

Cleveland Heights, Ohio

**CHAPTER 755**  
**Licensing and Operation of Sexually Oriented Businesses**

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**755.01 PURPOSE AND FINDINGS.**

(a) Purpose. The purpose of this chapter is to establish reasonable and uniform regulations to minimize and control the negative secondary effects of sexually oriented businesses within the City in order to promote the health, safety, and welfare of the citizens of the City. The provisions of this chapter have neither the purpose nor the effect of imposing a limitation or restriction on the content of any communicative materials or communication, including sexually oriented entertainment. Similarly, it is not the purpose or effect of this chapter to restrict or deny access by adults to sexually oriented entertainment protected by the First Amendment, or to deny access by distributors and exhibitors of sexually oriented entertainment to their intended market. Furthermore, it is not the intent or effect of this chapter to condone or legitimize the distribution or exhibition of entertainment that is obscene.

(b) Findings. Based on evidence concerning the adverse secondary effects of sexually oriented businesses on the community presented in hearings before the City Council and the City Planning Commission on findings incorporated in the cases of the City of Renton v. Playtime Theaters, Inc., 475 U.S. 41 (1986) and Young v. American Mini Theaters, 426 U.S. 50 (1976); and on studies in other cities including New York, New York; Islip, New York; Los Angeles, California; Indianapolis, Indiana; Whittier, California; Austin, Texas; and Phoenix, Arizona; along with Manatee County, Florida; New Hanover County, North Carolina; and the State of Minnesota; this Council finds:

- (1) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities.
- (2) Sexual acts, including masturbation and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semiprivate booths or rooms for viewing films, videos, or live sexually oriented entertainment. Such activities may result in spreading communicable diseases such as syphilis, gonorrhea, and human immunodeficiency virus (HIV).
- (3) Offering sexually oriented entertainment under conditions that encourage such activities creates unhealthy conditions.

- (4) Sanitary conditions in some sexually oriented businesses are unhealthy, in part because of the failure of owners and operators to regulate those activities and maintain their facilities.
- (5) Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view sexually oriented films.
- (6) The findings noted in subsections (b)(1) through (5) hereof raise substantial governmental concerns.
- (7) Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.
- (8) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and operators of sexually oriented businesses. Further, such a licensing procedure will place a heretofore nonexistent incentive on operators to see that sexually oriented businesses are run in a manner consistent with the health, safety and welfare of patrons and employees, as well as the citizens of the City. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, and fully in possession and control of the premises and activities occurring therein.
- (9) The regulation of nudity in sexually oriented businesses will further the substantial governmental interests in preventing prostitution and other sex-related crimes, including illegal sex acts, and protecting the public health, safety, and welfare.
- (10) Removal of doors on viewing booths in sexually oriented businesses and requiring sufficient lighting on premises with viewing booths will advance the substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult arcades and theaters and will facilitate enforcement of the provisions of this chapter and other federal, state and local laws, thereby furthering the substantial governmental interest in protecting the public health, safety, and welfare.
- (11) Requiring sufficient lighting in all sexually oriented businesses will advance the substantial governmental interest in curbing illegal sexual activity on the premises of sexually oriented businesses, and will facilitate enforcement of the provisions of this chapter and other federal, state and local laws, thereby furthering the substantial governmental interest in protecting the public health, safety, and welfare.
- (12) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of sexually oriented businesses, and by employees of such businesses, will facilitate the enforcement of the provisions of this chapter and other federal, state and local laws, and will thereby further the substantial government interest in protecting the public health, safety, and welfare.
- (13) A person who recently has been convicted of a sexually related crime is not an appropriate individual to operate or be employed in a sexually oriented business.
- (14) Barring such individuals from the management of and employment in sexually oriented businesses for a period of years serves as a deterrent to and prevents the commission of sexually related criminal acts, including conduct which leads to the transmission of sexually transmitted diseases.

#### **755.02 DEFINITIONS.**

For purposes of this chapter:

- (a) "Adult Arcade" means any place to which the public is permitted or invited where either or both:
  - (1) Motion picture machines, projectors, video or laser disc players, or
  - (2) Other video or image-producing devices are available, run via coin, token, or any form of consideration, to show images to five or fewer persons at one time;

and where the images shown and/or live entertainment presented is characterized by the depiction or description of specified sexual activities or specified anatomical areas.

- (b) “Adult Bookstore,” “Adult Novelty Store,” or “Adult Video Store” means a commercial establishment which, as one of its principal business purposes, offers for sale or rental for any form of consideration any one of more of the following:
  - (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, videodiscs, CD-ROM disks, or video reproductions, slides, or other visual representations that are characterized by the depiction or description of specified sexual activities or specified anatomical areas; or
  - (2) Instruments, devices, or paraphernalia, other than prophylactics, that are designed for use in connection with specified sexual activities.
- (c) “Adult Cabaret” means a nightclub, bar, restaurant, or similar commercial establishment that regularly features:
  - (1) Persons who appear in a state of seminudity;
  - (2) Live entertainment characterized by the depiction or description of specified anatomical areas or specified sexual activities;
  - (3) Live entertainment of an erotic nature including exotic dancers, strippers, male or female impersonators, or similar entertainment; or
  - (4) Films, motion pictures, video cassettes, slides, videodiscs, CD-ROM disks, or other photographic reproductions that are characterized by the depiction or description of specified sexual activities or specified anatomical areas.
- (d) “Adult Motel” means a hotel, motel or similar commercial establishment which:
  - (1) Offers accommodations 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 which 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 which advertises the availability of this sex-oriented type of photographic reproductions; or
  - (2) Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
  - (3) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours.
- (e) “Adult Motion Picture Theater” means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, videodiscs, CD-ROM disks, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.
- (f) “Adult Theater” means a theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear in a state of seminudity, live performances which are characterized by the depiction or description of specified anatomical areas, specified sexual activities, or live entertainment of an erotic nature including exotic dancers, strippers, male or female impersonators, or similar entertainment.
- (g) “City Manager” shall mean the City Manager of the City of Cleveland Heights or his designee.
- (h) “Covering” means any clothing or wearing apparel, including pasties, but does not include any substance that can be washed off the skin, such as paint or make-up, or any substance designed to simulate the appearance of the anatomical area beneath it.
- (i) “Employee” means a person who performs any service or work on the premises of a sexually oriented business, including but not limited to providing entertainment, performing work of a management or supervisory nature, or performing support functions, on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not 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 exclusively for

- repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.
- (j) “Employee Station” means an area on the premises of a Sexually Oriented Business designated for occupancy exclusively by one or more employees whose duties include assuring compliance with the provisions of this chapter.
  - (k) “County Board of Health” means the Cuyahoga County Board of Health or its authorized representative.
  - (l) “Licensee” means, with respect to a sexually oriented business license issued under this chapter, a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual(s) designated on the license application as principally responsible for the operation of the sexually oriented business. With respect to a sexually oriented employee license issued under this chapter, licensee means a person in whose name a license has been issued authorizing employment in a sexually oriented business.
  - (m) “Live Viewing Booth” means any private or semiprivate booth, or any viewing room of less than one hundred fifty (150) square feet of floor space, to which the public may gain admittance, wherein a live performance is presented to five (5) or fewer persons at any one time.
  - (n) “Nude Model Studio” means any place where a person who appears seminude or who 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.  
Nude Model Studio shall not include:
    - (1) A proprietary school licensed by the State of Ohio, or a college, junior college or university supported entirely or in part by public taxation; or
    - (2) A private college or university that offers educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
    - (3) An establishment holding classes in a structure that has no sign visible from the exterior of the structure and no other advertising that indicates a seminude 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 seminude model is on the premises at any one time.
  - (o) “Nudity” or “Nude” means exposing to view the genitals, pubic area, vulva, perineum, anus, anal cleft or cleavage, or pubic hair with less than a fully opaque covering; exposing to view any portion of the areola of the female breast with less than a fully opaque covering; exposing to view male genitals in a discernibly turgid state, even if entirely covered by an opaque covering; or exposing to view any device, costume, or covering that gives the appearance of or simulates any of these anatomical areas.
  - (p) “Operate” means to control or hold primary responsibility for the operation of a sexually oriented business or adult motel, either as a business entity, as an individual, or as part of a group of individuals with shared responsibility. “Operate” or “Cause to be Operated” shall mean to cause to function or to put or keep in operation. “Operator” means any person on the premises of a sexually oriented business who is authorized to exercise overall operational control or hold primary responsibility for the operation of a sexually oriented business or who causes to function or who puts or keeps in operation the business. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.
  - (q) “Person” means an individual, proprietorship, partnership, firm, association, joint stock company, corporation or combination of individuals of whatever form or character.
  - (r) “Seminudity” or “Seminude” means exposing to view, with less than a fully opaque covering, any portion of the female breast below the top of the areola or any portion of the buttocks. This definition shall include the entire lower portion of the female breast, but shall not include any portion of the cleavage of the female breast exhibited by a dress, blouse, shirt, leotard, bathing suit, or other clothing, provided that the areola is not exposed in whole or in part.

- (s) “Sexual Encounter Center” means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:
  - (1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
  - (2) Activities between male and female persons and/or persons of the same sex when one or more of the persons is seminude.
- (t) “Sexually Oriented Business” means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motion picture theater, adult theater, nude model studio, or sexual encounter center.
- (u) “Specified Anatomical Areas” means:
  - (1) The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
  - (2) Less than completely and opaquely covered human genitals, pubic region, buttocks or female breast below a point immediately above the top of the areola.
- (v) “Specified Criminal Activity” means any of the following offenses:
  - (1) Prostitution or promoting prostitution; soliciting; loitering to engage in solicitation; sexual performance by a child; public lewdness; indecent exposure; indecency with a child; sexual assault; molestation of a child; or any similar offenses to those described above under the criminal or penal code of any local jurisdiction, state, or country;
  - (2) For which:
    - A. Less than two years have 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 years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense.
  - (3) The fact that a conviction is being appealed shall not prevent such conviction from constituting a specified criminal activity as defined in this Section.
- (w) “Specified Sexual Activities” means any of the following:
  - (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
  - (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or
  - (3) Excretory functions as a part of or in connection with any of the activities set forth in subsection (w)(1) or (2) hereof.
- (x) “Video Booth” means any private or semiprivate booth or any viewing room of less than one hundred fifty (150) square feet of floor space or area to which the public may gain admittance, wherein a still or motion picture machine, projector, video monitor, or similar equipment is available for the purpose of showing still or motion pictures, videos, or similar images or photographic reproductions to five (5) or fewer persons at any one time.
- (y) “Viewing Booth” means live viewing booth or video booth, and “Viewing Booths” means live viewing booths, video booths, or any combination thereof.
- (z) “Transfer of Ownership or Control” of a sexually oriented business shall mean any of the following:
  - (1) The sale, lease, or sublease of the business;
  - (2) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
  - (3) 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.

**755.03 CLASSIFICATION.**

Businesses subject to sexually oriented business licensing are classified as follows:

- (a) Adult arcades;

- (b) Adult bookstores, adult novelty stores, or adult video stores;
- (c) Adult cabarets;
- (d) Adult motion picture theaters;
- (e) Adult theaters;
- (f) Nude model studios;
- (g) Sexual encounter centers; and
- (h) Any combination of classifications set forth in subsections (a) through (g) hereof.

**755.04 SEXUALLY ORIENTED BUSINESS LICENSE REQUIRED.**

- (a) No person shall:
  - (1) Operate a sexually oriented business without a valid sexually oriented business license issued by the City pursuant to this chapter.
  - (2) In connection with operating a sexually oriented business, retain the services of a person as an employee, as defined in Section 755.02 of this chapter, who is not licensed as a sexually oriented business employee by the City pursuant to this chapter.
- (b) Any person who violates subparagraph (a)(1) of this Section shall be guilty of a misdemeanor of the first degree.

**755.05 SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE REQUIRED.**

- (a) No person shall act as an employee, as defined in Section 755.02 of this chapter, on the premises of a sexually oriented business without having secured a sexually oriented business employee license pursuant to this chapter.
- (b) Any person who violates this Section shall be guilty of a misdemeanor of the third degree.

**755.06 SEXUALLY ORIENTED BUSINESS LICENSE APPLICATION.**

- (a) An application for a sexually oriented business license shall be submitted to the City Manager on a form provided by the City Manager. The application may request and the applicant shall provide such information as is reasonably necessary (including fingerprints) to enable the City to determine whether the applicant meets the qualifications established in this chapter.
- (b) An application for a sexually oriented business license shall identify and be signed by the following persons:
  - (1) If the business entity is owned by an individual, that individual.
  - (2) If the business entity is owned by a corporation, each officer or director of the corporation and each individual with a ten percent (10%) or greater ownership interest in the corporation.
  - (3) If the business entity is owned by a partnership, each partner and each individual with a ten percent (10%) or greater ownership interest in the partnership.
- (c) An application for a sexually oriented business license must designate one or more individuals who are to be principally responsible for the operation of the proposed sexually oriented business, if a license is granted. At least one person so designated must be involved in the day-to-day operation of the proposed sexually oriented business on a regular basis. Each person so designated, as well as the business entity itself, shall be considered a license applicant, must qualify as a licensee under this chapter, and shall be considered a licensee if a license is granted.
- (d) An application for a sexually oriented business license shall be completed according to the instructions of the application form, which shall require the following:
  - (1) If the applicant is:
    - A. An individual, state the legal name and any aliases of such individual;
    - B. A partnership, state the complete name of the partnership and all of its partners and whether the partnership is general or limited, and provide a copy of the partnership agreement, if any;

- C. A corporation, state the complete name of the corporation and the date of its incorporation, provide evidence that the corporation is in good standing under the laws of its state of incorporation, and state the names and capacity of all officers and directors, the name of the registered corporate agent, and the address of the registered office for service of process.
- (2) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, state the fictitious name to be used and submit copies of documentation evidencing the registration of the business name under applicable laws.
  - (3) State whether any applicant has been convicted of a specified criminal activity as defined in Section 755.02 of this chapter, and if so, the specified criminal activity involved and the date, place, and jurisdiction of each such conviction.
  - (4) State whether any applicant has had a previous license under this chapter or other similar regulation of another jurisdiction denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation; and state whether the applicant has been a partner in a partnership or an officer, director or ten percent or greater owner of a corporation licensed under this chapter whose license has previously been denied, suspended or revoked, including the name and location of the business for which the permit was denied, suspended or revoked, as well as the date of denial, suspension or revocation.
  - (5) State whether any applicant holds any other licenses under this chapter or other similar regulation from this or another jurisdiction and, if so, the names and locations of such other licensed businesses.
  - (6) State the classification of license for which the applicant is filing.
  - (7) State the location of the proposed sexually oriented business, including a legal description of the property (i.e., block and lot), street address, and telephone number(s), if any.
  - (8) State the mailing address and residential address of each applicant and each person signing the application.
  - (9) Submit a recent photograph of each applicant who is a natural person which clearly shows the applicant's face.
  - (10) Submit the fingerprints of each applicant who is a natural person, recorded by the Cleveland Heights Police Department.
  - (11) For any applicant who is a natural person, describe and identify the location of any tattoos on such person's face, arms, legs, or hands, or any other anatomical area that normally would be visible when such person is on the premises of the proposed sexually oriented business.
  - (12) State the driver's license number and Social Security number of each applicant who is a natural person and each person signing the application, or, for an applicant that is not a natural person, the applicant's federally issued tax identification number.
  - (13) Submit proof that each applicant who is a natural person is at least eighteen (18) years old.
  - (14) Submit a sketch or diagram showing the configuration of the premises of the sexually oriented business, including the location of all stages and customer seating and a statement of total floor space occupied by the business. The diagram shall also designate the place at which the sexually oriented business license will be conspicuously posted, if granted. The sketch or diagram need not be professionally prepared, but it 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.
  - (15) If an applicant wishes to operate a sexually oriented business which shall exhibit on the premises, in a viewing booth, as defined in Section 755.02 of this chapter, films, video cassettes, slides, videodiscs, CD-ROM disks, other video or image reproduction, or live entertainment which depicts

