to the Enforcement Officer, the City Council shall vote either to uphold or overrule the Enforcement Officer's decision. Such a vote shall be taken within twenty-one (21) calendar days after the date on which the City Clerk receives the notice of appeal.

Judicial review of a revocation by the Enforcement Officer and City Council may be made pursuant to "ARTICLE XI, Judicial Review" of this ordinance. During the pendency of the appeal, the status quo shall be maintained such that the licensee shall continue to be allowed to operate its business pursuant to its license and pursuant to this ordinance. (Ord. No. 2006-3-3, Sec. 10.)

7.52.11 Judicial review After denial of an initial or renewal application by the Enforcement Officer and the City Council, or upon a fine, suspension or revocation by the Enforcement Officer and the City Council, the applicant or licensee may seek judicial review in any court of competent jurisdiction.

- A. Time for taking appeal. All appeals from the City Council to a court of competent jurisdiction must be filed in the office of the clerk of the particular court having jurisdiction of the appeal within thirty (30) days from the date of the vote by the City Council.
- B. How taken. An appeal from the City Council to a court of competent jurisdiction shall be taken by filing the record of the findings and proceedings of the Enforcement Officer and the City Council, to the extent such a record is available. It shall be the duty of the City Clerk to prepare and certify such record when requested by the appellant, and upon payment of any fees authorized by law therefore. The appellant shall have the responsibility of filing such record in the office of the clerk of the court of competent jurisdiction.
- C. No record available. When the City Clerk neglects or refuses to prepare and certify a record for filing in a court of competent jurisdiction, the person desiring an appeal may perfect the appeal on or before the thirtieth day from the date of the vote by the City Council by filing an affidavit in the office of the clerk of the court of competent jurisdiction showing that he has requested the City Clerk to prepare and certify the records for purposes of appeal, and that the City Clerk has neglected to prepare and certify such records for purposes of appeal. A copy of such affidavit shall be promptly served upon the City Clerk and upon the adverse party. (Ord. No. 2006-3-3, Sec. 11.)

7.52.12 No transfer of license A licensee shall not transfer his/her license to any person who has not obtained a license, nor shall a business licensee operate a sexually oriented business under the authority of a sexually oriented business license at any place other than the address designated in the application. This section is not intended to prevent a business licensee from being allowed to sell, assign or transfer ownership or control of his/her business to another person already possessing a valid sexually oriented business license. It is intended only to prevent the sale, assignment, or transfer of ownership or control of a license by the licensee, or of the business to a non-licensee. (Ord. No. 2006-3-3, Sec. 12.)

7.52.13 Location restrictions Sexually oriented businesses not already lawfully operating on the effective date of this ordinance shall be permitted only in zoning districts Industrial I, Light Industrial District and Industrial II, General Industrial District subject to the following:

- A. The sexually oriented business may not be operated within:
1. One thousand (1,000) feet of a church;
  2. One thousand (1,000) feet of a church sponsored youth activity center;
  3. One thousand (1,000) feet of a public or private elementary, secondary or post-secondary school or pre-school;
  4. One thousand (1,000) feet of a public park;
  5. One thousand (1,000) feet of a museum;
  6. One thousand (1,000) feet of a licensed day-care center;
  7. One thousand (1,000) feet of an entertainment business that is oriented primarily towards children;
  8. One thousand (1,000) feet of a boundary of any residential district;
  9. One thousand (1,000) feet of a boundary of any commercial or traditional business district or a property legally used as a residential use in said commercial or traditional business use;
  10. One thousand (1,000) feet of a boundary of a local historic residential district;
  11. One thousand (1,000) feet of a boundary of a public park;
  12. One thousand (1,000) feet of a boundary of any facility primarily used or attended by persons under the age of eighteen (18).
  13. One thousand (1,000) feet of a property on the National Register of Historic Places;
  14. One thousand (1,000) feet of a property, place or establishment that sells or dispenses any alcoholic beverage; or
  15. One thousand (1,000) feet of another sexually oriented business.

- B. A sexually oriented business may not be operated in the same building, structure, or portion thereof, containing another sexually oriented business classified pursuant to “ARTICLE II, Classification”
- C. For the purpose of this ordinance, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest property of the premises where sexually oriented business is conducted, to the nearest property line of a use or a district in (1) and (2) above. (Ord. No. 2006-3-3, Sec. 13.)

7.52.14 Additional regulations for adult motels

- A. Evidence that a sleeping room in a hotel, motel, or a similar commercial enterprise has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the enterprise is an adult motel as that term is defined in this chapter.
- B. A person in control of an adult motel must have a sexually oriented business license or be subject to penalties as set forth below.
- C. For purposes of subsection (b) of this section, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration.
- D. Any person convicted of the violation of subsection (b) of this section shall be subject to misdemeanor penalties as set out in the Municipal Code. (Ord. No. 2006-3-3, Sec. 14.)

7.52.15 Additional regulations for escort agencies

- A. An escort agency shall not employ any person under the age of eighteen (18) years.
- B. A person shall not act as an escort or agree to act as an escort for any person under the age of eighteen (18) years.
- C. A person convicted of a violation of any provision of this section shall be subject to the misdemeanor penalties as set out in the Municipal Code. (Ord. No. 2006-3-3, Sec. 15.)

