

**TITLE 3**

**CHAPTER 12**

**SEXUALLY ORIENTED BUSINESSES**

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**3-12-1. PURPOSE AND FINDINGS:**

- A. This Ordinance shall be known as and may be cited as the Lincolnshire Sexually Oriented Business Licensing Ordinance, and is also referred to herein as this Ordinance.
- B. The purpose of this Ordinance is to establish reasonable and uniform regulations to minimize and control the negative secondary effects of SEXUALLY ORIENTED BUSINESSES within the MUNICIPALITY in order to promote the health, safety, and welfare of the citizens of the MUNICIPALITY. The provisions of this Ordinance have neither the purpose nor the effect of imposing a limitation or restriction on the content any communicative materials or communication, including sexually oriented entertainment. Similarly, it is not the purpose or effect of this Ordinance 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 Ordinance to condone or legitimize the distribution or exhibition of entertainment that is obscene.
- C. Based on evidence concerning the adverse secondary effects of SEXUALLY ORIENTED BUSINESSES presented to the MUNICIPALITY from findings incorporated in the cases of

City of Erie v. Pap's A.M., 529 U.S. 277, 120 S.Ct. 1382 (2000); Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991), City of Renton v. Playtime Theaters, Inc., 475 U.S. 41 (1986) Young v. American Mini Theaters, 426 U.S. 50 (1976), Berg v. Health and Hospital Corporation, 865 F.2d 797 (7<sup>th</sup> Cir 1989); Ellwest Stereo Theaters v. Wenner, 681 F.2d 1243 (9<sup>th</sup> Cir. 1982); Bamon Corp v. City of Dayton, 730 F.Supp 80 (S.D. Ohio, 1990) and EWAP Inc. v. City of Los Angeles, 97 Cal. App 3d 179, 158 Cal. Rptr. (1979), and on studies in other cities including the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (Minnesota, 1989); Memorandum re: Adult Entertainment Ordinance, of the Assistant Chief of Police of the Tucson, Arizona (May 1, 1990); Hecht, Peter R., Ph.D., Report to the American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses (March 31, 1996); Adult Entertainment Businesses in Indianapolis, An Analysis (1984) and McCleary, Richard, Ph.D. and Meeker, James W., Ph.D., Final Report to the City of Garden Grove: The Relationship Between Crime and Adult Business Operations on Garden Grove Boulevard, (Garden Grove, CA, October 23, 1991), this Legislative body finds:

1. SEXUALLY ORIENTED BUSINESSES lend themselves to ancillary unlawful and unhealthy activities.
  2. Sexual acts, including masturbation, oral sex and anal sex, occur at SEXUALLY ORIENTED BUSINESSES, especially those which provide private or semi-private 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 concealed from public view.
- D. The findings noted in Section 3-12-1(C), subparagraphs number 1 through 5 raise compelling and substantial governmental concerns for protecting the public health, safety, and welfare.
- E. SEXUALLY ORIENTED BUSINESSES have operational characteristics which should be reasonably regulated in order to protect the compelling and substantial governmental interest in protecting the public health, safety, and welfare.
- F. 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 MUNICIPALITY. 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.

- G. The regulation of NUDITY, SEMI-NUDITY, and physical contact between EMPLOYEES and PATRONS in SEXUALLY ORIENTED BUSINESSES will further the compelling and substantial governmental interests in preventing prostitution and other sex-related crimes, including illegal sex acts, and protecting the public health, safety, and welfare.
- H. Requiring open sight lines in SEXUALLY ORIENTED BUSINESSES and requiring sufficient lighting will advance the compelling and substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in SEXUALLY ORIENTED BUSINESSES and will facilitate enforcement of the provisions of this Ordinance and other federal, state and local laws, thereby furthering the compelling and substantial governmental interest in protecting the public health, safety, and welfare.
- I. 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 Ordinance and other federal, state and local laws, and will thereby further the compelling and substantial government interest in protecting the public health, safety, and welfare.
- J. 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.
- K. 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.
- L. A reasonable licensing procedure for SEXUALLY ORIENTED BUSINESSES assists the MUNICIPALITY in preventing the adverse secondary effects of such businesses on property values, the prevention of crime, and the public health.

**3-12-2. DEFINITIONS:** For purposes of this Ordinance,

- A. EMPLOYEE shall mean a natural 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.
- B. EMPLOYEE STATION shall mean 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 Ordinance.
- C. EXCRETORY FUNCTIONS shall mean urination, defecation, lactation, ejaculation and menstruation. It shall not mean urination and defecation performed in a public or employee-

only restroom in the manner in which those facilities are intended to be used, and when not performed or presented for a commercial purpose. It shall not mean lactation as part of breast-feeding an infant, unless performed or displayed for a commercial purpose other than education and training in the art, science or technique of breast-feeding an infant.