specified sexual activities or specified anatomical areas, then the applicant shall comply with the additional application requirements set forth in Section 755.18 of this chapter.

**755.07 ISSUANCE OF SEXUALLY ORIENTED BUSINESS LICENSE.**

(a) Within five days of receipt of an application for a sexually oriented business license, the City Manager shall notify the Police Chief, the Fire Chief, and the Cuyahoga County Board of Health (if appropriate) of such application. In making such notification, the City Manager shall request that the Police Chief promptly investigate the information provided in the application concerning the criminal background of the applicant(s), and shall request that the Fire Chief and Cuyahoga County Board of Health (if appropriate) promptly inspect the premises for which the sexually oriented business license is sought to assess compliance with the regulations under their respective jurisdictions.

The Police Chief and the Fire Chief shall begin their respective investigations and inspection processes promptly upon receipt of notice of an application from the City Manager. The Police Chief shall provide the results of his investigation to the City Manager, in writing, within ten (10) days of receipt of notice of the application. The Fire Chief shall provide to the City Manager a written certification of whether the premises are in compliance with the Fire Code within ten (10) days of receipt of notice of the application.

The City Manager shall commence the inspection of the premises for which a sexually oriented business license is sought promptly upon receipt of the application, and shall complete a written certification of whether the premises are in compliance with the Building Code, the Planning and Zoning Code, and the provisions of this chapter related to physical characteristics of the premises within fifteen days after receipt of the application.

(b) Within twenty-one (21) days after receipt of a completed sexually oriented business license application, the City Manager shall approve or deny the issuance of the license. The City Manager shall approve the issuance of a license to an applicant unless the Manager determines that one or more of the following findings is true:

- (1) An applicant who is a natural person is under eighteen (18) years of age.
- (2) An applicant has failed to provide information reasonably necessary for issuance of the license as requested on the application form, or has falsely answered a question or request for information on the application form.
- (3) An applicant has been denied a sexually oriented business license or has had a license to operate a sexually oriented business or adult motel revoked within the preceding twelve (12) months by any jurisdiction.
- (4) An applicant has been convicted of a specified criminal activity as defined in Section 755.02 of this chapter.
- (5) The proposed sexually oriented business would violate or fail to be in compliance with any provisions of the Planning and Zoning Code, the General Offenses Code of the City, or State statute or regulation.
- (6) The application and investigation fee required by this chapter has not been paid.
- (7) An applicant is in violation of or is not in compliance with any provision of this chapter, except as provided in Subparagraph (c)(1) of this Section.

(c) If the City Manager determines that one or both of the following findings is true, the license issued pursuant to Subparagraph (b) of this Section shall contain a requirement that the licensee correct all deficiencies specified within 120 days of the date the license is issued:

- (1) The results of inspections of the premises by the Fire Chief, the Cuyahoga County Board of Health, and/or the City Manager indicate that the premises are not in compliance with applicable laws and regulations under their respective jurisdictions, including the provisions of this chapter related to characteristics of the physical premises. This subparagraph shall not apply to premises that are in violation of any law or regulation that is identified or referenced in subparagraphs (b)(1) through (b)(7) above.
- (2) An applicant is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon him or her in relation to any business, which are not the subject of a pending appeal or other legal challenge.



(d) If the City Manager determines that no other grounds for denial of a license exist under Subparagraph (b) of this Section, the City Manager shall not delay approval of the application past the end of the 21-day period provided in this Section solely because the Fire Chief or the Cuyahoga County Board of Health has not provided the City Manager with the results of his inspection of the premises; the results of the City Manager's inspection of the premises are not available; and/or the Police Chief has not provided the results of his investigation of the criminal background of the applicant(s).

If, after approving the issuance of a license, the City Manager receives information from the Police Chief concerning his investigation, which the City Manager determines constitutes grounds for denial of a license under subsection (b) hereof, then the sexually oriented business license issued pursuant to this subsection (d) hereof shall be immediately revoked. If after approving the issuance of a license, the City Manager receives information concerning the results of inspections of the premises by the Fire Chief or the Cuyahoga County Board of Health, or concerning the results of the City Manager's own inspection, which the City Manager determines constitutes grounds for the issuance of a license subject to a requirement to correct deficiencies under subsection (c) hereof, then a requirement shall be added to the terms of the sexually oriented business licenses issued pursuant to this subsection (d) hereof to correct all deficiencies noted within 120 days of the date such requirement is added.

(e) A sexually oriented business license, 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 licensed sexually oriented business, and the classification for which the license is issued pursuant to Section 755.03 of this chapter. All sexually oriented business licenses shall be posted in a conspicuous place at or near the entrance to the business so that they may be easily read at any time.

(f) The City Manager shall advise the applicant in writing of the reasons for any license denial.

#### **755.08 SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE APPLICATION.**

(a) An application for a sexually oriented employee license shall be submitted to the City Manager on a form provided by the City Manager's Office. The application may request and the applicant shall provide such information as reasonably necessary (including fingerprints) to enable the City to determine whether the applicant meets the qualifications established in this chapter.

(b) An application for a sexually oriented business employee license shall be completed according to the instructions of the application form, which shall require the following:

- (1) State the applicant's name and any other names (including "stage" names) or aliases used by the applicant.
- (2) State the applicant's date and place of birth.
- (3) State the applicant's height, weight, and hair and eye color.
- (4) Submit a recent photograph of the applicant which clearly shows the applicant's face.
- (5) Submit the applicant's fingerprints, recorded by the Cleveland Heights Police Department.
- (6) Describe and identify the location of any tattoos on the applicant's face, arms, legs, or hands, or any other anatomical area that normally would be visible when the applicant is on the premises of the proposed sexually oriented business.
- (7) State the applicant's present residence address and telephone number.
- (8) State the applicant's present or intended business address and telephone number.
- (9) State the applicant's driver's license number and Social Security number.
- (10) Submit proof that the applicant is at least eighteen (18) years old.
- (11) Provide a statement detailing the sexually oriented business-related license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate a sexually oriented business in this or any other jurisdiction, and whether the applicant has ever had a sexually

oriented business related license, permit, or authorization to do business denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name of the issuing or denying jurisdiction and describe in full the reason for the denial, revocation, or suspension. Attach a copy of any order of denial, revocation, or suspension.

- (12) State whether the applicant has been convicted of a specified criminal activity as defined in Section 755.02 of this chapter and, if so, the specified criminal activity involved and the date, place and jurisdiction of each such conviction.

