

ORDINANCE NO. 07-30 AC CMS

AN ORDINANCE AMENDING THE CODIFIED ORDINANCES OF THE CITY OF OBERLIN TO ADD CHAPTER 791 TO ESTABLISH REGULATIONS RELATING TO THE LICENSING OF SEXUALLY ORIENTED BUSINESSES WITHIN THE CITY

WHEREAS, the City of Oberlin Council finds that Sexually Oriented Businesses in the City of Oberlin require special supervision from public safety and health agencies in order to protect and preserve the health, safety and welfare of the patrons of such businesses as well as citizens of the City; and

WHEREAS, numerous cities have studied the effects of Sexually Oriented Businesses on the neighborhoods and areas in which those businesses are located; and

WHEREAS, files available to the members of the City Council in the office of the Clerk of Council contain copies of the "Final Report to the City of Garden Grove: The Relationship Between Crime and Adult Business Operations on Garden Grove Boulevard" dated October 23, 1991, conducted by Richard McCleary, Ph.D. and James W. Meeker, J.D., Ph.D.; and the "Kansas City, Missouri Adult Use Study" dated April 1998 conducted by Eric Kelly in association with Connie Cooper, the "Adult Entertainment Study" dated November 1994 conducted by the New York City Department of Planning; "Adult Entertainment Businesses in Indianapolis, An Analysis" dated February 1984, conducted by the Department of Metropolitan Development of the City of Indianapolis; the "Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses" dated June 6, 1989, conducted by the Attorney General for the State of Minnesota; and

WHEREAS, the "Adult Entertainment Study" of the City of New York contains summaries of impact studies from the cities of 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; and

WHEREAS, the "Kansas City, Missouri Adult Use Study" in Appendix B-8 contains a copy of "A Report on the Secondary Impacts of Adult Use Businesses in the City of Denver" dated January 1998, prepared by the Office of Planning & Development in consultation with the City Attorney's Office, City and County of Denver, Colorado; and

WHEREAS, a copy of such summaries have been made available to each member of the City Council for review in conjunction with consideration of the Ordinance; and

WHEREAS, these numerous studies conclude, based on documented evidence, that Sexually Oriented Businesses have negative secondary effects such as increased crime rates, decreased property values, curtailed retail trade and deterioration of the quality of urban life; and

WHEREAS, the City Council finds that Sexually Oriented Businesses are frequently used for unlawful sexual activities, including prostitution; and

WHEREAS, the City Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry, protect the citizens from increased crime, preserve the quality of life, preserve the property values and character of surrounding neighborhoods, and deter the spread of urban blight; and

WHEREAS, the City Council has determined that location criteria alone do not adequately protect the health, safety and general welfare of the people of this City; and

WHEREAS, Sexually Oriented Businesses require special supervision from public safety agencies in order to protect and preserve the health, safety and welfare of the patrons of such businesses and the citizens of the City; and

WHEREAS, the City Council finds that Sexually Oriented Businesses and adult motels frequently are used for unlawful sexual activities, including prostitution and public sex acts; and

WHEREAS, the concern over sexually transmitted diseases is a legitimate health concern of the City which demands reasonable regulation of Sexually Oriented Businesses in order to protect the health and well-being of the citizens; and

WHEREAS, the City Council finds that the incidence of unlawful sexual activities in Sexually Oriented Businesses may be diminished by appropriate regulation of attire, operating conditions, hours of operation, and interior configuration; and

WHEREAS, licensing is a legitimate and reasonable means of accountability to ensure that operators of Sexually Oriented Businesses and adult motels comply with reasonable regulations and do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation; and

WHEREAS, the City Council finds that restrictions on hours of operation will further prevent the adverse secondary effects of Sexually Oriented Businesses; and

WHEREAS, it is not the intent of this Ordinance to suppress any speech activities protected by the First Amendment, but to enact a content-neutral Ordinance which addresses the secondary effects of Sexually Oriented Businesses; and

WHEREAS, it is not the intent of this Ordinance or of the City Council to condone or legitimize the distribution of obscene material.

