

**AN ORDINANCE AMENDING TITLE XI BUSINESS
REGULATIONS OF THE CITY OF FORT WAYNE
CODE OF ORDINANCES TO ADD A NEW
CHAPTER 121 SEXUALLY ORIENTED
BUSINESSES.**

WHEREAS, sexually oriented businesses require special supervision from the public safety agencies of the 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, the Common 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 Common 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); *FW/PBS, 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., 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) (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. Hommes*, 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); *HH-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 Common 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 Indiana Constitutions, Indiana Code, and the Indiana 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 Indiana 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.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That Title XI BUSINESS REGULATIONS be amended to add a new CHAPTER 121, titled SEXUALLY ORIENTED BUSINESSES, to read as follows:

CHAPTER 121: SEXUALLY ORIENTED BUSINESSES

<u>121.01</u>	Purpose; findings and rationale
<u>121.02</u>	Definitions
<u>121.03</u>	License required
<u>121.04</u>	Issuance of license
<u>121.05</u>	Fees
<u>121.06</u>	Inspection
<u>121.07</u>	Expiration and renewal of license
<u>121.08</u>	Suspension
<u>121.09</u>	Revocation
<u>121.10</u>	Hearing; license denial, suspension, revocation; appeal
<u>121.11</u>	Transfer of license
<u>121.12</u>	Regulations pertaining to operation of adult arcade or adult motion picture theater
<u>121.13</u>	Loitering, exterior lighting and monitoring, and interior lighting requirements
<u>121.14</u>	Enforcement
<u>121.15</u>	Applicability of chapter to existing businesses
<u>121.16</u>	Prohibited conduct
<u>121.17</u>	Scienter required to prove violation or business licensee liability
<u>121.18</u>	Severability
<u>121.19</u>	Conflicting code provisions repealed
<u>121.99</u>	Penalty

§ 121.01 PURPOSE; FINDINGS AND RATIONALE.

(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 Common 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); *Sewell v. Georgia*, 435 U.S.

1 982 (1978); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *City of Dallas v.*
2 *Stanglin*, 490 U.S. 19 (1989); and