7.52.16 Additional regulations for nude model studios

- A. A nude model studio shall not employ any person under the age of eighteen (18) years.
- B. A person under the age of eighteen (18) years shall not appear semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under eighteen (18) years was in a restroom not open to the public view or visible by any other person.
- C. A person shall not appear in a state of nudity, or with knowledge, allow another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right of way.
- D. A nude model studio shall not place or permit a bed or mattress in any room on the premises.
- E. A person convicted of the violation of any provision of this section shall be subject to the misdemeanor penalties as set out in the Batesville Municipal Code. (Ord. No. 2006-3-3, Sec. 16.)

7.52.17 Additional regulations concerning public nudity

- A. A person shall not appear in person in a state of nudity or semi-nudity in a sexually oriented business.
- B. A person shall not engage in any specified sexual activity in a sexually oriented business.
- C. A person convicted of the violation of any provision of this section shall be subject to the misdemeanor penalties as set out in the Batesville Municipal Code. (Ord. No. 2006-3-3, Sec. 17.)

7.52.18 Regulations pertaining to exhibition of sexually explicit films and 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 (100) square feet of floor space, a film, video cassette, or other video reproduction that depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:
  - 1. Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof

specifying the location of one (1) or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the business license 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 should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. The Enforcement Officer 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. The application shall be sworn to be true and correct by the applicant.
3. No alteration in the configuration or location of a manager's station may be made without the prior approval of the Enforcement Officer or his designee.
4. It is the duty of the owners and operator of the premises to ensure that at least one (1) employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
5. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of the entire area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment and/or two-way mirror. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of the entire area of the premises to which any patron is permitted access for any purpose from at least one (1) of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
6. It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in subsection (5) of this section remains unobstructed by any doors, walls, merchandise, display racks, curtains, or other materials at all times and to ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons will not be



permitted, as designated in the application filed pursuant to subsection (1) of this section.

7. No viewing room may be occupied by more than one (1) person at any time.
  8. The 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 (5.0) foot-candle as measured at the floor level.
  9. It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
  10. No licensee or operator shall knowingly allow an opening of any kind to exist between viewing rooms or booths.
  11. The operator of the sexually oriented business shall, during each business day, inspect the walls between the viewing booths to determine if any openings or holes exist.
  12. The operator of the sexually oriented business shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
  13. The operator of the sexually oriented business shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty-eight (48) inches of the floor.
- B. A person having a duty under subsection (a)(1) through (a)(13) of this section who is convicted of failing, with knowledge, to fulfill that duty shall be subject to the misdemeanor penalties as set out in the Batesville Municipal Code. (Ord. No. 2006-3-3, Sec. 18.)

7.52.19 Exterior portions of and signage for sexually oriented businesses

- A. No owner or operator of a sexually oriented business shall allow the merchandise or activities of the establishment to be visible from a point outside the establishment.

- B. No owner or operator of a sexually oriented business shall allow the exterior portion of the sexually oriented business to have any photographs of any person in a state of nudity or engaging in any specified sexual activity, nor shall such owner or operator allow the exterior portion of the sexually oriented business to have any pictorial or other representations of any kind of any person in a state of nudity or engaging in any specified sexual activity.
- C. Notwithstanding any other city ordinance, code, or regulation to the contrary, the operator of any sexually oriented business or any other person shall not 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.
- D. Primary signs shall have no more than two (2) display surfaces. Each such display surface shall:
  - 1. Conform with any applicable city sign code;
  - 2. Be a flat plane, rectangular in shape; and
  - 3. Not exceed seventy-five (75) square feet in area.
- E. Primary signs shall contain no photographs, and shall contain no pictorial or other representations of any kind of any person in a state of nudity or engaging in any specified sexual activity.
- F. Secondary signs shall have no more than one (1) display surface. Such display surface shall:
  - 1. Conform with any applicable city sign code;
  - 2. Be a flat plane, rectangular in shape;
  - 3. Not exceed twenty (20) square feet in area;
  - 4. Not exceed five (5) feet in height and four (4) feet in width; and
  - 5. Be affixed or attached to any wall or door of the enterprise.
- G. The provisions of subsection (e) above shall also apply to secondary signs.
- H. A person convicted of the violation of any provision of this section shall be subject to the misdemeanor penalties as set out in the Batesville Municipal Code. (Ord. No. 2006-3-3, Sec. 19.)

7.52.20 Sale, use or consumption of alcoholic beverages prohibited

- A. The sale, use or consumption of alcoholic beverages on the premises of a sexually oriented business is prohibited.

- B. A person convicted of the violation of this section shall be subject to the misdemeanor penalties as set out in the Batesville Municipal Code. (Ord. No. 2006-3-3, Sec. 20.)