- D. ENFORCEMENT OFFICER shall mean the Chief of Police of the Village of Lincolnshire or his or her designee.
- E. LICENSEE shall mean, with respect to a SEXUALLY ORIENTED BUSINESS license issued under this Ordinance, 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 BUSINESS EMPLOYEE license issued under this Ordinance, LICENSEE means a natural PERSON in whose name a license has been issued authorizing employment in a SEXUALLY ORIENTED BUSINESS.
- F. MUNICIPALITY shall mean the Village of Lincolnshire, Illinois.
- G. NUDITY or NUDE shall mean exposing to view SPECIFIED ANATOMICAL AREAS or any device, costume, or covering that gives the appearance of or simulates any SPECIFIED ANATOMICAL AREAS.
- H. OPERATE or CAUSE TO BE OPERATED shall mean to control or hold primary responsibility for the operation of a SEXUALLY ORIENTED BUSINESS, either as a business entity, as an individual, or as part of a group of individuals with shared responsibility. It shall also mean to cause to function or to put or keep in operation. 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.
- I. OPERATOR shall mean any PERSON who OPERATES or CAUSES TO BE OPERATED a SEXUALLY ORIENTED BUSINESS.
- J. PATRON shall mean any natural PERSON who is not an EMPLOYEE or OPERATOR.
- K. PERSON shall mean a natural person, proprietorship, partnership, limited liability company, firm, association, joint stock company, joint venture, corporation or combination of individuals of whatever form or character.
- L. SEMI-NUDITY or SEMI-NUDE shall mean exposing to view, with less than a fully opaque covering, any portion of the female breast below the top of the areola, any portion of female or male buttocks, or the male genitals in a discernibly turgid state, even if entirely covered by an opaque covering. 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. SEXUALLY ORIENTED BUSINESS shall mean any of the following when done in a place where the public is invited or permitted, or when done for any commercial purpose including

sale and rental, regardless of who pays or receives the consideration therefor, and regardless of the form of consideration:

1. Live exhibition or display of a natural PERSON or people in the state of NUDITY or SEMI-NUDITY, or engaged in SPECIFIED SEXUAL ACTIVITIES or EXCRETORY FUNCTIONS;
2. Engaging in, promoting or permitting a natural PERSON or people to engage in SPECIFIED SEXUAL ACTIVITIES or EXCRETORY FUNCTIONS.
3. Offering of physical contact in the form of wrestling or tumbling between natural PERSONS, when one or more of the PERSONS is NUDE or SEMI-NUDE.
4. Offering of products, services or activities by or with a natural PERSON or people when one or more of the people, whether a PATRON, agent, EMPLOYEE or otherwise, is in a state of NUDITY or SEMI-NUDITY.
5. Displaying or offering to others any publication or recorded depiction of a natural PERSON, or created image or character, as in cartoons and animation, by any medium, including without limitation film, videotape, closed-circuit television, digital video disc (DVD), laser disc, compact disc (CD), floppy disc, photograph, slide, television, book, magazine, and computer software, which is:
  - a. characterized or distinguished by an emphasis on the depiction or description of SPECIFIED SEXUAL ACTIVITIES, EXCRETORY FUNCTIONS, or SPECIFIED ANATOMICAL AREAS; or
  - b. advertised or otherwise held out to the public as being characterized or distinguished by an emphasis on the depiction or description of SPECIFIED SEXUAL ACTIVITIES, EXCRETORY FUNCTIONS, or SPECIFIED ANATOMICAL AREAS, including without limitation, the use of the term "adult" and the use of the designation of one or more "X" such as, but not limited to, "XXX".
6. The display and offering to others of novelties, instruments, devices, or paraphernalia that are designed primarily for use in connection with SPECIFIED SEXUAL ACTIVITIES or that give the appearance of or simulate any of the SPECIFIED ANATOMICAL AREAS.
7. The term SEXUALLY ORIENTED BUSINESS shall exclude the following:
  - a. The display and offering to others of condoms, spermicide or other non-prescription contraceptives;
  - b. The display and offering to others of drugs, instruments or devices which require a prescription, that are designed primarily for use in connection with SPECIFIED SEXUAL ACTIVITIES, and which are in fact dispensed by or under the supervision of a pharmacist licensed by the State of Illinois;
  - c. The display and offering to others of instruments, devices, or paraphernalia that are designed primarily for use in connection with SPECIFIED SEXUAL ACTIVITIES if they are displayed and offered to others on the premises where a pharmacist licensed

by the State of Illinois is employed to dispense prescription drugs, instruments or devices;