3 *HH-Indianapolis, LLC v. Consol. City of Indianapolis/Marion County*, 889 F.3d
4 432 (7th Cir. 2018); *BBL, Inc. v. City of Angola*, 2014 WL 26093 (N.D. Ind. Jan. 2,
5 2014), *aff'd*, *BBL, Inc. v. City of Angola*, 809 F.3d 317 (7th Cir. 2015); *HH-*
6 *Indianapolis, LLC v. Consol. City of Indianapolis/Marion County*, 265 F. Supp. 3d
7 873 (S.D. Ind. 2017); *1407, LLC v. City of Fort Wayne*, 2019 WL 341239 (N.D. Ind.
8 2019); *Uniontown Retail #36, LLC v. Bd. of Comm'rs of Jackson County*, 950 N.E.2d
9 332 (Ind. Ct. App. 2011); *Plaza Group Properties, LLC v. Spencer County Plan*
10 *Comm'n*, 911 N.E.2d 1264 (Ind. Ct. App. 2009); *Plaza Group Properties, LLC v.*
11 *Spencer County Plan Comm'n*, 877 N.E.2d 877 (Ind. Ct. App. 2007); *Foxxxy Ladyz*
12 *Adult World, Inc. v. Village of Dix*, 779 F.3d 706 (7th Cir. 2015); *Ben's Bar, Inc. v.*
13 *Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Andy's Restaurant & Lounge, Inc.*
14 *v. City of Gary*, 466 F.3d 550 (7th Cir. 2006); *Blue Canary Corp. v. City of*
15 *Milwaukee*, 270 F.3d 1156 (7th Cir. 2001); *Schultz v. City of Cumberland*, 228 F.3d
16 831 (7th Cir. 2000); *Matney v. County of Kenosha*, 86 F.3d 692 (7th Cir. 1996); *Berg*
17 *v. Health & Hospital Corp.*, 865 F.2d 797 (7th Cir. 1989); *DiMa Corp. v. Town of*
18 *Hallie*, 185 F.3d 823 (7th Cir. 1999); *Graff v. City of Chicago*, 9 F.3d 1309 (7th Cir.
19 1993); *North Avenue Novelties, Inc. v. City of Chicago*, 88 F.3d 441 (7th Cir. 1996);
20 *Chulchian v. City of Indianapolis*, 633 F.2d 27 (7th Cir. 1980); *Illinois One News, Inc.*
21 *v. City of Marshall*, 477 F.3d 461 (7th Cir. 2007); *G.M. Enterprises, Inc. v. Town of St.*
22 *Joseph*, 350 F.3d 631 (7th Cir. 2003); *Metro Pony, LLC v. City of Metropolis*, 2012
23 WL 1389656 (S.D. Ill. Apr. 20, 2012); *Entm't Prods., Inc. v. Shelby County*, 721 F.3d
24 729 (6th Cir. 2013); *Lund v. City of Fall River*, 714 F.3d 65 (1st Cir. 2013); *Imaginary*
25 *Images, Inc. v. Evans*, 612 F.3d 736 (4th Cir. 2010); *LLEH, Inc. v. Wichita County*,
26 289 F.3d 358 (5th Cir. 2002); *Ocello v. Koster*, 354 S.W.3d 187 (Mo. 2011); 84
27 *Video/Newsstand, Inc. v. Sartini*, 2011 WL 3904097 (6th Cir. Sept. 7, 2011);
28 *Flanigan's Enters., Inc. v. Fulton County*, 596 F.3d 1265 (11th Cir. 2010); *East*
29 *Brooks Books, Inc. v. Shelby County*, 588 F.3d 360 (6th Cir. 2009); *Entm't Prods., Inc.*
30 *v. Shelby County*, 588 F.3d 372 (6th Cir. 2009); *Sensations, Inc. v. City of Grand*
Rapids, 526 F.3d 291 (6th Cir. 2008); *World Wide Video of Washington, Inc. v. City of*
Spokane, 368 F.3d 1186 (9th Cir. 2004); *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); *Richland Bookmart, Inc. v. Knox County*, 555 F.3d 512 (6th
Cir. 2009); *Bigg Wolf Discount Video Movie Sales, Inc. v. Montgomery County*, 256 F.
Supp. 2d 385 (D. Md. 2003); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th
Cir. 1998); *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
WL 1722154 (Tex. App. July 25, 2002); *Fantasyland Video, Inc. v. County of San*
Diego, 505 F.3d 996 (9th Cir. 2007); *U.S. v. Baston*, 818 F.3d 651 (11th Cir. 2016);
Johnson v. California State Bd. of Accountancy, 72 F.3d 1427 (9th Cir. 1995);

1 *Spencer v. World Vision, Inc.*, 633 F.3d 723 (9th Cir. 2010); *Gammoh v. City of La*
2 *Habra*, 395 F.3d 1114 (9th Cir. 2005); *Z.J. Gifts D-4, L.L.C. v. City of Littleton*, Civil
3 Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001);
4 *People ex rel. Deters v. The Lion's Den, Inc.*, Case No. 04-CH-26, Modified
5 Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13,
6 2005); *Reliable Consultants, Inc. v. City of Kennedale*, No. 4:05-CV-166-A, Findings
7 of Fact and Conclusions of Law (N.D. Tex. May 26, 2005);