7.52.21 Persons younger than eighteen (18) prohibited from entry; attendant required

- A. No person shall allow a person who is younger than eighteen (18) years of age to enter or be on the premises of a sexually oriented business at any time the sexually oriented business is open for business.
- B. It shall be the duty of the business license and/or operator of each sexually oriented business to ensure that an attendant is stationed at each public entrance to the sexually oriented business at all times during such sexually oriented businesses' regular business hours. It shall be the duty of the attendant to prohibit any person under the age of eighteen (18) years from entering the sexually oriented business. It shall be a rebuttable presumption that a person knew a person was under the age of eighteen (18) unless the attendant asked for and was furnished:
  - 1. A valid operator's, commercial operator's, or chauffeur's driver's license issued by any state reflecting that such person is eighteen (18) years of age or older; or
  - 2. A valid personal identification certificate issued by any state reflecting that such person is eighteen (18) years of age or older.
- C. It shall be unlawful for any person under the age of eighteen (18) years to misrepresent such person's age for the purpose of entering the premises of a sexually oriented business at any time the sexually oriented business is open for business.
- D. A person convicted of the violation of any provision of this section shall be subject to the misdemeanor penalties as set out in the Batesville Municipal Code. (Ord. No. 2006-3-3, Sec. 21.)

7.52.22 Massages or baths It shall be unlawful for any business operating as a sexually oriented business to offer the services of a massage salon, massage parlor or any similar type business where any physical contact with the recipient of such services is provided by a person of the opposite sex, or where any physical contact with the recipient of such services constitutes specified sexual activities, regardless of the gender of the recipient or the provider of the service. A person convicted of the violation of any provision of this section shall be subject to the misdemeanor penalties as set out in the Batesville Municipal Code. (Ord. No. 2006-3-3, Sec. 22.)

7.52.23 Hours of operation No sexually oriented business, except for an adult motel, may remain open at any time between the hours of 5:00 a.m. and 11:00 a.m. (Ord. No. 2006-3-3, Sec. 23.)

7.52.24 Exemptions It is a defense to prosecution under this ordinance that a person appearing in a state of nudity or semi-nudity did so in a modeling class operated:

- A. By a proprietary school, licensed by the state, a college, junior college, or university supported entirely or partly by taxation;
- B. By a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation. (Ord. No. 2006-3-3, Sec. 24.)

7.52.25 Notices

- A. Any notice required or permitted to be given by the Enforcement Officer or any other city office, ordinance, department or other agency under this ordinance to any applicant, licensee operator or owner of a sexually oriented business must be given by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for the license, or in any subsequent notice of address change that has been received by the Enforcement Officer. Notices mailed as above shall be deemed given upon their receipt in the United States mail. In the event that any notice given by mail is returned by the postal service, the Enforcement Officer or his designee shall cause it to be posted at the principal entrance to the establishment, and notice will be considered received upon the date of such posting.
- B. A license may designate an agent for service and notify the Enforcement Officer of the identity and address of the agent for service. In such event, notices are subject to the requirement of subsection (a) above, except that notice shall be made at the address of the designated agent for service.
- C. Any notice required or permitted to be given to the Enforcement Officer by any person under this ordinance shall not be deemed given until and unless it is received in the office of the Enforcement Officer.
- D. It shall be the duty of each owner who is designated on the license application and each operator to furnish notice to the Enforcement Officer in writing of any change of residence or mailing address. (Ord. No. 2006-3-3, Sec. 25.)

7.52.26 Injunction A person who operates or causes to be operated a sexually oriented business without a valid business license, or a business shown by clear and convincing evidence to be engaging in a regular pattern or practice of violations of this ordinance, is subject to a suit for injunction as well as prosecution for criminal violations. Each day a sexually oriented business so operates, or each day a person so acts in violation of a provision of this ordinance, is to be considered a separate offense or violation. (Ord. No. 2006-3-3, Sec. 26.)

## **CHAPTER 7.56**

### **HISTORIC DISTRICT COMMISSION**

#### Sections:

- 7.56.01      Creation and members
- 7.56.02      Officers, meetings and staff
- 7.56.03      Fiscal procedures
- 7.56.04      Duties generally
- 7.56.05      Duties specifically

#### 7.56.01 Creation and members

- A.      There is hereby created the Batesville Historic District Commission pursuant to the authority contained in A.C.A. 14-172-201 et seq. which provisions of said statutes are hereby adopted.
- B.      The Historic District Commission shall consist of nine (9) members appointed by the Mayor with the advice and consent of the City Council. Members shall be electors of the city of Batesville holding no salaried or elective municipal office and shall include at least one (1) person who owns property within the proposed Historic District. Members shall demonstrate a positive interest in historic preservation, possessing interest or expertise in architecture, history, urban or regional planning, building rehabilitation, real estate, or preservation or conservation in general. (Ord. No. 2009-6-2, Sec. 1.)
- C.      Members shall be appointed for terms of three (3) years each and until their successors are appointed and qualified. The appointment shall be arranged so that the term of at least one (1) member shall expire each year. Vacancies shall be filled in the same manner for the balance of the unexpired terms. Members shall serve without compensation. (Ord. No. 2007-11-2, Sec. 1.)

7.56.02 Officers, meetings and staff The Commission shall elect a chairman and vice-chairman annually from its own members and shall meet at least four times per year. The Commission may adopt rules and regulations not inconsistent with the provisions of this ordinance and state law. A simple majority of the Commission shall constitute a quorum for the transaction of business. (Ord. No. 2007-11-2, Sec. 2.)

7.56.03 Fiscal procedures The Historic District Commission is subject to all fiscal procedures of the city. The Commission may, subject to appropriation, employ clerical and technical assistance or consultants and may accept money, gifts or grants, and use the same for such purpose. (Ord. No. 2007-11-2, Sec. 3.)