**755.09 ISSUANCE OF SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE.**

(a) Upon the filing of an application for a sexually oriented business employee license, the City Manager shall issue a temporary license to said applicant immediately.

(b) Within five (5) days of receipt of an application for a sexually oriented business employee license, the City Manager shall notify the Police Chief of such application. In making such notification, the City Manager shall request that the Police Chief promptly investigate the information provided in the application concerning the criminal background of the applicant. The Police Chief shall begin his investigation promptly upon receipt of notice of an application from the City Manager, and shall provide the results of his investigation to the City Manager within ten (10) days of receipt of notice of the application.

(c) Within twenty-one (21) days after receipt of a completed sexually oriented employee license application, the City Manager shall approve or deny the issuance of the license. The City Manager shall approve the issuance of a license to an applicant unless the City Manager determines that one or more of the following findings is true:

- (1) The applicant has failed to provide information reasonably necessary for issuance of the license as requested on the application form, or has falsely answered a question or request for information on the application form.
- (2) The applicant is under eighteen (18) years of age.
- (3) The applicant has been convicted of a specified criminal activity as defined in Section 755.02 of this chapter.
- (4) The sexually oriented business employee license is to be used for employment in a business prohibited by local, state, or federal law, statute, rule or regulation.
- (5) The applicant has been denied a sexually oriented business employee license or has had a sexually oriented business employee license revoked within the preceding twelve ( 12) months by any jurisdiction.

(d) If the sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. The City Manager shall advise the applicant in writing of the reason(s) for any such denial.

**755.10 FEES.**

(a) Every application for a new sexually oriented business license shall be accompanied by a \$500 nonrefundable application and investigation fee.

(b) Every application for renewal of a sexually oriented business license shall be accompanied by a five hundred dollar (\$500.00) nonrefundable application and investigation fee.

(c) In addition to the application and investigation fee required in subsection (a) or (b) hereof, every applicant that is granted a sexually oriented business license (new or renewal) shall pay to the City an annual, nonrefundable license fee of two hundred fifty dollars (\$250.00) within thirty (30) days of license issuance or renewal.

(d) Every application for a new sexually oriented business employee license shall be accompanied by an annual, nonrefundable application, investigation, and license fee of fifty dollars (\$50.00).

(e) Every application for renewal of a sexually oriented business employee license shall be accompanied by an annual, nonrefundable application, investigation, and license fee of fifty dollars (\$50.00).

**755.11 INSPECTION.**

(a) The Police Department shall, from time to time and at least four times a year, inspect each sexually oriented business licensed under the provisions of this chapter in order to assess compliance with the provisions of this chapter.

(b) The City Manager shall, from time to time request that the Cuyahoga County Board of Health inspect a sexually oriented business licensed under the provisions of this chapter in order to assess compliance with the provisions of this chapter.

(c) An applicant or licensee shall permit representatives of the Police Department, Fire Department, Cuyahoga County Board of Health, or other City departments or agencies, or the Cuyahoga County Health Commissioner, to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time that it is occupied or open for business.

(d) A person who operates a sexually oriented business or his agent or employee commits a misdemeanor of the first degree if he refuses to permit such lawful inspection of the premises.

**755.12 EXPIRATION AND RENEWAL OF LICENSE.**

(a) Each license issued pursuant to this chapter shall expire one year from the date of issuance and may be renewed by making application as provided in this Section. Application for renewal shall be made no more than ninety (90) days and no less than thirty (30) days before the expiration date. If application is made less than thirty (30) days before the expiration date, the license will not be extended pending a decision on the application, but will expire on its normal expiration date.

(b) An application for renewal of a sexually oriented business license shall be submitted to the City Manager on a form provided by the City Manager's Office. The renewal application may request and the applicant shall provide such information as reasonably necessary to enable the City to determine whether the applicant meets the qualifications established in this chapter. The completed renewal application shall describe any changes or additions to, or deletions from, the information provided in the applicant's initial license application pursuant to Section 755.06 of this chapter. The completed renewal application shall be accompanied by copies of any document or material submitted in connection with the initial license application that has been revised or requires revision to reflect any change in circumstances or conditions. Sketches or diagrams submitted with an initial sexually oriented business license application may be resubmitted with subsequent renewal applications, provided that the applicant certifies in writing that the sketch or diagram still depicts the premises accurately.

(c) The City Manager shall make determinations concerning the approval of sexually oriented business license renewals based on the same criteria used to evaluate applications for new licenses under Section 755.07 of this chapter.

(d) The City Manager shall advise the applicant in writing of the reason(s) for any denial of a sexually oriented business license renewal.

(e) An application for renewal of a sexually oriented business employee license shall be submitted to the City Manager on a form provided by the City Manager's Office. The renewal application may request and the applicant shall provide such information as reasonably necessary to enable the City to determine whether the applicant meets the qualifications established in this chapter. The completed renewal application shall describe any changes or additions to, or deletions from, the information provided in the applicant's initial license application pursuant to Section 755.08 of this chapter. The completed renewal application shall be accompanied by copies of any document or material submitted in connection with the initial license application that has been revised or requires revision to reflect any change in circumstances or conditions.

(f) The City Manager shall make determinations concerning the approval of sexually oriented business employee license renewals based on the same criteria used to evaluate applications for new licenses under Section 755.09 of this chapter.

(g) The City Manager shall advise the applicant in writing of the reason(s) for any denial of a sexually oriented business employee license renewal.

(h) When the City denies an application for renewal of either a sexually oriented business or employee license under this Section, the applicant shall not be issued another license for one year from the date of denial. If the City finds, subsequent to denial, that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the denial was issued.

**755.13 SUSPENSION.**

(a) The City shall suspend a sexually oriented business license for a period not to exceed thirty (30) days if it determines that a licensee:

- (1) Has violated or is not in compliance with any Section of this chapter; or
- (2) Has knowingly allowed an employee to violate or fail to comply with any Section of this chapter.

(b) The City shall suspend a sexually oriented business license for a period not to exceed thirty (30) days if it determines that a licensee or his employee or agent has refused to allow an inspection of the licensed sexually oriented business premises as authorized by this chapter.

(c) The City shall suspend a sexually oriented business employee license for a period not to exceed thirty (30) days if it determines that a licensee has violated or is not in compliance with any Section of this chapter.

(d) The City Manager shall advise the licensee in writing of the reason(s) for any suspension.

**755.14 REVOCATION.**

(a) The City shall revoke a sexually oriented business license or sexually oriented business employee license if a cause of suspension under Section 755.13 of this chapter occurs and the license has been suspended two times within the preceding twelve (12) months.

(b) The City shall revoke a sexually oriented business license if it determines that:

- (1) A licensee gave false or misleading information in the material submitted during the application process;
- (2) The licensee(s) failed to comply with any requirement stated in the license, or pursuant to Section 755.07 of this chapter, to correct specified deficiencies within 120 days;
- (3) A licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;
- (4) A licensee has knowingly allowed prostitution, solicitation, or the commission of a felony on the premises;
- (5) A licensee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
- (6) A licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises;
- (7) A licensee has been convicted of a specified criminal activity, as defined in Section 755.02 of this chapter, during the term of the license; or
- (8) A licensee is delinquent in payment to the City, County, or State for any taxes or fees past due that were assessed or imposed in relation to any business.

(c) The City shall revoke a sexually oriented business employee license if it determines that:

- (1) The licensee gave false or misleading information in the material submitted during the application process;
- (2) The licensee has knowingly acted as an employee on the premises of a sexually oriented business during a period of time when the licensee's license was suspended; or
- (3) The licensee has been convicted of a specified criminal activity, as defined in Section 755.02 of this chapter, during the term of the license.