8 and based upon reports concerning secondary effects occurring in and around sexually
9 oriented businesses, including, but not limited to, "Correlates of Current Transactional
10 Sex among a Sample of Female Exotic Dancers in Baltimore, MD," *Journal of Urban*
11 *Health* (2011); "Does the Presence of Sexually Oriented Businesses Relate to
12 Increased Levels of Crime?" *Crime & Delinquency* (2012) (Louisville, KY);
13 Metropolis, Illinois – 2011-12; Manatee County, Florida – 2007; Hillsborough
14 County, Florida – 2006; Clarksville, Indiana – 2009; El Paso, Texas – 2008; Memphis,
15 Tennessee – 2006; New Albany, Indiana – 2009; Louisville, Kentucky – 2004; Fulton
16 County, GA – 2001; Chattanooga, Tennessee – 1999-2003; Jackson County, Missouri
17 – 2008; Ft. Worth, Texas – 2004; Kennedale, Texas – 2005; Greensboro, North
18 Carolina – 2003; Dallas, Texas – 1997; Houston, Texas – 1997, 1983; Phoenix,
19 Arizona – 1995-98, 1979; Tucson, Arizona – 1990; Spokane, Washington – 2001; St.
20 Cloud, Minnesota – 1994; Austin, Texas – 1986; Indianapolis, Indiana – 1984; Garden
21 Grove, California – 1991; Los Angeles, California – 1977; Whittier, California – 1978;
22 Oklahoma City, Oklahoma – 1986; New York, New York Times Square – 1994; the
23 Report of the Attorney General's Working Group On The Regulation Of Sexually
24 Oriented Businesses, (June 6, 1989, State of Minnesota); Dallas, Texas – 2007; "Rural
25 Hotspots: The Case of Adult Businesses," 19 *Criminal Justice Policy Review* 153
26 (2008); "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by
27 Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution
28 Resources, Minneapolis, Minnesota; "Sexually Oriented Businesses: An Insider's
29 View," by David Sherman, presented to the Michigan House Committee on Ethics and
30 Constitutional Law, Jan. 12, 2000; Sex Store Statistics and Articles; Indianapolis /
Marion County Board of Zoning Appeals Documents; Law Enforcement and Private
Investigator Affidavits (Adult Cabarets in Forest Park, GA and Sandy Springs, GA);
and Strip Club-Trafficking Documents,

the Common 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, human trafficking, 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.
- (2) Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses.

- 1 (3) Each of the foregoing negative secondary effects constitutes a harm which the
2 City has a substantial government interest in preventing and/or abating. The
3 City's interest in regulating sexually oriented businesses extends to preventing
4 future secondary effects of either current or future sexually oriented businesses
5 that may locate in the City. The City finds that the cases and documentation
6 relied on in this chapter are reasonably believed to be relevant to said secondary
7 effects.

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

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13 **§ 121.02 DEFINITIONS.**

14 For purposes of this chapter, the following definitions shall apply unless the context
15 clearly indicates or requires a different meaning.

16 **ADULT ARCADE.** A commercial establishment to which the public is permitted or
17 invited that maintains booths or rooms smaller than 100 square feet wherein image-
18 producing devices are regularly maintained to show images characterized by their
19 emphasis upon matter exhibiting "specified sexual activities" or "specified anatomical
20 areas."

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

- 29 (A) At least 35% of the establishment's displayed merchandise consists of said
30 items, or
(B) At least 35% of the establishment's revenues derive from the sale or rental, for
any form of consideration, of said items, or
(C) 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
(D) 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

1 items are rented or sold, shall be included in "floor space" maintained for the
2 display, sale, or rental of said items); or

- 3 (E) The establishment regularly offers for sale or rental at least five hundred (500)
4 of said items.

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

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

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

16 **CITY.** The city of Fort Wayne, Indiana.

17 **COMMON COUNCIL.** The Common Council of the City of Fort Wayne, Indiana.

18 **EMPLOY, EMPLOYEE, AND EMPLOYMENT.** These terms describe and pertain to
19 any person who works or engages in activity for pay on the premises of a sexually
20 oriented business, on a full time, part time, temporary, or contract basis, regardless of
21 whether the person is denominated an employee, independent contractor, agent, lessee, or
22 otherwise. Employee does not include a person exclusively on the premises for repair or
23 maintenance of the premises or for the delivery of goods to the premises.

24 **ESTABLISH OR ESTABLISHMENT.** Any of the following:

- 25 (A) The opening or commencement of any sexually oriented business as a new
26 business;
27 (B) The conversion of an existing business, whether or not a sexually oriented
28 business, to any sexually oriented business; or
29 (C) The addition of any sexually oriented business to any other existing sexually
30 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 an employee of the City, who is licensed to
practice law in Indiana, and retained to serve as an independent tribunal to conduct
hearings under this chapter.