7.56.04 Duties generally

- A. The Commission may conduct studies for the identification and designation of historic districts and sites. The Commission may proceed at its own initiative or upon a petition from any person, group, or association. The Commission shall maintain records of all studies and inventories for public use.
- B. The Commission may make recommendations to the State Historic Preservation Officer for the listing of a Historic District or site in the National Register of Historic Places.
- C. The Commission will cooperate with the Arkansas Historic Preservation Program (AHPP) and the National Park Service (NPS) in the pursuance of Certified Local Government (CLG) status and Preserve American community status for the city of Batesville.
- D. The Commission will serve as the official custodian of the city's history and will act as a point of contact for the public and for state and federal agencies in all matters concerning historic preservation within the city of Batesville. (Ord. No. 2007-11-2, Sec. 4.)

7.56.05 Duties specifically

- A. The Commission shall make an investigation and report on the historic significance of the buildings, structures, sites, or surroundings included in a proposed Historic District and shall transmit copies of its report to the Arkansas Historic Preservation Program (AHPP), a division of the Department of Arkansas Heritage, or its successor agencies, and to the Batesville Planning Commission for their consideration and recommendation. AHPP (or applicable state agency) and

the Planning Commission shall give their recommendations to the Historic District Commission within sixty (60) days from the date of receipt of the report.

1. Failure by these bodies to make recommendations within sixty (60) days after date of receipt shall be taken as approval of the report of the Commission.
  2. Recommendations shall be read in full at the required public hearing to be held by the Commission.
- B. The Commission shall hold a public hearing on the establishment of the proposed Historic District after giving notice of such hearing by publication in a newspaper of general circulation in the city once a week for three (3) consecutive weeks, the first such publication being at least twenty(20) days prior to the public hearing. Such notice shall include the time and place of the hearing, specify the purpose and describe the boundaries of the proposed Historic District.
- C. The Historic District Commission shall submit a final report with its recommendations and a draft of a proposed ordinance to the City Council within sixty (60) days after the public hearing. The report shall contain the following:
1. A complete description of the area or areas to be included in the Historic District or Districts. Any single Historic District may embrace non-contiguous lands.
  2. A map showing the exact boundaries of the area or areas to be included within the proposed district or districts.
  3. A proposed ordinance designed to implement the provisions of the Arkansas Historic Districts Act A.C.A. 14-172-201, et seq.
  4. Such other matters as the Commission may deem necessary and advisable, including a statement of purpose and policy.
- D. The City Council, after reviewing the report of the Commission, shall take one (1) of the following steps:
1. Accept the report of the Commission and enact the proposed ordinance therein; or

2. Return the report to the Commission, with such amendments and revisions thereto as it may deem advisable, for consideration by the Commission and a further report City Council within ninety (90) days of such return; or
3. Reject the report of the Commission, stating its reasons therefore, and discharge the Commission. (Ord. No. 2007-11-2, Sec. 5.)

## **CHAPTER 7.60**

### **PROCEDURES FOR PROTECTION AND PRESERVATION**

#### **OF HISTORIC DISTRICT**

Sections:

7.60.01	Purpose
7.60.02	Batesville downtown commercial Historic District
7.60.03	Commission powers
7.60.04	Historic Preservation Officer
7.60.05	Definitions
7.60.06	Certificate of Appropriateness required
7.60.07	Determination on an application
7.60.08	Demolition
7.60.09	Economic hardship
7.60.10	Demolition by neglect
7.60.11	Work not requiring a Certificate of Appropriateness
7.60.12	Applicability to city and utilities
7.60.13	Appeals
7.60.14	Enforcement

7.60.01 Purpose It is hereby declared as a matter of public policy that the protection, enhancement, perpetuation, and use of such areas, improvements and districts of special character or special historic or aesthetic interest or value are public necessities and are required in the interest of the health, prosperity, safety and welfare of the people of this city.



The purpose of this ordinance is to:

- A. effect and accomplish the protection, enhancement, and perpetuation of such areas and improvement of districts which represent or reflect elements of the city's cultural, social, economic, political, and architectural history;
- B. safeguard the city's historic, aesthetic and cultural heritage, as embodied and reflected in such areas;
- C. stabilize and improve property values in such districts;
- D. foster civic pride in the beauty and accomplishments of the past;
- E. protect and enhance the city's attractions to tourists and visitors;
- F. strengthen the economy of the city and
- G. promote the use of historic districts and landmarks for the education, pleasure, and welfare of the people of the city. (Ord. No. 2009-4-2, Sec. 1.)

7.60.02 Batesville downtown commercial Historic District The Historic District hereby created shall consist of that area of the city shown on Exhibit 1, which is attached hereto and made a part hereof. The downtown commercial Historic District in Batesville, Arkansas, is described as follows:

Both sides of Main Street between State Street and Fourth Street and the west side of Central from Main Street to the railroad tracks, more specifically the following parcels in the Old Town addition: Block 13, Lots 5-10; Block 14, Lots 1-5; Block 15, Lots 1-5; Block 16, Lots 6-10; Block 17, Lots 5-8; Block 18, Lots 1-4; Block 19, Lots 1-5; Block 20, Lots 6-10. (Ord. No. 2009-4-2, Sec. 2.)

7.60.03 Commission powers Without limiting the generality of the other provisions of this ordinance by reason of the following enumeration, the Historic District Commission (hereafter referred to as HDC) shall have, in addition to the duties enumerated in Ord. No. 2007-11-2 the authority but not be limited to:

- A. adopt and amend design review guidelines to be used when considering Certificate of Appropriateness applications, such actions always following a public hearing. Once the Commission has formally adopted the initial set of guidelines it shall not have the authority to change or amend the guidelines except with a majority of the signatures of the total number of property owners within the Historic District consenting to any proposed changes. These guidelines will be

based upon the Secretary of Interior's Standards for Rehabilitation and adapted specifically to Batesville. (Ord. No. 2009-6-3, Sec. 1.)

- B. conduct surveys and studies of neighborhoods, areas, places, structures, objects and improvements within the city of Batesville for the purpose of determining those of distinctive historic, community, architectural, or archeological interest or value;
- C. nominate buildings, structures, objects and historic districts to the National Register of Historic Places;
- D. recommend to the City Council the adoption of ordinances designating areas as having special historic community or architectural value as "Historic District" and add these historic districts to the provisions of this ordinance;
- E. keep a register of all properties and structures that have been designated as historically significant including all information required for each designation;
- F. obtain the services of qualified persons to direct, advise and assist the Historic District Commission;
- G. request and receive any appropriate information, cooperation, assistance or studies from any city departments, boards, agencies or commissions and any joint city-county departments, boards, agencies or commissions;
- H. advise and assist owners of historic properties within historic districts on physical and financial aspects of preservation, renovation, rehabilitation, and reuse, and on procedures for inclusion on the National Register of Historic Places;
- I. promote the education and understanding of Batesville's heritage;
- J. hold public hearings to review applications for Certificates of Appropriateness;
- K. periodically review the Batesville Zoning Ordinance and recommend to the Planning Commission and the City Council any amendments appropriate for the protection and continued use of property within Historic Districts;
- L. review and make recommendations to the Planning Commission on all conditional uses, rezoning, and variances that affect properties within Historic Districts;
- M. testify before relevant boards and commission on any matter affecting architecturally and/or historically significant properties;

- N. destroy, exchange or otherwise dispose of in accordance with the law, any materials in its possession, except borrowed materials, which it may find to be worthless or surplus to its needs;
- O. establish and make reasonable charges for furnishing copies of materials in its possession or for sales of historic memorabilia or signs;
- P. expend any money arising from grants, contributions or gratuities, and receive bequests or donations of real or personal property and convert into money any such property which cannot be used in the form received, and expend the same for any of the functions performable by it;
- Q. cooperate with the Arkansas Historic Preservation Program, historical associations and other non-profit organizations devoted to the history of this city and state;
- R. take such other action, not inconsistent with law, as it shall deem necessary in the performance of any of its functions; and
- S. adopt (or amend) its own rules and regulations by a vote of not less than two thirds of all members present and voting. (Ord. No. 2009-4-2, Sec. 3.)

7.60.04 Historic Preservation Officer The Mayor shall designate an individual to serve as the city's Historic Preservation Officer, who shall keep the Historic District Commission's records, provide administrative support, and advise the HDC on matters submitted to it. Said officer may be a current city employee or a consultant procured for professional services.

In addition to serving as a representative of the HDC, the Historic Preservation Officer is responsible, along with the HDC Chair or his/her designee, for coordinating the city's preservation activities with those of state and national agencies and organizations. The HPO may consult, at his or her discretion, with preservation professionals including, but not limited to, architects, archeologists, and realtors. In addition, the HPO may, when necessary and with adequate notice, call special meetings of the HDC. (Ord. No. 2009-4-2, Sec. 4.)

7.60.05 Definitions Unless specifically defined below, words or phrases shall have the same meaning they have in common usage.

**Adaptive use** – Rehabilitation of a historic structure for use other than its original use such as a residence converted into offices.

**Addition** – New construction added to an existing building or structure.

**Alteration** – Any project involving change of or addition to an existing building.

**Areas of influence** – The affected area to be notified for a public hearing as determined by a specific type of construction, alteration, restoration, moving or demolition as described in the individual categories found in the guidelines for review adopted by the Historic District Commission.

**Building** – Any structure having a roof supported by columns or walls for the housing or enclosure of persons, animals or chattels.

**Certificate of appropriateness** – A document awarded by the Historic District Commission allowing an applicant to proceed with a proposed rehabilitation, renovation, preservation, alteration, demolition, or new construction in a designated area or site, following a determination of the proposal's suitability according to applicable criteria.

**Certificate of economic hardship** – A certificate issued by the Historic District Commission waiving the requirement for a Certificate of Appropriateness due to significant financial constraints of the property.

**Character** – The qualities and attributes of any structure, site, street or district.

**Contemporary** – Reflecting characteristics of the current period. Contemporary denotes characteristics which illustrate that a building, structure or detail was constructed in the present or recent past rather than being imitative or reflective of a historic design.

**Detailing** – Architectural aspects that, due to particular treatment, draw attention to certain parts or features of a building.

**Demolition** – Any act which destroys in whole or in part a building or structure.

**Demolition by neglect** – The destruction of a building or structure through abandonment or lack of maintenance.

**Design guidelines** – Criteria developed by preservation commissions to identify design concerns in an area and to help property owners ensure that rehabilitation and new construction respect the character of designated buildings and districts.

**Element** – A material part or detail of a site, structure, street, or district.

**Entrance area** – The area of access to the interior of the building including the design, location, and materials of all porches, stairs, doors, transoms, and sidelight.

**Exterior architectural features** – The architectural style, design and general arrangement of the exterior of a structure, including the kind and texture of the building material and the type and style of all windows, doors, light fixtures, signs and other appurtenant fixtures.

**Façade** – A face of a building.

**Height** – The vertical distance as measured through the central axis of the building from the elevation of the lowest finished floor level to the highest point of the building.

**Historic District** – A geographically definable area with a significant concentration of buildings, structures, sites, spaces, or objects unified by past events, physical development, design, setting, materials, workmanship, sense of cohesiveness or related historical and aesthetic associations. The significance of a district may be recognized through listing in a local, state, or national register and may be protected legally through enactment of a local Historic District ordinance administered by a Historic District Commission.

**Landmark** – A building, structure, object or site which is identified as a historic resource of particular significance.

**Massing** – Volume, magnitude or overall size of a building.

**Ordinary maintenance** – Those improvements which do not change but simply upgrade a structure.

**Owner of record** – The person, corporation, or other legal entity listed as owner on the records of Independence County.

**Preservation** – The maintenance of a property without significant alteration to its current condition.

**Proportion** – Relationship of height to width of the building outline as well as individual components.

**Public notice** – The classified advertisement of an event, such as a Preservation Commission meeting, that is published in the local newspaper and posted in the city government building in order to notify the general public of the upcoming event.

**Rehabilitation** – The process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic, architectural, and cultural values.

**Restoration** – The process of returning a building to its condition at a specific time period, often to its original condition.

**Rhythm** – A harmonious or orderly recurrence of compositional elements at regular intervals, including the location of doors and the placement of windows, symmetrically or asymmetrically and their relative proportion.

**Roof area** – The outside covering of a building or structure extending above the vertical walls including the form, material, and texture of the roof, including the slope, pitch, and spacing of roof covering. Roof area also includes but is not limited to size, design, number, and location of dormers; the design and placement of cornices; and the size, design, material, and location of chimneys.

**Scale** – The relative dimension, size, degree or proportion of parts of a building to one another or group of buildings.

**Siting** – Location of a building in relationship to the legal boundaries and setbacks, adjacent properties, and the natural conditions of the site.

**Structure** – Any improvement on the land that extends above ground level.

**Texture** – The visual or tactile surface characteristics created by shape, arrangement and distribution of the component materials.

**Wall areas** – The vertical architectural member used to define and divide space. This includes but is not limited to kind, texture, and exposure of wall sidings and trims and the location, number, and design of all window and door openings. (Ord. No. 2009-4-2, Sec. 5.)

7.60.06 Certificate of appropriateness required No building or structure, including but not limited to masonry walls, fences, light fixtures, steps and paving, other appurtenant fixtures, or other elements set forth in design guidelines shall be erected, altered, restored, moved, or demolished within said Historic District until after an application for a Certificate of Appropriateness has been submitted to and approved by the HDC.

- A. No building permit or other permit shall be granted for purpose of constructing or altering exterior, street-side surfaces until an application for a Certificate of Appropriateness as to the exterior architectural features has been submitted to and approved by the HDC.
- B. No demolition permit shall be issued without a Certificate of Appropriateness.
- C. A Certificate of Appropriateness shall be required whether or not a building permit is required.

- D. In its deliberations under this ordinance, said HDC shall not consider interior arrangement or use. (Ord. No. 2009-4-2, Sec. 6.)

7.60.07 Determination on an application Within a reasonable amount of time, not to exceed thirty (30) days after the filing of an application for a Certificate of Appropriateness, the HDC shall make a preliminary determination as to the properties, if any, that will be materially affected by any of the changes proposed in said application. The HDC shall promptly send by mail, postage prepaid to the applicant and to the owners of all such affected properties, a notice of hearing to be held by the HDC on said application. A notice of the public hearing shall be published at least one (1) time in a newspaper having circulation throughout the city of Batesville a minimum of fifteen (15) days prior to the hearing.

- A. The HDC, at the public hearing, shall hear all person desiring to present information regarding the application. The HDC shall act on such application for Certificate of Appropriateness within a reasonable period of time. The HDC shall determine whether the restoration, rehabilitation, renovation, preservation, alteration, construction, moving or demolition of buildings, structures, or appurtenant fixtures involved will be appropriate to the preservation of the Historic District. If the HDC determines that a Certificate of Appropriateness should not be issued, it shall place upon its records the reasons for such determination. The HDC shall immediately notify the applicant of its determination.
- B. Proposed repairs, alterations, new construction moving or demolition in the Historic District shall respect and relate to the special character of the District. IN making its determination, the HDC shall consider without being limited to the following criteria:
1. The purpose of this ordinance;
  2. The architectural or historic value or significance of a building and its relationship to the surrounding area;
  3. The general compatibility of proposed changes; and
  4. Any other actor, including visual and aesthetic, considered pertinent.
- C. The HDC shall encourage proposed changes which reflect the original design of the structure, based on photographs, written description or other historical documentation, and shall be guided by the following preferences:
1. It is preferable to preserve by maintenance rather than to repair original features of the building.
  2. It is preferable to repair rather than to reconstruct if possible.
  3. It is preferable to restore by reconstruction of original features rather than to remove or remodel.

4. Contemporary design shall not be excluded from consideration.
- D. When evaluating the general compatibility of alterations to the exterior of any building in the Historic District, the HDC shall consider, but not be limited to, the following factors within the building's area of influence:
1. Siting
  2. Height
  3. Proportion
  4. Rhythm
  5. Roof area
  6. Entrance area
  7. Wall areas
  8. Detailing
  9. Façade
  10. Scale
  11. Massing
- E. New construction shall be judged on its compatibility with the existing neighborhood and area of influence.
- F. Additions to existing buildings shall be judged in the same manner as new construction and shall complement the design of the original building.
- G. No change shall be made in the scope of work for any building permit after issuance of a Certificate of Appropriateness without resubmitting to the HDC and receiving approval in the same manner as provided above. (Ord. No. 2009-4-2, Sec. 7.)

7.60.08 Demolition If the application for a Certificate of Appropriateness involves the demolition of a building which the HDC initially determines to be an inappropriate demolition, then the HDC may defer the matter until such time as it has had an opportunity to consider the following alternatives to the demolition of subject property:

- A. Sources of funding for preservation and restoration activities if lack of such funds is the reason for the request to demolish.
- B. Adaptive use changes.
- C. An attempt to find a purchaser for the property who would maintain the building in a suitable and acceptable manner.



- D. The feasibility of moving the building to another appropriate location.
- E. Any such other solution as may be deemed advisable and in keeping with the spirit and intent of this ordinance.

The owner or other person having legal custody of any building or structure within a historic district shall keep the structure properly maintained and repaired in order to prevent demolition by neglect. However, during the time the HDC is considering any one of the alternatives above, progress reports shall be made by the HDC and/or its staff at its regularly scheduled meeting. If, at the expiration of six (6) calendar months from the date of the first public hearing of an application for demolition, the property owner has not found a viable alternative to the demolition of the property, the HDC shall reschedule the matter for public hearing requiring notices as aforesaid, and upon said public hearing, make its final determination as to the application. In such cases, the public hearing for final determination shall be held within one (1) calendar month after the expiration of the six (6) months from the date of the first public hearing, and at the second public hearing, the HDC may hear such matters as are considered necessary or desirable to be fully advised of all facts and circumstances pertaining to the proposed demolition. At the second public hearing, the HDC may immediately announce its decision or take the matter under advisement to its next regularly scheduled meeting but in no event longer than two (2) calendar months after the expiration of the six-month period after the first public hearing. (Ord. No. 2009-4-2, Sec. 8.)

7.60.09 Economic hardship Upon denial of a Certificate of Appropriateness, a property owner may apply for reconsideration based on economic hardship. In this case, consideration shall follow guidelines established by the Commission.

It shall be the incumbent on the applicant to demonstrate economic hardship to the HDC. The HDC may request the applicant to produce documentation including, but not limited to, cost estimates, reports from engineers and architects, market value of the property before and after proposed renovations, and income realized and/or realizable from the property.

If the property is a significant historic and community resource, the HDC may invoke up to a ninety (90) day delay of proposed work. During this period of delay, the applicant, with the assistance of the HDC and the HPO, shall investigate the feasibility of the alternatives, and report his/her findings to the HDC. If the applicant fails such, the HDC may consider this failure in their deliberations.

The HDC may seek expert testimony on the foregoing and may request the submission of any other information reasonably considered necessary to determine whether the property does yield or may yield a reasonable economic return for the owner.

If, after the end of the ninety (90) day delay period, no reasonable alternative plan or use can be found and there will be no substantial detriment to the Historic District, the HDC may issue a Certificate of Economic Hardship approving the proposed work. If the HDC finds otherwise, it shall deny the application for Certificate of Economic Hardship, and record in its records the reasons therefore. (Ord. No. 2009-4-2, Sec. 9.)

#### 7.60.10 Demolition by neglect

- A. No owner or person with an interest in real property within the Historic District shall permit said property to fall into a serious state of disrepair so as to result in the deterioration of any exterior architectural feature which would, in the judgment of the Historic District Commission, produce a detrimental effect upon the character of the Historic District as a whole or the life and character of the property itself.
- B. Upon any citizen's complaint, the Historic Preservation Officer's notification, or upon the Building Official's own initiative and determination that demolition by neglect is occurring with respect to any property in one of the city's Historic Districts, the Historic Preservation Officer and Building Official shall conduct a preliminary investigation and prepare a staff report and notify the HDC Chairperson of the complaint and report.
- C. If the preliminary investigation does not substantiate the complaint, the complaint is resolved and no further action will be taken. If the city finds that the complaint has a basis in fact, it will notify the property owner that a complaint has been received. The complaint and staff report will be brought before the Historic District Commission in no fewer than thirty (30) days. The first letter of notice to the property shall include:
  - 1. A description of the process;
  - 2. How the property owner or others having legal possession, custody or control can resolve the issue immediately, and
  - 3. Reports documenting the violations.
- D. The Historic Preservation Officer will forward the complaint and staff report to the HDC at its next regularly scheduled meeting;
- E. The Historic District Commission will review complaints and staff reports and accept information from the owner and other interested persons. Based on the information received, the HDC may file a decision. If the HDC determines there

are specific defects with the subject property it will notify the Historic Preservation Officer and Building Official to act under the procedures set out below to require the correction of deterioration or making of repairs to the historic structure;

- F. Whenever a decision of the Historic District Commission is filed with the Historic Preservation Officer and Building Official, the city shall issue and cause to be served upon the owner and/or such other person who may have legal possession, custody, and control thereof, as the same may be determined by reasonable diligence, a written finding stating that the Historic District Commission has reason to believe that the property is undergoing demolition by neglect;
- G. The written finding shall identify the specific conditions(s) of the property which have led to that determination, and shall contain a notice that a hearing will be held before the Historic District Commission not less than thirty (30) nor more than forty-five (45) days after the serving of such order;
- H. The written finding shall also state that the owner and/or parties in interest shall be given a right to answer and to give testimony at the hearing; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Historic District Commission. The purpose of the hearing is to receive evidence concerning the charge of demolition by neglect;
- I. If after such finding and hearing, the Historic District Commission determines that the structure is undergoing demolition by neglect because it is deteriorating, or if its condition is contributing to deterioration, the Historic Preservation Officer shall state in writing the findings of fact in support of such determination and shall request the city of Batesville to issue an order to be served upon the owner and/or other parties in interest therein an order to repair within a time to be specified in the written decision those elements of the structure that are deteriorating, contributing to deterioration, or deteriorated.
- J. An approved Certificate of Appropriateness and arrangements to bring the property into compliance agreed upon by the property owner and/or other parties in interest, and the Historic District Commission, will stay all proceedings under these regulations.
- K. Complaints or orders issued by the city of Batesville shall be served upon persons either personally or by certified mail. If the whereabouts of such persons are unknown and the same cannot be ascertained by Historic Preservation Officer or Building Official in the exercise of reasonable diligence, and the Historic Preservation Officer or Building Official shall make an affidavit to that effect,

stating the steps taken to determine and locate the persons in interest, then the serving of such complaint or order may be made by publishing the same once each week for two (2) successive weeks in a newspaper of general circulation within the city. Where such service is by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected. (Ord. No. 2009-4-2, Sec. 10.)

7.60.11 Work not requiring a Certificate of Appropriateness

- A. Nothing in this ordinance shall be construed to prevent the ordinary maintenance and/or repair of any exterior architectural feature in the Historic District which does not involve a change in design, materials, or outer appearance and includes in-kind replacement or repair. Such ordinary maintenance will not require a Certificate of Appropriateness. Work consisting only of a change in exterior paint color shall be considered ordinary maintenance, as shall the planting or replacement of grass, shrubs, and trees. The city Building Official and the Historic Preservation officer shall be responsible for determining what is ordinary maintenance in specific cases.
- B. This ordinance shall not prevent the restoration, rehabilitation, renovation, preservation, alteration, construction, or demolition of any such feature that the Building Inspector or similar agent of the city shall certify is required for the public safety. IN emergency situations, threatening life, limb or significant property damage, work may be authorized by the city of Batesville without a Certificate of Appropriateness. Such work shall be done in accordance with the principles and specific criteria adopted under this ordinance. When work is performed by city staff or utility companies under this emergency clause, the HDC shall be so notified by the next business day.
- C. Any building or demolition permit that has been issued before enactment of this ordinance but in compliance with which no substantial construction or demolition has begun shall be null and void upon enactment of this ordinance, and a new permit shall be requested. (Ord. No. 2009-4-2, Sec. 11.)

7.60.12 Applicability to city and utilities Work done by the city of Batesville and by public utility companies within Historic Districts shall be subject to the provisions of this ordinance. The HDC shall consider these certificates in accordance with the procedures and standards applicable to individual certificates. (Ord. No. 2009-4-2, Sec. 12.)

7.60.13 Appeals The HDC may adopt, within its own rules, procedures for addressing aggrieved applicants or reconsidering prior decisions. Any applicant still aggrieved by the determination of the HDC may, within thirty (30) days after the making of such decision, appeal

the determination of the HDC to the Circuit Court of Independence County, Arkansas. (Ord. No. 2009-4-2, Sec. 13.)

7.60.14 Enforcement In the event that work being performed is found not to be in accordance with the Certificate of Appropriateness or upon notification of such fact by the Historic District Commission and/or city staff, the Building Inspector shall issue a stop work order and all work shall immediately cease. No further work shall be undertaken on the project as long as a stop work order is in effect. Stop work orders and penalties for non-compliance with such will be enforced according to other applicable laws. A decision shall be made by the HDC concerning the stop work order within five (5) business days.

Any person who violates any of the provisions of this ordinance shall be guilty of a misdemeanor, and upon conviction there, shall be fined in accordance with Ord. No. 2005-11-1, as amended from time to time.

In addition, the violation of this ordinance may result in the revocation of any business and privilege licenses issued by the city of Batesville.

The City Council may, at the request of the HDC, in lieu of or in addition to penalties provided in this chapter, apply for any appropriate remedy for the purpose of restraining or abating any violation of this chapter. (Ord. No. 2009-4-2, Sec. 14.)