(d) The City Manager shall advise the licensee in writing of the reason(s) for any revocation.

(e) When the City revokes a license, the licensee shall not be issued another license for one (1) year from the date the revocation became effective. If the City finds, subsequent to revocation, that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective.

#### **755.15 APPEAL RIGHTS.**

(a) Any denial, suspension, or revocation of a new or renewal license under this chapter may be appealed to the Health Code Board of Appeals, which shall act as the Board of Appeals ("Board") for purposes of this Section, by written notice to the Board within ten (10) days of such denial, suspension, or revocation. Unless the applicant requests a longer period, the Board must hold a hearing on the appeal within fourteen (14) days of receipt of the notice at its office and must issue a decision affirming or reversing the denial, suspension, or revocation within five (5) days after the hearing.

(b) Any decision by the Board shall be a final appealable order, and the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction.

(c) In the event that an applicant or licensee seeks judicial review of a decision issued pursuant to this chapter, the applicant or licensee shall file a notice of appeal with the Board, as well as with the court, and shall file a praecipe with the Board requesting that a complete transcript of all original papers, testimony, and evidence offered, heard, and taken into consideration in the Board's issuance of the final order appealed from be filed with the court. Within ten (10) days of receiving such written notice of appeal, or within such shorter time as may be ordered by the court, the Board shall transmit to the court in which the appeal was sought a copy of the full administrative record for the matter, including a complete transcript of all the original papers, testimony and evidence offered, heard, and taken into consideration in issuing the final order. The Board and all other departments or agencies of the City shall provide any further information, assistance, or cooperation requested by the reviewing court without delay.

(d) Subject to the provisions of (f) of this Section, any licensee lawfully operating a sexually oriented business prior to the denial of a license renewal application, or the suspension or revocation of a license, may continue to operate said business during the pendency of an appeal to the Board or to a court.

(e) Subject to the provisions of (f) of this Section, any licensee lawfully acting as an employee in a sexually oriented business prior to the denial of a license renewal application, or the suspension or revocation of a license, may continue to serve in such capacity during the pendency of an appeal to the Board or to a court.

(f) In the event that an applicant for a new sexually oriented business license or a new sexually oriented business employee license seeks judicial review of the denial of a new license, and such review does not result in a final judicial decision within sixty (60) days of the date the appeal was filed, the City will issue such applicant a provisional sexually oriented business license or sexually oriented business employee license upon request of the applicant. The provisional license:

- (1) Will allow an applicant for a sexually oriented business license to operate the sexually oriented business named in the license application under the same terms as a normal sexually oriented business license issued pursuant to Section 755.07 of this chapter for the period of time specified in subsection (g) hereof; and
- (2) Will allow an applicant for a sexually oriented business employee license to act as an employee on the premises of a sexually oriented business under the same terms as a normal sexually oriented business employee license issued pursuant to Section 755.09 of this chapter for the period of time specified in Subparagraph (g) of this Section; and
- (3) Will be subject to the same requirements as a normal sexually oriented business license or sexually oriented business employee license issued under Section 755.07 or Section 755.09 of this chapter.

(g) A provisional license will expire on whichever of the following three dates is earliest:

- (1) The date that a judicial decision is issued upholding the license denial;
- (2) The date on which a non-provisional sexually oriented business license or sexually oriented business employee license is issued to the applicant pursuant to a judicial decision overturning the license denial; or
- (3) The date one year from the issuance of the provisional license.

(h) In the event that judicial review of the denial of a new license application is still pending thirty (30) days before the expiration date of a provisional license, the provisional licensee may file a renewal license application with the City Manager pursuant to Section 755.12(b) or (e) of this chapter. The City Manager shall grant an application for renewal of a provisional license unless the City Manager determines that new grounds exist for denial of a license application pursuant to Section 755.07 or Section 755.09 of this chapter, which did not exist at the time of the original license application. In the event that an application for renewal of a provisional license is denied and the applicant seeks judicial review of that denial, the City has the right to consolidate such review with the pending judicial appeal of the previous license denial.

#### **755.16 TRANSFER OF LICENSE.**

(a) A sexually oriented business license is not transferable from one licensee to another or from one location to another. Any purported transfer of a sexually oriented business license shall automatically and immediately revoke that license.

(b) A sexually oriented business employee license is not transferable from one licensee to another, but the use of the license by the individual to whom it was issued may be transferred from one licensed sexually oriented business to another such licensed establishment during the term of the license, provided that the licensee gives written notice of such transfer to the City Manager within fifteen (15) days of such transfer.

#### **755.17 PROHIBITION OF ADULT MOTELS.**

(a) No person shall operate an adult motel within the City.

(b) Evidence that a sleeping room in a hotel, motel, or similar commercial establishment has been rented and vacated two or more times in less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in Section 755.02 of this chapter.

(c) Evidence that a person in control of a sleeping room in a hotel, motel, or similar commercial establishment has rented or subrented a sleeping room to a person and, within ten (10) hours from the time the room was rented, has rented or subrented the same sleeping room again, creates a rebuttable presumption that the establishment is an adult motel as that term is defined in Section 755.02 of this chapter.

(d) For purposes of subsection (b) hereof, the terms “rent” or “subrent” mean the act of permitting a room to be occupied for any form of consideration.

(e) Any person who operates a hotel, motel, or similar commercial establishment that is found to be an adult motel, as defined in Section 755.02 of this chapter, commits a misdemeanor of the first degree.

**755.18 REGULATIONS PERTAINING TO THE EXHIBITION OF SEXUALLY EXPLICIT FILMS, VIDEOS OR LIVE ENTERTAINMENT IN VIEWING BOOTHS.**

(a) No person may operate or cause to be operated a sexually oriented business, which exhibits on the premises in a viewing booth, as defined in Section 755.02 of this chapter, films, video cassettes, other video or image reproduction, or live entertainment which depicts "specified sexual activities" or "specified anatomical areas," without complying with the following requirements:

- (1) The sexually oriented business license application required under this chapter shall be accompanied by a diagram of the premises showing a plan thereof which specifies the location of one or more employee's stations and the location of all overhead lighting fixtures, and which designates any portion of the premises in which patrons will not be permitted. The diagram shall also designate the place at which the sexually oriented 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.
- (2) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an employee's station of every area of the premises to which any patron is permitted access for any purpose, including the interior of all viewing booths and excluding restrooms. Restrooms may not contain video reproduction equipment, and no entertainment of any kind may be offered in restrooms. If the premises has two or more employee's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the employee's stations. The view required in this subsection must be by direct line of sight from the employee's station.
- (3) No alteration in the configuration or location of an employee's station shall be made without the prior approval of the City Manager.
- (4) At least one employee shall be on duty and situated in each employee's station at all times that any patron is present inside the premises.
- (5) An employee's station shall not exceed thirty-two (32) square feet of floor area, and no single dimension of an employee's station shall exceed eight (8) feet.
- (6) The view from the employee's station(s) shall remain unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials.
- (7) No patron may at any time be permitted access to any area of the premises which has been designated in the license application filed pursuant to this chapter as an area in which patrons will not be permitted.
- (8) No viewing booth may be occupied by more than one person at any time.
- (9) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access, including both the interior of viewing booths and restrooms, at an illumination level of not less than five (5.0) footcandles as measured at floor level.
- (10) The illumination described above shall be maintained at all times that any patron is present in the premises. In the event of a power failure, the business shall stop operating immediately and all patrons shall be cleared from the premises. The premises shall not be reopened until the minimum illumination level can be assured.

