

**CITY OF FLORENCE, KENTUCKY
ORDINANCE O-28-2023**

AN ORDINANCE REPEALING AND REPLACING ORDINANCE NO. O-2-07 AND CHAPTER 119 OF THE CITY OF FLORENCE, KENTUCKY CODE OF ORDINANCES, AMENDING LICENSING REQUIREMENTS AND REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES AND EMPLOYEES WITHIN THE CITY OF FLORENCE, KENTUCKY.

WHEREAS, sexually oriented businesses require special supervision from the public safety agencies of the City of Florence (“City”) in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the City; and

WHEREAS, Florence City Council (“City Council”) finds that sexually oriented businesses, as a category of establishments, are frequently used for unlawful sexual activities, including prostitution, and sexual liaisons of a casual nature; and

WHEREAS, there is convincing documented evidence that sexually oriented businesses, as a category of establishments, have deleterious secondary effects and are often associated with crime and adverse effects on surrounding properties; and

WHEREAS, the City Council desires to protect the health, safety, and welfare of the citizenry; protect the citizens from crime; preserve the quality of life; preserve the character of surrounding neighborhoods and deter the spread of urban blight; and

WHEREAS, certain sexually oriented products and services offered to the public are recognized as not inherently expressive and not protected by the First Amendment, see, e.g., *Heideman v. South Salt Lake City*, 348 F.3d 1182, 1195 (10th Cir. 2003) ("On its face, the Ordinance applies to all 'sexually oriented businesses,' which include establishments such as 'adult motels' and 'adult novelty stores,' which are not engaged in expressive activity."); *Sewell v. Georgia*, 233 S.E.2d 187 (Ga. 1977), dismissed for want of a substantial federal question, 435 U.S. 982 (1978) (sexual devices); *FWIPBS, Inc. v. City of Dallas*, 493 U.S. 215, 224 (1990) (escort services and sexual encounter services); and

WHEREAS, there is documented evidence of sexually oriented businesses, including adult bookstores and adult video stores, manipulating their inventory and/or business practices to avoid regulation while retaining their essentially "adult" nature, see, e.g., *ZJ Gifts D-4, L.L. C. v. City of Littleton*, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001) (finding retail adult store's "argument that it is not an adult entertainment establishment" to be "frivolous at best"); *People ex rel. Deters v. The Lion's Den, Inc.*, Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005) (noting that "the accuracy and credibility" of the evidence on inventory in adult retail store was suspect, and that testimony was "less than candid" and "suggested an intention to obscure the actual amount of sexually explicit material sold"); *City of New York v. Hammes*, 724 N.E.2d 368 (N.Y. 1999) (documenting manipulation of inventory to avoid adult classification); *Taylor v. State*, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002) (noting that "the nonadult video

selections appeared old and several of its display cases were covered with cobwebs"); *HH-Indianapolis, LLC v. Consol. City of Indianapolis/Marion County*, 889 F.3d 432 (7th Cir. 2018); *HR-Indianapolis, LLC v. Consol. City of Indianapolis/Marion County*, 265 F. Supp. 3d 873 (S.D. Ind. 2017); and

WHEREAS, the manner in which an establishment holds itself out to the public is a reasonable consideration in determining whether the establishment is a sexually oriented business, see, e.g., *East Brooks Books, Inc. v. Shelby County*, 588 F.3d 360, 365 (6th Cir. 2009) ("A prominent display advertising an establishment as an 'adult store,' moreover, is a more objective indicator that the store is of the kind the Act aims to regulate, than the mere share of its stock or trade comprised of adult materials."); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 261 (1991) (Scalia, J., concurring in part and dissenting in part) ("[I]t is most implausible that any enterprise which has as its constant intentional objective the sale of such [sexual] material does not advertise or promote it as such."); see also *Johnson v. California State Bd of Accountancy*, 72 F.3d 1427 (9th Cir. 1995) (rejecting First Amendment challenge to statute which used the phrase "holding out" to identify conduct indicative of the practice of public accountancy, but did not ban any speech); *Spencer v. World Vision, Inc.*, 633 F.3d 723 (9th Cir. 2010) (O'Scannlain, J., concurring) (concluding that whether an entity "holds itself out" as religious is a neutral factor and that factor helps to ensure that the entity is a bona fide religious entity); and

WHEREAS, the City intends to regulate such businesses as sexually oriented businesses through a narrowly tailored Ordinance designed to serve its substantial government interest in protecting the health, safety, and welfare of the community, including by preventing the negative secondary effects of sexually oriented businesses; and

WHEREAS, the City recognizes its constitutional duty to interpret and construe its laws to comply with constitutional requirements as they are announced; and

WHEREAS, with the passage of any Ordinance, the City and the City Council accept as binding the applicability of general principles of criminal and civil law and procedure and the rights and obligations under the United States and Kentucky Constitutions, Kentucky Code, and the Kentucky Rules of Civil and Criminal Procedure; and

WHEREAS, it is not the intent of this Ordinance to suppress any speech activities protected by the U.S. Constitution or the Kentucky Constitution, but to enact legislation to further the content-neutral governmental interests of the City, to wit, the controlling of secondary effects of sexually oriented businesses; and

WHEREAS, the City has regulated such establishments since at least 2007 through Chapter 119; and

