

# RECORD OF ORDINANCES

Dayton Legal Blank, Inc.

Form No. 30043

2005-10

Ordinance No. \_\_\_\_\_

Passed \_\_\_\_\_ October 18 \_\_\_\_\_, 20 05 \_\_\_\_\_

## **AN ORDINANCE ADOPTING CERTAIN BUSINESS REGULATIONS IN THE CITY OF BROOKVILLE, OHIO TO REQUIRE THE LICENSING AND REGULATION OF SEXUALLY ORIENTED BUSINESSES AND THEIR EMPLOYEES.**

**WHEREAS**, studies have shown that increased crime and unhealthful conduct, including but not limited to prostitution, pandering, exposing minors to harmful materials, possession and distribution of obscene materials and child pornography, possession and sale of controlled substances, and violent crimes against persons and property tend to accompany, concentrate around, and be aggravated by sexually oriented businesses; and

**WHEREAS**, concern over sexually transmitted diseases, including AIDS, is a legitimate health concern of the City of Brookville, Ohio (hereinafter the "City") which demands the reasonable regulation of sexually oriented business in order to protect the health and well being of citizens and visitors to the City; and

**WHEREAS**, sexually oriented businesses require special supervision from public safety and health agencies having jurisdiction within the City in order to protect and preserve the health, safety and welfare of the patrons of such businesses as well as other persons in the nearby community, and some provision to offset the cost of the same is in order; and

**WHEREAS**, from review of other cities' planning and land use studies pertaining to the operation and concentration of sexually oriented businesses, including but not limited to studies conducted in 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, there is convincing documentary evidence that sexually oriented businesses, because of their nature, have a deleterious effect on both existing businesses around them and the surrounding residential and commercial areas adjacent to them, and also cause adverse secondary effects, such as increased crime, downgrading of property values and urban blight; and

**WHEREAS**, it is recognized and studies demonstrate that sexually oriented businesses can become a regional point of destination and have even greater secondary effects when they are operating in close proximity to each other; and

**WHEREAS**, the City Council has considered the decisions of the United States Supreme Court regarding local regulation of sexually oriented businesses, including but not limited to, *Young v. American Mini-Theatres, Inc.*, 427 U.S. 50 (1976) reh. denied 429 U.S. 873; *Renton v. Playtime Theatres*, 475 U.S.41 (1986) reh. denied 475 U.S. 1132; *FW/PBS, Inc. v. Dallas*, 493 U.S. 215 (1990); *Barnes v. Glen Theater*, 501 U.S. 560 (1991); and *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); and various decisions of other courts including, but not limited, *City of National City v. Wiener, et al.*, 3 Cal. 4<sup>th</sup> 832 (1992) (as modified Jan. 21, 1993); *Topanga Press, Inc., et al. v. City of Los Angeles*, 989 F. 2d. 1524 (9<sup>th</sup> Cir., 1993); *East Brooks Books v. City of Memphis*, 48 F. 3d 435 (6<sup>th</sup> Cir. 1998); *DLS, Inc. v. City of Chattanooga*, 107 F. 3d 403 (6<sup>th</sup> Cir. 1997); and *Hickerson v. City of New York*, 146 F. 3d 99 (2<sup>nd</sup> Cir. 1998); and

**WHEREAS**, the City Council has determined that disbursement requirements alone will not adequately protect the health, safety and general welfare of the people of the City and thus certain requirements with respect to the ownership and operation of sexually oriented businesses are in the public interest; and

**WHEREAS**, the City Council further finds that restricted hours of operation will reduce the adverse secondary effects of sexually oriented businesses by reducing crime, open sex and solicitation of sex and preserving the aesthetic and residential or commercial character of the neighborhoods surrounding such establishments; 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 adverse secondary effects of sexually oriented businesses; and

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**WHEREAS**, it is not the intent of the City Council to condone or legitimize the distribution of obscene material, and the Council recognizes that state law prohibits the distribution of obscene materials and expects and encourages state law enforcement officials to enforce state obscenity statutes against any such illegal activities in the City; and

**WHEREAS**, the City Council is aware of convincing documented evidence regarding the physiological and sexual distinctions between male and female breasts; and