- (11) No openings of any kind shall be permitted to exist between viewing booths or in any wall of a viewing booth.
- (12) No person shall make or attempt to make an opening of any kind between viewing booths or in any wall of a viewing booth.
- (13) The walls of each viewing booth shall be inspected regularly during each business day to determine if any openings or holes exist.
- (14) All floor coverings in viewing booths shall be nonporous, easily cleanable surfaces, with no rugs or carpeting.
- (15) All wall surfaces, ceiling surfaces and seating surfaces in viewing booths shall be constructed of, or permanently covered by, nonporous, easily cleanable material.

(b) A person who operates a sexually oriented business or his agent or employee shall be guilty of a misdemeanor of the third degree if he operates a sexually oriented business in violation of subsection (a) hereof.

**755.19 ADDITIONAL REGULATIONS CONCERNING THE OPERATION OF SEXUALLY ORIENTED BUSINESSES.**

(a) Nudity, Sexual Activity, Live Entertainment and Performances.

- (1) No employee on the premises of a sexually oriented business may appear in a state of "nudity," as defined in Section 755.02 of this chapter, or engage in "specified sexual activities" in a state of "nudity," as those terms are defined in Section 755.02 of this chapter.
- (2) Any employee appearing on the premises of a sexually oriented business in a state of seminudity, as defined in Section 755.02 of this chapter, must be on a stage that is at least forty-five (45) inches from the floor, and at a distance at least seventy-two (72) inches from all parts of a clearly designated area in which patrons will be present.
- (3) All live entertainment and performances in a sexually oriented business must take place on a seventy-two (72) inches from all parts of a clearly designated area in which patrons will be present.
- (4) The stage shall be separated from the area in which patrons may be present.
- (5) No employee, as defined in Section 755.02 of this chapter, appearing on the premises of a sexually oriented business in a state of seminudity, may touch a customer or a customer's clothing or permit himself or herself to be touched by a customer or a customer's clothing.
- (6) Any live entertainment that is provided on the premises of a sexually oriented business, in a private or semiprivate room, to five (5) or fewer persons at any one time, must take place in the direct, unobstructed line of sight of an employee's station at which at least one employee is on duty and stationed at all times during which such entertainment takes place, with all doors to such room completely open and ajar, if such room is not considered a "viewing booth" under Section 755.02 of this chapter and therefore is not subject to the provisions of Section 755.18 of this chapter.

The provisions of this subparagraph (a) shall not apply to an employee's bona fide use of a restroom or of a single-sex dressing room that is accessible only to entertainers.

(b) Dressing Rooms. All sexually oriented businesses that offer live entertainment must provide separate dressing room facilities for female and male entertainers which shall not be occupied or used in any way by anyone other than entertainers.

(c) Minors Prohibited. No person under the age of 18 years shall be permitted on the premises of a sexually oriented business.

(d) Hours of Operation. No sexually oriented business shall remain open at any time between the hours of 2:30 a.m. and 7:00 a.m. on weekdays and Saturdays, and 2:30 a.m. and noon (12:00 p.m.) on Sundays, nor shall any entertainment, service, or product be provided to a customer on the premises of a sexually oriented business during those hours.



(e) Minimum Lighting Level.

- (1) The premises of every sexually oriented business shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access, including restrooms, at an illumination level of not less than five (5.0) footcandles as measured at floor level.
- (2) The illumination described in subsection (e)(1) above shall be maintained at all times that any patron is present in the premises. In the event of a power failure, the business shall stop operating immediately and all patrons shall be cleared from the premises. The premises shall not be reopened until the minimum illumination level can be assured.

(f) Exterior Display. No sexually oriented business shall be operated in any manner that permits the observation from outside the premises of any material or entertainment depicting or describing specified sexual activities or specified anatomical areas, as defined in Section 755.02 of this chapter, or any person in a state of nudity or seminudity, whether by means of display, decoration, sign, window or any other means.

(g) Except as otherwise provided in this paragraph, any person who violates subparagraph (a) of this Section, or any person who operates a sexually oriented business and knowingly and permits a violation of subparagraph (a) of this Section on the premises, shall be guilty of a misdemeanor of the fourth degree. If the offender previously has been convicted of or pleaded guilty to one violation of subparagraph (a) of this Section, a violation of subparagraph (a) of this Section will be considered a misdemeanor of the third degree. If the offender previously has been convicted of or pleaded guilty to two violations of subparagraph (a) of this Section, a violation of subparagraph (a) of this Section will be considered a misdemeanor of the second degree. If the offender previously has been convicted of or pleaded guilty to three or more violations of subparagraph (a) of this Section will be considered a misdemeanor of the first degree.

(h) Any person who operates a sexually oriented business and knowingly permits a violation of subsection (f) hereof on the premises shall be guilty of a misdemeanor of the first degree.

(i) Any person who operates a sexually oriented business in violation of subsections (b), (d), or (e) hereof shall be guilty of a misdemeanor of the fourth degree.

(j) Any operator of a sexually oriented business or his agent or employee who recklessly violates, or operates a sexually oriented business in violation of, subparagraph (c) of this Section commits a misdemeanor of the second degree. Mistake of age is not a defense to a charge under this Section, unless the person under age 18 who was permitted on the premises exhibited to the operator or his agent or employee a draft card, driver's license, birth record, or other official or apparently official document purporting to show that the person was eighteen years of age or over, and the person to whom that document was exhibited did not otherwise have reasonable cause to believe that the person seeking admittance was under eighteen years old.

**755.20 LOITERING AND EXTERIOR LIGHTING AND MONITORING REQUIREMENTS.**

- (a) It shall be the duty of the operator of a sexually oriented business to:
- (1) Initiate and enforce a no loitering policy within the external boundaries of the real property upon which the sexually oriented businesses are located;
  - (2) Post conspicuous signs stating that no loitering is permitted on such property;
  - (3) Designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every thirty (30) minutes or inspecting such property by use of video cameras and monitors; and
  - (4) Provide adequate lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. The video cameras and monitors shall operate continuously at all times that the premises is open for business. The monitors shall be installed within a manager's station.

(b) It shall be unlawful for a person having a duty under this Section to knowingly fail to fulfill that duty.

**755.21 INJUNCTION.**

Any person who operates or causes to be operated a sexually oriented business or adult motel in violation of this chapter is subject to a suit for injunction as well as prosecution for criminal violations under Section 755.99.

**755.22 EFFECT OF PARTIAL INVALIDITY.**

If any section, subsection or clause of this chapter shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected.

**755.99 PENALTY.**

(a) Violations of this chapter shall be misdemeanor offenses punishable by fine or imprisonment, as provided in Chapter 501 of the Codified Ordinances of the City of Cleveland Heights.

(b) Each day that a sexually oriented business or adult motel operates in violation of this chapter is a separate offense or violation.

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**CHAPTER 1169**  
**Sexually Oriented Businesses**

**1169.01 Definitions.**

**1169.02 Sexually oriented business uses.**

**1169.03 Effect of partial invalidity.**

**CROSS REFERENCES**

Licensing of sexually oriented businesses - see BUS. REG. Ch. 755

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**1169.01 DEFINITIONS.**

(a) "Adult arcade" means any place to which the public is permitted or invited where either or both:

- (1) Motion picture machines, projectors, video or laser disc players, or other video image-producing devices are available, run via coin, token, or any form of consideration, to show images to five or fewer persons at one time; and
- (2) Where the images shown and/or live entertainment presented is characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

(b) "Adult bookstore", "adult novelty store" or "adult video store" means a commercial establishment which, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:

- (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videocassettes, videodisks, CD-ROM disks, or video reproductions, slide or other visual representations that are characterized by the depiction of or description of "specified sexual activities" or "specified anatomical areas"; or
- (2) Instruments, devices or paraphernalia, other than prophylactics, that are designed for use in connection with "specified sexual activities".