WHEREAS, the City Council desires to continue its longstanding regulations of sexually oriented businesses, by replacing the provisions in Chapter 119 with the updated and revised provisions adopted in this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF FLORENCE, KENTUCKY, AS FOLLOWS:

SECTION I

Ordinance No. O-2-07 and Chapter 119 of the Code of City Ordinances is repealed and the following Chapter is enacted as the new Chapter 119 of the Code of Ordinances:

CHAPTER 119: SEXUALLY ORIENTED BUSINESSES

Section

- 119.01 Rationale and findings
- 119.02 Definitions
- 119.03 Classifications
- 119.04 License required
- 119.05 Issuance of license
- 119.06 Fees
- 119.07 Inspection
- 119.08 Expiration and renewal of license
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- 119.10 Revocation
- 119.11 Hearing; license denial, suspension, revocation; appeal
- 119.12 Transfer of license
- 119.13 Hours of Operation
- 119.14 Regulations pertaining to operation of adult arcade or adult motion picture theater
- 119.15 Loitering; exterior lighting; monitoring requirements
- 119.16 Applicability to existing businesses
- 119.17 Prohibited Conduct
- 119.18 Scierter required to prove violation or business licensee liability
- 119.19 Conflicting Code provisions repealed
- 119.20 Penalty

§ 119.01 RATIONALE AND FINDINGS

- (A) Purpose. It is the purpose of this Chapter to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the City. The provisions of this Chapter have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor 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 material.
- (B) Findings and Rationale. Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the City Council, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *Bellanca v. N.Y. State Liquor Authority*, 452 U.S. 714 (1981); *Sewell v. Georgia*, 435 U.S. 982 (1978); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *City of Dallas v. Stanglin*, 490 U.S. 19 (1989); and *600 Marshall Entm't Concepts, LLC v. City of Memphis*, 705 F.3d 576 (6th Cir. 2013); *Big Dipper Entm't, LLC v. City of Warren*, 641 F.3d 715 (6th Cir. 2011); *East Brooks Books, Inc. v. Shelby County*, 588 F.3d 360 (6th Cir. 2009); *Entm't Prods., Inc. v. Shelby County*, 588 F.3d 372 (6th Cir. 2009); *Richland Bookmart, Inc. v. Knox County*, 555 F.3d 512 (6th Cir. 2009); *Sensations, Inc. v. City of Grand Rapids*, 526 F.3d 291 (6th Cir. 2008); *729, Inc. v. Kenton County Fiscal Court*, 515 F.3d 485 (6th Cir. 2008); *Deja Vu of Nashville, Inc. v. Metropolitan Gov't of Nashville and Davidson County*, 466 F.3d 391 (6th Cir. 2006); *Deja Vu of Cincinnati, L.L.C. v. Union Township Bd. Of Trustees*, 411 F.3d 777 (6th Cir. 2005) (en banc); *Bronco's Entm't, Ltd. v. Charter Twp. Of Van Buren*, 421 F.3d 440 (6th Cir. 2005); *Little Mack Entm't II, Inc. v. Twp. Of Marengo*, 2008 WL 2783252 (W.D. Mich. July 17, 2008); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *84 Video/Newsstand, Inc. v. Sartini*, 2011 WL 3904097 (6th Cir. Sept. 7, 2011); *Big Dipper Entm't, LLC v. City of Warren*, 658 F. Supp. 2d 831 (E.D. Mich. 2009); *Kentucky Restaurant Concepts, Inc. v. City of Louisville and Jefferson County*, 209 F. Supp. 2d 672 (W.D. Ky. 2002); *Restaurant Ventures of Lexington- Fayette Urban County Gov't*, 60 S.W.3d 572 (Ct. App. Ky. 2001); *Mr. B's Bar & Lounge, Inc. v. Louisville*, 630 S.W.2d 564 (Ct. App. Ky. 1981); *Commonwealth v. Jameson*, 215 S.W.3d 9 (Ky. 2007); *Blue Movies, Inc. v. Louisville/Jefferson County Metro Government*, 317 S.W.3d 23 (Ky. 2010); *LM Entm't, Inc. v. City of Mt. Sterling*, 2009 WL 1974549 (Ky. Ct. App. July 10, 2009); *Imaginary Images, Inc. v. Evans*, 612 F.3d 736 (4th Cir. 2010); *LLEH, Inc. v. Wichita County*, 289