**WHEREAS**, the City Council has determined that the prohibition of publicly nude employees or independent contractors in any sexually oriented business further reduces the adverse secondary impacts of sexually oriented businesses by reducing crime, open sex and solicitation of sex and preserving the aesthetic and residential or commercial character of the neighborhoods surrounding such establishments; and

**WHEREAS**, the City Council wishes to provide and preserve all rights guaranteed under the Constitution to operators and potential operators of sexually oriented businesses in the City of Brookville, Ohio.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BROOKVILLE, OHIO:**

**Section 1:** The Council of the City of Brookville, Ohio, hereby adopts and enacts the following regulations for the licensing and operation of Sexually Oriented Businesses:

## CHAPTER 755

### LICENSING AND OPERATION OF SEXUALLY ORIENTED BUSINESSES

#### 755.01 PURPOSE AND FINDINGS

(a) **Purpose:** It is the purpose and intent of this Chapter to regulate sexually oriented businesses, to promote the health, safety, morals, and general welfare of the citizens of the City and to establish reasonable and uniform regulations to prevent any deleterious location and concentration of sexually oriented businesses within the City, and to regulate their operation, thereby reducing or eliminating the adverse secondary effects from such sexually oriented businesses.

The provisions of this Chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent or effect of this Chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Chapter to condone or legitimize the distribution of obscene, or otherwise illegal materials, goods or activities.

(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.



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(2) Sexual acts, including masturbation and oral 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.

(6) The findings noted in subsection (b)(1) through (5) hereof raise substantial governmental concerns.

(7) Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.

(8) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and operators of sexually oriented businesses. Further, such a licensing procedure will place a heretofore nonexistent incentive on operators to see that sexually oriented businesses are run in a manner consistent with the health, safety and welfare of patrons and employees, as well as the citizens of the City. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, and fully in possession and control of the premises and activities occurring therein.

(9) The regulation of nudity in sexually oriented businesses will further the substantial governmental interests in preventing prostitution and other sex related crimes, including illegal sex acts, and protecting the public health, safety, and welfare.

(10) Removal of doors on viewing booths in sexually oriented businesses and requiring sufficient lighting on premises with viewing booths will advance the substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult arcades and theaters and will facilitate enforcement of the provisions of this chapter and other federal, state, and local laws, thereby furthering the substantial governmental interest in protecting the public health, safety, and welfare.

(11) Requiring sufficient lighting in all sexually oriented businesses will advance the substantial governmental interest in curbing illegal sexual activity on the premises of sexually oriented businesses, and will facilitate enforcement 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 governmental 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.

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(14) Barring such individuals from the management of and employment in sexually oriented businesses for a period of years serves as a deterrent to and prevents the commission of sexually related criminal acts, including conduct which leads to the transmission of sexually transmitted diseases.

## 755.02 DEFINITIONS

The definitions enumerated below may contain references to "nudity" or a "state of nudity". Such references should not be construed or interpreted to permit nudity or a state of nudity in any sexually oriented business in the City. In fact, this Chapter expressly prohibits such. The definitions are provided for illustrative purposes only. The words defined here shall have these meanings regardless of whether they are capitalized, in quotation marks, or otherwise noted as defined terms.

For the purposes of this Chapter, certain terms and words are defined as follows:

(a) "Adult arcade" means an establishment where, for any form of consideration, one or more still or motion picture projectors, slide projectors, or similar machines, or other image producing machines, or other visual representations, for viewing by five (5) or fewer persons each, are regularly used to show films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

(b) "Adult Bookstore", "Adult Novelty Store" or "Adult Video Store" means a commercial establishment which has as a significant or substantial (i.e. 50% or more) portion of its stock-in-trade or derives a significant or substantial (i.e. 50% or more) portion of its interior business of advertising to the sale or rental for any for any form of consideration, of any one or more of the following:

1. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, digital video discs, or other visual representations which are characterizes by the depiction or description of "specified sexual activities" or "specified anatomical areas";

2. Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others.

An establishment may have other principal business purposes that do not involve the offering for sale, rental or viewing of materials depicting or describing "specified sexual activities" or specified anatomical areas", and still be categorized as an adult bookstore, adult novelty store, or adult video store so long as the definition above is met.