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INFLUENTIAL INTEREST. The actual power to control or influence 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 he or she (1) is the on-site general manager of the sexually oriented business, (2) owns a financial interest of thirty percent (30%) or more of a business or of any class of voting securities of a business, or (3) holds an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the sexually oriented business.

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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.

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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 chapter, a "fully opaque covering" must be non-flesh colored, shall not consist of any substance that can be washed or peeled off the skin (such as paint, make-up, or latex), and shall not simulate the appearance of the anatomical area that it covers.

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

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

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PERSON. An individual, proprietorship, partnership, corporation, association, or other legal entity.

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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.

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POLICE CHIEF. The Chief of the Fort Wayne Police Department or his or her designee.

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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. 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.

SEXUAL DEVICE. Any three (3) 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 commonly known 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 designed for protection against sexually transmitted diseases or for preventing pregnancy.

SEXUAL DEVICE SHOP. A commercial establishment:

- (A) where more than 100 sexual devices are regularly made available for sale or rental; or
- (B) 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 room or discrete area of the establishment significantly devoted to sexual devices, positioning sexual devices near cash registers or similar points of sale, hosting events focused on sexual devices, or holding itself out to the public as a place that focuses on sexual devices).

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 primarily dedicated to providing durable medical equipment.

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. Any of the following:

- (A) 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

- 1 (B) Human male genitals in a discernibly turgid state, even if completely and
2 opaquely covered.

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

- 5 (A) rape, sexual assault, public indecency, statutory rape, rape of a child, sexual
6 exploitation of a minor, indecent exposure;
- 7 (B) prostitution, patronizing prostitution, promoting prostitution;
- 8 (C) obscenity;
- 9 (D) dealing in controlled substances;
- 10 (E) racketeering, tax evasion, money laundering;
- 11 (F) any attempt, solicitation, or conspiracy to commit one of the foregoing offenses;
12 or
- 13 (G) any offense in another jurisdiction that, had the predicate act(s) been committed
14 in Indiana, would have constituted any of the foregoing offenses.

15 ***SPECIFIED SEXUAL ACTIVITY.*** Any of the following:

- 16 (A) intercourse, oral copulation, masturbation or sodomy; or
- 17 (B) excretory functions as a part of or in connection with any of the activities
18 described in (A) above.

19 ***TRANSFER OF OWNERSHIP OR CONTROL.*** Any of the following:

- 20 (A) The sale, lease, or sublease of the business;
- 21 (B) The transfer of securities which constitute an influential interest in the
22 business, whether by sale, exchange, or similar means; or
- 23 (C) The establishment of a trust, gift, or other similar legal device which transfers
24 the ownership or control of the business, except for transfer by bequest or
25 other operation of law upon the death of the person possessing the ownership
or control.

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

1 **§ 121.03 LICENSE REQUIRED.**

2 (A) *Sexually Oriented Business License.* It shall be unlawful for any person to operate a
3 sexually oriented business in the City without a valid sexually oriented business
4 license.

5 (B) *Employee License.* It shall be unlawful for any person to be an "employee," as
6 defined in this chapter, of a sexually oriented business in the City without a valid
7 sexually oriented business employee license, except that a person who is a licensee
8 under a valid sexually oriented business license shall not be required to also obtain a
9 sexually oriented business employee license. It shall be unlawful for any person
10 who operates a sexually oriented business to employ a person at the establishment
11 who does not have a valid sexually oriented business employee license.

12 (C) *Application.* An applicant for a sexually oriented business license or a sexually
13 oriented business employee license shall file in person at the office of the Police
14 Chief a completed application made on a form provided by the Police Chief. A
15 sexually oriented business may designate an individual with an influential interest
16 in the business to file its application for a sexually oriented business license in
17 person on behalf of the business. The application shall be signed as required by §
18 121.03(D) and shall be notarized. An application shall be considered complete when
19 it contains, for each person required to sign the application, the information and/or
20 items required in this subsection (C), accompanied by the appropriate licensing fee:

21 (1) The applicant's full legal name and any other names used by the applicant in
22 the preceding five (5) years.

23 (2) Current business address or another mailing address for the applicant.