- d. Breast-feeding an infant, unless performed or displayed for a commercial purpose other than education and training in the art, science or technique of breast-feeding an infant;
- e. The display and offering to others of motion pictures, by any format, which have received a rating from the Motion Picture Association of America of G, PG, PG-13, R or NC-17, when offered or displayed substantially in their entirety;
- f. Libraries and museums funded in whole or in part by federal, state or local governmental funds.
- g. The display and offering to others of items described in Section 3-12-2(M)(5) of this Ordinance, if and only if the display and offering are done for a commercial purpose, and all of the following apply to the business displaying and offering such items to others:
  - (1) Less than 5% of its gross income comes from the sale, rental or exhibition of the following types of items:
    - (a) items which are characterized or distinguished by an emphasis on the depiction or description of SPECIFIED SEXUAL ACTIVITIES, EXCRETORY FUNCTIONS, or SPECIFIED ANATOMICAL AREAS or any combination thereof, and
    - (b) items which are advertised or otherwise held out to the public as being characterized or distinguished by an emphasis on the depiction or description of SPECIFIED SEXUAL ACTIVITIES, EXCRETORY FUNCTIONS, or SPECIFIED ANATOMICAL AREAS or any combination thereof, including without limitation, the use of the term “adult” and the use of the designation of one or more “X” such as, but not limited to, “XXX”; and
  - (2) Less than 5% of its display space is used for the sale, rental or exhibition of the items described in paragraph (1)(a) and (b) above; and
  - (3) Less than 5% of the items it offers to others are the items described in paragraph (1)(a) and (b) above; and
  - (4) The items described paragraph (1)(a) and (b) above are segregated from all other displays and retail areas of the premises by a solid partition from floor to ceiling with no openings or windows and with entrance and egress by means of a solid door posted with a sign not less than one foot by one foot with the words “UNDER 18 NOT ADMITTED” lettered on the sign, except that magazines characterized or distinguished by an emphasis on the depiction or description of SPECIFIED SEXUAL ACTIVITIES, EXCRETORY FUNCTIONS, or SPECIFIED ANATOMICAL AREAS or any combination thereof may be displayed on racks or other display cases only if the magazine

is encased or otherwise covered up and concealed from common view of anything other than the magazine title or text or other materials which would not be described as sexually oriented.

Certain uses which fall within the definition of SEXUALLY ORIENTED BUSINESS may also constitute uses which are illegal under local, state or federal law, such as obscenity or child pornography. Even if such illegal uses constitute a SEXUALLY ORIENTED BUSINESS under the definition set forth in this Ordinance, they shall not be permitted to receive a SEXUALLY ORIENTED BUSINESS license.

N. SPECIFIED ANATOMICAL AREAS shall mean the human genitals, pubic area, perineum, anus, anal cleft or cleavage, pubic hair, any portion of the areola of the female breast if less than a fully and opaquely covered; and the male genitals in a discernibly turgid state, even if entirely covered by an opaque covering. In determining whether any of the foregoing portions of the anatomy are fully and opaquely covered, coverage by make-up, paint, or similar matter applied directly to the skin, shall not be considered to be fully and opaquely covered.

O. SPECIFIED CRIMINAL ACTIVITY shall mean:

1. Any of the following offenses, as set forth in the Illinois Criminal Code of 1961, as amended, or any substantially similar offenses to those set forth below under the criminal or penal code of any local jurisdiction, state, country, or international law: Indecent Solicitation of a Child, Indecent Solicitation of an Adult, Adultery, Fornication, Public Indecency, Sexual Exploitation of a Child, Custodial Sexual Misconduct, Presence Within School Zone By Child Sex Offenders Prohibited, Sexual Relations Within Families, Bigamy, Marrying a Bigamist, Prostitution, Solicitation of a Sexual Act, Soliciting for a Prostitute, Soliciting for a Juvenile Prostitute, Pandering, Keeping a Place of Prostitution, Keeping a Place of Juvenile Prostitution, Patronizing a Prostitute, Patronizing a Juvenile Prostitute, Pimping, Juvenile Pimping, Exploitation of a Child, Obscenity, Child Pornography, Commercial Film and Photographic Print Processor - Reports, Harmful Material, Tie-in Sales of Obscene Publications to Distributors, Criminal Sexual Assault, Aggravated Criminal Sexual Assault, Predatory Criminal Sexual Assault of a Child, Criminal Sexual Abuse, Aggravated Criminal Sexual Abuse, Criminal Transmission of HIV, Ritualized Abuse of a Child, Female Genital Mutilation, violation of the Sex Offender Registration Act, Stalking (if the basis of the conviction is the threat of immediate or future sexual assault, or placing a person in reasonable apprehension of immediate or future sexual assault), First Degree Murder (if the basis for the conviction is 720 ILCS 5/9-1(a)(3), commonly known as felony murder, where the predicate felony is any felony otherwise set forth in this definition), Burglary (if the basis for the conviction is an intent to commit any felony otherwise set forth in this definition), Residential Burglary (if the basis for the conviction is an intent to commit any felony otherwise set forth in this definition), Armed Violence (if the basis for the conviction is an intent to commit any felony otherwise set forth in this definition), Attempt to commit any of the foregoing crimes, Conspiracy to commit any of the foregoing crimes, and any other felony or misdemeanor for which an element of the offense is the commission of any of the foregoing crimes or an intent to commit any of the foregoing crimes.
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, business offense or petty 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 Ordinance.

P. SPECIFIED SEXUAL ACTIVITIES shall mean any of the following, whether actual or simulated:

1. The fondling or other erotic touching of SPECIFIED ANATOMICAL AREAS, regardless of whether the performer or recipient is clothed, in a state of NUDITY or in a state of SEMI-NUDITY;
2. The manipulation of the human body of another, including massage, by the use of any portion of manipulator's body, whether covered or uncovered, or by any device, if the PERSON performing the manipulation is in a state of NUDITY or SEMI-NUDITY.
3. Sex acts, normal or perverted, heterosexual, homosexual or bisexual, including without limitation intercourse, fellatio, cunnilingus, analingus, masturbation, bestiality, sodomy, bondage and discipline, sadism and masochism, and any other act intended to cause sexual arousal;
4. Sex acts between animals when offered or displayed for the purpose or with the intent of causing the sexual arousal of a human viewer.

Q. TRANSFER OF OWNERSHIP OR CONTROL of a SEXUALLY ORIENTED BUSINESS shall mean 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 transfers by bequest or other operation of law upon the death of the PERSON possessing the ownership or control.

**3-12-3      *RESERVED FOR FUTURE USE***

**3-12-4.      SEXUALLY ORIENTED BUSINESS LICENSE REQUIRED:**

- A. No PERSON shall OPERATE a SEXUALLY ORIENTED BUSINESS without a valid SEXUALLY ORIENTED BUSINESS license issued by the MUNICIPALITY pursuant to this Ordinance.
- B. No PERSON shall, in connection with OPERATING a SEXUALLY ORIENTED BUSINESS, retain the services of a PERSON as an EMPLOYEE who is not licensed as a SEXUALLY ORIENTED BUSINESS EMPLOYEE by the MUNICIPALITY pursuant to this Ordinance.

**3-12-5. SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE REQUIRED:** No PERSON shall act as an EMPLOYEE on the premises of a SEXUALLY ORIENTED BUSINESS without having secured a SEXUALLY ORIENTED BUSINESS EMPLOYEE license pursuant to this Ordinance.

**3-12-6. SEXUALLY ORIENTED BUSINESS LICENSE APPLICATION:**

- A. An application for a SEXUALLY ORIENTED BUSINESS license shall be submitted to the MUNICIPALITY's clerk on a form provided by the ENFORCEMENT OFFICER. The application may request and the applicant shall provide such information as reasonably necessary (including fingerprints) to enable the MUNICIPALITY to determine whether the applicant meets the qualifications established in this Ordinance.
- B. An application for a SEXUALLY ORIENTED BUSINESS license shall identify the following PERSONS and be signed under oath by said PERSONS that the information contained therein is true:
  - 1. If the business entity is a sole proprietorship, that sole proprietor;
  - 2. If the business entity is a corporation, each officer and Director of the corporation and each individual with a 10 percent or greater ownership interest in the corporation;
  - 3. If the business entity is a partnership, each general partner, and each limited partner who owns 10% or more of total limited partnership interest;
  - 4. If the business is a limited liability company, each manager, and each member with a 10% or greater ownership interest in the company. If the limited liability company does not have any managers, then each member holding a 10% or greater ownership interest in the company.
- C. An application for a SEXUALLY ORIENTED BUSINESS license must designate one or more natural PERSONS who are to be principally responsible for the operation of the proposed SEXUALLY ORIENTED BUSINESS, if a license is granted. At least one natural PERSON so designated must be involved in the day-to-day operation of the proposed SEXUALLY ORIENTED BUSINESS on a regular basis. Each natural PERSON so designated, as well as the business entity itself, shall be considered a license applicant, must qualify as a LICENSEE under this Ordinance, 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, address, date of birth, social security number, 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, and the information specified in (A) for each partner;

- 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 of Illinois, and state the names and capacity of all officers and directors, all persons owning 10% or more of the stock of the corporation, the name of the registered corporate agent, and the address of the registered office for service of process, and the information specified in (A) for each officer, director and owner of 10% or more of the stock;
  - d. a limited liability company, state the complete name of the company and the date of its organization, provide evidence that the company is in good standing under the laws of its state of organization and of Illinois, and state the names and capacity of all members, owners and managers, the name of the registered agent, and the address of the registered office for service of process, and the information specified in (A) for each member, owner and manager;
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**, 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 Ordinance 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 10 percent or greater owner of a corporation, or a member or manager of a limited liability company, licensed under this Ordinance 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 Ordinance or other similar regulation from this or another jurisdiction and, if so, the names and locations of other such licensed businesses.
  6. State the nature of the **SEXUALLY ORIENTED BUSINESS** 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, telephone number(s), e-mail address and internet website URL, if any.
  8. State the mailing address of each applicant and each **PERSON** signing the application.

9. 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.
10. Submit proof that each applicant who is a natural PERSON is at least eighteen (18) years old.
11. Submit a sketch or diagram showing the configuration of the premises of the SEXUALLY ORIENTED BUSINESS, including the location of all stages, walls, partitions, designated sales areas, book cases, and PATRON 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 one (1) foot.
12. The applicant is under a continuing affirmative duty to notify the MUNICIPALITY in writing of any change, alteration, or event respecting items 1, 2, 3, 4, 5, and 11 in this Section 3-12-6.

**3-12-7. ISSUANCE OF A SEXUALLY ORIENTED BUSINESS LICENSE:**

- A. Upon receipt of a completed application for a SEXUALLY ORIENTED BUSINESS license, the MUNICIPALITY's clerk shall immediately file a copy of the completed application with the ENFORCEMENT OFFICER.
- B. Upon receipt of a copy of a completed application for a SEXUALLY ORIENTED BUSINESS license, the ENFORCEMENT OFFICER, or any peace officer designated by the ENFORCEMENT OFFICER, shall promptly investigate the information provided in the application concerning the criminal background of the applicants and shall record the results of the investigation in writing within five (5) days of the completion of the investigation. If the investigation is done by a peace officer designated by the ENFORCEMENT OFFICER, then the written results of the investigation shall also be filed with the ENFORCEMENT OFFICER within five (5) days of the completion of the investigation.
- C. Within five (5) days of receipt of a copy of a completed application for a SEXUALLY ORIENTED BUSINESS license, the ENFORCEMENT OFFICER shall notify the MUNICIPALITY's Fire Chief and Building Department of such application. In making such notification, the ENFORCEMENT OFFICER shall request that the Fire Chief and the Building Department promptly inspect the premises for which the SEXUALLY ORIENTED BUSINESS license is sought to assess compliance with the regulations under their respective jurisdictions.
- D. The Fire Chief shall provide to the ENFORCEMENT OFFICER a written certification of whether the premises are in compliance with the Fire Code within five (5) days of completing the inspection.
- E. The Building Department shall provide the ENFORCEMENT OFFICER a written

certification of whether the premises are in compliance with the Building Code, the Planning and Zoning Code, and the provisions of this Ordinance related to physical characteristics of the premises within five (5) days of completing the inspection.

- F. The ENFORCEMENT OFFICER shall approve the issuance of a license to an applicant unless the ENFORCEMENT OFFICER determines by a preponderance of the evidence that one or more of the following findings is true:
  - 1. An applicant 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 provided false information.
  - 3. An applicant has been denied a SEXUALLY ORIENTED BUSINESS license or has had a license to operate a SEXUALLY ORIENTED BUSINESS revoked within the preceding thirty-six (36) months by any jurisdiction.
  - 4. An applicant has been convicted of a SPECIFIED CRIMINAL ACTIVITY.
  - 5. The proposed SEXUALLY ORIENTED BUSINESS or the premises on which it would OPERATE would violate or fail to be in compliance with any provisions of the Zoning Code, the provisions of this Ordinance related to physical characteristics of the premises, or any state or federal law.
  - 6. The application and investigation fee required by this Ordinance has not been paid.
  - 7. An applicant is otherwise in violation of or is not in compliance with any provision of this Ordinance.
- G. If the ENFORCEMENT OFFICER determines that no grounds for denial of a license exist under this Section, the ENFORCEMENT OFFICER shall not delay approval of the application.
- H. 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, and the address of the licensed SEXUALLY ORIENTED BUSINESS. 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.
- I. The ENFORCEMENT OFFICER shall advise the applicant in writing of the reasons for any license denial. The written license denial shall be either served on the applicant personally or by placing it in a sealed envelope, addressed to the applicant at the address set forth in the application, and depositing it with the United States Postal Service, proper first class postage prepaid. The ENFORCEMENT OFFICER may, but is not required to serve the written license denial by certified or registered mail, as set forth above.

**3-12-8. SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE APPLICATION:**

- A. An application for a SEXUALLY ORIENTED BUSINESS EMPLOYEE license shall be submitted to the MUNICIPALITY's clerk on a form provided by the ENFORCEMENT

OFFICER. The application may request and the applicant shall provide such information as reasonably necessary (including fingerprints) to enable the MUNICIPALITY to determine whether the applicant meets the qualifications established in this Ordinance.

- B. An application for a SEXUALLY ORIENTED BUSINESS EMPLOYEE license shall be completed according to the instructions of the application form, signed by the applicant under oath that the information contained therein is true, and 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. 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.
  5. State the applicant's present and intended business address and telephone number, identifying the SEXUALLY ORIENTED BUSINESS at which the applicant intends employment.
  6. Submit proof that the applicant is at least eighteen (18) years old.
  7. Provide a statement detailing the SEXUALLY ORIENTED BUSINESS EMPLOYEE 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 license or a SEXUALLY ORIENTED BUSINESS EMPLOYEE license, permit, or authorization to do business denied, revoked, or suspended by this or any other jurisdiction. 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.
  8. State whether the applicant has been convicted of a SPECIFIED CRIMINAL ACTIVITY and, if so, the SPECIFIED CRIMINAL ACTIVITY involved and the date, place and jurisdiction of each such conviction, and the date of release from confinement, if any, for such conviction.
  9. The applicant is under a continuing affirmative duty to notify the MUNICIPALITY in writing of any change, alteration, or event respecting items 7 and 8 in this Section 3-12-8.

**3-12-9. ISSUANCE OF SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE:**

- A. Upon receipt of a completed application for a SEXUALLY ORIENTED BUSINESS EMPLOYEE license, the MUNICIPALITY's clerk shall immediately file a copy of the completed application with the ENFORCEMENT OFFICER.

- B. Upon receipt of a copy of a completed application for a SEXUALLY ORIENTED BUSINESS EMPLOYEE license, the ENFORCEMENT OFFICER, or any peace officer designated by the ENFORCEMENT OFFICER, shall promptly investigate the information provided in the application concerning the criminal background of the applicant and shall record the results of the investigation in writing within five (5) days of the completion of the investigation. If the investigation is done by a peace officer designated by the ENFORCEMENT OFFICER, then the written results of the investigation shall also be filed with the ENFORCEMENT OFFICER within five (5) days of the completion of the investigation.
  
- C. The ENFORCEMENT OFFICER shall approve the issuance of a license to an applicant unless the ENFORCEMENT OFFICER determines by a preponderance of the evidence 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 given false information.
  - 2. The applicant is under eighteen (18) years of age.
  - 3. The applicant has been convicted of a SPECIFIED CRIMINAL ACTIVITY.
  - 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 SEXUALLY ORIENTED BUSINESS where the applicant intends employment is not a licensed SEXUALLY ORIENTED BUSINESS pursuant to this Ordinance.
  - 6. The applicant has been denied a SEXUALLY ORIENTED BUSINESS license or a SEXUALLY ORIENTED BUSINESS EMPLOYEE license, or has had a SEXUALLY ORIENTED BUSINESS license or a SEXUALLY ORIENTED BUSINESS EMPLOYEE license revoked within the preceding twelve (12) months by any jurisdiction.
  
- D. The ENFORCEMENT OFFICER shall advise the applicant in writing of the reasons for any license denial. The written license denial shall be either served on the applicant personally or by placing it in a sealed envelope, addressed to the applicant at the address set forth in the application, and depositing it with the United States Postal Service, proper first class postage prepaid. The ENFORCEMENT OFFICER may, but is not required to serve the written license denial by certified or registered mail, as set forth above.

**3-12-10. FEES:** Fees for SEXUALLY ORIENTED BUSINESS and SEXUALLY ORIENTED BUSINESS EMPLOYEE licenses shall be those set forth in Section 1-15-9 of this Code.

**3-12-11. EXPIRATION AND RENEWAL OF LICENSE:**

- A. Each license issued pursuant to this Ordinance 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 twenty-eight (28) days

before the expiration date. If application is made less than twenty-eight (28) 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 or SEXUALLY ORIENTED BUSINESS EMPLOYEE license shall be submitted to the MUNICIPALITY's clerk on a form provided by the ENFORCEMENT OFFICER. The renewal application may request and the applicant shall provide such information as reasonably necessary to enable the MUNICIPALITY to determine whether the applicant meets the qualifications established in this Ordinance. The completed renewal application shall describe any changes or additions to, or deletions from, the information provided in the applicant's initial license application. 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 ENFORCEMENT OFFICER shall make the determination concerning the approval of license renewals based on the same criteria and using the same procedures used to evaluate applications for new licenses under this Ordinance.
- D. The ENFORCEMENT OFFICER shall advise the applicant in writing of the reasons for any renewal denial, and shall the written renewal denial on the applicant in the same manner as a denial of an initial application.
- E. When the ENFORCEMENT OFFICER denies an application for renewal of a license, the applicant shall not be issued another license for one year from the date of denial.