F.3d 358 (5th Cir. 2002); *Ocello v. Koster*, 354 S.W.3d 187 (Mo. 2011); *Plaza Group Properties, LLC v. Spencer County Plan Commission*, 877 N.E.2d 877 (Ind. Ct. App. 2007); *Flanigan's Enters., Inc. v. Fulton County*, 596 F.3d 1265 (11th Cir. 2010); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Peek-a-Boo Lounge v. Manatee County*, 630 F.3d 1346 (11th Cir. 2011); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *Heideman v. South Salt Lake City*, 348 F.3d 1182 (10th Cir. 2003); *Williams v. Morgan*, 478 F.3d 1316 (11th Cir. 2007); *Jacksonville Property Rights Ass'n, Inc. v. City of Jacksonville*, 635 F.3d 1266 (11th Cir. 2011); *H&A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006); *Illinois One News, Inc. v. City of Marshall*, 477 F.3d 461 (7th Cir. 2007); *G.M. Enterprises, Inc. v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003); *Bigg Wolf Discount Video Movie Sales, Inc. v. Montgomery County*, 256 F. Supp. 2d 385 (D. Md. 2003); *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996); *DCR, Inc. v. Pierce County*, 964 P.2d 380 (Wash. Ct. App. 1998); *City of New York v. Hommes*, 724 N.E.2d 368 (N.Y. 1999); *Taylor v. State*, No. 01-01-00505-CR, 2002 WL1722154 (Tex. App. July 25, 2002); *Fantasyland Video, Inc. v. County of San Diego*, 505 F.3d 996 (9th Cir. 2007); *Stardust, 3007 LLC v. City of Brookhaven*, 899 F.3d 1164 (11th Cir. 2018); *Tokyo Gwinnett, LLC v. Gwinnett County*, No. 1:15-cv-2606, 2022 WL 1027633 (N.D. Ga., April 6, 2022); *HR-Indianapolis, LLC v. Consol. City of Indianapolis/Marion County*, 889 F.3d 432 (7th Cir. 2018); *HR-Indianapolis, LLC v. Consol. City of Indianapolis/Marion County*, 265 F. Supp. 3d 873 (S.D. Ind. 2017); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *Z.J. Gifts D-4, L.L.C. v. City of Littleton*, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001); *People ex rel. Deters v. The Lion's Den, Inc.*, Case No. 04-4 CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005); *Reliable Consultants, Inc. v. City of Kennedale*, No. 4:05-CV-166-A, Findings of Fact and Conclusions of Law (N.D. Tex. May 26, 2005); and based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, "Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD," *Journal of Urban Health* (2011); "Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime?" *Crime & Delinquency* (2012) (Louisville, KY); *Metropolis, Illinois-2011-12*; *Manatee County, Florida-2007*; *Hillsborough County, Florida-2006*; *Clarksville, Indiana-2009*; *El Paso, Texas-2008*; *Memphis, Tennessee - 2006*; *New Albany, Indiana- 2009*; *Louisville, Kentucky-2004*; *Fulton County, GA-2001*; *Chattanooga, Tennessee-1999-2003*; *Jackson County, Missouri-2008*; *Ft. Worth, Texas- 2004*; *Kennedale, Texas-2005*; *Greensboro, North Carolina-2003*; *Dallas, Texas-1997*; *Houston, Texas-1997, 1983*; *Phoenix, Arizona-1995-98, 1979*; *Tucson, Arizona-1990*; *Spokane, Washington- 2001*; *St. Cloud, Minnesota-1994*; *Austin, Texas-1986*; *Indianapolis, Indiana-1984*; *Garden Grove, California-1991*; *Los Angeles, California-1977*; *Whittier, California-1978*; *Oklahoma City, Oklahoma-1986*; *New York, New York Times Square- 1994*; the Report of the Attorney General's Working Group On

The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota); Dallas, Texas-2007; "Rural Hotspots: The Case of Adult Businesses," 19 Criminal Justice Policy Review 153 (2008); "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; Sex Store Statistics and Articles; and Law Enforcement and Private Investigator Affidavits (Adult Cabarets in Forest Park, GA and Sandy Springs, GA), the City Council finds:

- (1) Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation. Alcohol consumption impairs judgment and lowers inhibitions, thereby increasing the risk of adverse secondary effects.
- (2) Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.
- (3) Each of the foregoing negative secondary effects constitutes a harm which the City has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects is the City's rationale for this Chapter. Additionally, the City's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the City. The City finds that the cases and documentation relied on in this Chapter are reasonably believed to be relevant to said secondary effects.

The City hereby adopts and incorporates herein its stated findings and legislative record related to the adverse secondary effects of sexually oriented businesses, including the judicial opinions and reports related to such secondary effects.

§ 119.02 DEFINITIONS.

For purposes of this Ordinance, the words and phrases defined hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

ADMINISTRATOR. The Administrator Director/City Administrator or his or her designee.

ADULT ARCADE. A commercial establishment to which the public is permitted or invited that maintains booths or rooms smaller than 100 square feet, wherein image-producing devices are

regularly maintained to show images characterized by their emphasis upon matter exhibiting specified sexual activities or specified anatomical areas.

ADULT BOOKSTORE. A commercial establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas. A principal business activity exists where the commercial establishment meets any one or more of the following criteria:

- (1) At least 35% of the establishment's displayed merchandise consists of said items; or
- (2) At least 35% of the establishment's revenues derive from the sale or rental, for any form of consideration, of said items; or
- (3) The establishment maintains at least 35% of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items, as well as cashier stations where said items are rented or sold, shall be included in "floor space" maintained for the display, sale, or rental of said items); or
- (4) The establishment maintains at least five hundred square feet (500 sq. ft.) of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items, as well as cashier stations where said items are rented or sold, shall be included in "floor space" maintained for the display, sale, or rental of said items), or
- (5) The establishment regularly offers for sale or rental at least five hundred (500) of said items; or
- (6) The establishment regularly makes said items available for sale or rental and holds itself out, in any medium, as an establishment that caters to adult sexual interests.

ADULT CABARET. A nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment that regularly offers live semi-nude conduct. No establishment shall avoid classification as an adult cabaret by offering nude conduct.

ADULT MOTION PICTURE THEATER. A commercial establishment to which the public is permitted or invited that maintains viewing rooms that are 100 square feet or larger wherein films or videos characterized by their emphasis upon specified sexual activities or specified anatomical areas are regularly shown.