NOW, THEREFORE, Be it ordained by the Council of the City of Oberlin, Lorain County, State of Ohio, a majority of all members elected thereto concurring:

SECTION 1. PURPOSE AND FINDINGS

- (1) **Purpose.** That 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 City in order to promote the health, safety, and welfare of the citizens of the City. The provisions of this Ordinance 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 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.
- (2) **Findings.** Based on evidence concerning the adverse secondary effects of Sexually Oriented Businesses on the community presented in hearings before the council; on findings incorporated in the cases of the *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), *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:
 - (a) Sexually Oriented Businesses lend themselves to ancillary unlawful and unhealthy activities.
 - (b) Sexual acts, including masturbation and oral sex, occur at Sexually Oriented Businesses, especially those that 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).

- (c) Offering sexually oriented entertainment under conditions that encourage such activities creates unhealthy conditions.
- (d) 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.
- (e) Numerous studies and reports have determined that semen is found in the areas of Sexually Oriented Businesses where persons view sexually oriented films.
- (f) The findings noted in paragraphs number (a) through (e) raise substantial governmental concerns.
- (g) Sexually Oriented Businesses have operational characteristics, which should be reasonably regulated in order to protect those substantial governmental concerns.
- (h) 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.
- (i) 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.
- (j) Removal of doors, curtains, partitions, drapes, or any other obstruction whatsoever that would be capable of wholly or partially obscuring the view from outside a viewing booth of any person inside a viewing booth 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.

- (k) 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.
- (l) 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.
- (m) 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 or adult motel.
- (n) 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.

SECTION 2. Chapter 791 is hereby added to the Codified Ordinances of the City of Oberlin, Ohio, to read as set forth in Exhibit A attached hereto and incorporated herein by reference.

SECTION 3. Any establishment in operation on the effective date of this Ordinance that is considered a Sexually Oriented Business or adult motel under the terms of this Ordinance will be subject to the terms of this Ordinance as of the effective date of this Ordinance. Any such establishment must submit an application for a Sexually Oriented Business license pursuant to this Ordinance within sixty (60) days of its effective date. Any establishment for which a Sexually Oriented Business license application is submitted within the required sixty (60) day period will be permitted to operate, subject to compliance with the non-licensing provisions of this Ordinance, pending review of the license application and any appeal of a license denial.

SECTION 4. Any person acting, on the effective date of this Ordinance, as an employee in an establishment that is considered a Sexually Oriented

Business or adult motel under the terms of this Ordinance, will be subject to the terms of this Ordinance as of the effective date of this Ordinance. Any such person must submit an application for a Sexually Oriented Business employee license pursuant to this Ordinance within 60 days of its effective date. Any person who has submitted an application for a Sexually Oriented Business employee license within the required sixty (60) day period will be permitted to continue acting as an employee in an establishment that is considered a Sexually Oriented Business or adult motel, subject to compliance with the non-licensing provisions of this Ordinance, pending review of the license application and any appeal of a license denial.

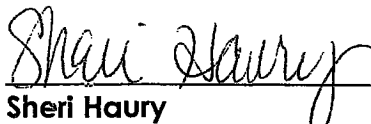
SECTION 5. All ordinances, parts of ordinances, chapters, sections, subsections, clauses, phrases or sentences contained in the City of Oberlin Codified Ordinances that conflict with this Ordinance are hereby repealed.

SECTION 6. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.


SECTION 7. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

PASSED: 1st Reading – March 19, 2007
2nd Reading – April 2, 2007 (Amended – Exhibit)
3rd Reading – April 16, 2007 (Tabled – 4 Ayes/3 Nays)
3rd Reading – May 7, 2007

ATTEST:



Sheri Haury
INTERIM CLERK OF COUNCIL



Daniel Gardner
PRESIDENT OF COUNCIL

POSTED: May 8, 2007

EFFECTIVE DATE: June 7, 2007

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APPENDIX A

Ordinance No. 07-30

791.01 PURPOSE AND FINDINGS.

- (a) **Purpose.** That 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 City in order to promote the health, safety, and welfare of the citizens of the City. The provisions of this Ordinance 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 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.
- (b) **Findings.** Based on evidence concerning the adverse secondary effects of Sexually Oriented Businesses on the community presented in hearings before the council; on findings incorporated in the cases of the *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), *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 sex, occur at Sexually Oriented Businesses, especially those that 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.
- (6) The findings noted in paragraphs number 1 through 5 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, curtains, partitions, drapes, or any other obstruction whatsoever that would be capable of wholly or partially obscuring the view from outside a viewing booth of any person inside a viewing booth 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 or adult motel.
- (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.