**3-12-12. SUSPENSION:**

- A. The ENFORCEMENT OFFICER shall suspend a SEXUALLY ORIENTED BUSINESS license for a period not to exceed sixty (60) days if the ENFORCEMENT OFFICER determines that a LICENSEE: (1) has violated or is not in compliance with any section of this Ordinance except as set forth in Section 3-12-12 (b); or (2) has knowingly allowed an EMPLOYEE to violate or fail to comply with any section of this Ordinance.
- B. The ENFORCEMENT OFFICER shall suspend a SEXUALLY ORIENTED BUSINESS EMPLOYEE license for a period not to exceed sixty (60) days if the ENFORCEMENT OFFICER determines that a LICENSEE has violated or is not in compliance with any section of this Ordinance, except as set forth in Section 3-12-12(c).
- C. The ENFORCEMENT OFFICER shall advise the LICENSEE in writing of the reasons for any suspension. The written suspension shall be either served on the applicant personally on or before five days before the suspension is to take effect, or by placing it in a sealed envelope, addressed to the LICENSEE at the address set forth in the application, and depositing it with the United States Postal Service, proper first class postage prepaid, on or before five days before the suspension is to take effect. The ENFORCEMENT OFFICER may, but is not required to serve the written suspension by certified or registered mail, as set

forth above.

**3-12-13. REVOCATION:**

- A. The ENFORCEMENT OFFICER shall revoke a SEXUALLY ORIENTED BUSINESS license or SEXUALLY ORIENTED BUSINESS EMPLOYEE license if a cause of suspension under Section 3-12-12 of this Ordinance occurs and the license has been suspended two times within the preceding twelve (12) months.
- B. The ENFORCEMENT OFFICER shall revoke a SEXUALLY ORIENTED BUSINESS license if he/she determines that:
  - 1. a LICENSEE gave false or misleading information in the material submitted during the application or renewal process;
  - 2. a LICENSEE has knowingly allowed possession, use, or sale of controlled substances on the premises;
  - 3. a LICENSEE has knowingly allowed any SPECIFIC CRIMINAL ACTIVITY, or the commission of any felony on the premises;
  - 4. a LICENSEE knowingly OPERATED the SEXUALLY ORIENTED BUSINESS during a period of time when the LICENSEE's license was pending initial application, expired or suspended;
  - 5. a LICENSEE has knowingly allowed one or more SPECIFIED SEXUAL ACTIVITIES to occur in or on the licensed premises;
  - 6. a LICENSEE has been convicted of a SPECIFIED CRIMINAL ACTIVITY during the term of the license; or
  - 7. a LICENSEE is delinquent in payment to the MUNICIPALITY for any taxes or fees past due that were assessed or imposed in relation to any business or business property.
- C. The ENFORCEMENT OFFICER shall revoke a SEXUALLY ORIENTED BUSINESS EMPLOYEE license if he/she determines that:
  - 1. the LICENSEE gave false or misleading information in the material submitted during the application or renewal 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 pending initial application, expired or suspended; or
  - 3. the LICENSEE has been convicted of a SPECIFIED CRIMINAL ACTIVITY during the term of the license.
- D. The ENFORCEMENT OFFICER shall advise the LICENSEE in writing of the reasons for any revocation. The written revocation shall be either served on the applicant personally on or before five days before the revocation is to take effect, or by placing it in a sealed

envelope, addressed to the LICENSEE at the address set forth in the application, and depositing it with the United States Postal Service, proper first class postage prepaid, on or before five days before the revocation is to take effect. The ENFORCEMENT OFFICER may, but is not required to serve the written revocation by certified or registered mail, as set forth above.

- E. When the ENFORCEMENT OFFICER revokes a license, the LICENSEE shall not be issued another license for three (3) years from the date the revocation became effective.

**3-12-14. APPEAL RIGHTS:**

- A. Any denial, suspension, or revocation of a new or renewal license under this Ordinance may be appealed to the Mayor of the MUNICIPALITY by written notice filed with the MUNICIPALITY's clerk within ten (10) days of the effective date of such denial, suspension, or revocation. A suspension or revocation of a license under this Ordinance shall be stayed pending appeal.
- B. The Mayor shall notify the appellant in writing of the date for the hearing on the appeal. The written notice shall be either served on the appellant personally on or before five days before the hearing, or by placing it in a sealed envelope, addressed to the appellant at the address set forth in the application, and depositing it with the United States Postal Service, proper first class postage prepaid, on or before seven days before the hearing. The Mayor may, but is not required to, serve the written notice by certified or registered mail, as set forth above.
- C. The Mayor shall conduct a hearing on the appeal within fourteen (14) days of receipt of the written notice of appeal by the MUNICIPALITY's clerk, at which hearing the appellant may present witnesses or other evidence opposing the denial, suspension or revocation. The ENFORCEMENT OFFICER may also present witnesses or other evidence supporting the denial, suspension or revocation. Both parties shall have the right to cross-examine witnesses.
- D. The Mayor shall determine whether the preponderance of the evidence presented at the hearing supported the decision of the ENFORCEMENT OFFICER to deny, suspend or revoke the license of the appellant.
- E. The Mayor shall issue a written decision setting forth his findings regarding the evidence presented at the hearing, and his decision to affirm or overrule the decision of the ENFORCEMENT OFFICER. The Mayor shall serve a copy of his written decision on the appellant and the ENFORCEMENT OFFICER in writing. The written decision shall be either served on the parties personally on or before five days after the date of the hearing, or by placing it in a sealed envelope, addressed to the respective parties at the address set forth in the application and at the ENFORCEMENT OFFICER's ordinary business address, and depositing it with the United States Postal Service, proper first class postage prepaid, on or before five days after the hearing. The Mayor may, but is not required to, serve the written decision by certified or registered mail, as set forth above.
- F. The written decision of the Mayor shall be considered a final decision.

**3-12-15. 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 ENFORCEMENT OFFICER within fifteen (15) days after such transfer.

**3-12-16. ADDITIONAL REGULATIONS CONCERNING THE OPERATION OF SEXUALLY ORIENTED BUSINESSES.**

- A. No EMPLOYEE on the premises of a SEXUALLY ORIENTED BUSINESS may engage in any SPECIFIED CRIMINAL ACTIVITY, SPECIFIED SEXUAL ACTIVITIES or EXCRETORY FUNCTIONS.
- B. Any EMPLOYEE appearing on the premises of a SEXUALLY ORIENTED BUSINESS, in a place that can be viewed by PATRONS, when said EMPLOYEE is in a state of NUDITY or SEMI-NUDITY must be on a stage that is at least 45 inches from the floor, and at a distance at least 72 inches from all parts of a clearly designated area in which PATRONS will be present, and no PATRON shall be permitted in any area closer than 72 inches from the stage.
- C. No EMPLOYEE appearing on the premises of a SEXUALLY ORIENTED BUSINESS in a state of NUDITY or SEMI-NUDITY may intentionally or knowingly touch a PATRON or a PATRON's clothing or permit himself or herself to be touched by a PATRON or a PATRON's clothing. No EMPLOYEE may intentionally or knowingly touch SPECIFIED ANATOMICAL AREAS of a PATRON either directly or through clothing or other covering. No EMPLOYEE may intentionally or knowingly permit a PATRON to touch SPECIFIED ANATOMICAL AREAS of an EMPLOYEE either directly or through clothing or other covering. For purposes of this subsection, touching need not be accomplished by the hand, and includes the touching by any part of the toucher's body, clothing or device held by the toucher.
- D. All SEXUALLY ORIENTED BUSINESSES that offer live entertainment must provide separate dressing room facilities for female and male EMPLOYEES, and which shall not be occupied or used in any way by anyone other than EMPLOYEES.
- E. No PERSON under the age of eighteen (18) years shall be permitted on the premises of a SEXUALLY ORIENTED BUSINESS. Mistake of age is not a defense to a charge under this Section, unless the PERSON under the age 18 who was permitted on the premises exhibited to the EMPLOYEE a driver's license, or other apparently official government-issued identification card bearing the PATRON's photograph, and purporting to show that the PERSON was eighteen years of age or over, and the EMPLOYEE to whom that document was exhibited did not otherwise have reasonable cause to believe that the PERSON seeking admittance was under eighteen years .
- F. No SEXUALLY ORIENTED BUSINESS shall remain open at any time between the hours of 12:00 a.m. and 7:00 a.m. on weekdays and Saturdays, and 12:00 a.m. and noon (12:00 p.m.) on Sundays, nor shall any entertainment, service, or product be provided to a PATRON on

the premises of a SEXUALLY ORIENTED BUSINESS during those hours.

- G. A SEXUALLY ORIENTED BUSINESS shall meet the following standards for minimum lighting levels:
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 fifty (50) foot candles as measured at floor level.
  2. The illumination described in subsection (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 is restored.
- H. No SEXUALLY ORIENTED BUSINESS shall be operated in any manner that permits the observation from outside the premises of any image, material or entertainment depicting or describing EXCRETORY FUNCTIONS, SPECIFIED SEXUAL ACTIVITIES or SPECIFIED ANATOMICAL AREAS or any PERSON in a state of NUDITY or SEMI-NUDITY, whether by means of display, decoration, sign, window or any other means.

**3-12-17. PENALTY:** Any PERSON who violates or who intentionally or knowingly permits the violation of any Section of this Ordinance shall be subject to the General Penalty provisions of Title 1, Chapter 4 of this Code.

**3-12-18. INJUNCTION:** Any PERSON who OPERATES or CAUSES TO BE OPERATED a SEXUALLY ORIENTED BUSINESS in violation of this Ordinance is subject to a suit for injunction as well as prosecution for ordinance violations as provided in Title 1, Chapter 4 of this Code.

**3-12-19. EFFECT OF PARTIAL INVALIDITY:** If any section, subsection, clause or phrase of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, clauses and phrases shall not be affected.

(Ord. 06-2013-04, eff. 2/13/06)