CHARACTERIZED BY. Describing the essential character or quality of an item. As applied in this Chapter, no business shall be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

CITY. City of Florence, Kentucky.

EMPLOY, EMPLOYEE, and EMPLOYMENT. Describe and pertain to any person who works or engages in activity for pay on the premises of a sexually oriented business, on a full-time, part-time, temporary, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, lessee, or otherwise. EMPLOYEE does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises, or an attorney, accountant, or similar state-licensed professional performing professional services for the business.

ESTABLISH or ESTABLISHMENT. Shall mean and include any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business;
- (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or
- (3) The addition of any sexually oriented business to any other existing sexually oriented business.

FLOOR SPACE. The floor area inside an establishment that is visible or accessible to patrons for any reason, excluding restrooms.

HEARING OFFICER. An attorney, not otherwise employed by the City, appointed by the City Council to serve until a successor is appointed, and retained to serve as an independent tribunal to conduct hearings under this Chapter.

INFLUENTIAL INTEREST. The actual power to influence or control the operation, management, or policies of the sexually oriented business or legal entity which operates the sexually oriented business. An individual is deemed to have an "influential interest" if the individual:

- (1) Is the on-site general manager of the sexually oriented business;
- (2) Owns a financial interest of 30% or more of a business or of any class of voting securities of a business; or
- (3) Holds an office (such as president, vice president, secretary, treasurer, managing member, managing director, and the like) in a legal entity which operates the sexually oriented business.

LICENSEE. A person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In the case of an employee, it shall mean the person in whose name the sexually oriented business employee license has been issued.

NUDITY or NUDE CONDUCT. The showing of the human male or female genitals, pubic area, vulva, or anus with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola. For purposes of this definition,

a "fully opaque covering" must not consist of any substance that can be washed or peeled off the skin (such as paint, make-up, or latex).

OPERATE. To cause to function or to put or keep in a state of doing business.

OPERATOR. Any person who manages, supervises, or controls the sexually oriented business or a portion thereof. A person may be found to be an operator regardless of whether that person is an owner, part owner, or licensee of the business.

PERSON. Individual, proprietorship, partnership, corporation, association, or other legal entity.

PREMISES. The real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a sexually oriented business license.

REGIONAL SHOPPING MALL (ENCLOSED). A group of retail and other commercial establishments that is planned, developed, and managed as a single property, with on-site parking provided around the perimeter of the shopping center, and that is generally at least forty acres in size and flanked by two or more large "anchor" stores, such as department stores. The common walkway or "mall" is enclosed, climate-controlled and lighted, usually with an inward orientation of the stores facing the walkway.

REGULARLY. The consistent and repeated doing of an act on an ongoing basis.

SEMI-NUDE or SEMI-NUDITY. The showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks, with less than a fully opaque covering. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part. For purposes of this definition, a "fully opaque covering" must not consist of any substance that can be washed or peeled off the skin (such as paint, make-up, or latex).

SEXUAL DEVICE. Any three dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, nipple, or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

SEXUAL DEVICE SHOP. A commercial establishment:

- (1) Where more than 100 sexual devices are regularly made available for sale or rental; or
- (2) Where sexual devices are regularly made available for sale or rental and the establishment regularly gives special prominence to sexual devices (e.g., by using lighted display cases

for sexual devices, having a large variety of sexual devices, having a room or discrete area of the establishment significantly devoted to sexual devices, or positioning sexual devices near cash registers or similar points of sale).

This definition shall not be construed to include an establishment located within an enclosed regional shopping mall, an establishment containing a pharmacy that employs a licensed pharmacist to fill prescriptions on the premises, or an establishment that is enrolled in Medicare as a durable medical equipment, prosthetics, and supplies (DMEPOS) supplier.

SEXUALLY ORIENTED BUSINESS. An adult arcade, an adult bookstore, an adult cabaret, an adult motion picture theater, or a sexual device shop.

SPECIFIED ANATOMICAL AREAS. Include:

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

SPECIFIED CRIMINAL ACTIVITY. Any of the following specified crimes for which less than five years elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:

- (1) KRS 510.040, 510.050, or 510.060 (rape in the first, second, or third degree); KRS 510.070, 510.080, or 510.090 (sodomy in the first, second, or third degree); KRS 510.110, 510.120, or 510.130 (sexual abuse in the first, second, or third degree); KRS 510.140 (sexual misconduct); KRS 510.148, 510.150 (indecent exposure);
- (2) KRS 517.050 (falsifying business records);
- (3) KRS 529.020, 529.030, 529.040, or 529.050 (prostitution, promoting prostitution in the first, second, or third degree); KRS 529.070, (permitting prostitution);
- (4) KRS 531.020, 531.030, or 531.040 (distributing obscene matter, distributing obscene matter to minors, using minors to distribute obscene matter);
- (5) KRS 218A.140, et seq. (offenses relating to controlled substances);
- (6) Any offense listed in KRS 531.300 through 531.370 (sexual exploitation of minors offenses);
- (7) Engaging in organized crime (KRS 506.120) relating to a sexually oriented business;
- (8) Any criminal attempt, conspiracy, or solicitation to commit one of the foregoing offenses;
or

- (9) Any offense in another jurisdiction that, had the predicate act(s) been committed in Kentucky, would have constituted any of the foregoing offenses.

SPECIFIED SEXUAL ACTIVITY. Any of the following:

- (1) Intercourse, oral copulation, masturbation or sodomy; or
- (2) Excretory functions as a part of or in connection with any of the activities described in (1) above.

TRANSFER OF OWNERSHIP OR CONTROL (of a sexually oriented business). Any of the following:

- (1) The sale, lease, or sublease of the business;
- (2) The transfer of securities which constitute an influential 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.

VIEWING ROOM. The room or booth where a patron of a sexually oriented business would ordinarily be positioned while watching a film, videocassette, digital video disc, or other video on an image-producing device.

§ 119.03 CLASSIFICATION.

The classifications for sexually oriented businesses shall be as follows:

- (A) Adult bookstore;
- (B) Adult cabaret;
- (C) Adult motion picture theater;
- (D) Adult arcade;
- (E) Sexual device shop;

§ 119.04 LICENSE REQUIRED.

- (A) *Business license.* It shall be unlawful for any person to operate a sexually oriented business in the City without a valid sexually oriented business license.
- (B) *Employee license.* It shall be unlawful for any person to be an employee, as defined in this Chapter, of a sexually oriented business in the City without a valid sexually oriented business employee license, except that a person who is a licensee under a valid sexually oriented business license shall not be required to also obtain a sexually oriented business employee license. It shall be unlawful for any person who operates a sexually oriented

business to employ a person at the establishment who does not have a valid sexually oriented business employee license.

(C) *Application.* An applicant for a sexually oriented business license or a sexually oriented business employee license shall file in person at the office of the City Administrator a completed application made on a form provided by the City Administrator. A sexually oriented business may designate an individual with an influential interest in the business to file its application for a sexually oriented business license in person on behalf of the business. The application shall be signed as required by division (D) herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in this division, accompanied by the appropriate licensing fee:

- (1) The applicant's full legal name and any other names used by the applicant in the preceding five years.
- (2) Current business address or another mailing address, and an email address, for the applicant.
- (3) Written proof of age, in the form of a driver's license, a picture identification document containing the applicant's date of birth issued by a governmental agency, or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.
- (4) If the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number of the sexually oriented business, along with a list of the business's employees and a list identifying each of the business's operators, as defined in § 119.02.
- (5) If the application is for a sexually oriented business license, the name and business address of the statutory agent or other agent authorized to receive service of process.
- (6) A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in § 119.02, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.
- (7) A statement of whether any sexually oriented business in which an applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):
 - (a) Been found by a court to have been operating unlawfully;
 - (b) Been enjoined by a court from engaging in conduct prohibited by law;

(c) Been held in contempt of court for operating contrary to a court order;

(d) Been declared by a court to be a nuisance; or

(e) Been subject to a court order requiring closure of the business or affirming revocation of any license required to operate the business.

(8) An application for a sexually oriented business license shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business and a statement of floor area visible or accessible to patrons for any reason, excluding restrooms. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. Applicants who are required to comply with the stage, booth, and/or room configuration requirements of this Chapter shall submit a diagram indicating that the setup and configuration of the premises meets the requirements of the applicable regulations. The information provided pursuant to this division shall be supplemented in writing by certified mail, return receipt requested, to the City Administrator within ten working days of a change of circumstances which would render the information originally submitted false or incomplete.

(9) If the application is for a sexually oriented business license, a statement whether the applicant is the owner of the premises wherein the establishment will be operated or holds a lease thereon for the period to be covered by the license. If the applicant is a lease holder, a copy of the lease shall be submitted with the license application.

(10) If the application is for a sexually oriented business employee license, the name and address of the establishment where the applicant intends to use the employee license.

(D) *Signature.* A person who seeks a sexually oriented business employee license under this section shall sign the application for a license. If a person who seeks a sexually oriented business license under this section is an individual, he shall sign the application for a license as applicant. If a person who seeks a sexually oriented business license is other than an individual, each person with an influential interest in the sexually oriented business or in a legal entity that controls the sexually oriented business shall sign the application for a license as applicant. Each applicant must be qualified under this Chapter and each applicant shall be considered a licensee if a license is granted.

(E) The information provided by an applicant in connection with an application for a license under this Chapter will not be disclosed by the office of the City Administrator under public records laws except as may be required, and only to the extent required, by governing law

or court order. Any information protected by the right to privacy as recognized by state or federal law shall be redacted prior to such disclosure.

§ 119.05 ISSUANCE OF LICENSE.

(A) *Business license.* Upon the filing of a completed application for a sexually oriented business license, the City Administrator shall issue a temporary license to the applicant within 5 business days if the completed application is from a preexisting sexually oriented business that is, in all respects, lawfully operating in the City and the completed application, on its face, shows that the applicant is entitled to an annual sexually oriented business license. The temporary license shall expire upon the final decision of the City to deny or grant an annual license. Within 30 days of the filing of a completed sexually oriented business license application, the City Administrator shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The City Administrator shall issue a license unless:

- (1) An applicant is less than 18 years of age.
- (2) An applicant has failed to provide information required by this Chapter for issuance of a license or has falsely answered a question or request for information on the application form.
- (3) The license application fee required by this Chapter has not been paid.
- (4) The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this Chapter or is not in compliance with the location requirements of any Ordinance or regulation in effect in the county.
- (5) Any sexually oriented business in which an applicant has had an influential interest has, in the previous five years (and at a time during which the applicant had the influential interest):
 - (a) Been found by a court to have been operating unlawfully;
 - (b) Been enjoined by a court from engaging in conduct prohibited by law;
 - (c) Been held in contempt of court for operating contrary to a court order;
 - (d) Been declared by a court to be a nuisance; or
 - (e) Been subject to a court order requiring closure of the business or affirming revocation of any license required to operate the business.
- (6) An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in § 119.02.

- (7) The applicant is neither the owner of the premises wherein the establishment will be operated, nor the holder of a lease thereon for the period to be covered by the license.
- (8) An employee or operator of the applicant operated a sexually oriented business that, in the previous five (5) years (and due to conduct occurring when the person was an operator of the sexually oriented business), has:
 - (a) Been found by a court to have been operating unlawfully;
 - (b) Been enjoined by a court from engaging in conduct prohibited by law;
 - (c) Been held in contempt of court for operating contrary to a court order;
 - (d) Been declared by a court to be a nuisance; or
 - (e) Been subject to a court order requiring closure of the business or affirming revocation of any license required to operate the business.

(B) *Employee license.* Upon the filing of a completed application for a sexually oriented business employee license, the City Administrator shall issue a temporary license to the applicant within 3 business days if the applicant seeks licensure to work in a licensed sexually oriented business and the completed application, on its face, shows that the applicant is entitled to an annual sexually oriented business employee license. The temporary license shall expire upon the final decision of the City to deny or grant an annual license. Within 30 days of the filing of a completed sexually oriented business employee license application, the City Administrator shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The City Administrator shall issue a license unless:

- (1) The applicant is less than 18 years of age.
- (2) The applicant has failed to provide information as required by this Chapter for issuance of a license or has falsely answered a question or request for information on the application form.
- (3) The license application fee required by this Chapter has not been paid.
- (4) Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):
 - (a) Been found by a court to have been operating unlawfully;
 - (b) Been enjoined by a court from engaging in conduct prohibited by law;
 - (c) Been held in contempt of court for operating contrary to a court order;

- (d) Been declared by a court to be a nuisance; or
 - (e) Been subject to a court order requiring closure of the business or affirming revocation of any license required to operate the business.
- (5) The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in § 119.02.
- (6) The applicant has expressed the intent to use the sexually oriented business employee license at an establishment that is not licensed by the City to operate a sexually oriented business.

(C) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall be kept on the premises of the sexually oriented business so that it may be inspected by the City Administrator and his or her agents at any time that the business is occupied by patrons or is open to the public. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working.

§ 119.06 FEES.

The initial license and annual renewal fees for sexually oriented business licenses and sexually oriented business employee licenses shall be as follows: \$100 for the initial fee for a sexually oriented business license and \$50 for annual renewal; \$50 for the initial sexually oriented business employee license and \$25 for annual renewal.

§ 119.07 INSPECTION.

Sexually oriented businesses and sexually oriented business employees shall permit the City Administrator and the City Code Enforcement Officers, and his or her agents to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this Chapter, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed to authorize only reasonable inspections of the licensed premises pursuant to this Chapter.

§ 119.08 EXPIRATION AND RENEWAL OF LICENSE.

- (A) Each license shall remain valid for a period of one calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in this Chapter. When a renewal license is issued, it shall become effective the day after the previous license expires and shall remain valid for a period of one calendar year from its effective date unless otherwise suspended or revoked.

(B) Application for renewal of an annual license should be made at least 90 days before the expiration date of the current annual license, and when made less than 90 days before the expiration date, the expiration of the current license will not be affected.

§ 119.09 SUSPENSION.

(A) The City Administrator shall issue a written notice of intent to suspend a sexually oriented business license for a period not to exceed 30 days if the sexually oriented business licensee has knowingly or recklessly violated this Chapter or has knowingly or recklessly allowed an employee or any other person to violate this Chapter.

(B) The City Administrator shall issue a written notice of intent to suspend a sexually oriented business employee license for a period not to exceed 30 days if the employee licensee has knowingly or recklessly violated this Chapter.

§ 119.10 REVOCATION.

(A) The City Administrator shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if the licensee knowingly or recklessly violates this Chapter or has knowingly or recklessly allowed an employee or any other person to violate this Chapter and a suspension of the licensee's license has become effective within the previous 12-month period.

(B) The City Administrator shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if:

- (1) The licensee has knowingly given false information in the application for the sexually oriented business license or the sexually oriented business employee license;
- (2) The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises of the sexually oriented business;
- (3) The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises of the sexually oriented business;
- (4) The licensee knowingly or recklessly operated the sexually oriented business during a period of time when the license was finally suspended or revoked;
- (5) The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity or specified criminal activity to occur in or on the premises of the sexually oriented business;
- (6) The licensee has knowingly or recklessly allowed a person under the age of 21 years to consume alcohol on the premises of the sexually oriented business;

- (7) The licensee has knowingly or recklessly allowed a person under the age of 18 years to appear in a semi-nude condition or in a state of nudity on the premises of the sexually oriented business; or
 - (8) The licensee has knowingly or recklessly allowed 3 or more violations of this Chapter within a 12-month period.
 - (9) The licensee has failed to meet or maintain the qualifications to be issued or to hold the license.
- (C) The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.
- (D) When, after the notice and hearing procedure described in this Chapter, the City revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for one year from the date revocation becomes effective.

§ 119.11 HEARING; LICENSE DENIAL, SUSPENSION, REVOCATION; APPEAL.

(A) (1) When the City Administrator issues a written notice of intent to deny, suspend, or revoke a license, the City Administrator shall immediately send such notice, which shall state the grounds under this Chapter for such action, to the applicant or licensee by personal delivery or certified mail or email. The notice shall be directed to the most current business address or other mailing address or email address on file with the City Administrator for the applicant or licensee. The notice shall also set forth the following: The applicant or licensee shall have 10 business days after the issuance of the written notice to deliver, at the office of the City Administrator, a written request for a hearing that specifies the alleged defects in the City Administrator's licensing decision. If the applicant or licensee does not request a hearing within said 10 business days, the City Administrator's written notice shall become a final denial, suspension, or revocation, as the case may be, on the 15th business day after it is issued.

(2) If the applicant or licensee (hereafter, "petitioner") does make a written request for a hearing within said 10 business days, then the City Administrator shall, within 10 business days after receiving the request, send a notice to the petitioner indicating the date, time, and place of the hearing. The hearing shall be conducted not less than 10 days nor more than 30 days after the date that the hearing notice is issued. The hearing may be transcribed by either party.

(3) At the hearing, the petitioner shall have the opportunity to present all relevant arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the City Administrator's witnesses. The City Administrator may also be represented by counsel, present evidence and witnesses, and cross-examine any of the petitioner's witnesses. The hearing shall take no longer than one day, unless extended at the request of the petitioner to meet the requirements of due process and proper administration of justice. The petitioner shall have the burden of proving by a preponderance of the evidence that there is no substantial evidence to support the City Administrator's licensing decision. The Hearing Officer shall affirm the City Administrator's licensing decision if any substantial evidence in the record at the hearing supports any of the grounds set forth in the written notice of intent to deny, suspend, or revoke. The Hearing Officer shall issue a final written decision, including specific reasons for the decision pursuant to this Chapter, to the petitioner and the City within five days after the hearing.

(4) If the decision is to deny, suspend, or revoke the license, the decision shall advise the petitioner of the right to appeal such decision to a court of competent jurisdiction, and the decision shall not become effective until the 10th day after it is rendered. If the Hearing Officer's decision finds that there is no substantial evidence to support the City Administrator's licensing decision, the Hearing Officer shall, contemporaneously with the issuance of the decision, order the City Administrator to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the petitioner in writing by certified mail or email of such action. If the petitioner is not yet licensed, the City Administrator shall contemporaneously therewith issue the license to the applicant.

(B) If any court action challenging the licensing decision is initiated, the City shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any sexually oriented business that is, in all respects, lawfully operating as a sexually oriented business, or any sexually oriented business employee that is lawfully employed as a sexually oriented business employee, on the date on which the completed business or employee application, as applicable, is filed with the City Administrator. Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the City's enforcement of any denial, suspension, or revocation of a license, the City Administrator shall immediately issue the petitioner a provisional license. The provisional license shall allow the petitioner to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the petitioner's appeal or other action to restrain or otherwise enjoin the City's enforcement, unless the provisional license is suspended or revoked prior to entry of said judgment. While a provisional license is in effect, the provisional licensee shall comply with

the regulations set forth in §119.07, §119.13, §119.14, §119.15, and §119.18, and any violations thereof shall be subject to the provisions of §119.99. A provisional license may be suspended under §119.09 or revoked under §119.10, and if an appeal is taken from that suspension or revocation decision, the City will issue no further provisional license or stay of enforcement.

§ 119.12 TRANSFER OF LICENSE.

A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application.

§ 119.13 HOURS OF OPERATION.

No sexually oriented business shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day.

§ 119.14 REGULATIONS PERTAINING TO OPERATION OF ADULT ARCADE OR ADULT MOTION PICTURE THEATER.

(A) A person who operates or causes to be operated an adult arcade or adult motion picture theater shall comply with the following requirements.

- (1) Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all operator's stations, booths or viewing rooms, overhead lighting fixtures, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain equipment for displaying films, video cassettes, digital video discs, or other video reproductions. The diagram shall also designate the place at which the 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 shall be oriented to the north or to some designated street or object and shall 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 inches. The City Administrator may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
- (2) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.

- (3) The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five foot-candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.
- (4) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no specified sexual activity occurs in or on the premises.
- (5) It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:
 - (a) That the occupancy of viewing rooms less than 100 square feet is limited to one person.
 - (b) That sexual activity on the premises is prohibited.
 - (c) That the making of openings between viewing rooms is prohibited.
 - (d) That violators will be required to leave the premises.
 - (e) That violations of these regulations are unlawful.
- (6) It shall be the duty of the operator to enforce the regulations articulated in division (5)(a) through (e) above.
- (7) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed 32 square feet of floor area. If the premises has two or more operator'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, excluding restrooms, from at least one of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the

premises, to ensure that the view area specified in this division remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

- (8) It shall be the duty of the operator to ensure that no porous materials are used for any wall, floor, or seat in any booth or viewing room.
- (9) It shall be unlawful for a person having a duty under this section to knowingly or recklessly fail to fulfill that duty.
- (10) No patron shall knowingly or recklessly enter or remain in a viewing room less than 100 square feet in area that is occupied by any other patron.
- (11) No patron shall knowingly or recklessly be or remain within one foot of any other patron while in a viewing room that is 100 square feet or larger in area.
- (12) No person shall knowingly or recklessly make any hole or opening between viewing rooms.

§ 119.15 LOITERING; EXTERIOR LIGHTING; MONITORING REQUIREMENTS.

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

- (1) Post conspicuous signs stating that no loitering is permitted on such property;
- (2) Designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every 90 minutes or inspecting such property by use of video cameras and monitors; and
- (3) Provide lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. Said lighting shall be of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than one (1.0) foot candle as measured at the floor level. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.

(B) It shall be the duty of the operator of a sexually oriented business to ensure that the interior premises shall be equipped with overhead lighting of sufficient intensity to illuminate every place to which customers are permitted access at an illumination

of not less than five (5.0) foot candles as measured at the floor level and the illumination must be maintained at all times that any customer is present in or on the premises.

(C) No sexually oriented business shall erect a fence, wall, or similar barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right-of-way.

(D) It shall be unlawful for a person having a duty under this section to knowingly or recklessly fail to fulfill that duty.

§ 119.16 APPLICABILITY TO EXISTING BUSINESSES.

(A) All existing sexually oriented businesses that are, in all respects, lawfully operating in the City in compliance with all state and local laws on the effective date of this Chapter, and sexually oriented business employees that are, in all respects, lawfully working in a lawfully operating sexually oriented business in the City on the effective date of this Chapter, may continue operation or employment until the expiration, suspension, or revocation of their current license. Further licensing shall be subject to this Chapter.

(B) Except as provided for in § 119.16(A), sexually oriented businesses shall comply with this Chapter on the date that it takes effect.

§ 119.17 PROHIBITED CONDUCT.

(A) No patron, employee, or any other person shall knowingly or intentionally, in a sexually oriented business, appear in a state of nudity or engage in a specified sexual activity.

(B) No person shall knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six feet from all patrons and on a stage at least 18 inches from the floor in a room of at least 1,000 square feet.

(C) No employee who appears semi-nude in a sexually oriented business shall knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business. No customer shall knowingly or intentionally touch such an employee or the clothing of such an employee on the premises of a sexually oriented business.

(D) No person shall possess, use, or consume alcoholic beverages on the premises of a sexually oriented business.

(E) No person shall knowingly or recklessly allow a person under the age of 18 years to be or remain on the premises of a sexually oriented business.

(F) No operator of a sexually oriented business shall knowingly or recklessly allow a room in the sexually oriented business to be simultaneously occupied by any patron and any other employee who is semi-nude or who appears semi-nude on the premises of the sexually oriented business, unless an operator of the sexually oriented business is present in the same room.

(G) No operator or licensee of a sexually oriented business shall violate the regulations in this section or knowingly or recklessly allow an employee or any other person to violate the regulations in this section. Without limiting the scope of the preceding sentence, an operator shall be deemed to have recklessly allowed another person to violate a regulation if, at the time of the violation, the operator failed to have an employee on duty and situated in at least one operator's station having a direct line of sight to the area of the establishment where the violation occurred.

(H) A sign in a form to be prescribed by the City Administrator, and summarizing the provisions of divisions (A), (B), (C), (D), and (E), shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry. No person shall cover, obstruct, or obscure said sign.

§ 119.18 SCIENTER REQUIRED TO PROVE VIOLATION OR BUSINESS LICENSEE LIABILITY.

This Chapter does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a reckless mental state is necessary to establish a violation of a provision of this Chapter. Notwithstanding anything to the contrary, for the purposes of this Chapter, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the sexually oriented business licensee for purposes of finding a violation of this Chapter, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

§ 119.19 CONFLICTING CODE PROVISIONS REPEALED.

Any provision(s) in this code specifically in conflict with any provision in this Chapter is hereby deemed inoperative and repealed.

§ 119.99 PENALTY.

(A) A person who violates any of the provisions of this Chapter shall be guilty of a Class A Misdemeanor, and, upon conviction, shall be punishable as provided for in KRS 83A.065(2). Each day a violation is committed, or permitted to continue, shall constitute a separate offense and shall be fined as such.

(B) The City's legal counsel is hereby authorized to institute civil proceedings necessary for the enforcement of this Chapter to enjoin, prosecute, restrain, or correct violations hereof.

Such proceedings shall be brought in the name of the City, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this Chapter, or any of the laws in force in the City or to exempt anyone violating this code or any part of the said laws from any penalty which may be incurred.

(C) Any premises, building, dwelling, or other structure in which a sexually oriented business is repeatedly operated or maintained in violation of this Chapter shall constitute a nuisance and shall be subject to civil abatement proceedings in a court of competent jurisdiction.

SECTION II

This Ordinance shall become effective after publication as provided by law.

SECTION III

If any section, paragraph or clause of this Ordinance be held by a proper Court to be invalid, such invalidity shall not affect the remaining sections, paragraphs or clauses, it being hereby expressly declared that the remainder of this Ordinance would have been passed despite such invalidity.

SECTION IV

This Ordinance shall be published by posting on the City's internet website.

PASSED AND APPROVED ON FIRST READING THIS 17th DAY OF OCTOBER 2023.

PASSED AND APPROVED ON SECOND READING AND PUBLICATION ORDERED THIS 7th DAY OF NOVEMBER 2023.

APPROVED:

/s/ Julie M. Aubuchon
Julie M. Aubuchon, Mayor

ATTEST:

/s/ Melissa Kramer
Melissa Kramer, City Clerk