24 (3) Written proof of age, in the form of a driver's license, a picture identification
25 document containing the applicant's date of birth issued by a governmental
26 agency, or a copy of a birth certificate accompanied by a picture identification
27 document issued by a governmental agency.

28 (4) If the application is for a sexually oriented business license, the business name,
29 location, legal description, mailing address and phone number of the sexually
30 oriented business.

 (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 this chapter,
 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.

1 (7) A statement of whether any sexually oriented business in which an applicant
2 has had an influential interest, has, in the previous five (5) years (and at a time
3 during which the applicant had the influential interest):

4 (i) been declared by a court of law to be a nuisance; or

5 (ii) been subject to a court order of closure.

6 (8) An application for a sexually oriented business license shall be accompanied
7 by a legal description of the property where the business is located and a
8 sketch or diagram showing the configuration of the premises, including a
9 statement of total floor area occupied by the business and a statement of floor
10 area visible or accessible to patrons for any reason, excluding restrooms. The
11 sketch or diagram need not be professionally prepared but shall be drawn to a
12 designated scale or drawn with marked dimensions of the interior of the
13 premises to an accuracy of plus or minus six (6) inches. Applicants who are
14 required to comply with the stage, booth, and/or room configuration
15 requirements of this chapter shall submit a diagram indicating that the setup
16 and configuration of the premises meets the requirements of the applicable
17 regulations. See § 121.12 and § 121.16. The Police Chief may waive the
18 requirements of this subsection (8) for a renewal application if the applicant
19 adopts a legal description and a sketch or diagram that was previously
20 submitted and certifies that the configuration of the premises has not been
21 altered since it was prepared.

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

25 The information provided pursuant to this subsection (C) shall be supplemented in
26 writing by certified mail, return receipt requested, to the Police Chief within ten
27 (10) working days of a change of circumstances which would render the
28 information originally submitted false or incomplete.

29 (D) *Signature.* A person who seeks a sexually oriented business employee license
30 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 shall be maintained by the office of the Police Chief on a
confidential basis, and such information may be disclosed only 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.

§ 121.04 ISSUANCE OF LICENSE.

(A) *Sexually Oriented Business License.* Upon the filing of a completed application for a sexually oriented business license, the Police Chief shall immediately issue a Temporary License to the applicant if the completed application is from a preexisting sexually oriented business that is lawfully operating in the City and the completed application, on its face, indicates that the applicant is entitled to an annual sexually oriented business license. The Temporary License shall expire upon the final decision to deny or grant an annual license. Within thirty (30) days of the filing of a completed sexually oriented business license application, the Police Chief shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The Police Chief shall issue a license unless:

- (1) An applicant is less than eighteen (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.
- (5) The location of the sexually oriented business does not comply with the location requirements of the Code of Fort Wayne.
- (6) Any sexually oriented business in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
 - (i) been declared by a court of law to be a nuisance; or
 - (ii) been subject to an order of closure.
- (7) An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this chapter.

(B) *Employee License.* Upon the filing of a completed application for a sexually oriented business employee license, the Police Chief shall immediately issue a Temporary License to the applicant if the applicant seeks licensure to work in a licensed sexually oriented business and the completed application, on its face, indicates that the applicant is entitled to an annual sexually oriented business employee license. The Temporary License shall expire upon the final decision to

1 deny or grant an annual license. Within thirty (30) days of the filing of a completed
2 sexually oriented business employee license application, the Police Chief shall
3 either issue a license to the applicant or issue a written notice of intent to deny a
4 license to the applicant. The Police Chief shall issue a license unless:

- 5 (1) The applicant is less than eighteen (18) years of age.
- 6 (2) The applicant has failed to provide information as required by this chapter for
7 issuance of a license or has falsely answered a question or request for
8 information on the application form.
- 9 (3) The license application fee required by this chapter has not been paid.
- 10 (4) Any sexually oriented business in which the applicant has had an influential
11 interest, has, in the previous five (5) years (and at a time during which the
12 applicant had the influential interest):
 - 13 (i) been declared by a court of law to be a nuisance; or
 - 14 (ii) been subject to an order of closure.
- 15 (5) The applicant has been convicted of or pled guilty or nolo contendere to a
16 specified criminal activity, as defined in this chapter.

