

CHAPTER 111: SEXUALLY ORIENTED BUSINESSES

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§ 111.01 PURPOSE AND INTENT.

It is the purpose of this chapter to regulate sexually oriented businesses and related activities 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 location and concentration of sexually oriented businesses within the city. The provisions of the chapter do not have the purpose of imposing a limitation or restriction on the content or any communicative material, including sexually oriented materials. Similarly, it is not the intent of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment of the United States Constitution, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent of this chapter to condone or legitimize the distribution of obscene materials.
(Ord. 169, passed 5-18-98)

§ 111.02 DEFINITIONS.

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

ADULT ENTERTAINMENT USES. Any uses of land, whether vacant or combined with structures or vehicles thereon by which said property is devoted to displaying or exhibiting material for entertainment, a significant portion of which includes matter or actions depicting, describing or presenting **SPECIFIED SEXUAL ACTIVITIES** or **SPECIFIED ANATOMICAL AREAS**. For purposes of this definition, the term significant, as used above and as following,

shall be defined as greater than 20% of the total material displayed or exhibited for sale or entertainment purposes. Adult entertainment uses shall include, but are not limited to the following.

(1) **ADULT MOTION PICTURE THEATER.** An enclosed building with a capacity of 50 or more persons used for presenting material which has a significant portion of any motion picture or other display depicting **SPECIFIED SEXUAL ACTIVITIES** or **SPECIFIED ANATOMICAL AREAS** for observation by patrons therein.

(2) **ADULT MINI-MOTION PICTURE THEATER.** An enclosed building with a capacity for less than (50 persons used for presenting material which has a significant portion of any motion picture or other display depicting, describing, or presenting **SPECIFIED SEXUAL ACTIVITIES** or **SPECIFIED ANATOMICAL AREAS** for observation by patrons therein.

(3) **ADULT MOTION PICTURE ARCADE.** Any place in which the public is permitted or invited wherein coin or slug-operated or electronically or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where a significant portion of images so displayed depict, describe, or relate to **SPECIFIED SEXUAL ACTIVITIES** or **SPECIFIED ANATOMICAL AREAS**.

(4) **ADULT BOOK STORE.** A use which has a display containing books, magazines, periodicals, slides, pictures, videos, cassettes, or other printed or recorded material which has a significant portion of its content or exhibit matter or actions depicting, describing, or relating to **SPECIFIED SEXUAL ACTIVITIES** or **SPECIFIED ANATOMICAL AREAS** or an establishment with a significant segment or section devoted to the sale or display of such material.

(5) **ADULT CABARET.** A nightclub, theater, or other establishment which features live performances by topless and/or bottomless dancers, "go-go" dancers, exotic dancers, strippers, or similar entertainers, where performances show,, depict, or describe **SPECIFIED SEXUAL ACTIVITIES** or **SPECIFIED ANATOMICAL AREAS**.

(6) **ADULT MOTEL.** A motel wherein matter, actions or other displays are presented which contain a significant portion depicting, describing, or relating to **SPECIFIED SEXUAL ACTIVITIES** or **SPECIFIED ANATOMICAL AREAS**.

(7) **ADULT MASSAGE PARLOR.** Any place where for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatment or any other treatment of any person providing such treatment, manipulation or service related thereto exposes **SPECIFIED ANATOMICAL AREAS**. This definition shall not include services provided by a licensed medical doctor, osteopathic physician, chiropractor licensed by the State of Michigan as a medical professional, or similarly licensed professional providing message therapy as part of a bonafide health procedure.

(8) **ADULT MODEL STUDIO.** Any place where, for any form of consideration or

gratuity, figure models who display ***SPECIFIED ANATOMICAL AREAS*** are provided to be observed or sketched. This definition shall not include an accredited state-licensed public or private educational institution offering art instruction which may involve the full exposure of the human body for purposes of sketching or photography as part of a bonafide course.

(9) ***ADULT SEXUAL ENCOUNTER CENTER.*** Any business, agency, or person who, for any form of consideration or gratuity, provides a place where three or more persons, not all members of the same family, may congregate, assemble, or associate for the purpose of engaging in ***SPECIFIED SEXUAL ACTIVITIES*** or exposing ***SPECIFIED ANATOMICAL AREAS***.

(10) ***ADULT ENTERTAINMENT ESTABLISHMENT.*** Any establishment in which the uses defined in subsections (1) through (9) are carried on.

NUDITY OR STATE OF NUDITY. The appearance of a human bare buttock, anus, male genitals, female genitals, or female breast without a fully opaque complete covering of the breast below a point immediately above the top of the areola, or human male genitals in a discernible turgid state even if completely and opaquely covered.

PERMITTEE. A person in whose name a permit to operate a sexually oriented business has been issued as well as the individual listed as an applicant on the application form.

PERMIT. A special use permit for the operation of a sexually oriented business as issued pursuant to this sexually oriented business ordinance.

PERSON. An individual, proprietorship, partnership, limited liability company, corporation, association, or legal entity.

SPECIFIED ANATOMICAL AREAS This term includes the following.

(1) Less than completely and opaquely covered human genitals, pubic regions, buttocks and female breasts below a point immediately above the top of the areola;

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

SPECIFIED SEXUAL ACTIVITIES. This term includes the following.

(1) Acts of human masturbation, sexual intercourse, or sodomy.

(2) Fondling or other erotic touching of human genitals, pubic regions, buttocks or female breasts.

(3) Human genitals in a state of sexual simulation or arousal.

SEXUALLY ORIENTED BUSINESS. An adult bookstore or adult video store, adult motion picture theater, adult mini-theater, or adult entertainment establishment.

TRANSFER OF OWNERSHIP OR CONTROL OF SEXUALLY ORIENTED BUSINESS. This term means and includes any of the following:

- (1) The sale, lease, or sublease of the business.
- (2) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means.
- (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.
(Ord. 169, passed 5-18-98)

§ 111.03 PERMIT AND/OR LICENSE REQUIRED.

It shall be unlawful for a person to operate a sexually oriented business without a valid permit issued by the Building Inspector and Zoning Administrator.
(Ord. 169, passed 5-18-98) Penalty, see § 10.99

§ 111.04 APPLICATION REQUIREMENTS; LICENSE FEES.

(A) An application for a permit must be made on a form provided by the city. The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of square footage of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.

(B) Applications for permit shall be made and delivered to the Building Inspector and Zoning Administrator by the intended operator of the establishment. The intended operator shall be required to give the following information on the application form.

(1) The name and street address (and mailing address, if different) and driver's license number of the intended operator if he or she has such a driver's license and the name and street address (and mailing address, if different) of the owner(s), if different.

(2) The name under which the establishment is to be operated and general description of the services to be provided.

(3) The telephone number of the establishment or, if unavailable, the operator's.

(4) The address, and legal description, of the tract of land on which the establishment is to be located.

(C) The fact that a person possesses other types of state or county permits and/or licenses

does not exempt him from the requirement of obtaining a sexually oriented business permit form the city.

(D) The application shall be accompanied by the following.

(1) Payment of the application fee in full based on the following schedule:

Adult Entertainment Manager License Fee	\$100
Adult Entertainment License Fee	\$100 annually
Adult Entertainment Server License Fee.....	\$50 annually

(2) Proof of current fee ownership of the tract of land on which the establishment is to be situated in the form of a copy of the recorded deed, land contract, or other instrument of conveyances;

(3) If the persons identified as the fee owner(s) of the tract of land in division (D)(2) of this section are not also the owners of the establishment, then the lease, purchase contract, purchase option contract, lease option contract or other document(s) evidencing the legally enforceable right of the ownership or proposed owners of the establishment to have or obtain the use and possession of the tract or portion thereof that is to be used for the establishment for the purpose of the operation of the establishment.

(E) The application shall contain a statement under oath of the following.

(1) The applicant has personal knowledge of the information contained in the application and that the information contained therein and furnished therewith is true and correct.

(2) The applicant has read the provisions of this chapter.
(Ord. 169, passed 5-18-98)

§ 111.05 CONDITIONS FOR APPROVAL OF PERMIT.

(A) The Building Inspector and Zoning Administrator shall approve the issuance of a permit to an applicant within 30 days after receipt of an application unless he finds one or more of the following to be true.

(1) An applicant is under 18 years of age.

(2) An applicant is overdue in his payment of taxes, fines or penalties assessed against applicant or imposed upon applicant in relation to a sexually oriented business.

(3) An applicant has failed to provide information reasonably necessary for issuance of the permit or has falsely answered a question or request for information on the application form.

(4) An applicant who has been denied a permit by the city to operate a sexually oriented business within the preceding 12 months, or whose license to operate a sexually oriented business has been revoked within the preceding 12 months.

(5) The premises to be used for the sexually oriented business have not been approved by the Health Department for the use intended, if applicable, or any occupancy permit has been issued by the City Building Inspector.

(6) The permit fee required by this chapter has not been paid.

(7) An application for the proposal establishment is in violation of or is not in compliance with any of the provisions of this chapter.

(8) An applicant has been convicted of any of the following criminal offenses in any jurisdiction.

(a) Prostitution, procuring or soliciting a prostitute.

(b) Sale, distribution or display of obscene material.

(c) Soliciting, procuring or aiding and abetting an unlawful sexual performance by a minor.

(d) Possession, sale or distribution of child pornography.

(e) Public lewdness.

(f) Indecent conduct with a child.

(g) Sexual assault or rape.

(h) Incest.

(i) Sexual solicitation of a child.

(B) The applicant shall certify, as part of the application, that applicant has not been convicted of any one or more of the foregoing criminal offenses.

(Ord. 169, passed 5-18-98)

§ 111.06 ISSUANCE OF PERMIT; NOTICE OF DENIAL; FALSE INFORMATION.

(A) The permit, if granted, shall state on its face the name of the person or persons to whom it is granted, and the address of the sexually oriented business so that it may be easily read at anytime.

(B) In the event that the Building Inspector and Zoning Administrator determine that an applicant is not eligible for a permit, the applicant shall be given notice in writing of the reasons for the denial within 30 days of the receipt of its application by the Building Inspector and Zoning Administrator, provided that the applicant may request, in writing, that such period be extended for an additional period of not more than ten days at any time before the notice is issued in order to make modifications necessary to comply with this chapter.

(C) The Building Inspector and Zoning Administrator may also take all steps necessary to revoke a permit if he determines that a permittee gave false information in the material submitted during the application process.
(Ord. 169, passed 5-18-98)

§ 111.07 INSPECTION.

An applicant or permittee shall allow the City Building Inspector and Zoning Administrator or City Law Enforcement Officer to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law at any time it is occupied or open for business.
(Ord. 169, passed 5-18-98)

§ 111.08 ACTION TO REVOKE PERMIT.

The Building Inspector and Zoning Administrator may take enforcement action, including the revocation of a permit, if any of the following occurs.

(A) A permittee gave false or materially misleading information in the application process.

(B) A permittee has been convicted of using and/or allowing the use of controlled substances within the establishment.

(C) A permittee has been convicted of prostitution or other activity fostering, promoting or otherwise facilitating prostitution, within the establishment or elsewhere.

(D) A permittee or employee of the sexually oriented business has been convicted of any crime of sexual nature or involving sexual conduct or the solicitation thereof within the establishment or elsewhere.

(E) A permittee has been convicted of knowingly allowing a person under 18 years of age to enter the establishment.

(F) There has been a transfer of ownership or control of an establishment without the prior consent of the Building Inspector and Zoning Administrator, as required herein.

(G) A permittee has violated the terms of this chapter.
(Ord. 169, passed 5-18-98)

§ 111.09 TRANSFER OF PERMIT.

A permittee shall not transfer his permit to another, nor shall a permittee operate a sexually oriented business under the authority of permit at any place other than the address designated in the application. Permittee must complete application.

(Ord. 169, passed 5-18-98) Penalty, see § 10.99

§ 111.10 LOCATION RESTRICTIONS.

(A) A sexually oriented business may not be operated within 500 feet of the following.

- (1) A church, synagogue or regular place of worship.
- (2) A public or private elementary or secondary school.
- (3) A boundary of any residential structure within or without a zoned area.
- (4) A public park.
- (5) A licensed day-care center.
- (6) Another sexually oriented business.

(B) A sexually oriented business may not be operated in the same building, structure, or portion thereof, containing another sexually oriented business.

(C) For the purpose of this chapter, measurement shall be made in a straight line, without regard to intervening structure or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted to the nearest property line of the premises of a church, synagogue, regular place of worship, or public or private elementary or secondary school, or to the nearest boundary of an affected public park, residential district, or residential lot, and licensed day-care center.

(D) For the purposes of Division (C) of this section, the distance between any two sexually oriented business uses shall be made from the closest exterior wall of the structure in which each business is located.

(Ord. 169, passed 5-18-98) Penalty, see § 10.99

§ 111.11 REGULATIONS PERTAINING TO ADULT ENTERTAINMENT.

A person who operates or causes to be operated an adult entertainment establishment which presents live entertainment for the enjoyment of an audience which has paid or promised to pay an admission fee and which depicts specified sexual activities or displays specified anatomical areas, shall comply with the following requirements.

(A) Upon application for a sexually oriented business permit, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures (indicating the type of illumination intensity of each such fixture) and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 30 square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises.

(B) The application shall be sworn to be true and correct by the applicant.

(C) No alteration in the configuration of the location of a manager's station may be made without the prior approval of the City Building Inspector and Zoning Administrator.

(D) It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

(E) The interior of the premises shall be configured in such a manner that there is an unobstructed view of a manager's station and of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this division (E) must be direct line of sight from the manager's station.

(F) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises to ensure that the view area specified in division (E) remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times and 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 in the application filed pursuant to division (A) of this section. The manager would have to be in full view of the operation of the business.

(G) The 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 one (1.0) foot candle as measured at the floor level.

(H) It shall be the duty of the owners and operator and it shall also be the duty of any agents and employees present in the premises to ensure that the illumination described above is maintained at all times if any patron is present in the premises.

(I) All off-street parking requirements must be in compliance with the city zoning ordinance; including that all areas of the off-street parking provided for the sexually oriented business patrons must be fully lighted.

(J) All aspects of the city zoning ordinance that are applicable for the construction of all structures associated with the sexually oriented business must be satisfactorily addressed and in compliance with all zoning regulations that are applicable.

(K) Operational hours for the sexually oriented business are permitted between the hours of 10:00 a.m. to 10:00 p.m. and it is prohibited for the operation of the sexually oriented business at any other times not within the above-stated times.

(L) The sexually oriented business must comply with the terms of the city zoning ordinance.

(M) The premises shall meet all barrier free requirements and building code requirements imposed by the State of Michigan.

(Ord. 169, passed 5-18-98) Penalty, see § 10.99

§ 111.12 EXTERIOR PORTIONS OF SEXUALLY ORIENTED BUSINESSES.

(A) It shall be unlawful for any owner or operator of a sexually oriented business to allow the merchandise or activities of the establishment to be visible from a point outside the establishment.

(B) It shall be unlawful for the owner or operator of a sexually oriented business to allow the exterior portion of the sexually oriented business to have any words, lettering, photographs, silhouettes, drawings, or pictorial representations of a sexual or explicit manner, except to the extent otherwise permitted by the provisions of this chapter.

(C) Signs shall contain no photographs, silhouettes, drawings or pictorial representations of any manner, and contain only the name of the enterprise.

(D) All signage must be in compliance with the city zoning ordinance.
(Ord. 169, passed 5-18-98) Penalty, see § 10.99

§ 111.13 PERSONS YOUNGER THAN 18 PROHIBITED FROM ENTRY.

(A) It shall be unlawful to allow a person who is younger than 18 years of age to enter or be on the premises of a sexually oriented business at any time that the sexually oriented business is open for business.

(B) It shall be the duty of the operator of each sexually oriented business to ensure that an attendant is stationed at each public entrance to the sexually oriented business at all times during such sexually oriented business's regular hours. It shall be the duty of the attendant to not allow any person under the age of 18 years to enter the sexually oriented business. It shall be presumed

that an attendant knew a person was under the age of 18 unless such attendant asked for and was furnished a valid operator's, commercial operator's, or chauffeur's license, or a valid personal identification certificate reflecting that such person is 18 years of age or older.

(Ord. 169, passed 5-18-98) Penalty, see § 10.99

§ 111.14 EXEMPTION.

It is a defense to prosecution under this chapter that a person appearing in a state of nudity did so in a modeling class operated by one of the following.

(A) A proprietary school, licensed by the State of Michigan, a college, junior college, or university supported entirely or partly by taxation.

(B) A primate college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

(Ord. 169, passed 5-18-98)

§ 111.15 NOTICES.

(A) Any notice required or permitted to be given by the city or other agency under this chapter to any applicant, operator or owner of an establishment may be given either by personal delivery or by certified United States Mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for permit, or transfer application that has been received by the city or any notice of address change that has been received by the city. Notices mailed as above shall be deemed given upon their deposit in the United States Mail. In the event that any notice by mail is returned by the Postal Service, the city shall cause to be posted at the principal entrance to the establishment.

(B) Any notice required or permitted to be given to the city by any person under this chapter shall not be deemed given until and unless it is received in the principal office of the city.

(C) It shall be the duty of each owner who is designated on the permit application and each operator to furnish notice to the city in writing of any change of residence or mailing address.

(Ord. 169, passed 5-18-98)

§ 111.16 INJUNCTION AND OTHER REMEDIES FOR VIOLATIONS.

A person who operates or causes to be operated a sexually oriented business without a valid permit and/or license or otherwise violates this chapter shall be subject to a suit for injunctive relief and/or revocation of the sexually oriented business permit, as well as fines or other penalties as provided by the city zoning ordinance. Any person, firm, or corporation which violates any of the above provisions of this chapter or regulations, promulgated pursuant thereto, shall be deemed guilty of a misdemeanor and shall be punished as provided in § 10.99.

(Ord. 169, passed 5-18-98) Penalty, see § 10.99