(c) "Adult cabaret" means a nightclub, bar, restaurant or similar commercial establishment that regularly features:

- (1) Persons who appear in a "state of nudity" or a "state of seminudity"; or

- (2) Live entertainment characterized by the depiction or description of “specified anatomical areas” or by “specified sexual activities”; or
- (3) Live entertainment of an erotic nature including exotic dancers, strippers, male or female impersonators, or similar entertainment; or
- (4) Films, motion pictures, videocassettes, slides or other photographic reproductions that are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”.

(d) “Adult motion picture theater” means a commercial establishment where, for any form of consideration, films, motion pictures, videocassettes, slides, videodisks, CD-ROM disks, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”.

(e) “Adult theater” means a theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear in a “state of nudity” or “seminudity” or live performances which are characterized by the depiction or description of “specified anatomical areas”, “specified sexual activities” or live entertainment of an erotic nature, including exotic dancers, strippers, male or female impersonators, or similar entertainment.

(f) “Nude model studio” means any place where a person who appears in a “state of nudity” or “seminudity” or who displays “specified anatomical areas” is provided to be observed, sketched, drawn, painted, sculpted, photographed or similarly depicted by other persons who pay money or any form of consideration.

(g) “Nudity”, “state of nudity” or “nude” means the exposing to view the genitals, pubic area, vulva, perineum, anus, anal cleft or cleavage, or pubic hair with less than a fully opaque covering; exposing to view any portion of the areola of the female breast with less than a fully opaque covering; exposing to view male genitals in a discernibly turgid state, even if entirely covered by an opaque covering; or exposing to view any device, costume, or covering that gives the appearance of or simulates any of these anatomical areas.

(h) “Seminudity”, “state of seminudity” or “seminude” means exposing to view with less than a fully opaque covering, any portion of the female breast below the top of the areola or any portion of the buttocks. This definition shall include the entire lower portion of the female breast, but shall not include any portion of the cleavage of the female breast exhibited by a dress, blouse, shirt, leotard, bathing suit, or other clothing, provided that the areola is not exposed in whole or in part.

(i) “Sexual encounter center” means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

- (1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- (2) Activities between male and female persons and/or persons of the same sex when one or more of the persons is seminude.

(j) “Sexually oriented business” means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motion picture theater, adult theater, nude model studio, or sexual encounter center.

(k) “Specified anatomical areas” means any of the following:

- (1) The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
- (2) Less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola.

(l) “Specified sexual activities” means any of the following:

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts;

- (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation or sodomy;
- (3) Excretory functions as part of or in connection with any of the activities set forth in subsections (1)(1) or (2) above.

**1169.02 SEXUALLY ORIENTED BUSINESS USES.**

(a) Subject to the regulations of Chapter 755 of the Business Regulation Code, the General Offenses Code, other provisions of the City Zoning Code, and state law or regulation, a sexually oriented business may be located only in accordance with the following restrictions:

- (1) A sexually oriented business may only be located as a conditional use in a C-3 Zoning District.
- (2) No such business shall be located on any lot within 500 feet of any public library, private or public elementary or secondary school, or place of worship; and
- (3) No such business shall be located on any lot within 1,000 feet of another sexually oriented business.

(b) For the purposes of subsection (a) hereof, 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 place of worship, public library or public or private elementary or secondary school.

(c) For the purposes of subsection (a) hereof, 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.

(d) A conditional use permit for a sexually oriented business shall not be rendered invalid by the subsequent location of a place of worship, public or private elementary or secondary school, public park or public library within 1,000 feet of the sexually oriented business.

(e) No person shall establish, operator or cause the establishment or operation of any sexually oriented business in violation of the provisions of this chapter and Part Seven, Business Regulation Code, and any other provisions of the Codified Ordinances and state statute or regulation.

(f) Nothing in this section shall be construed to prohibit or limit the display, sale or rental of descriptive, printed, film or video material or any live performance which, taken as a whole, contains serious literary, artistic, political, medical, educational or scientific value.

**1169.03 EFFECT OF PARTIAL INVALIDITY.**

If any section, subsection or clause of this chapter shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections or clauses shall not be affected.

Westlake, Ohio

**CHAPTER 1213**  
**Location of Sexually Oriented Businesses**

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| <b>1213.01 Purpose and findings.</b>                     | <b>1213.05 Additional regulations concerning lot, yard, height, parking, building and site design standards, and site development plan requirements.</b> |
| <b>1213.02 Definitions.</b>                              |  |
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**CROSS REFERENCES**

Licensing and operation of sexually oriented business - see BUS. REG. Ch. 755

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**1213.01 PURPOSE AND FINDINGS.**

(a) Purpose. It is the purpose of this chapter to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the City. The provisions of this chapter do not have the purpose or effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Further, it is not the intent of this chapter 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 chapter to condone or legitimize the distribution of obscene material.

(b) Findings. The City Council has received substantial evidence concerning the adverse secondary effects of adult uses on the community in findings incorporated in the cases of City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986), Young v. American Mini Theatres, 426 U.S. 50(1976), and Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991), and on studies in other communities including, but not limited to, Phoenix, Arizona; Tucson, Arizona; Los Angeles, California; Indianapolis, Indiana; Minneapolis, Minnesota; St. Paul, Minnesota; New York, New York; Oklahoma City, Oklahoma; Amarillo, Texas; Austin, Texas; Beaumont, Texas; Houston, Texas; and Seattle, Washington.

**1213.02 DEFINITIONS.**

(a) "ADULT ARCADE" means any place to which the public is permitted or invited where either or both:

- (1) Motion picture machines, projectors, video or laser disc players, or
- (2) Other video or image-producing devices are available, run via coin, token, or any form of consideration, to show images to five or fewer persons at one time; and where the images shown and/or live entertainment presented is characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(b) "ADULT BOOKSTORE, ADULT NOVELTY STORE OR ADULT VIDEO STORE" means a commercial establishment which, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:

- (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or

- (2) Instruments, devices, or paraphernalia other than prophylactics, which are designed for use in connection with "specified sexual activities."

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and may still be categorized as "ADULT BOOKSTORE, ADULT NOVELTY STORE", or "ADULT VIDEO STORE". Such other business purposes will not serve to exempt such commercial establishments from being categorized as an "ADULT BOOKSTORE, ADULT NOVELTY STORE", or "ADULT VIDEO STORE" so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(c) "ADULT CABARET" means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:

- (1) Persons who appear in a "state of nudity" or "state of semi-nudity"; or
- (2) Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or
- (3) Live entertainment of an erotic nature including exotic dancers, strippers, male or female impersonators, or similar entertainment; or
- (4) Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(d) "ADULT MOTION PICTURE THEATER" means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, digital projections, laser projections, computer reproductions or similar visual reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(e) "ADULT THEATER" means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nudity, or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities" or live entertainment of an erotic nature, including exotic dancers, strippers, male or female impersonators or similar entertainment.

(f) "COVERING" means any clothing or wearing apparel, including pasties, but does not include any substance that can be washed off the skin, such as paint or make-up, or any substance designed to simulate the appearance of the anatomical area beneath it.

(g) "ESTABLISHMENT" means and includes any of the following:

- (1) The opening or commencement of any Sexually Oriented Business as a new business;
- (2) The conversion of an existing business, whether or not a Sexually Oriented Business, to any Sexually Oriented Business;
- (3) The additions of any Sexually Oriented Business to any other existing Sexually Oriented Business; or
- (4) The relocation of any Sexually Oriented Business.