- 17 (C) The license, if granted, shall state on its face the name of the person or persons to
18 whom it is granted, the number of the license issued to the licensee(s), the
19 expiration date, and, if the license is for a sexually oriented business, the address of
20 the sexually oriented business. The sexually oriented business license shall be
21 posted in a conspicuous place at or near the entrance to the sexually oriented
22 business so that it may be read at any time that the business is occupied by patrons
23 or is open to the public. A sexually oriented business employee shall keep the
24 employee's license on his or her person or on the premises where the licensee is
25 then working.

26 **§ 121.05 FEES.**

27 The initial license and annual renewal fees for sexually oriented business licenses
28 and sexually oriented business employee licenses shall be as follows: one hundred
29 dollars (\$100) for the initial fee for a sexually oriented business license and fifty dollars
30 (\$50) for annual renewal; fifty dollars (\$50) for the initial sexually oriented business
employee license and twenty-five dollars (\$25) for annual renewal.

31 **§ 121.06 INSPECTION.**

32 Sexually oriented businesses and sexually oriented business employees shall permit
33 the Police Chief and his or her agents to inspect, from time to time on an occasional

1 basis, the portions of the sexually oriented business premises where patrons are
2 permitted, for the purpose of ensuring compliance with the specific regulations of this
3 chapter, during those times when the sexually oriented business is occupied by patrons or
4 is open to the public. This section shall be narrowly construed to authorize only
5 reasonable inspections of the licensed premises pursuant to this chapter.

6 **§ 121.07 EXPIRATION AND RENEWAL OF LICENSE.**

- 7 (A) Each license shall remain valid for a period of one calendar year from the date of
8 issuance unless otherwise suspended or revoked. Such license may be renewed only
9 by making application and payment of a fee as provided in this chapter. When a
10 renewal license is issued, it shall become effective the day after the previous license
11 expires and shall remain valid for a period of one calendar year from its effective
12 date unless otherwise suspended or revoked.
- 13 (B) Application for renewal of an annual license should be made at least ninety (90)
14 days before the expiration date of the current annual license, and when made less
15 than ninety (90) days before the expiration date, the expiration of the current license
16 will not be affected.

17 **§ 121.08 SUSPENSION.**

- 18 (A) The Police Chief shall issue a written notice of intent to suspend a sexually oriented
19 business license for a period not to exceed thirty (30) days if the sexually oriented
20 business licensee has knowingly or recklessly violated this chapter or has
21 knowingly or recklessly allowed an employee or any other person to violate this
22 chapter.
- 23 (B) The Police Chief shall issue a written notice of intent to suspend a sexually oriented
24 business employee license for a period not to exceed thirty (30) days if the
25 employee licensee has knowingly or recklessly violated this chapter.

26 **§ 121.09 REVOCATION.**

- 27 (A) The Police Chief shall issue a written notice of intent to revoke a sexually oriented
28 business license or a sexually oriented business employee license, as applicable, if
29 the licensee knowingly or recklessly violates this chapter or has knowingly or
30 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
twelve-month (12-mo.) period.
- (B) The Police Chief 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 eighteen (18) years to appear in a semi-nude condition or in a state of nudity on the premises of the sexually oriented business; or
 - (7) The licensee has knowingly or recklessly allowed three (3) or more violations of this chapter within a twelve-month period.
- (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, a license is revoked, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for one (1) year from the date revocation becomes effective.

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

- (A) When the Police Chief issues a written notice of intent to deny, suspend, or revoke a license, the Police Chief 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. The notice shall be directed to the most current business address or other mailing address on file with the Police Chief for the applicant or licensee. The notice shall also set forth the following: The applicant or licensee shall have ten (10) days after the delivery of the written notice to submit, at the office of the Police Chief, a written request for a hearing. If the applicant or licensee does not request a hearing within said ten (10) days, the Police Chief's written

notice shall become a final denial, suspension, or revocation, as the case may be, on the thirtieth (30th) day after it is issued.

