**ARTICLE XII**

**Planning Commission**

**§ 163-50. Planning Commission.**

The Mayor and Council shall appoint a Planning Commission of three (3) members. The Planning Commission shall carry out the functions described in this chapter under the procedures established for the operation of the Planning Commission.

**§ 163-51. Powers and duties of Planning Commission.**

The Planning Commission, at the request of Council, shall have the power and shall be required to:

1. Prepare plans for the development of the Borough of South Greensburg as set forth by the Pennsylvania Municipalities Planning Code, and present them for consideration by Council.
2. Maintain and keep on file records of its actions. All records and files of the planning commission shall be in the possession of Council.
3. Make recommendations to Council concerning the adoption or amendment of the Official Map.
4. Prepare and present to Council updates to the Zoning Ordinance, and make recommendation to the Council on proposed amendments to it as set forth in this chapter.
5. Prepare and present to the Council a Building Code and Housing Code and make recommendations concerning proposed amendments thereto.
6. Do such other acts or make such studies as may be necessary to fulfill the duties and obligations imposed by this chapter.
7. Make recommendations to the Council for capital improvement programming.
8. Promote public interest in, and understanding of planning.

I. Make recommendations to governmental, civic and private agencies and individuals as to the effectiveness of the proposals of such agencies and individuals.

J. Review the Zoning Ordinance, Zoning Map, provisions for planned residential development and such other ordinances and regulations governing the development.

**§ 163-52. Membership.**

All of the members of the Planning Commission shall be residents of the borough. In accordance with the Pennsylvania Municipalities Planning Code, two (2) members of the Commission shall be designated as citizen members and shall not be officers or employees of the borough.

**§ 163-53. Removal.**

Any member of the Planning Commission once qualified and appointed may be removed from office for malfeasance, misfeasance or nonfeasance in office or for other just cause by a majority vote of the governing body taken after the member has received fifteen (15) days' advance notice of the intent to take such a vote. A hearing shall be held in connection with the vote if the member shall request it in writing. Any appointment to fill a vacancy created by removal shall be only for the unexpired term.

**§ 163-54. Appointment, term and vacancy.**

1. All members of the Planning Commission shall be appointed by Council.
2. The term of each of the members of the Commission shall be for five (5) years, or until his successor is appointed and qualified.
3. The Chairman of the Planning Commission shall promptly notify Council concerning vacancies in the Commission, and such vacancy shall be filled for the unexpired term. If a vacancy shall occur otherwise than by expiration of term, it shall be filled by appointment for the unexpired term according to the terms of this chapter.

**§ 163-55. Conduct of business.**

The Commission shall elect its own Chairman and Vice Chairman and create and fill such other offices as it may determine. Officers shall serve annual terms and may succeed themselves. The Commission may make and alter by laws and rules and regulations to govern its procedures consistent with the ordinances of the borough and the laws of the commonwealth. The Commission shall keep a full record of its business and shall annually make a written report by March 1 of each year of its activities to Council. Interim reports may be made as often as may be necessary, or as requested by the Council.

**§ 163-56. Administrative and technical assistance.**

The Planning Commission, under authority of Council, may employ administrative and technical services to aid in carrying out the provision of this chapter either as consultants on particular matters or as regular employees of the borough.

**§ 163-57. Assistance.**

The Planning Commission may, with the consent of Council, accept and utilize any funds, personnel or other assistance made available by the county, the commonwealth or the federal government or any of their agencies, or from private sources to carry out the provisions of this chapter. The Council may enter into agreements or contracts regarding the acceptance or utilization of the funds or assistance in accordance with the governmental procedures of the borough.

**ARTICLE XIII**

**Sexually Oriented Establishments**

**[Added 9-9-2002 by Ord. No. 2002-06.]**

**§ 163-58. Intent.**

A. It is the intent of this regulation to further the purpose of the zoning regulations. The borough, through its planning and zoning regulations, wishes to provide for its citizens and tourists an atmosphere that is both safe, healthy and aesthetically pleasing, one that fosters activities appropriate for visitors of all ages on its thoroughfares. In addition, the borough through its neighborhood planning program and Comprehensive Plan recognizes that some residential neighborhoods, because of their proximity to commercial districts, are more susceptible to the effect of intensive or obnoxious activities. This regulation aims to preserve neighborhood integrity while fostering a positive and wholesome image for visitors from out of the area.

B. It is further the purpose of this article to promote the health, safety and general welfare of the citizens of the borough and to establish reasonable regulations. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this article to condone or legitimize the distributions of obscene material.

**§ 163-59. Definitions.**

As used in this article, the following terms shall have the meanings indicated:

ADULT ARCADE - 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 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. All adult arcades must be constructed according to Exhibit A, which is part of this article.

ADULT BOOKSTORE or ADULT VIDEO STORE - A commercial establishment which, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter; photographs, films, motion pictures, videocassettes, video reproductions, slides or other visual representations which depict or describe specified sexual activities or specified anatomical areas; or instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities.

ADULT CABARET A nightclub, bar, restaurant or similar commercial establishment which regularly features persons appearing in the state of nudity; live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; films, motion pictures, videocassettes , slides, digital imaging, photographic reproductions or any and all visual media using the most recent technology, which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

ADULT MOTEL - A hotel, motel or similar commercial establishment which offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films , motion pictures, videocassettes, slides, digital imaging, photographic reproductions or any visual media using current technology which are characterized by the depiction or description of specified sexual activities or specified anatomical areas; p and has a sign visible from the public right-of -way which advertises the availability of this adult-type of photographic reproductions; or offers sleeping rooms for rent four or more times in one calendar day during five or more calendar days in any continuous thirty-day period.

ADULT MOTION-PICTURE THEATER - A commercial establishment where, for any form of consideration, films, motion pictures, videocassettes, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

ADULT THEATER - A theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of specified anatomical areas or specified sexual activities.

CHILD-ORIENTED BUSINESS - Any commercial establishment which, as one of its principal business purposes, serves and/or sells children and their families food, apparel, goods, services, play and/or entertainment.

ESCORT - A person whom, for consideration, agrees or offers to act as a companion, guide or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

ESCORT AGENCY - Any 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.

PERMITTEE and/or LICENSEE Any person in whose name a permit and/or license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.

NUDE MODEL STUDIO - Any place where a person who appears in a state of nudity or displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration.

NUDITY or A STATE OF NUDITY - The appearance of a human bare buttock, anus, male genitals, female genitals or female breast.

PERSON an individual, proprietorship, partnership, corporation, association or other legal entity.

SEMINUDE - A state of dress in which clothing covers no more than the genitals, pubic region and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

SEXUAL ENCOUNTER CENTER - A business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration physical contact in the form of wrestling or tumbling between persons of the opposite sex; or activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or seminude.

SEXUALLY ORIENTED BUSINESS - 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 The male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals.

SPECIFIED SEXUAL ACTIVITIES - Includes any of the following: fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts; sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy; masturbation, actual or simulated; or excretory functions as part of or in connection with any other specified sexual activities.

SUBSTANTIAL ENLARGEMENT OF A SEXUALLY ORIENTED BUSINESS - That increase in floor areas occupied by the business by more than 25%, as the floor area exists on date of enactment of this article.

MUNICIPALITY - The Borough of south Greensburg.

TRANSFER OF OWNERSHIP OR CONTROL OF A SEXUALLY ORIENTED BUSINESS -Includes any of the following: the sale, lease or sublease of the business; the transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means; or the establishment of a trust, gift or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

**§ 163-60. 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.

I. Sexual encounter centers.

**§ 163-61. Permit required; application; inspection.**

A. Any person who operates a sexually oriented business without a valid permit issued by the borough is guilty of a violation of the Zoning Ordinance.

B. An application for a permit to operate a sexually oriented business must be made on a form provided by the Zoning Officer. Pennsylvania Department of Labor and Industry approved plans showing the floor plan and plot plan configuration of the premises, including a statement of total floor space occupied by the business, must accompany the application. 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 inches.

C. The applicant must be qualified according to the provisions of this chapter, and the premises must be inspected and found to be in compliance with the law of the Zoning Officer.

D. If a person who wishes to operate a sexually oriented business is an individual, he must sign the application for a permit as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten-percent or greater interest in the business must sign the application for a permit as applicant. If a corporation is listed as owner of a sexually oriented business or as the entity which wishes to operate such a business, each individual having a direct or indirect interest of 10% or greater in the corporation must sign the application for a permit as applicant.

E. The fact that a person possesses other types of borough permits does not exempt the person from the requirements of obtaining a sexually oriented business permit.

**§ 163-62. Issuance of permit.**

A. The Zoning Officer shall approve the issuance of a permit to an applicant within 30 days after receipt of an application unless he finds one or more of the following to be true:

(1) An applicant is under 18 years of age.

(2) An applicant or an applicant's spouse is overdue in his payment to the borough of taxes, fees, fines or penalties assessed against him or imposed upon him in relation to a sexually oriented business.

(3) An applicant has failed to provide all information required for issuance of the permit or has falsely answered a question or request for information on the application form.

(4) An applicant is residing with a person who has been denied a permit by the borough to operate a sexually oriented business within the preceding 12 months or residing with a person whose license to operate a sexually oriented business has been revoked within the preceding 12 months.

(5) The premises to be used for the sexually oriented business have been reviewed and have been disapproved by the Zoning Officer as not being in compliance with applicable laws and ordinances.

(6) The permit fee required by this article has not been paid.

(7) An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this article.

(8) An individual applicant or any individual holding a direct or indirect interest of more than 10% of a corporate applicant, or any of the officers and directors of a corporate applicant, if the applicant is a corporation; or any of the partners , including limited partners, if the applicant is a partnership; or the manager or other person in charge of the operation of the applicant' [s business, has or have been convicted of an offense involving sexual misconduct within the Commonwealth of Pennsylvania, including but not limited to prostitution, obscenity and possession of child pornography, or convicted of any offense in any jurisdiction other than the Commonwealth of Pennsylvania that would have constituted an offense involving sexual misconduct if committed within the Commonwealth of Pennsylvania . In order for approval to be denied pursuant to this subsection, the person or person's conviction or release in connection with the sexual misconduct offense must have occurred within two years of the date of application in the event of a misdemeanor and within five years of the date of application in the event of a felony.

B. The permit, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The permit 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.

C. The Zoning Officer shall complete the certification that the premises are in compliance or not in compliance within 20 days of receipt of the application to the Zoning Officer . The certification shall be promptly presented to the Zoning Officer.

**§ 163-63. Fees.**

The annual fee for a sexually oriented business permit is $500.00.

**§ 163-64. Inspection.**

A. An applicant, or permittee, shall permit the Zoning Officer to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law at any time that the sexually oriented business is open for business.

B. A person who operates a sexually oriented business or his agent or employee violates the Zoning Ordinance if he refuses to permit such lawful inspection of the premises at any time it is open for business.

**§ 163-65. Expiration of permit.**

A. Each permit shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 5. Application for renewal should be made at least 30 days before the expiration date, and, when made fewer than 30 days before the expiration date, the pendency of the application will not prevent the expiration of the permit.

B. If the Zoning Officer denies renewal of a license, the applicant shall not be issued a permit for one year from the date of denial, except that after 90 days having elapsed since the date of denial; the applicant may be granted a permit if the Zoning Officer finds that the basis for denial of the renewal permit has been corrected or abated.

**§ 163-66. Suspension of permit.**

The Zoning Officer shall suspend a permit for a period not to exceed 30 days if he determines that a permittee or an employee of a permittee has violated or is not in compliance with any section to this article; refused to allow an inspection of the sexually oriented business premises as authorized by this chapter; knowingly permitted gambling by any person on the sexually oriented business premises.

**§ 163-67. Revocation of permit.**

A. The Zoning Officer shall revoke a permit if a cause of suspension set forth in Section 9 occurs and the permit has been suspended within the preceding 12 months.

B. The Zoning Officer shall revoke a permit if he determines that:

(1) Permittee, or any of the persons specified in Section 5, or has been convicted of the offenses specified in said section.

(2) Permittee gave false or misleading information in the material submitted to the borough during the application process.

(3) Permittee or an employee of a permittee has knowingly allowed possession, use or sale of controlled substances on the premises.'

(4) Permittee or an employee of a permittee has knowingly allowed prostitution on the premises.

(5) Permittee or an employee of a permittee knowingly operated the sexually oriented business during a period of time when the permittee' s permit was suspended.

(6) Permittee or an employee of a permittee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or other explicit sexual conduct to occur in or on the permitted premises.

(7) Permittee is delinquent in payment to the city or state of any taxes or fees relating to sexually oriented businesses.

C. When the Zoning Officer revokes a permit, the revocation shall continue for one year, and the permittee shall not be issued a sexually oriented business permit for one year from the date revocation becomes effective, except that if the revocation is pursuant to Subsection B (1) above, the revocation shall be effective for two years in the event of a misdemeanor or five years in the case of a felony.

D. To minimize and reduce delay to the applicant or permittee, and in addition to the appeal time frames and remedies available under the Municipalities Planning Code, 53 P.S. S 10101, et seq., all permit denial, renewal, suspension or revocation decisions shall be sent, in writing, to the applicant or licensee. All such decisions which deny, refuse or renew, suspend or revoke a permit shall state specifically the ordinance requirement not met and any other basis of the decision. After denial of an application, or denial of a renewal of an application, or after suspension or revocation of any permit, the applicant or permittee may appeal pursuant the procedures of the Local Agency Law (2 Pa. C. S.A. S 101 et seq.) to the South Greensburg Zoning Hearing Board, except as modified herein. Any such appeal must be filed, in writing, with the Zoning Officer; within 30 days from the date of the mailing of the decision appealed from and shall specify, in detail, the basis for the appeal. Failure or refusal to file said appeal or specify the basis of said appeal with the Zoning Officer shall be deemed a conclusive determination as to the issues or matters addressed by the written decision. If an appeal is timely filed, the Zoning Hearing Board will then hold a Local Agency Law hearing pursuant to 2 Pa. C. S.A. SIOI et seq. within 20 days from the date the appeal is filed and will render a written decision within 10 days from the date such hearing concludes. In the case of a denial or renewal, or in the case of a permit suspension or revocation, the permittee may continue to operate to the same extent as immediately prior to the suspension or revocation until the earlier of:

(1) The expiration of the ten-day appeal period without filing of an appeal; or

(2) The date of a final decision dismissing any appeal.

E. To minimize and reduce delay to the applicant or permittee, and in addition to the appeal time frames and remedies available under the Municipalities Planning Code, 53 P.S. S 10101 et seq., any person aggrieved by a decision of the Zoning Hearing Board may appeal to a court of competent jurisdiction pursuant to the Local Agency Law (2 Pa. C. S.A. S 101 et seq.) and 42 Pa. C.S.A. S933 (a) (2). The Zoning Hearing Board shall, upon filing of such an appeal, consent to any request by a permit applicant or permittee to the court to give expedited review of such appeal. The Zoning Hearing Board shall certify any record to the court within 20 days after the appeal is filed. In the case of a denial of a permit renewal, or in the case of a permit suspension or revocation, the permittee may continue to operate to the same extent as immediately prior to the denial, suspension or revocation until the earlier of the expiration of the thirty-day appeal period without filing of an appeal; or the date of a decision dismissing an appeal by a court of competent j jurisdiction.

**§ 163-68. Transfer of permit.**

A permittee shall not transfer his permit to another person. A permittee shall not operate a sexually oriented business under the authority of a permit at any place other than the address designated in the application.

**§ 163-69. Transfer of permit.**

A. A person is guilty of a violation of the Zoning Ordinance if he operates or causes to be operated a sexually oriented business outside of the district in which a sexually oriented business is a permitted use. No sexually oriented business shall be located outside a district in which a sexually oriented business is a permitted use. Sexually oriented businesses as defined herein shall be permitted in the General Industrial District (M). Hours of operation shall be from 8:00 a.m. to 10:00 p.m., Monday through Saturday. No hours of operation on Sundays and legal holidays.

B. A person is guilty of a violation of the Zoning Ordinance if he operates or causes to be operated a sexually oriented business within I, 000 feet of a church; a public or private pre-elementary, elementary or secondary school; a public library; a child-care facility or nursery school; a public park adjacent to any residential district; a child-oriented business; a college and/or public or private university; and any residentially zoned districts in the borough.

C. A person is guilty of a violation of the Zoning Ordinance if he causes or permits the operation, establishment, substantial enlargement or transfer of ownership or control of a sexually oriented business within 1, 000 feet of another sexually oriented business.

D. A person is guilty of a violation of the Zoning Ordinance if he causes or permits the operation of a substantial enlargement of the sexually oriented business.

E. For the purposes of this article of the Zoning Chapter of the Code of the Borough of South Greensburg, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church, public or private pre-elementary, elementary or secondary school, public library, child-care facility, child-oriented business or nursery school; or to the nearest boundary of an affected public park, college, university or residentially zoned district.

F. For purposes of this section of this article of the Zoning Chapter of the Code of the Borough of South Greensburg, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

G. Any sexually oriented business lawfully operating on date of enactment of this article that is in violation of any part of this Section 12 shall be deemed a nonconforming use . Any preexisting nonconforming use sexually oriented business that is abandoned or is not used as such for a period of at least 12 months loses its preexisting nonconforming status and must thereafter comply with all provisions of this article to reopen. At the time of the writ inq of this article there are no such preexisting uses in the borouqh . If in the event that two or more sexually oriented businesses are within 1, 000 feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business is nonconforming.

H. A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business permit, of a church, public or private pre-elementary, elementary or secondary school, public library , child-care facility, child-oriented business, nursery school or public park within I , 500 feet of the sexually oriented business. This provision applies only to the renewal of a valid permit and does not apply when an application for a permit is submitted after a permit has expired or has been revoked.

**§ 163-70. Exemptions.**

It is a defense to prosecution under SS5 and 12 that a person appearing in a state of nudity did so in a modeling class operated by a proprietary school , licensed by the Commonwealth of Pennsylvania, or a college, junior college or university supported entirely or partly by taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; in a structure which has no sight visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; where, in order to participate in a class, a student must enroll at least three days in advance of the class; and where no more than one nude model is on the premises at any one time.

**§ 163-71. Injunction.**

A person who operates or causes to be operated a sexually oriented business without a valid permit or in violation of this article is subject to an action in equity or a suit for injunction as well as citations for violations of the Zoning Ordinance.

**§ 163-72. Severability.**

The provisions of this article are severable, and, if any section, sentence, clause, part or provision hereof shall be held illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect the remaining sections, sentences, clauses, parts or provisions of this article. It is hereby declared to be in the intent of the Council that this article would have been adopted if such illegal, invalid or unconstitutional section, sentence, clause, part or provision had not been included herein.