(h) "NUDE MODEL STUDIO" means any place where a person who appears semi-nude or who 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.

"Nude Model Studio" shall not include:

- (1) A proprietary school licensed by the State of Ohio, or a college, junior college or university supported entirely or in part by public taxation.
- (2) A private college or university that offers educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or

- (3) An establishment holding classes in a structure that has no sign visible from the exterior of the structure and no other advertising that indicates a semi-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 semi-nude model is on the premises at any one time.

(i) “NUDITY” or a “STATE OF NUDITY” or “NUDE” means exposing to view the genitals, pubic area, vulva, perineum, anus, anal cleft or cleavage, or pubic hair with less than a fully opaque covering; exposing to view any portion of the areola of the female breast with less than a fully opaque covering; exposing to view male genitals in a discernibly turgid state, even if entirely covered by an opaque covering; or exposing to view any device, costume, or covering that gives the appearance of or simulates any of these anatomical areas.

(j) “PERSON” means an individual, proprietorship, partnership, corporation, association or other legal entity.

(k) “PRINCIPAL BUSINESS PURPOSE” means twenty-five percent (25%) or more of the stock in trade of the business offered for sale or rental for consideration measured as a percentage of either the total linear feet of merchandise for sale or rental for consideration on display or the gross receipts of merchandise for sale or rental for consideration, whichever is the greater.

(l) “SEMI-NUDITY” or “SEMI-NUDE CONDITION” or “SEMI-NUDE” means exposing to view, with less than a fully opaque covering, any portion of the female breast below the top of the areola or any portion of the buttocks. This definition shall include the entire lower portion of the female breast, but shall not include any portion of the cleavage of the female breast exhibited by a dress, blouse, shirt, leotard, bathing suit, or other clothing, provided that the areola is not exposed in whole or in part.

(m) “SEXUAL ENCOUNTER CENTER” means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

- (1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- (2) Activities between male and female persons and/or persons of the same sex when one or more of the persons is semi-nude.

(n) “SEXUALLY ORIENTED BUSINESS” means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motion picture theater, adult theater, nude model studio, or sexual encounter center.

(o) “SPECIFIED ANATOMICAL AREAS” means:

- (1) The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
- (2) Less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola.

(p) “SPECIFIED SEXUAL ACTIVITIES” means any of the following:

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
- (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or
- (3) Excretory functions as part of or in connection with any of the activities set forth in subsections (a)(1) and (2) hereof.

(q) “SUBSTANTIAL ENLARGEMENT” of a Sexually Oriented business means the increase in floor areas occupied by the business by more than twenty-five percent (25%), as the floor areas exist on the date this chapter takes effect.

**1213.03 SEXUALLY ORIENTED BUSINESSES.**

Sexually Oriented Businesses are classified as follows:

- (a) Adult arcades;
- (b) Adult bookstores, adult novelty stores, or adult video stores;
- (c) Adult cabarets;
- (d) Adult motion picture theaters;
- (e) Adult theaters;
- (f) Nude model studios; and
- (g) Sexual encounter centers.

**1213.04 LOCATION OF SEXUALLY ORIENTED BUSINESSES.**

(a) Sexually Oriented Businesses may be located only in accordance with the restrictions contained in subsections (b) through (i) hereof.

(b) Sexually Oriented Businesses may be located only in those areas that are to the north of the projection west of the centerline of Clemens Road and to the west of a line drawn parallel to the centerline of Bradley Road 1,350 feet east of the centerline of Bradley Road and zoned as Exclusive Industrial (L) District. However, in no event shall any such use have frontage on or access to or from Crocker Road.

(c) No Sexually Oriented Business may be established on any lot which borders on or touches U. S. Interstate Highway 90 (I-90).

(d) No Sexually Oriented Business may be established within 1,000 feet of:

- (1) A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;
- (2) A public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities; school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;
- (3) A structure devoted to a residential use whether or not such structure is located within the limits of the City of Westlake;
- (4) A public or private park or public or private recreational area which has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas, miniature golf course, or other similar family recreation area, and other similarly used public land within the City which is under the control, operation, or management of either the City park and recreation authorities or which is operated or managed by the Cleveland MetroParks; or
- (5) A licensed premises, licensed pursuant to the alcoholic beverage control regulations of the State of Ohio.

(e) No Sexually Oriented Business may be established within 300 feet of a residential zoning district whether or not such district is located within the City of Westlake.

(f) No Sexually Oriented Business may be established, operated or enlarged within 1,000 feet of another Sexually Oriented Business.

(g) Not more than one Sexually Oriented Business shall be established or operated in the same building, structure, or portion thereof, and the floor area of any Sexually Oriented Business in any building, structure, or portion thereof containing another Sexually Oriented business may not be increased.



(h) For the purpose of subsection (d) hereof, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a Sexually Oriented Business is conducted, to the nearest property line of the premises of a use listed in subsection (d) hereof.

(i) For purposes of subsection (f) hereof, the distance between any two Sexually Oriented Businesses shall be measured in a straight line, without regard to the intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

**1213.05 ADDITIONAL REGULATIONS CONCERNING LOT, YARD, HEIGHT, PARKING, BUILDING AND SITE DESIGN STANDARDS, AND SITE DEVELOPMENT PLAN REQUIREMENTS.**

(a) Lot requirements for Sexually Oriented Businesses are those specified for Recreation Businesses in Section 1216.05 of this Code.

(b) Yard requirements for a Sexually Oriented Business are those specified for Recreation Businesses in Section 1216.06 of this Code.

(c) Maximum Height Regulations for a Sexually Oriented Business are those specified for Recreation Businesses in Section 1216.08 of this Code.

(d) Parking requirements for a Sexually Oriented Business are governed by the provisions contained in Chapter 1221 of this Code.

(e) Building and site design standards for a Sexually Oriented Business are those specified in Section 1216.13 of this Code.

(f) Site development plans for a Sexually Oriented Business shall be submitted to the Department of Planning in accordance with the procedures specified in Chapter 1220 of this Code.

(g) Review and approval procedures for a site development plan for a Sexually Oriented Business shall be in accordance with the procedures specified in Chapter 755 of this Code, Licensing and Operation of Sexually Oriented Businesses.

**1213.06 SIGN REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES.**

(a) All signs shall be "wall signs" as defined in Section 1383.02(a)(19) of this Code, with a maximum allowable sign area of forty (40) square feet as measured in accordance with the standards specified in Section 1383.03 of this Code, and shall comply with:

- (1) The location standards specified in Sections 1383.05(b) and 1383.08(c) of this Code;
- (2) The illumination standards specified in Section 1383.07 of this Code;
- (3) The Design and Construction standards specified in Section 1383.10 of this Code; and
- (4) The list of prohibited signs specified in Section 1383.12 of this Code.

(b) All signs shall be maintained in accordance with Section 1383.14 of this Code and may be ordered to be removed in accordance with the provisions of Section 1383.15 of this Code.

(c) No merchandise or pictures of the products or entertainment on the premises shall be displayed in window areas or any area where they can be viewed from a sidewalk or street adjacent to the building.

(d) Window areas shall not be covered or made opaque in any way. No signs shall be placed in any window. A one-square-foot sign may be placed on the door to state hours of operation and admittance to adults only.

(e) Review and approval procedures for a sign permit for a Sexually Oriented Business shall be in accordance with the procedures specified in Chapter 755 of the Codified Ordinances, Licensing and Operation of Sexually Oriented Businesses.