- (B) If the applicant or licensee (hereafter, "petitioner") does make a written request for a hearing within said ten (10) days, then the Police Chief shall, within ten (10) days after the submission of 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 ten (10) days nor more than twenty (20) days after the date that the hearing notice is issued. The hearing shall be transcribed.
- (C) 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 Police Chief's witnesses. The Police Chief 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 (1) day, unless extended at the request of the petitioner to meet the requirements of due process and proper administration of justice. The Hearing Officer shall affirm the Police Chief'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 within five (5) days after the hearing.
- (D) 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 tenth (10th) day after it is rendered. If the Hearing Officer's decision finds that there is no substantial evidence to support the Police Chief's licensing decision, the Hearing Officer shall, contemporaneously with the issuance of the decision, order the Police Chief to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the petitioner in writing by certified mail of such action. If the petitioner is not yet licensed, the Police Chief shall contemporaneously therewith issue the license to the applicant.
- (E) If any court action challenging a 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 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 Police Chief: 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 Temporary License or annual license, the Police Chief 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

1 restrain or otherwise enjoin the City's enforcement. While a Provisional License is
2 in effect, the provisional licensee shall comply with the regulations set forth in §
3 121.06, § 121.12, § 121.13, and § 121.16, and any violations thereof shall be subject
4 to the provisions of § 121.14 and § 121.99.

5 **§ 121.11 TRANSFER OF LICENSE.**

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

9 **§ 121.12 REGULATIONS PERTAINING TO OPERATION OF ADULT
10 ARCADE OR ADULT MOTION PICTURE THEATER**

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

13 (1) Each application for a sexually oriented business license shall contain a
14 diagram of the premises showing the location of all operator's stations, booths
15 or viewing rooms, overhead lighting fixtures, and restrooms, and shall
16 designate all portions of the premises in which patrons will not be permitted.
17 The diagram shall also designate the place at which the license will be
18 conspicuously posted, if granted. A professionally prepared diagram in the
19 nature of an engineer's or architect's blueprint shall not be required; however,
20 each diagram shall be oriented to the north or to some designated street or
21 object and shall be drawn to a designated scale or with marked dimensions
22 sufficient to show the various internal dimensions of all areas of the interior of
23 the premises to an accuracy of plus or minus six inches. The Police Chief may
24 waive the foregoing diagram for renewal applications if the applicant adopts a
25 diagram that was previously submitted and certifies that the configuration of
26 the premises has not been altered since it was prepared.

27 (2) It shall be the duty of the operator, and of any employees present on the
28 premises, to ensure that no patron is permitted access to any area of the
29 premises which has been designated as an area in which patrons will not be
30 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 (5.0) 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:
- (i) That the occupancy of viewing rooms less than 100 square feet is limited to one person.
 - (ii) That specified sexual activity on the premises is prohibited.
 - (iii) That the making of openings between viewing rooms is prohibited.
 - (iv) That violators will be required to leave the premises.
 - (v) That violations of these regulations are unlawful.
- (6) It shall be the duty of the operator to enforce the regulations articulated in (5)(i) through (iv) 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 thirty-two (32) square feet of floor area. If the premises has two (2) 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 paragraph 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.
- (B) It shall be unlawful for a person having a duty under subsections (A)(1) through (A)(8) to knowingly or recklessly fail to fulfill that duty.
- (C) 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.
- (D) 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.

- 1 (E) No person shall knowingly or recklessly make any hole or opening between
2 viewing rooms.