791.02 DEFINITIONS

For purposes of this chapter,

- (a) "ADULT ARCADE" means any place to which the public is permitted or invited where either or both (i) motion picture machines, projectors, DVDS, video or laser disc players, or (ii) 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 are 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, DVDs, 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.
 - (3) For the purpose of this section, 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. 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 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 that regularly features:
- (1) persons who appear in a "state of nudity" or "state of semi-nudity"; or
 - (2) live entertainment characterized by the depiction or description of specified anatomical areas or 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, DVDs, slides 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, DVDs, 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 sub-rent 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, DVDs, video cassettes, slides, 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 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," and which does not also meet the definition of a "mainstream performance house."
- (g) **"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.
- (h) **"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, lessee, 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.
- (i) **"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.
- (j) **"HEALTH COMMISSIONER"** means the Lorain County Commissioner of Health or his authorized representative.
- (k) **"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 or adult motel 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 or adult motel. 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 or adult motel.

- (l) **MAINSTREAM PERFORMANCE HOUSE** means a theater, concert hall, opera house, museum, educational institution or similar establishment, which regularly features live performances, including plays, operas, ballets, concerts or other similar performances, which are not distinguished or characterized by an emphasis on the depiction, display, or description, or the featuring of "specified anatomical areas" or "specified sexual activities" in that such depiction, display, description or featuring is incidental to the primary purpose of any performance. Performances and showings are regularly featured when they comprise 85 percent of all performances or showings. "Distinguished or characterized by an emphasis upon," means the dominant or principal theme of the object referenced. For example, when the phrase refers to performances which are "distinguished or characterized by an emphasis upon the exhibition or display of specified anatomical areas," the performances so described are those whose dominant or principal character or theme is the exhibition or display of "specified anatomical areas" or "specified sexual activities."
- (m) **"LIVE VIEWING BOOTH"** means any private or semi-private 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 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;
- (3) an arts education organization that has been granted not-for-profit status under § 501(c)(3) of the Internal Revenue Code; or

- (4) 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.
- (o) "NUDITY" or "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.
- (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 persons 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 operation 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) "SEMI-NUDITY" or "SEMINUDE 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.
- (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 same or 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 nude or semi-nude.

Sexual Encounter Center shall not include a business or commercial enterprise that regularly offers as one of its principal business purposes instruction in any of the wrestling styles recognized by the International Federation of Associated Wrestling Styles, also known as *Fédération Internationale des Luites Associées* (FILA).

- (f) "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. "Sexually Oriented Business" does not include an adult motel as defined above.

- (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 (1) or (2) above.
- (x) **"VIDEO BOOTH"** means any private or semi-private 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 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.

791.03 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 paragraphs (a) through (g) above.

791.04 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 791.02 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 fourth degree.

791.05 SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE REQUIRED.

- (a) No person shall act as an employee, as defined in Section 791.02 of this chapter, on the premises of a Sexually Oriented Business or an adult motel 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 fourth degree.

791.06 SEXUALLY ORIENTED BUSINESS LICENSE APPLICATION.

- (a) An application for a Sexually Oriented Business license shall be submitted to the Chief of Police on a form provided by the Chief of Police. 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 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, any individual owning or controlling more than 50 percent of the voting shares of the corporation, and

any person with an ownership interest in the corporation who will be principally responsible for the operation of the proposed Sexually Oriented Business.

- (3) If the business entity is owned by a partnership (general or limited), a joint venture, or any other type of organization where two or more persons share in the profits and liabilities of the organization, each partner (other than limited partners); and any other person entitled to share in the profits of the organization, whether or not such person is also obligated to share in the liabilities of the organization, who will be principally responsible for the operation of the proposed Sexually Oriented Business.
- (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; or
 - (C) a joint venture, or any other type of organization where two or more persons share in the profits and liabilities of the organization, state the complete name of the organization and provide a copy of the legal document establishing the organization, if any; or
 - (D) 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 or adult motel 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 791.02 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 or adult motel 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 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 or adult motel, 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, taken by the City of Oberlin Police Department, that clearly shows the applicant's face.
- (10) Submit the fingerprints of each applicant who is a natural person, recorded by the City of Oberlin 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 or adult motel.
- (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 or adult motel, 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 adult 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, other than an adult motel, which shall exhibit on the premises, in a booth, as defined in Section 791.02 of this chapter, films, DVDs, video cassettes, other video or image reproduction, or live entertainment which depict "specified sexual activities" or "specified anatomical areas," then the applicant shall comply with the additional application requirements set forth in Section 791.18(a)(1) of this chapter.

791.07 ISSUANCE OF SEXUALLY ORIENTED BUSINESS LICENSE.

- (a) Upon the filing of a completed application for a Sexually Oriented Business license, the Chief of Police shall issue a temporary license to said applicant immediately.
- (b) Upon receipt of an application for a Sexually Oriented Business license, the Chief of Police shall promptly investigate the information provided in the application concerning the criminal background of the applicant(s) and shall record the results of his investigation in writing within five (5) days of the completion of his investigation.
- (c) Within twenty-one (21) days after receipt of a completed Sexually Oriented Business license application, the Chief of Police shall approve or

deny the issuance of a license. The Chief of Police shall approve the issuance of a license to an applicant unless he 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 an adult business licenses 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 791.02 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 of the City, 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 in not in compliance with any provision of this chapter.
- (d) If the Chief of Police determines that 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, 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:
- (e) If the Chief of Police determines that no other grounds for denial of a license exist under Subparagraph (b) of this section, the Chief of Police shall not delay approval of the application past the end of the 21-day period provided in this section solely because the Chief of Police has not completed his investigation of the criminal background of the applicant(s). If, after approving the issuance of a license, the Chief of Police receives information from his investigation that he determines constitutes grounds for denial of a license under Subparagraph (b) of this

section, then the Sexually Oriented Business license issued pursuant to this Subparagraph (d) shall be immediately revoked.

- (f) 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 or adult motel, and the classification for which the license is issued pursuant to Section 791.03 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.
- (g) The Chief of Police shall advise the applicant in writing of the reasons for any license denial.

791.08 SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE APPLICATION.

- (a) An application for a sexually oriented employee license shall be submitted to the Chief of Police on a form provided by the Chief of Police. 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, taken by the City of Oberlin Police Department, which clearly shows the applicant's face.
 - (5) Submit the applicant's fingerprints, recorded by the City of Oberlin 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 Employee -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 or adult motel, in this or any other jurisdiction, and whether the applicant has ever had a Sexually Oriented Business Employee-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 791.02 of this chapter and, if so, the specified criminal activity involved and the date, place and jurisdiction of each such conviction.**

791.09 ISSUANCE OF SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE.

- (a) Upon the filing of a completed application for a Sexually Oriented Business employee license, the Chief of Police shall issue a temporary license to said applicant immediately.**
- (b) Within five (5) days of receipt of a completed application for a Sexually Oriented Business employee license, the Chief of Police shall initiate an investigation of the information provided in the application concerning the criminal background of the applicant. The Chief of Police shall document the results of his investigation in writing within five (5) days of the completion of his investigation.**
- (c) Within ten (10) days after completion of the Chief of Police's investigation of the criminal background of the applicant, the Chief of Police shall approve or deny the issuance of the license. The Chief of Police shall approve the issuance of a license to an applicant unless he 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 791.02 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 Chief of Police shall advise the applicant in writing of the reason(s) for any such denial.

791.10 FEES.

- (a) Every application for a new Sexually Oriented Business license shall be accompanied by a \$100.00 non-refundable application and investigation fee.
- (b) Every application for renewal of a Sexually Oriented Business license shall be accompanied by a \$50.00 non-refundable application and investigation fee.
- (c) In addition to the application and investigation fee required in subparagraph (a) or (b) above, every applicant that is granted a Sexually Oriented Business license (new or renewal) shall pay to the City an annual, non-refundable license fee of \$360.00 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 \$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 \$25.00.

791.11 INSPECTION.

- (a) The Police Department shall, from time to time, but no more than four times in a calendar year, inspect that portion of each Sexually Oriented Business or adult motel licensed under the provisions of this chapter that is open to the public, at any time that it is occupied or open for business, in order to assess compliance with the provisions of this chapter.
- (b) The Chief of Police may, from time to time, but not more than two times a calendar year, request that the Health Commissioner and/or the City of Oberlin Chief Building Official and/or Code Administrator inspect that portion of each Sexually Oriented Business or adult motel licensed under the provisions of this chapter that is open to the public in order to assess compliance with the provisions of this chapter.
- (c) An applicant or licensee shall permit the City of Oberlin Chief Building Official or Code Administrator and representatives of the City of Oberlin Police Department, Fire Division, or other City departments or agencies, or the Health Commissioner, to inspect that portion of the premises of a Sexually Oriented Business or adult motel that is open to the public 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 fourth degree if he refuses to permit such lawful inspection of the premises.

791.12 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 Chief of Police on a form provided by the Chief of Police. 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 791.06 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 Chief of Police shall make determinations concerning the approval of license renewals based on the same criteria used to evaluate applications for new licenses under Section 791.07 of this chapter.
- (d) The Chief of Police shall advise the applicant in writing of the reason(s) for any denial of a license renewal.
- (e) An application for renewal of a Sexually Oriented Business employee license shall be submitted to the Chief of Police on a form provided by the Chief of Police. 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 791.08 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 Chief of Police shall make determinations concerning the approval of license renewals based on the same criteria used to evaluate applications for new licenses under Section 791.09 of this chapter.
- (g) The Chief of Police shall advise the applicant in writing of the reason(s) for any denial of a license renewal.
- (h) When the City denies an application for renewal of a license, 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.

791.13 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 authorized or approved an employee's violation of or failure to

comply with any section of this chapter, or as a result of the licensee's negligent failure to supervise either the premises of the Sexually Oriented Business or a Sexually Oriented Business Employee has 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 or adult motel 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 Chief of Police shall advise the licensee in writing of the reason(s) for any suspension.

791.14 REVOCATION.

- (a) The City shall revoke a Sexually Oriented Business license or Sexually Oriented Business employee license if a cause of suspension under Section 791.13 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, pursuant to Section 791.07(g) of this Chapter, to correct specified deficiencies within 120 days;
 - (3) a licensee has knowingly allowed, or as a result of the licensee's negligent failure to supervise either the premises of the Sexually Oriented Business or a Sexually Oriented Business Employee has allowed, possession, use, or sale of controlled substances on the premises;
 - (4) a licensee has knowingly allowed, or as a result of the licensee's negligent failure to supervise either the premises of the Sexually Oriented Business or a Sexually Oriented Business Employee has allowed, prostitution, solicitation, or the commission of a felony on the premises;

- (5) a licensee operated the Sexually Oriented Business during a period of time when the licensee knew or reasonably should have known that the licensee's license was suspended;
 - (6) a licensee has knowingly allowed, or as a result of the licensee's negligent failure to supervise either the premises of the Sexually Oriented Business or a Sexually Oriented Business Employee has 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 791.02 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 acted as an employee on the premises of a Sexually Oriented Business during a period of time when the licensee knew or reasonably should have known that the licensee's license was suspended; or
 - (3) the licensee has been convicted of a specified criminal activity, as defined in Section 791.02 of this chapter during the term of the license.
- (d) The Chief of Police 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.

791.15 APPEAL RIGHTS.

- (a) Any denial, suspension, or revocation of a new or renewal license under this chapter may be appealed to the City of Oberlin Zoning Board of Appeals by written notice within ten (10) days of such denial, suspension,

or revocation. Unless the applicant requests a longer period, the Zoning Board of Appeals must hold a hearing on the appeal within thirty (30) days 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 Zoning Board of Appeals 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 Ordinance, the applicant or licensee shall provide written notice of such appeal to the Zoning Board of Appeals in advance of or at the time of the filing of the appeal. Within ten days of receiving such written notice of appeal, or within such shorter time as may be ordered by the court, the Zoning Board of Appeals shall transmit to the court in which 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 Zoning Board of Appeals 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 subsection (f) of this Section, any licensee lawfully operating a Sexually Oriented Business or adult motel 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 of a decision rendered under this Ordinance to the Zoning Board of Appeals or to a court.
- (e) Subject to the provisions of subsection (f) of this Section, any licensee lawfully acting as an employee in a Sexually Oriented Business or adult motel 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 of a decision rendered under this Ordinance to the Zoning Board of Appeals 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 thirty (30) 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 or adult motel named in the license application under the same terms as a normal Sexually

Oriented Business issued pursuant to Section 791.07 of this chapter for the period of time specified in Subparagraph (g) of this section; 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 or adult motel under the same terms as a normal Sexually Oriented Business employee license issued pursuant to Section 791.09 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 791.07 or Section 791.09 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 Chief of Police pursuant to Section 791.12 (b) of this chapter. The Chief of Police shall grant an application for renewal of a provisional license unless he determines that new grounds exist for denial of a license application pursuant to Section 791.07 or Section 791.09 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.

791.16 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 or adult motel to another such licensed establishment during the term of the license, provided that the licensee gives written notice of such transfer to the Chief of Police within fifteen (15) days of such transfer.

791.17 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 791.02 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 791.02 of this chapter.
- (d) For purposes of Subparagraph (b) of this section, 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 791.02 of this chapter, commits a misdemeanor of the fourth degree.

791.18 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 791.02 of this chapter, films, video cassettes, other video or image reproduction, or live entertainment which depict or 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 Chief of Police.
- (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) foot-candles 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 fourth degree if he operates a Sexually Oriented Business in violation of Subsection (a) of this section.

791.19 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 791.02 of this chapter, or engage in "specified sexual activities" in a state of "nudity," as defined in Section 791.02 of this chapter.
- (2) Any employee appearing on the premises of a Sexually Oriented Business in a state of semi-nudity, as defined in Section 791.02 of this chapter, must be on a stage that is at least 24 inches from the

floor, and at a distance at least 60 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 stage that is at least 24 inches from the floor and a distance of at least 60 inches from all parts of a clear 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 791.02 of this chapter, appearing on the premises of a Sexually Oriented Business in a state of semi-nudity, may intentionally or knowingly 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 semi-private 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" as defined in Section 791.02 of this chapter and therefore is not subject to the provisions of Section 791.18 of this chapter.

The provisions of this subparagraph (a) shall not apply to an employee's use of any restroom or any 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 that shall not be occupied or used in any way by any one other than entertainers.
- (c) Restrooms. All restrooms in Sexually Oriented Businesses shall be equipped with standard toilets, sinks and other traditional lavatory facilities. No live performances shall be provided or allowed at any time in the restrooms of a Sexually Oriented Business. Separate male and female restrooms shall be provided for and used by Sexually Oriented Business employees and patrons.
- (d) Minors Prohibited. No person under the age of 18 years shall be permitted on the premises of a Sexually Oriented Business.

- (e) **Hours of Operation.** No Sexually Oriented Business shall be open for business at any time between the hours of 12 midnight and 12 noon on any weekday or Saturday, nor shall any entertainment, service, or product be provided to a customer on the premises of a Sexually Oriented Business during those hours. No Sexually Oriented Business shall be open for business at any time on Sunday or on any legal State of Ohio or federal holiday, nor shall any entertainment, service, or product be provided to a customer on the premises of a Sexually Oriented Business during those days.
- (f) **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) foot-candles as measured at floor level.
 - (2) The illumination described in subsection (a) 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.
- (g) **Exterior Display.** No Sexually Oriented Business or adult motel 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 791.02 of this chapter~~, or any person in a state of nudity or semi-nudity, whether by means of display, decoration, sign, window or any other means.
- (h) 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 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.

- (i) Any person who operates a Sexually Oriented Business and permits a violation of subparagraph (f) of this section on the premises shall be guilty of a misdemeanor of the fourth degree.
- (j) Any person who operates a Sexually Oriented Business in violation of subparagraph (b), (c), or (e) of this section shall be guilty of a misdemeanor of the fourth degree.
- (k) 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 (d) of this section commits a misdemeanor of the fourth 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.

791.20 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 Business is 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.

791.21 PENALTY.

- (a) Violations of this chapter, as previously specified above, shall be misdemeanor offenses punishable by fine or imprisonment as provided for the various degrees of misdemeanor in Section 501.02 of the Codified Ordinances of the City of Oberlin.
- (b) Each day that a Sexually Oriented Business or adult motel operates in violation of this chapter is a separate offense or violation.

791.22 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 this Chapter.

791.23 EFFECT OF PARTIAL INVALIDITY.

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