(c) "Adult cabaret" means a nightclub, bar, restaurant, private club, bottle club, juice bar or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features: (1) persons who appear nude or semi-nude or in a state of nudity or semi-nudity; (2) live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or (3) films, motion pictures, video cassettes, digital video discs, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas." "Private Club" shall mean an establishment where patrons may bring in their own bottle or other container of alcohol (including beer, wine or liquor) and purchase a mixture for the same or use of a glass from the club or business.

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(d) "Adult motel" means a hotel, motel, or similar commercial establishment which: (1) Offers public accommodation, for any form of consideration, which provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, digital video discs, slides or other photographic reproductions which are characterized by the depiction of "specified sexual activities" or "specified anatomical areas" and which advertises the availability of this sexually oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or

(2) Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours.

(e) "Adult motion picture theater" means a commercial establishment where films, motion pictures, video cassettes, digital video discs, slides or similar photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" are regularly shown for any form of consideration.

(f) "Adult theater" means a theater, concert hall, auditorium, or similar commercial establishment which, for any form of consideration, regularly features persons who appear in a state of nudity or semi-nudity or live performances which are characterized by exposure of "specified anatomical areas" or by specified sexual activities" which is not customarily open to the general public during such features because it excludes minors by reason of age.

(g) "Escort Agency" means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration. "Escort" means a person who, for any form of consideration, agrees or offers to act as a companion, guide, or date for any person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person or to privately appear in the state of nudity or semi-nudity for any person.

(h) "Massage parlor" means any place where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatments, or any other treatment or manipulation of the human body which occurs as a part of or in connection with "specified sexual activities" is offered, or where any person providing such treatment, manipulation, or service related thereto, exposes his or her "specified anatomical areas." The definition of sexually oriented business shall not include the practice of massage in any licensed hospital, nor by any licensed hospital, nor by a licensed physician, surgeon, chiropractor or osteopath, nor by any nurse or technician working under the supervision of a licensed physician, surgeon, chiropractor, or osteopath, nor by trainers for any amateur, semiprofessional or professional athlete or athletic team or school athletic program, nor barber shops or beauty salons in which massages are administered only to the scalp, the face, the neck or the shoulder, nor by any other individual licenses by the State of Ohio to perform massages.

(i) "Nude Model Studio" means any place where a person regularly appears in a state of nudity or semi-nudity or displays "specified anatomical areas" for money or for any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. Reference above to nudity should not be construed or interpreted to permit nudity or a state of nudity in a "Nude Model Studio". "Nude model studio" shall not include a proprietary school licensed by the State of Ohio, or a college, junior college or university supported entirely or in part by public taxation, or 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.



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(j) "Sexual encounter establishment" means a business or commercial establishment, that as one of its principal business purposes, offers for any form of consideration, (A) a place where two or more persons may congregate, associate, or consort for the purpose of "specified sexual activities" or the exposure of "specified anatomical areas"; or (B) activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nudity. The definition of sexually oriented businesses shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the State of Ohio engages in medically approved and recognized sexual therapy.

(k) "Simulated" means to assume the mere appearance of something, without the reality; to imitate or pretend.

(l) "Specified Sexual Activities" means and includes any of the following:

1. The fondling or intentional touching of human genitals, public region, anus, or female breast;
2. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
3. Masturbation, actual or simulated; or
4. Human genitals in a state of sexual stimulation, arousal or tumescence;
5. Excretory functions as part of or in connection with any of the activities set forth in subdivisions (1) through (4) of this subsection.

(m) "Employee" means a person who works or performs in and/or for a sexually oriented business, regardless of whether or not said person is paid a salary, wage or other compensation by the operator of said business, or any form of remuneration, tips of any kind or gratuities from the operator or customers of said business.

(n) "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.

(o) "Established" means and includes any of the following:

1. The opening or commencement of any sexually oriented business as a new business.
2. The conversion of an existing business, whether or not a sexually oriented business, to any of the sexually oriented businesses defined in this chapter;
3. The addition of any of the sexually oriented businesses defined in this chapter to any other existing sexually oriented business; or
4. The relocation of any such sexually oriented business.

(p) "Licensee" means, with respect to a sexually oriented business license issued under this chapter, a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual(s) designated on the license application as principally responsible for the operation of the sexually oriented business. With respect to a sexually oriented employee license issued under this chapter, licensee means a person in whose name a license has been issued authorizing employment in a sexually oriented business.

(q) "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.

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(r) "Nude, Nudity or State of Nudity" means a live person exhibiting: (1) the anus, male genitals, female genitals, or the areola or nipple of the female breast; or (2) a state of dress which fails to opaquely and fully cover the anus, male or female genitals, pubic region or areola or nipple of the female breast.

(s) "Specified Anatomical Areas" means and includes any of the following:

1. Less than completely and opaquely covered human genitals, pubic region, anus, or areolas or nipple of the female breast; or
2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(t) "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; disseminating material harmful to juveniles, displaying the materials harmful to juveniles, pandering obscenity, pandering obscenity involving a minor, pandering sexually oriented material involving a minor; 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.

(u) "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.

(v) "Viewing Booth" means live viewing booth or video booth, and "Viewing Booths" means live viewing booths, video booths, or any combination thereof.

(w) "Transfer of Ownership or Control" of a sexually oriented business shall mean any of the following:

- (1) The sale, lease, or sublease of the business;
- (2) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
- (3) The establishment of a trust, gift, or 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;

(x) "Covering" means any clothing or wearing apparel, including pasties, but does not included any substance that can be washed off the skin, such as paint or makeup, or any substance designed to simulate the appearance of the anatomical area beneath it.

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(y) "Operate" means to control or hold primarily responsibility for the operation of a sexually oriented business, either as a business entity, as an individual, or as a 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 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.

(z) "Person" means an individual, proprietorship, partnership, firm, association, joint stock company, corporation, limited liability corporation, or combination of individuals of whatever form or character.

(aa) "Semi-Nudity" or "Semi-Nude" means exposing to view, with less than a full 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.

(bb) "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, escort agency, massage parlor, or sexual encounter center. "Sexually oriented business" does not include an adult motel as defined above.

## 755.03 CLASSIFICATION

(a) Businesses subject to sexually oriented business licensing required by this chapter are classified as follows:

- (1) Adult arcades;
- (2) Adult book stores, adult novelty stores, or adult video stores;
- (3) Adult cabarets;
- (4) Adult motion picture theaters;
- (5) Adult theaters;
- (6) Escort Agency
- (7) Massage Parlor
- (8) Nude model studios;
- (9) Sexual encounter centers; and
- (10) Any combination of classifications set forth in subsections (A)(1) through (9) hereof.

## 755.04 SEXUALLY ORIENTED BUSINESS LICENSE REQUIRED

(a) No person shall:

(1) Operate a sexually oriented business without a valid sexually oriented business license issued by the City pursuant to this chapter.

(2) In connection with operating a sexually oriented business, retain the services of a person as an employee, as defined in Section 755.02, who is not licensed as a sexually oriented business employee by the City pursuant to this chapter.

(b) Any person who violates subsection (a)(1) or (a)(2) hereof shall be guilty of a misdemeanor of the first degree.



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## 755.05 SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE REQUIRED

(a) No person shall act as an employee, as defined in Section 755.02, on the premises of a sexually oriented business without having secured a sexually oriented business employee license pursuant to this chapter.

(b) Any person who violates this section shall be guilty of a misdemeanor of the third degree.

## 755.06 SEXUALLY ORIENTED BUSINESS LICENSE APPLICATION

(a) An application for a sexually oriented business license shall be submitted to the City Manager on a form provided by the City. 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 and each individual with a ten percent (10%) or greater ownership interest in the corporation.
- (3) If the business entity is owned by a partnership, each partner and each individual with a ten percent (10%) or greater ownership interest in the corporation.

(c) An application for a sexually oriented business license shall designate one or more individuals who are to be principally responsible for the operation of the proposed sexually oriented business, if a license is granted. At least one person so designated must be involved in the day-to-day operation of the proposed sexually oriented business on a regular basis. Each person so designated, as well as the business entity itself, shall be considered a license applicant, must qualify as a licensee under this chapter, and shall be considered a licensee if a license is granted.

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

(1) If the applicant is:

- A. An individual, state the legal name and any aliases of such individual;
- B. A partnership, state the complete name of the partnership and all of its partners and whether the partnership is general or limited, and provide a copy of the partnership agreement, if any;
- C. A corporation, state the complete name of the corporation and the date of its incorporation, provide evidence that the corporation is in good standing under the laws of its state of incorporation, and state the names and capacity of all officers and directors, the name of the registered corporate agent, and the address of the registered office for service of process.

(2) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, state the fictitious name to be used and submit copies of documentation evidencing the registration of the business name under applicable laws.

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

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(4) State whether any applicant has had a previous license under this chapter other similar regulation of another jurisdiction denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation; and state whether the applicant has been a partner in a partnership or an officer, director or ten percent (10%) or greater owner of a corporation licensed under this chapter whose license has previously been 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 under this chapter for which the applicant is filing.

(7) State the location of the proposed sexually oriented business, including a legal description of the property, street address, and telephone number(s) if any. The applicant shall submit a site plan complying with all relevant provisions of the Codified Ordinances of the City of Brookville.

(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 Brookville Police Department which clearly shows the applicant's face.

(10) Submit the fingerprints of each applicant who is a natural person, recorded by the City of Brookville Police Department.

(11) For any applicant who is a natural person, describe and identify the location of any tattoos on such person's face, arms, legs, or hands, or any other anatomical area that normally would be visible when such person is on the premises of the proposed sexually oriented business.

(12) State the driver's license number and Social Security number of each applicant who is a natural person and each person signing the application, or, for an applicant that is not a natural person, the applicant's federally issued tax identification number.

(13) Submit proof that each applicant who is a natural person is at least eighteen (18) years old.

(14) Submit a sketch or diagram showing the configuration of the premises of the sexually oriented business, including the location of all stages and customer seating and a statement of total floor space occupied by the business. The diagram shall also designate the place at which the adult business license shall be conspicuously posted, if granted. The sketch or diagram does need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

(15) If an applicant wishes to operate a sexually oriented business, which shall exhibit on the premises, in a booth, as defined in Section 755.02, films, video cassettes, other video or image reproduction, or live entertainment which depicts "specified sexual activities" or "specified anatomical areas," then the applicant shall comply with the additional application requirements set forth in Section 755.18.

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## 755.07 ISSUANCE OF SEXUALLY ORIENTED BUSINESS LICENSE

(a) Within five (5) regular business days of receipt of a completed application for a sexually oriented business license, the City Manager shall notify the City of Brookville Police Chief, the City of Brookville Fire Chief, and the Building Inspector of the City of Brookville of such application. In making such notification, the City Manager shall request that the Police Chief promptly investigate the information provided in the application concerning the criminal background of the applicant(s), and shall request that the Fire Chief and Building Inspector promptly inspect the premises for which the adult business license is sought to assess compliance with the regulations under their respective jurisdictions.

The Police Chief and the Fire Chief shall begin their respective investigations and inspection processes promptly upon receipt of notice of an application from the City Manager. The Police Chief shall provide the results of his investigation to the City Manager, in writing, within ten (10) days of receipt of notice of the application. The Fire Chief shall provide to the City Manager a written certification of whether the premises are in compliance with the Fire Code within ten (10) days of receipt of notice of the application. The Building Inspector shall commence the inspection of the premises for which a sexually oriented business license is sought promptly upon receipt of the application, and shall complete a written certification of whether the premises are in compliance with the Building Code, the Planning and Zoning Code, and the provisions of this chapter related to physical characteristics of the premises within fifteen (15) days after receipt of the application.

(b) Within twenty-one (21) days after receipt of a completed sexually oriented business license application, the City Manager shall approve or deny the issuance of the license. The City Manager shall approve the issuance of a license to an applicant unless he determines that one or more of the following findings are 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 license or has had a license to operate a sexually oriented business revoked within the preceding twelve (12) months by any jurisdiction.
- (4) An applicant has been convicted of a specified criminal activity as defined in Section 755.02
- (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 of Brookville, including but not limited to, Section 1145.03(g) of the Code of Ordinances, the General Offenses Code of the City, or State statute or regulation
- (6) The application and investigation fee required by this chapter has not been paid.
- (7) An applicant is in violation of or is not in compliance with any provision of this chapter, except as provided in subsection (c)(1) hereof.

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

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



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(d) If the City Manager determines that no other grounds for denial of a license exist under subsection (b) hereof, the City Manager shall not delay approval of the application because the Fire Chief has not provided the City Manager with the results of his inspection of the premises; the Building Inspector has not provide the City Manager with the results of his inspection of the premises; and/or the Police Chief has not provided the results of his criminal background of the applicant(s). If, after approving issuance of the license, the City Manager receives information from the Police Chief concerning his investigation, which the City Manager determines constitutes grounds for denial of a license under subsection (b) hereof, then the sexually oriented business license issued pursuant to this subsection (d) hereof shall be immediately revoked. If after approving the issuance of a license, the City Manager receives information concerning the results of inspections by the Fire Chief or the Building Inspector, which the City Manager determines constitutes grounds for the issuance of a license subject to a requirement to correct deficiencies under subsection (c) hereof, then a requirement shall be added to the terms of the sexually oriented business licenses issued pursuant to this subsection (d) hereof to correct all deficiencies noted within 120 days of the date such requirement is added.

(e) A sexually oriented business license, if granted shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the licensed sexually oriented business, and the classification for which the license is issued pursuant to Section 755.03. All sexually oriented business licenses shall be posted in a conspicuous place at or near the entrance to the business so that they may be easily read at any time.

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

## 755.08 SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE APPLICATION

(a) An application for a sexually oriented employee license shall be submitted to the City Manager on a form provided by the City Manager. 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 Brookville Police Department, which clearly shows the applicant's face.

(5) Submit the applicant's fingerprints, recorded by the City of Brookville 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.

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(10) Submit proof that the applicant is at least eighteen (18) years old.

(11) Provide a statement detailing the sexually oriented business-related license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate a sexually oriented business, in this or any other jurisdiction, and whether the applicant has ever had a sexually oriented business-related license, permit, or authorization to do business denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name of the issuing or denying jurisdiction and described in full the reason for the denial, revocation, or suspension.

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

## 755.09 ISSUANCE OF SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE

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

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

(c) Within twenty-one (21) days after receipt of a completed sexually oriented employee license application, the City Manager shall approve or deny the issuance of the license. The City Manager shall approve the issuance of a license to an applicant unless 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 755.02.

(4) The sexually oriented business employee license is to be used for employment in a business prohibited by local, state, or federal law, statute, rule or regulation.

(5) The applicant has been denied a sexually oriented business employee license or has had a sexually oriented business employee license revoked within the preceding twelve (12) months by any jurisdiction.

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

## 755.10 FEES

(a) Every application for a new sexually oriented business license shall be accompanied by a five hundred (\$500.00) non-refundable application and investigation fee.

(b) Every application for renewal of a sexually oriented business license shall be accompanied by a one hundred fifty dollar (\$150.00) non-refundable application and investigation fee.



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(c) In addition to the application and investigation fee required in subsection (a) or (b) hereof, every applicant that is granted a sexually oriented business license (new or renewal) shall pay to the City an annual, non-refundable license fee of three hundred dollars (\$300.00) 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 one hundred dollars (\$100.00).

(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 thirty-five dollars (\$35.00).

## 755.11 INSPECTION

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

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

(c) An applicant or licensee shall permit the City of Brookville Police Department, Fire Department, Building Inspector, or other City Departments or Agencies to inspect the premises of a sexually oriented business for the purpose of insuring compliance with provisions of this chapter, at any time that the sexually oriented business is occupied or open for business.

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

(e) All employee licenses shall be kept on the licensed premises and readily available for review.

## 755.12 EXPIRATION AND RENEWAL OF LICENSE

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

(b) An application for renewal of a sexually oriented business license shall be submitted to the City Manager on a form provided by the City Manager. The renewal application may request and the applicant shall provide such information as reasonably necessary to enable the City to determine whether the applicant meets the qualifications established in this chapter. The completed renewal application shall describe any changes or additions to, or deletions from, the information provided in the applicant's initial license application pursuant to Section 755.07. The completed renewal application shall be accompanied by copies of any document or material submitted in connection with the initial license application that has been revised or requires revision to reflect any change in circumstances or conditions. Sketches or diagrams submitted with an initial sexually oriented business license application may be resubmitted with subsequent renewal applications, provided that the applicant certifies in writing that the sketch or diagram still depicts the premises accurately.

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



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(d) The City Manager 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 shall be submitted to the City Manager on a form provided by the City Manager. The renewal application may request and the applicant shall provide such information as reasonably necessary to enable the City to determine whether the applicant meets the qualifications established in this chapter. The completed renewal application shall describe any changes or additions to, or deletions from, the information provided in the applicant's initial license application pursuant to Section 755.09. The completed renewal application shall be accompanied by copies of any document or material submitted in connection with the initial license application that has been revised or requires revision to reflect any change in circumstances or conditions.

(f) The City Manager shall make determinations concerning the approval of license renewals based on the same criteria used to evaluate applications for new licenses under Section 755.07 and 755.09.

(g) The City Manager 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 has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the denial was issued.

## 755.13 SUSPENSION

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

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

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

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

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

## 755.14 REVOCATION

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

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

- (1) A licensee gave false or misleading information in the material submitted during the application process; or
- (2) The licensee(s) failed to comply with any requirement stated in the license, pursuant to Section 755.07, to correct specified deficiencies within 120 days;
- (3) A licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;

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(4) A licensee has knowingly allowed prostitution, solicitation, or the commission of a felony on the premises;

(5) A licensee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;

(6) A licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises;

(7) A licensee has been convicted of a specified criminal activity, as defined in Section 755.02, 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 Manager shall revoke a sexually oriented business employee license if he determines that:

(1) The licensee gave false or misleading information in the material submitted during the application process;

(2) The licensee has knowingly acted as an employee on the premises of a sexually oriented business during a period of time when the licensee's license was suspended; or

(3) The licensee has been convicted of a specified criminal activity, as defined in Section 755.02 during the term of the license.

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

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

## 755.15 APPEAL RIGHTS

(a) Any denial, suspension, or revocation of a new or renewal license under this chapter may be appealed to the Board of Zoning Appeals by written notice within ten (10) days of such denial, suspension, or revocation. Unless the applicant requests a longer period, the Board must hold a hearing on the appeal within fourteen (14) days and must issue a decision affirming or reversing the denial, suspension, or revocation within five (5) days after the hearing.

(b) Any decision by the Board of Zoning 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 chapter, the applicant or licensee shall provide written notice of such appeal to the Board of Zoning Appeals within three (3) days 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 Board 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 original papers, testimony and evidence offered, heard, and taken into consideration in issuing the final order. The Board and all other departments or agencies of the City shall provide any further information, assistance, or cooperation requested by the reviewing court without delay.

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

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(e) Subject to the provisions of subsection (f) hereof of this section, any licensee lawfully acting as an employee in a sexually oriented business prior to the denial of a license renewal application, or the suspension or revocation of a license, may continue to serve in such capacity during the pendency of an appeal to the Board of Zoning 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 sixty (60) days of the date the appeal was filed, the City will issue such applicant a provisional sexually oriented business license or sexually oriented business employee license upon request of the applicant. The provisional license:

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

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

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

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

755.16 TRANSFER OF LICENSE

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

755.17 PROHIBITION OF ADULT MOTELS

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



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

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

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

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

## 755.18 REGULATIONS OF EXHIBITION OF SEXUALLY EXPLICIT FILMS, VIDEOS OR LIVE ENTERTAINMENT IN VIEWING BOOTHS

(a) No person may operate or cause to be operated a sexually oriented business which exhibits on the premises in a viewing booth, as defined in Section 755.02, 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 the employee's station of every area of the premises to which any patron is permitted access for any purpose, including the interior of all viewing booths and excluding restrooms. Restrooms may not contain video reproduction equipment, and no entertainment of any kind may be offered in restrooms. If the premises has two or more employee's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the employee's stations. The view required in this subsection must be by direct line of sight from the employee's station.

(3) No alteration in the configuration or location of an employee's station shall be made, without the prior approval of the City Manager.

(4) At least one employee shall be on duty and situated in each employee's station at all times that any patron is present inside the premises.

(5) An employee's station shall not exceed thirty-two (32) square feet of floor area, and no single dimension of an employee's station shall exceed eight (8) feet.

(6) The view from the employee's station(s) shall remain unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials.

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(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 third degree if he operates a sexually oriented business in violation of subsection (a) hereof.

## 755.19 ADDITIONAL REGULATIONS FOR OPERATION OF SEXUALLY ORIENTED BUSINESSES

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

(1) No employee on the premises of a sexually oriented business may appear in a state of "nudity," as defined in Section 755.02, or engage in "specified sexual activities" in a state of "nudity," as defined in Section 755.02.

(2) Any employee appearing on the premises of a sexually oriented business in a state of semi-nudity, as defined in Section 755.02, must be on a stage that is at least forty-five (45) inches from the floor, and at a distance at least seventy-two (72) inches from all parts of a clear 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 forty-five (45) inches from the floor and a distance of at least seventy-two (72) 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 755.02, 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 knowingly permit himself or herself to be touch by a customer or a customer's clothing.

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(6) Any live entertainment that is provided on the premises of a sexually oriented business, in a private or semi-private room, must take place in the direct, unobstructed line of sight of an employee's station at which at least one employee is on duty and stationed at all times during which such entertainment takes place, with all doors to such room completely open and ajar, if such room is not considered a "viewing booth" under Section 755.02 and therefore is not subject to the provisions of Section 755.18.

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

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

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

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

(e) Minimum Lighting Level:

(1) The premises of every sexually oriented business shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access, including restrooms, at an illumination level of not less than five (5.0) 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.

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

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

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

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



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Passed October 18, 2005

(j) Any operator of a sexually oriented business or his agent or employee who reckless violates, or operates a sexually oriented business in violation subsection (c) hereof commits a misdemeanor of the second degree. Mistake of age is not a defense to a charge under this section, unless the person under age eighteen (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 (18) 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 of age.

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

(a) It shall be the duty of the operator of a sexually oriented business to:

(1) Initiate and enforce a no loitering policy within the external boundaries of the real property upon which the sexually oriented businesses are located;

(2) Post conspicuous signs stating that no loitering is permitted on such property;

(3) Designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every thirty (30) minutes or inspecting such property by use of video cameras and monitors; and

(4) Provide adequate lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. The video cameras and monitors shall operate continuously at all times that the premises is open for business. The monitors shall be installed within a manager's station.

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

**755.21 INJUNCTION**

Any person who operates or causes to be operated a sexually oriented business in violation of this chapter is subject to suit for injunction as well as prosecution for criminal violations under Chapter 755 of the Codified Ordinances of the City of Brookville.

**755.22 EFFECT OF PARTIAL INVALIDITY**

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

**755.99 PENALTY**

(a) Unless otherwise provided in this chapter, any violations of any provision of this chapter shall be a misdemeanor of the first degree punishable by fine up to and including one thousand dollars (\$1,000) and imprisonment up to and including one hundred eighty (180) days.

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

**SECTION 2:** This Ordinance shall be effective at the earliest date permitted by the Charter of the City of Brookville, Ohio.


## RECORD OF ORDINANCES

Dayton Legal Blank, Inc.

Form No. 30043

Ordinance No. 2005-10Passed October 18, 2005PASSED THIS 18TH DAY OF OCTOBER, 2005

ATTEST:



Sonja M. Keaton, Clerk



David E. Seagraves, Mayor

CERTIFICATE

The undersigned, Clerk of the City of Brookville, Ohio, does hereby certify that the foregoing is a true and correct copy of Ordinance 2005-10 passed by the Council of said City on the 18th day of October, 2005.



Sonja M. Keaton, Clerk

CERTIFICATE OF POSTING

The undersigned, Clerk of Council of the City of Brookville, Ohio, hereby certifies that the foregoing Ordinance 2005-10 was posted at the City Building, U.S. Post Office, and the Brookville Branch of the Montgomery County Public Library, Brookville, Ohio, on the 21st day of October, 2005 to the 21st day of November, 2005, both days inclusive.



Sonja M. Keaton, Clerk