3 **§ 121.13 LOITERING, EXTERIOR LIGHTING AND MONITORING, AND**
4 **INTERIOR LIGHTING REQUIREMENTS.**

- 5 (A) It shall be the duty of the operator of a sexually oriented business to: (i) ensure that
6 at least two conspicuous signs stating that no loitering is permitted on the premises
7 are posted on the premises; (ii) designate one or more employees to monitor the
8 activities of persons on the premises by visually inspecting the premises at least
9 once every ninety (90) minutes or inspecting the premises by use of video cameras
10 and monitors; and (iii) provide lighting to the exterior premises to provide for visual
11 inspection or video monitoring to prohibit loitering. Said lighting shall be of
12 sufficient intensity to illuminate every place to which customers are permitted
13 access at an illumination of not less than two (2.0) foot candles as measured at the
14 floor level. If used, video cameras and monitors shall operate continuously at all
15 times that the premises are open for business. The monitors shall be installed within
16 an operator's station.
- 17 (B) It shall be the duty of the operator of a sexually oriented business to ensure that the
18 interior premises shall be equipped with overhead lighting of sufficient intensity to
19 illuminate every place to which customers are permitted access at an illumination of
20 not less than five (5.0) foot candles as measured at the floor level and the
21 illumination must be maintained at all times that any customer is present in or on
22 the premises.
- 23 (C) No sexually oriented business shall erect a fence, wall, or similar barrier that
24 prevents any portion of the parking lot(s) for the establishment from being visible
25 from a public right of way.
- 26 (D) It shall be unlawful for a person having a duty under this section to knowingly or
27 recklessly fail to fulfill that duty.

28 **§ 121.14 ENFORCEMENT.**

- 29 (A) Any premises on which repeated violations of this chapter occur shall constitute a
30 nuisance. For purposes of this chapter, "repeated violations" shall mean three or
more violations of this chapter within a one (1) year period dating from the time of
any violation.
- (B) The City's legal counsel is hereby authorized to institute civil proceedings necessary
for the enforcement of this chapter to enjoin, prosecute, restrain, correct or abate
violations thereof and to seek judgment for fines under § 121.99 below. The City
shall be entitled to recover its attorney fees related to any such enforcement action
brought under this chapter. Such enforcement proceedings shall be brought in the
name of the City, provided, however, that nothing in this chapter and no action

1 taken hereunder, shall be held to exclude such criminal or administrative
2 proceedings as may be authorized by any other ordinance, or any of the laws in
3 force in the City or to exempt anyone violating this code or any part of the said laws
4 from any penalty which may be incurred.

5 **§ 121.15 APPLICABILITY OF CHAPTER TO EXISTING BUSINESSES.**

6 (A) *Licensing Requirements.* All preexisting sexually oriented businesses lawfully
7 operating in the City in compliance with all state and local laws prior to the
8 effective date of this chapter, and all sexually oriented business employees working
9 in the City prior to the effective date of this chapter, are hereby granted a *De Facto*
10 Temporary License to continue operation or employment for a period of one
11 hundred twenty (120) days following the effective date of this chapter. Within
12 ninety (90) days following the effective date of this chapter, all sexually oriented
13 businesses and sexually oriented business employees must apply for a license under
14 this chapter.

15 (B) *Interior Configuration Requirements.* Any preexisting sexually oriented business
16 that is required to, but does not, have interior configurations or stages that meet at
17 least the minimum requirements of § 121.12 and § 121.16(B) shall have ninety (90)
18 days from the effective date of this chapter to conform its premises to said
19 requirements. During said ninety (90) days, any employee who appears within view
20 of any patron in a semi-nude condition shall nevertheless remain, while semi-nude,
21 at least six (6) feet from all patrons.

22 (C) *Other Requirements.* Except as provided for in subsections (A) and (B) above,
23 sexually oriented businesses shall comply with this chapter on the date that it takes
24 effect.

25 **§ 121.16 PROHIBITED CONDUCT.**

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

29 (B) No person shall knowingly or intentionally, in a sexually oriented business, appear
30 in a semi-nude condition unless the person is an employee who, while semi-nude,
remains at least six (6) feet from all patrons and on a stage at least eighteen (18)
inches from the floor in a room of at least six hundred (600) 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 knowingly or recklessly allow a person under the age of eighteen (18) years to be or remain on the premises of a sexually oriented business.
- (E) 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.
- (F) 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.
- (G) A sign in a form to be prescribed by the Police Chief, and summarizing the provisions of subsections (A), (B), (C), and (D), 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.

§ 121.17 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, general partner, operator, or a person who managed, supervised, or controlled the operation of the business premises or a portion thereof, knowingly or recklessly allowed such act to occur on the premises.

§ 121.18 SEVERABILITY.

This chapter and each section and provision of said chapter hereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said chapter, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid. Should any procedural aspect of this chapter be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this chapter.

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§ 121.99 PENALTY.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney