

STURGEON CITY CODE

CHAPTER 24: ADULT BUSINESSES

(All sections of Ch. 24 are derived from Ord. 717, Approved and Effective March 29, 2010, unless otherwise noted.)

Section 24.010 Secondary Effects Studies and Findings of Fact

WHEREAS, the Board of Aldermen, as elected representatives of the citizens of the City, have a duty to investigate the feasibility of adopting reasonable regulations to protect the citizens of the City from activities that have adverse effects which are harmful to the health, safety and general welfare of the citizenry; and

WHEREAS, the Board of Aldermen of the City met in a series of public meetings from October 22, 2009 thru March 29, 2010, to consider the regulation of adult businesses in the City and heard a report from staff and received documents regarding such regulations;

WHEREAS, sexually oriented businesses require special supervision in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the communities where they locate, and

WHEREAS, the concern for sexually transmitted diseases is a legitimate health concern of the City that demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens; and at least Fifty (50) communicable diseases may be spread by activities occurring in sexually oriented businesses including but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections, and

WHEREAS, the Board of Aldermen desires to minimize and control the adverse secondary effects associated with adult businesses and thereby protect the health, safety and welfare of the citizenry, preserve the quality of life, preserve property values and the character of surrounding neighborhoods and to deter the spread of urban blight; and

WHEREAS, sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and operators of the facilities to self-regulate those activities and maintain those facilities.

WHEREAS, numerous reports have determined that bodily fluids, including semen and urine, are found in the areas of sexually oriented businesses where persons view "adult" oriented films.

WHEREAS, nude dancing in adult establishments increases the likelihood of drug-dealing and drug use.

WHEREAS, the Board of Aldermen of the City is particularly concerned about the adverse secondary effect of an Adult Business upon other businesses in the community and upon the continued receipt of Sales Tax income by the City, specifically because the Board finds that certain family or child oriented businesses may flee the community if an Adult Business locates near to the Family or Child Oriented Businesses, and

WHEREAS, it is the purpose of this ordinance to regulate sexually oriented businesses and related activities to promote the health, safety, and morals, 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 this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this ordinance 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 ordinance to condone or legitimize the distribution of obscene materials.

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WHEREAS, the following studies regarding the adverse secondary effects associated with adult businesses were given to the Mayor and each Alderman, and placed on file with the City Clerk for review by the Board of Aldermen following the **October 22, 2009**, meeting as more particularly described as follows:

1. A study by the Special Programs Division of the Office of the Land Development Services in Austin, Texas, entitled "Report on Adult Oriented Businesses in Austin";
2. A study by the City of Phoenix, Arizona, entitled "Adult Business Study";
3. A report by the Minnesota Attorney General's Office entitled "Report of the Minnesota Attorney General's Working Group on the Regulation of Sexually Oriented Business";
4. A report prepared by the St. Paul, Minnesota Division of Planning entitled "Effects on Surrounding Area of Adult Entertainment Businesses in St. Paul";
5. A staff report prepared by the St. Paul, Minnesota Division of Planning entitled "Adult Entertainment";
6. A report prepared by the Amarillo, Texas Planning Department entitled "A Report on Zoning and Other Methods of Regulating Adult Entertainment in Amarillo";
7. A report prepared by the Los Angeles, California Department of City Planning entitled "Study of the Effects of the Concentration of Adult Entertainment Establishments in the City of Los Angeles";
8. A report prepared by the Indianapolis, Indiana Department of Metropolitan Development Division of Planning entitled "Adult Entertainment Businesses in Indianapolis: An Analysis";
9. A report prepared by the Beaumont, Texas Planning Department entitled "Regulation of Adult Uses; Revised September 14, 1982";
10. A memorandum from the Assistant Chief of Police of the City of Tucson, Arizona to the City Prosecutor entitled "Adult Entertainment Ordinance";
11. A report by Richard McCleary, Ph.D., and James W. Meeker, J.D., Ph. D., entitled "Final Report to the City of Garden Grove: The Relationship Between Crime and Adult Business Operations on Garden Grove Boulevard";
12. A report of the Whittier, California Planning Department Staff entitled "Amendment to Zoning Regulations; Adult Business in C-2 Zone with Conditional Use Permit";
13. An internal report of the Cleveland, Ohio Police Department entitled "Smut Shop Outlets, Contribution of these Outlets to the Increased Crime Rate in the Census Tract Areas of the Smut Shops";
14. A report by the Oklahoma City, Oklahoma Community Development Department Planning Division entitled "Adult Entertainment Businesses in Oklahoma City: A Survey of Real Estate Appraisers";
15. A legislative report by the Committee on the Proposed Regulation of Sexually Oriented Businesses of the Houston, Texas City Council;
16. A report by the Newport News, Virginia Department of Planning Development entitled "Adult Use Study";

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17. A report of the Seattle, Washington Department of Construction and Land Use entitled "Directors Report: Proposed Land Use Code Text Amendment--Adult Cabarets";

18. A report by the Minnesota Crime Prevention Center, Inc. to the Minneapolis, Minnesota Board of Aldermen entitled "Analysis of the Relationship Between Adult Entertainment Establishments, Crime, and Housing Values"; and

19. Adult Cabarets-Factual Records from Phoenix, Arizona;

20. Incall Escort Bureaus/Nude Modeling Studios(Private Room Nude Dancing) Index to Factual Record from Phoenix, Arizona;

21. Appendix A-Analysis of Adult Business Studios in Indianapolis, Indiana and Los Angeles, California;

22. Organized Crime;

23. Summaries of Key Reports Concerning the Negative Effects of Sexually Oriented Businesses;

24. Nude Entertainment Study from Adams County, California;

25. Adult Entertainment Study from Manatee County, Florida;

26. Adult Entertainment report from Saint Paul, Minnesota;

27. City Commission Minutes from Las Vegas, Nevada;

28. Adult Business Study from Ellicottville, New York (1998)

29. Study & Recommendations for Adult Entertainment Businesses from Islip New York(1980);

30. Adult Entertainment Study from New York, New York(1994);

31. Report of Secondary Effects of the Concentration of Adult Use Establishments from Times Square, New York(1994);

32. Regulation of Adult Entertainment Establishments from New Hanover County, North Carolina(1989);

33. A Look at Successful Abatement of Adult Oriented Business Nuisances from Oklahoma City, Oklahoma(1992);

34. A report on Secondary Impacts of Sex Oriented Businesses from Philadelphia, Pennsylvania(1996);

35. Report on Why and How Our City Organized a Joint County-Wide Sexually Oriented Businesses Task Force from Cleburne, Texas(1997);

36. An Analysis of the Effects of Sexually Oriented Businesses on the Surrounding Neighborhoods from Dallas, Texas(1997);

37. Report on The Effects of Adult Entertainment Businesses on Residential Neighborhoods from El Paso, Texas(1986);

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38. Report on Location of Adult Entertainment Uses-Background Material from Bellevue, Washington(1988);
39. Report on Adult Use Study from Des Moines, Washington(1984);
40. Regulation of Adult Entertainment Establishments in St. Croix County, Wisconsin(1993);
41. Report on Commercial Sexual Exploitation of Children in the U.S.(2001);
42. Testimony of David Sherman(2000) – An Insider's View of Sexually Oriented Businesses;
43. A Report on Strip Clubs According to Strippers: Exposing Workplace Sexual Violence.

WHEREAS, of particular relevance to the City was the study regarding the adverse secondary effects associated with adult businesses entitled an “Adult Use Study” prepared for the City of Kansas City, Missouri by Eric Damian Kelly, Ph.D., AICP, and Connie B. Cooper, AICP, consisting of 4 parts and 9 appendices (the “Kelly and Cooper Study”); and

WHEREAS, based on the secondary effects studies, testimony, case law and other information before it, the Board of Aldermen has made the following legislative findings of fact:

1. That certain conduct occurring on the premises of adult businesses is detrimental to the public health, safety and general welfare of the citizens of the City and, therefore, such conduct must be regulated;
2. That adult businesses are associated with and promote prostitution, illegal drug use and other criminal activity which constitute an immediate threat to the public peace, health, morals and safety;
3. That regulation of adult businesses is necessary because in the absence of such regulation, significant criminal activity, including prostitution, illegal drug use and disruptive behavior and high-risk sexual conduct that may result in health hazards, has historically and regularly occurred;
4. That adult businesses have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and downgrading of property values; these deleterious effects create a legitimate concern of the City to protect property values, business interests and generally protect the City from urban blight associated with adult businesses; and
5. That it is recognized that adult businesses have serious objectionable operational characteristics, particularly when they are located in close proximity to each other, thereby contributing to urban blight; and
6. That it is necessary to regulate and license entertainers and servers in the adult entertainment industry to prevent the exploitation of minors, to ensure that such individuals are adults and to ensure that such individuals have not assumed a false identity or been involved in criminal activity associated with adult entertainment, which would make regulation difficult or impossible; and
7. That it is recognized that the live entertainment presented by some adult businesses involves bodily contact between patrons and performers, including physical contact while giving and receiving gratuities, including hugging, kissing and fondling of performers or patrons; it is further recognized that this contact titillation promotes prostitution and the spread of sexually transmitted diseases; it is further recognized that a reasonable and effective means of preventing this type of physical contact is achieved by requiring entertainers to dance or perform only on a

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stage, prohibiting customers from touching the performers on the stage and prohibiting customers from providing gratuities to the performers on stage except in a container placed on the stage; and

8. That it is necessary to have a licensed manager on the premises of adult business establishments to ensure that a person responsible for the overall operation of the business, including the actions of the customers and employees, is present at all times; and

9. That the license fees imposed by these regulations are reasonable fees imposed as necessary regulatory measures designed to help defray expenses incurred by the City in regulating adult businesses; and

10. That it is necessary to restrict hours of operation of adult businesses in order to prevent noise and crime during the late night and early morning hours and to preserve the character and quality of nearby residential neighborhoods; and

11. That the types of videos and films shown in adult video viewing booths are available for viewing, purchase or rental in other types of adult businesses which are less harmful to the health, safety and welfare of the community, and therefore adult video viewing booths should be prohibited in favor of other venues; and

12. That adult retail establishments (the businesses referred to in the Kelly and Cooper Report as “sex shops”) have documented harmful secondary effects within nearby residential neighborhoods notwithstanding the retail nature of the businesses; and

13. That as of the date of the adoption of this ordinance approximately 20 tracts of land , or approximately 20% of the total area of the City, is properly zoned and could accommodate various types of adult businesses notwithstanding the locational restrictions imposed by this ordinance; and

14. That adult businesses (if any) operating on the effective date of this ordinance should be brought into compliance with the provisions of this ordinance and those businesses which do not conform to the locational restrictions contained herein shall conform their operations to a lawful business use and discontinue operation as an adult business at that existing location; and

15. Crime static’s show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods where sexually oriented businesses are located, and

16. Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows.

WHEREAS, the Board of Aldermen desires to minimize and control the adverse secondary effects associated with adult businesses and thereby protect the health, safety and welfare of the citizenry, preserve the quality of life, preserve property values and the character of surrounding neighborhoods and to deter the spread of urban blight; and

WHEREAS, it is not the intent of this ordinance or any previously enacted ordinance to suppress or limit any speech activities protected by the First Amendment to the United States Constitution, but to enact a content neutral, reasonable time, place and manner regulation that effectively addresses the harmful secondary effects associated with adult businesses.

Section 24.020 Severability.

As section 26 of this ordinance also says, this ordinance is intended to be severable. The Board of Aldermen unequivocally states, to the maximum extent permitted by the Constitution of the United States of America, each and

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every section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance is enacted independently of every other section, subsection, subdivision, paragraph, sentence, clause or phrase. Because some Federal courts seem unable or unwilling to give effect to the severability clause in an ordinance of this sort, this intention is stated both at the beginning and at the end of this ordinance. **WE DO NOT KNOW HOW TO MAKE THIS INTENTION ANY CLEARER TO ANY REASONABLE PERSON.**

If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance, or the application thereof to any circumstances, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision **shall not affect** the validity or effectiveness of the remaining portions of this ordinance. The Board of Aldermen would have enacted the remainder of the ordinance without such unconstitutional or invalid or ineffective provision.

Section 24.030 Definitions.

For the purposes of this section and unless the context plainly requires otherwise, the following definitions are adopted:

1. "Adult Business" means any business:
 - a. that has as a substantial or significant purpose the sale or rental of merchandise that is that emphasizes matters depicting, describing or relating to specified sexual activities or specified anatomical areas; or
 - b. that has as one of its regular and substantial business purposes:
 - (1) the providing of entertainment where the emphasis is on performances, live or otherwise, that depict, portray, exhibit or display specified anatomical areas or specified sexual activities; or
 - (2) the providing of services that are intended to provide sexual arousal or excitement or that allow observation of specified sexual activities or specified anatomical areas ancillary to other pursuits, or allow participation in specified sexual activities ancillary to other pursuits.
 - c. The definition of "adult business" also includes but is not limited to any and all of the following specific adult businesses, as defined herein:
 - (1) Businesses that offer merchandise for sale or rent.
 - (a) "Adult media outlet" means a business engaging in the sale or rental of merchandise where a substantial or significant portion of the business is devoted to the sale or rental of "adult media." For purposes of this subsection, it shall be presumed that a "substantial or significant" portion of a business is devoted to the sale or rental of "adult media" if any one or more of the following criteria are satisfied:
 - (A) Twenty-five percent (25%) or more of the sales (including rentals), measured in dollars over any consecutive ninety-day period is derived from "adult media";
 - (B) Twenty-five percent (25%) or more of the number of transactions, measured over any consecutive ninety-day period, relate to "adult media";

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- (C) Twenty-five percent (25%) or more of the dollar value of all merchandise displayed at any time is attributable to “adult media”;
- (D) Twenty-five percent (25%) or more of the inventory consists of “adult media” at any time; or
- (E) Twenty-five percent (25%) or more of the merchandise displayed for sale or rental consists of “adult media” at any time; or
- (F) Twenty-five percent (25%) or more of the sales floor area of the business (not including storerooms, stock areas, bathrooms, or any portion of the business not open to the public) is devoted to “adult media” at any time.

The presumption that a “substantial or significant” portion of a business is devoted to the sale or rental of “adult media”, based upon the above guidelines, shall be rebuttable.

- (b) "Adult news rack" means any coin- or card-operated device that offers for sale by dispensing printed material which is distinguished or characterized by its emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.
- (c) “Adult retail establishment” means a business that displays or offers good for sale or rent and that meets any of the following tests:
 - (A) It displays or offers for sale or rent items from any two (2) of the following categories: “sexually-oriented toys or novelties”; lingerie; clothing that graphically depicts “specified anatomical area”; leather goods designed or marketed for use for sexual bondage or sadomasochistic practices; and the combination of such items constitutes
 - (1) ten percent (10%) or more of the sales (including rentals), measured in dollars over any consecutive ninety (90) day period; or
 - (2) ten percent (10%) or more of the number of sales transactions, measured over any consecutive ninety-day period; or
 - (3) ten percent (10%) or more of the dollar value of all merchandise displayed at any time; or
 - (4) ten percent (10%) or more of all inventory at any time, or
 - (5) ten percent (10%) or more of the merchandise displayed for sale at any time; or
 - (6) ten percent (10%) or more of the sales floor area of the business (not including storerooms, stock areas, bathrooms, or any portion of the business not open to the public) at any time; or
 - (B) Any sales (including rentals), measured in dollars over any consecutive ninety (90) day period is derived from “sexually-oriented toys or novelties”; or
 - (C) Any sales transactions, measured over any consecutive ninety (90) day period, relate to “sexually-oriented toys or novelties”; or

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(D) Any dollar value of all merchandise displayed at any time is attributable to “sexually-oriented toys or novelties”; or

(E) All inventory of “sexually-oriented toys or novelties” at any time; or

(F) Any merchandise displayed for sale consists of “sexually-oriented toys or novelties” at any time; or

(G) Five percent (5%) or more of the sales floor area of the business (not including storerooms, stock areas, bathrooms, or any portion of the business not open to the public) is devoted to “sexually-oriented toys or novelties” at any time.

(2) Businesses that provide entertainment.

(a) "Adult entertainment business" means any business to which the public, patrons or members are invited or admitted, and where providing "adult entertainment," as defined herein, as a regular and substantial portion of its business.

(b) The definition of "adult entertainment business" also includes, but is not limited to, any and all of the following specific adult entertainment businesses, as defined herein:

(A) "Adult motion picture theater" means an establishment with a screen or projection areas, where a regular and substantial portion of its business is the exhibition to patrons of films, videotapes or motion pictures which are intended to provide sexual arousal or sexual excitement to the patrons and which are distinguished by or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

(B) "Adult theater" means an establishment where a regular and substantial portion of its business is providing the live performance of activities relating to specified sexual activities or exhibition of specified anatomical areas of live performers, for observation by patrons.

(C) "Adult entertainment cabaret" means an establishment where a regular and substantial portion of its business is providing adult entertainment which features strippers, male or female impersonators, or live performances, or material which depict, portray, exhibit or display specified anatomical areas or specified sexual activities or are intended to arouse or excite the sexual desires of the entertainer, other entertainer or patron.

(D) "Adult entertainment studio" (includes the terms "rap studio," "exotic dance studio," "sensitivity studio" or "encounter studio") means an establishment whose premises are physically arranged so as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises, and where a regular and substantial portion of its business is providing entertainment which features materials or live performances characterized by an emphasis on or features materials relating to specified sexual activities or the exhibition of specified anatomical areas.

(E) "Adult encounter parlor" means an establishment where a regular and substantial portion of its business is the provision of premises where patrons congregate, associate, or

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consort with employees, performers, and/or other patrons or private contractors who display specified anatomical areas in the presence of such patrons, with the intent of providing sexual arousal or excitement to such patrons.

(F) "Body Painting Studio" means an establishment where a regular and substantial portion of its business is the application of paint or other substance to or on the human body by any means of application, technique or process when the subject's body displays for the patron's view specified anatomical areas.

(3) Businesses that provide services.

(a) "Bath House" means an enterprise where a regular and substantial portion of its business is offering baths and/or showers with other persons present who are nude or displaying specified anatomical areas.

(b) "Adult Motel" means an enterprise where a regular and substantial portion of its business is offering public accommodations, for the purpose of viewing motion pictures or viewing publications which are distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical area" by any photographic, electronic, magnetic tape, digital or other medium (including but not limited to film, video, magnetic tape, laser disc, CD-ROM, books, magazines or periodical) for observation by patrons therein and which rents room accommodations for less than six (6) hours at a time.

2. "Adult entertainment" means any exhibition, performance, display or dance of any type, including, but not limited to, talking, singing, reading, listening, posing, serving food or beverages, soliciting for the sale of food, beverages or entertainment, pantomiming, modeling, removal of clothing, or any service offered on a premises where such exhibition, performance, display or dance is intended to arouse or excite the sexual desires of the entertainer, other entertainers or patrons, or if the entertainment depicts, portrays, exhibits or displays specified anatomical areas or specified sexual activities.

3. "Adult media" means books, magazines, periodicals, other printed matter, pictures, slides, records, audiotapes, videotapes, compact discs, motion pictures, films, CD-ROMs or other devices used to record computer images, or other media which are distinguished or characterized by an emphasis on matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas."

4. "Adult video viewing booth" means any booth, cubicle, stall or compartment which is designed, constructed or used to hold or seat patrons and is used for presenting or viewing motion pictures or viewing publications which are distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas" by any photographic, electronic, magnetic tape, digital or other medium (including, but not limited to, film, video, magnetic tape, laser disc, CD-ROM, books magazines or periodicals) for observation by patrons therein. "Adult video viewing booths" are sometimes referred to as "peep shows", "adult video arcades", "panoramas" and "adult mini-motion picture theaters". An "adult video viewing booth" shall not mean a theater, movie house, playhouse, or a room or enclosure or a portion thereof which contains more than 150 square feet of gross floor area. Note: as of the date of the adoption of this definition, there are no known "adult video viewing booths" within the City, and the Zoning Ordinance specifically does not list this as a permitted use in any existing zoning district.

5. "Adult Arcade" means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, videos, or other image-producing devices are maintained to show images to five or fewer persons per machine at any

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one time, and where the images so displayed are distinguished or characterized by the depicting or describing of “specified sexual activities” or “specified anatomical areas.”

6. "Contagious and communicable diseases" means those diseases which are set out in Missouri Code of State Regulations, Department of Health, 19 C.S.R. 20-20.020, as amended.

7. "Employee" means any and all persons, including managers, entertainers and independent contractors, who work in or at or render any services directly related to the operation of an adult business.

8. "Entertainer" means any person who provides adult entertainment within an adult business, whether or not a fee is charged or accepted for entertainment.

9. "Escort Agency" means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

10. "Manager" means any person who manages, directs, administers, or is in charge of the affairs and/or conduct of any portion of any activity at any adult business.

11. "Minor" means any person less than eighteen (18) years of age.

12. "Nude or Nudity" means the appearance of the human bare buttocks, anus, human genitals, the areola or the nipple of the female breast or a state of dress which fails to opaquely or fully cover the anus, human genitals or the areola or the nipple of the female breast.

13. "Operate" means to own, conduct or maintain the affairs of any adult business.

14. "Operator" means any person owning, operating, conducting or maintaining an adult business.

15. "Patron" means any person who enters an adult business without regard to whether a purchase is made from the adult business or compensation is paid to the adult business or any employee of the adult business for merchandise, entertainment or service, provided that the term patron shall not include persons who enter an adult business for the sole purpose of providing service or merchandise to the adult business and who do not remain in the adult business after the purpose had been accomplished including, but not limited to, persons performing construction, repair or maintenance on the premises or delivering goods or merchandise to the adult business and any such similar activity.

16. "Person" means any individual, partnership, corporation, trust, incorporated or unincorporated association, joint venture, governmental entity, or other entity or group of persons, however organized.

17. "Server" means any person who serves food and drink at an adult entertainment business.

18. "Sexually-oriented toys or novelties" means instruments, devices or paraphernalia which either depict "specified anatomical areas" or are designed or marketed for use in connection with "specified sexual activities." In determining whether an item is "designed or marketed for use" in connection with "specified sexual activities," the following guidelines may be considered:

- a. Expert testimony as to the principal use of the item;
- b. Evidence concerning the total business of a person or business or a person or business establishment and the type of merchandise involved in the business;

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- c. National and local advertising concerning the use of the item;
- d. Evidence of advertising concerning the nature of the business establishment;
- e. Instructions, graphics or other material contained on the item itself or on the packaging materials for the item;
- f. The physical or structural characteristics of the item; or
- h. The manner in which the item is displayed, including its proximity to other regulated merchandise or signage relating to items in a display area.

Any person may request an interpretive ruling from the City Clerk, or his or her designee, as to whether a particular item is considered by the City to be “designed or marketed for use” in connection with “specified sexual activities.” An application for an interpretive ruling shall be made in writing on a form provided by the City Clerk, and shall be accompanied by such other information as may reasonably be requested under the circumstances pertaining to the specific item about which a ruling is requested. The City Clerk shall issue a written interpretive ruling within ten (10) business days following submission of a completed application. The decision of the City Clerk may be appealed to the Board of Aldermen within fifteen (15) days following the date of the interpretive ruling by submitting a written notice of appeal to the City Clerk.

19. "Specified anatomical areas" mean

- a. uncovered or exposed human genitals, pubic region or pubic hair, buttocks, female breast or breasts below a point immediately above the top of the areola encircling the nipple, or any combination of the foregoing; or
- b. human male genitals in a discernibly erect state, even if completely and opaquely covered.

20. "Specified sexual activities" mean any of the following acts of intended sexual arousal or excitement:

- a. Sexual conduct including, but not limited to, actual or simulated acts of sexual intercourse, masturbation, oral copulation or sodomy;
- b. Fondling or other intentional touching of a person's clothed or unclothed genitals, pubic area, buttocks, or the breast of a female;
- c. Sadomasochistic acts; or
- d. Acts involving animals or latent objects.

Section 24.040 License required for adult business.

1. It is unlawful for any person to operate or maintain an adult business in the City unless the owner of the adult business has obtained an adult business license from the City, or to operate such business after such license has been revoked or suspended by the City.

2. It is unlawful for any entertainer, server, employee, manager, operator or owner to knowingly perform any work, service or entertainment directly related to the operation of an unlicensed adult business.

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3. The failure to post an adult business license in the manner required herein shall be prima facie evidence that an adult business has not obtained such a license. In addition, it shall be prima facie evidence that any entertainer, employee, manager or owner who performs any business, service or entertainment in an adult business in which an adult business license is not posted in the manner required herein had knowledge that such business is not licensed.

4. Any business that engages in the barter, rental, or sale of items consisting of printed matter, pictures, slides, records, audiotapes, videotapes, compact discs, motion pictures, films or other media, if such business is not open to the public in general but only to one or more classes of the public, excluding any minor by reason of age, or if a substantial or significant portion of such items are distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas" shall be deemed to have consented to periodic entry into and inspection of the business premises by appropriate City officials and inspection by those officials of only those business records necessary for the limited purpose of determining whether such business enterprise is an "Adult Business" as defined herein. This entry and inspection shall take place during hours when such business is open to the public, unless otherwise requested by the business, and shall not unreasonably interfere with the conduct of such business.

Section 24.050 License required for managers, employees, servers and entertainers.

It is unlawful for any person to work as an entertainer, server, employees or manager at an adult business without first obtaining a license to do so from the City, or to work as an entertainer, server or manager at an adult business after such person's license to do so had been revoked or suspended. It is unlawful for any adult business to employ any person in any capacity within its premises, whether as an employee or as an independent contractor, who does not have the license required by this section. Provided, that no such license shall be required of bona fide repair or maintenance independent contractors or bona fide custodial employees who do not engage in any other activities within the adult business.

Section 24.060 License, classification and fees.

1. The license year for all fees required herein shall be from each January 1 through December 31. The application for a license shall be accompanied by payment in full of the fee in the amount of (For current rates see Chapter 25 - Deposits, Fees & Charges, Section 25.650), by certified or cashier's check or money order, and no application shall be considered complete until such fee is paid.

2. All licenses shall be nontransferable to other persons, but shall not be limited to a specific adult business that is properly licensed under this Article. All license fees shall be nonrefundable.

3. All adult business licenses shall be issued only for the one adult business use listed on the application and defined in this ordinance, any change in the type of adult use shall invalidate the adult business license and require the licensee to obtain a new license for the change in use. A separate license is required for each adult use.

Section 24.070 Adult Business Fund.

All fees received for licenses required by section 3 and 4 of this ordinance shall be deposited in a separate "Adult Business Fund" to be maintained by the City. No funds shall be disbursed from that fund expenses except for inspection of adult businesses and enforcement of this ordinance.

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Section 24.080 Inspection Frequency.

It is the intention of the City that each adult business will be inspected on a weekly basis. These inspections will not be announced or scheduled in advance. Each licensed adult business, and each licensed manager, server, employee or entertainer is required to assist and cooperate with such inspection. Any delay or interference with the conduct of an inspection causing an unnecessary delay in the inspection shall be grounds for revocation of both the license of the adult business, and the license of the manger(s), employee(s), server(s) or entertainer(s) who participated in the delay. Any delay in excess of 90 seconds shall be presumed to be unreasonable. This presumption shall be rebuttable. However, no delay by an employee awaiting instructions from higher management or otherwise caused by an adult business licensee's failure to train its employees as to the requirements of this ordinance shall be considered reasonable.

Section 24.090 License applications.

1. Adult Business License.

All persons desiring to secure a license to operate an adult business as required herein shall make a verified application with the City Clerk. All applications shall be submitted in the name of the person who owns the adult business. The application shall be signed by the applicant. If the applicant is a corporation, the application shall be signed by its President. If the applicant is a partnership, the application shall be signed by a partner. In all other instances where the owner is not an individual, where applicable, the application shall be signed by an authorized representative of the owner. The City Clerk may require proof of authorization before accepting an application. All applications shall be submitted on a form supplied by the City Clerk and shall require all of the following information:

- a. The name, residence address, home telephone number, occupation, date, place of birth and social security number of the applicant.
- b. The tax identification number and registered agent if the owner is required to have a tax identification number or registered agent.
- c. The name of the adult business, a description of the type of adult business to be performed on the licensed premises, and the name of the owner of the premises where the adult business will be located.
- d. The names, residence addresses, social security numbers and dates of births of all partners, if the applicant is a partnership or limited liability partnership, and if the applicant is a corporation or limited liability company, the same information for all corporate officers and directors and stockholders or members who own more than twenty-five percent (25%) interest in the corporation.
- e. A statement from the applicant whether the applicant, or any corporate officer or director, or stockholder, partner or member who owns more than twenty-five percent (25%) interest in such entity, in previously operating in this or another City, county or state, has had an adult business license of any type revoked or suspended, and if so, the reason for the suspension or relocation and the business activity subjected to the suspension or revocation.
- f. A statement from the applicant, all partners or each corporate officer and director that each such person has not been either: convicted of, or released from confinement for conviction of, or diverted from prosecution on:
 - (1) any felony within the five (5) years immediately preceding the application, or,

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- (2) a misdemeanor within the two (2) years immediately preceding the application, or,
 - (3) a municipal or county ordinance violation within the two (2) years immediately preceding the application, where such felony, misdemeanor, municipal or county ordinance violation involved sexual offenses, prostitution, indecent exposure, sexual abuse of a child or pornography or related offenses, or controlled substances or illegal drugs or narcotics offenses as defined in the Missouri Statutes or county or municipal ordinances.
- g. On applications requesting a license to operate a bath house or body painting studio, the applicant shall submit to the City Clerk within forty-eight (48) hours of the time each employee begins employment, a health certificate from a duly licensed Missouri physician stating that within ninety (90) days prior to the date of employment, such employee has been examined and found free of any contagious or communicable disease as defined herein. This shall be a continuing requirement and shall also initially apply to the applicant.
- h. If the applicant is a corporation or Limited Liability Company, a current certificate of registration issued by the Missouri Secretary of State.
- i. A statement signed under oath that the applicant has personal knowledge of the information contained in the application and that the information contained therein is true and correct and that the applicant has read the provisions of this ordinance regulating adult businesses.

Failure to provide the information and documentation required herein shall constitute an incomplete application. The City Clerk shall notify the applicant whether or not the application is complete within ten (10) working days of the date the application is received by the City Clerk.

2. Manager, Server or Entertainer License.

All persons desiring to secure a license to be a manager, server or entertainer shall make a verified application with the City Clerk. All applications shall be submitted in the name of the person proposing to be a manager, server or entertainer. All applications shall be submitted on a form supplied by the City Clerk and shall require all of the following information:

- a. The applicant's name, home address, home telephone number, date and place of birth, social security number, and any stage names or nicknames used in entertaining.
- b. A statement from the applicant that the applicant has not been convicted of, or released from confinement for conviction of, or diverted from prosecution on, any felony, whichever event is later, within five (5) years immediately preceding the application, or has not been convicted of, or diverted from prosecution on, a misdemeanor, or released from confinement for conviction of a misdemeanor, whichever event is later, within two (2) years immediately preceding the application, where such felony or misdemeanor involved sexual offenses, prostitution, indecent exposure, sexual abuse of a child or pornography and related offenses, or controlled substances or illegal drugs or narcotics offenses as defined in the Missouri statutes or municipal ordinances.

The statement shall also indicate that the applicant has not been convicted of a municipal ordinance violation or diverted from prosecution on a municipal ordinance violation within two (2) years immediately preceding the application where such municipal ordinance violation involved sexual offenses, indecent exposure, prostitution or sale of controlled substances or illegal drugs or narcotics.

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- c. The applicant shall present to the City Clerk, who shall copy, documentation that the applicant has attained the age of eighteen (18) years at the time the application is submitted. Any of the following shall be accepted as documentation of age:
- (1) A motor vehicle operator's license issued by any state, bearing the applicant's photograph and date of birth;
 - (2) A state-issued identification card bearing the applicant's photograph and date of birth;
 - (3) An official and valid passport issued by the United States of America;
 - (4) An immigration card issued by the United States of America;
 - (5) Any other form of picture identification issued by a governmental entity that is deemed reliable by the City Clerk; or
 - (6) Any other form of identification deemed reliable by the City Clerk.

Failure to provide the information required herein shall constitute an incomplete application. The City Clerk shall notify the applicant whether or not the application is complete within ten (10) working days of the date the application was received by the City Clerk.

3. Application processing.

Upon receipt of an application for an adult business, manager, server or entertainer license, the City Clerk shall immediately transmit one copy of the application to the Chief of Police for investigation of the application. In addition, the City Clerk shall transmit a copy of the application to the Mayor and Building Official. It shall be the duty of the Chief of Police to investigate such application to determine whether the information contained in the application is accurate and whether the application meets the requirements herein for issuance of the license for which the application is made. The Chief of Police shall report the results of the investigation to the City Clerk not later than twenty (20) working days from the date the application is received by the City Clerk. It shall be the duty of the Building Official to determine whether the structure where the adult business will be conducted complies with the requirements and meets the standards of the applicable health, zoning, building code, and fire code ordinances of the City. The Building Official shall report the results of his/her investigation to the City Clerk not later than twenty (20) working days from the date the application is received by the City Clerk. Upon receipt of the reports from the Chief of Police and the Building Official, the City Clerk shall schedule the application for consideration by the governing body at the earliest meeting consistent with the notification requirements established by law, provided the license application for an adult business, server, manager or entertainer license shall be approved or disapproved within forty-five (45) days from the date a application is received by the City Clerk. The applicant shall be notified in writing of the date when the governing body will consider the application and shall be afforded an opportunity to be heard at that meeting.

Section 24.100 Examination of Application, Issuance of License, Disapproval.

1. The governing body shall examine an application for an adult business license, or a manager, server, employee, or entertainer license within forty-five (45) days of the date such application was received by the City Clerk. After such examination, the governing body shall approve the issuance of a license only if the appropriate license fee has been paid, the applicant is qualified, and all the applicable requirements set forth herein are met. No license shall be approved for any person ineligible pursuant to the provisions herein. All incomplete applications shall be denied.

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2. The record of the governing body shall show the action taken on the application, and if the license is granted, the governing body shall direct the City Clerk to issue the proper license. The adult business license and all manager, server and entertainer licenses shall state that it is not transferable to other persons or entities and the calendar year for which it is issued.

3. If an application for a license is denied, the applicant shall be immediately notified by registered or certified mail to the applicant's last known address and the notification shall state the basis for such disapproval. Any applicant aggrieved by the disapproval of a license application may seek judicial review in the Boone County Circuit Court in a manner provided by law.

Section 24.110 License -Ineligibility and Disqualification.

No person is eligible nor shall a license be issued to:

1. An applicant for an adult business license if one or more of the following conditions exist:

a. The premises for which an application for an adult business has been made is located within I) one thousand feet (1000') of any school, church, or licensed child care center or child care center one thousand feet (1000') of any public building or park, or property used for residential purposes, which uses are located within the City limits. Measurements shall be made in a straight line, without regard to intervening structures or objects, from the nearest point of the premises from which the adult business would be operated to the nearest point on the property line of any school, church, licensed child care center or child care center, public park or property used for residential purposes located within the City;

(1) Provided the phrase "property used for residential purposes" shall not include any property used primarily for commercial purposes but which contains an apartment or dwelling for the owner, or for a night watchman or employee.

(2) Provided further, the list of protected uses set forth herein shall exclude streets, alleys and highway rights-of-way.

(3) Provided further, that the spacing restriction set forth above in subsection 1 may be waived by the Board of Aldermen after review and recommendation by the Planning Commission, if the applicant demonstrates by substantial and competent evidence and it is found that

(a) the proposed use will not be contrary to the public interest or contrary to nearby properties, and that the spirit and intent of this ordinance will be observed, and

(b) the proposed use will not enlarge or encourage the development of a "blighted area" as defined in Section 100.310 of the Revised Statutes of Missouri, as amended, and

(c) the establishment of an additional regulated use in the area will not be contrary to any program of neighborhood conservation nor will it interfere with any program or urban renewal, and

(d) all applicable regulations of this ordinance will be observed.

b. The premises for which an application for an adult business has been made is located within seven hundred fifty feet (750') of any other adult business for which there is a license issued by the City regardless of

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whether such businesses are located on the same property or separate properties. Measurements shall be made in a straight line, without regard to intervening structures or objects from the premises from which an adult business would be operated to the nearest point on the property line of such other adult business located within the City;

- (1) Provided the list of protected uses set forth herein shall exclude streets, alleys and highway rights-of-way, and
 - (2) Provided further, that the seven hundred fifty feet (750') restriction between such regulated uses may be waived by the Board of Aldermen after review and recommendation by the City Clerk, if the applicant demonstrates by substantial and competent evidence and it is found that
 - (a) the proposed use will not be contrary to the public interest or contrary to nearby properties, and that the spirit and intent of this ordinance will be observed, and
 - (b) the proposed use will not enlarge or encourage the development of a "blighted area" as defined in Section 100.310 of the Revised Statutes of Missouri, as amended, and
 - (c) the establishment of an additional regulated use in the area will not be contrary to any program of neighborhood conservation nor will it interfere with any program or urban renewal, and
 - (d) all applicable regulations of this ordinance will be observed.
- c. The applicant failed to supply all of the information requested on the application;
 - d. The applicant knowingly gave false, fraudulent or untruthful information on the application;
 - e. The applicant's proposed business premises does not comply with or meet the requirements of the applicable health, zoning, building code, fire and property maintenance ordinances of the City, provided, that upon a showing that the premises meets said requirements and that the applicant is otherwise qualified, the application shall be eligible for reconsideration by the governing body;
 - f. The applicant has been convicted, released from incarceration for conviction or diverted from prosecution on any of the crimes set forth herein during the time period set forth herein;
 - g. The applicant has had an adult business license or comparable license revoked or suspended in this or any other City during the past five (5) years; or
 - h. If the applicant is applying for a license to operate a bath house or body painting studio and applicant has not produced a health certificate as required herein for all persons working on the premises.
2. An applicant for a manager, server or entertainer license if one or more of the following conditions exist:
 - a. The applicant has been convicted, released from incarceration for conviction or diverted on any of the crimes set forth herein during the time period set forth herein;
 - b. The applicant knowingly failed to provide all of the information required on the application;
 - c. The applicant knowingly gave materially false, fraudulent or untruthful information on the application;

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d. The applicant has had a manager, server or entertainer license revoked or suspended in this or any other City during the past five (5) years; or

e. The applicant is applying for a license for a manager, server or entertainer in a bath house or body painting studio and has not produced a health certificate as required herein.

Section 24.120 Certain “Sexually-oriented toys or novelties” prohibited

It shall be unlawful for any person to knowingly distribute, possess with intent to distribute or offer or agree to distribute for anything of pecuniary value any obscene material or any device designed or marketed as useful primarily for the stimulation of a “specified anatomical area,” even if such use is possible while the user is wearing clothing or an opaque covering. Material not otherwise obscene may be obscene under this section if the distribution of the material, the offer to do so, or the possession with the intent to do so is a commercial exploitation of erotica solely for the sake of prurient appeal.

Section 24.130 Standards of conduct.

The following standards of conduct shall be adhered to by all adult businesses, their employees and all managers, servers and entertainers and patrons of adult businesses, while on or about the premises of the business:

1. Identification Cards.

All or any manager, server, employee or entertainer issued a license by the City Clerk under the provisions contained herein shall, at all times when working in an adult business, have in their possession and their person a valid identification card issued by the City, bearing the permit number, the employee's physical description and a photograph of such employee. Such identification cards shall be laminated to prevent alteration.

2. Age restriction.

Only persons eighteen (18) years of age or older shall be permitted on the premises of any adult business.

3. Exterior Observation.

The premises of all adult businesses will be so constructed as to insure that the interior of the premises is not observable from the exterior of the building. In addition, all windows will be covered to prevent viewing of the interior of the building from the outside and all doorways not constructed with an anteroom or foyer will be covered so as to prevent observation of the interior of the premises from the exterior of the building.

4. Exterior Display.

No adult business will be conducted in any manner that permits the observation of live performers engaged in an erotic depiction or dance or any material or persons depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined herein, from any exterior source by display, decoration, sign, show window or other opening.

5. Nudity prohibited.

No manager, employee, server, entertainer or patron in an adult business other than a licensed bath house shall be nude, or clothed in less than opaque attire.

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6. Certain Acts Prohibited.

a. No manager, employee, server, entertainer or patron shall perform any specified sexual activities as defined herein, wear or use any device or covering exposed to view which simulates any specified anatomical area, use artificial devices or inanimate objects to perform or depict any of the specified sexual activities or participate in any act of prostitution as prohibited by state law or municipal ordinance while on the premises of an adult business.

b. All dancing or other live entertainment on the licensed premises that is intended to provide sexual stimulation or to appeal to, arouse or excite the sexual desire or interests of the patrons shall occur and be performed solely on a platform or stage which is raised at least two (2) feet above the primary level of the customer floor area. In order to insure the performance area of the stage or performance platform is not within the reach of patrons and to further insure patrons are unable to touch the performers during their performances, the licensee, owner, operator or manager shall either erect a physical barrier between the performers and the patrons that effectively eliminates the touching of the performers by the patrons or they shall paint a clearly discernible boundary line on the stage surface beyond which the performers shall not perform and which is sufficiently distant from the forward edge of the stage to insure the patrons cannot touch the performers. Further, it shall be unlawful for any patron to be upon any portion of the stage during a performance or for an owner, operator or manager to permit a patron to be upon any portion of the stage during the performance.

c. No employee, server, entertainer or patron of an adult business while on the premises of an adult business shall knowingly touch, fondle or caress any specified anatomical area of another person, or knowingly permit another person to touch, fondle or caress any specified anatomical area of such employee, server, entertainer or patron, whether such specified anatomical areas are clothed, unclothed, covered or exposed.

d. No entertainer shall solicit, demand or receive any payment or gratuity from any patron for any act prohibited herein and while on the premises of an adult business and no entertainer shall receive any payment or gratuity from any patron for any entertainment except as follows:

(1) While such entertainer is on the stage a patron may place such payment or gratuity into a container affixed to the stage; or

(2) While such entertainer is not on the stage but while on the premises of an adult business and is clothed so as to not expose to view any specified anatomical area, a patron may either place such payment or gratuity into the entertainer's hand, or under a leg garter worn by such entertainer at least four (4) inches below the bottom of the pubic region.

e. No owner, operator, manager or other person in charge of the premises of an adult business shall:

(1) Knowingly permit alcoholic liquor or cereal malt beverages to be brought upon the premises unless authorized to do so by a properly issued and current drinking establishment or cereal malt beverage license;

(2) Knowingly allow or permit the sale, distribution, delivery or consumption of any controlled substance or illegal drug or narcotic on the premises;

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- (3) Knowingly allow or permit any person under the age of eighteen (18) to be in or upon the premises of an adult entertainment business;
- (4) Knowingly allow or permit any act of prostitution or patronizing prostitution on the premises, as prohibited by state law or municipal ordinance; or
- (5) Knowingly allow or permit a violation of this ordinance or any other City ordinance provision or state law.

An application is overdue in payment to the City for taxes, fees, fines, or penalties assessed against or imposed upon him\her in relation to the sexually oriented business for which license is sought, or the property on which the sexually oriented business is located or will be located.

Section 24.140 Hours of Operation:

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of eleven o'clock (11:00) P.M. and eleven o'clock (11:00) A.M. on weekdays and Saturdays. No sexually oriented business shall open for business or remain open for business on Sunday or any legal holiday recognized by the State of Missouri.

Section 24.150 Signs Required.

1. All adult businesses shall conspicuously display on the principal entrance to the premises, a sign, visible from the exterior of the premises and in contrasting colors on which uppercase letters shall be at least two (2) inches high, and lowercase letters at least one inch high, which shall read as follows:

<p><i>THIS BUSINESS IS AN ADULT BUSINESS. ONLY PERSONS EIGHTEEN (18) YEARS OF AGE OR OLDER ARE PERMITTED ON THE PREMISES.</i></p>

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2. All adult entertainment businesses that provide live entertainment shall conspicuously display in the common area at the principal entrance to the premises, a sign, in contrasting colors, on which uppercase letters shall be at least two (2) inches high, and lowercase letters at least one inch high, which shall read as follows:

*THIS BUSINESS IS AN ADULT ENTERTAINMENT BUSINESS IS REGULATED
AND LICENSED BY THE City of Sturgeon*

ENTERTAINERS ARE:

- * Not permitted to engage in any type of sexual conduct or prostitution on the premises or to fondle, caress or touch the breasts, pubic region, buttocks or genitals of any employee, patron or other entertainer or to permit any employee, patron or other entertainer to fondle, caress or touch the breasts, pubic region, buttocks or genitals of said entertainer.
- * Not permitted to be nude.
- * Not permitted to demand or collect any payment or gratuity from any customer for entertainment, except as follows:
While such entertainer is on the stage, by placing such payment or gratuity into a box affixed to the stage; or
While such entertainer is not on the stage, by either placing such payment or gratuity into the entertainer's hand, or under the entertainer's leg garter.

CUSTOMERS ARE:

- * Not permitted to be upon the stage at any time.
- * Not permitted to touch, caress or fondle the breasts, pubic region, buttocks or genitals of any employee, server, entertainer or patron or engage in solicitation for prostitution.

3. Lighting required.

The premises of all adult businesses shall be equipped with overhead lighting of every place to which customers are permitted access, at an illumination of not less than one (1) foot-candle, as measured at the floor level, and such illumination must be maintained at all times that any customer or patron is present in or on the premises.

4. Closed booths or rooms prohibited.

The premises of all adult businesses shall be physically arranged in such manner that the entire interior portion of any booths, cubicles, rooms or stalls is visible from a common area of the premises. Visibility shall not be blocked or obscured by doors, curtains, drapes or any other obstruction whatsoever. "Adult video viewing booths" are prohibited whether or not the booth is visible from a common area of the premises.

5. Ventilation and sanitation requirements.

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The premises of all adult businesses shall be kept in a sanitary condition. Except as otherwise provided herein, separate dressing rooms and rest rooms for men and women shall at all times be maintained and kept in a sanitary condition.

6. Hours of operation.

No adult business may be open or in use:

- a. Between the hours of 11:00 p.m. and 8:00 a.m. Monday through Saturday; nor
- b. Between the hours of 11:00 p.m. Saturday and 8:00 a.m. Monday; nor
- c. Between the hours of 12:00 a.m. and 11:59 p.m. on public holidays, as defined in Section 9.010 of the Revised Statutes of the State of Missouri.

7. Facilities necessary.

No adult business license to conduct a bath house or body painting studio shall be issued unless an inspection by an appropriate City Official reveals that the premises on which the applicant intends to conduct such business complies with each of the following minimum requirements:

- a. The walls shall be clean and painted with washable, mold-resistant paint in all rooms where water or steam baths are given or showers taken. Floors shall be free from any accumulation of dust, dirt, or refuse. All equipment used in the business' operation shall be maintained in a clean and sanitary condition. Towels, linen, and items for personal use of operators and patrons shall be clean and freshly laundered. Towels, cloths, and sheets shall not be used for more than one patron. Heavy, white paper may be substituted for sheets provided that such paper is changed for every patron. No activity related to an adult business shall be carried on within any cubicle, room, booth, or any area within any permitted establishment which is fitted with a door capable of being locked.
- b. Toilet facilities shall be provided in convenient locations. Toilets shall be designated as to the sex accommodated therein.
- c. Lavatories or wash basins provided with both hot and cold running water shall be installed in either the toilet room or a vestibule. Lavatories or wash basins shall be provided with soap in a dispenser and with sanitary towels.

An appropriate City Official shall certify that the proposed business establishment complies with all of the requirements of this section and shall give or send such certification to the City Clerk. Provided, however, that nothing contained herein shall be construed to eliminate other requirements of statute or ordinance concerning the maintenance of premises, nor to preclude authorized inspection thereof. The appropriate City official may recommend the issuance of a license contingent upon the compliance with any requirements in this section.

Section 24.160 License - Posting or display.

1. Every person licensed as an adult business shall post such license in a conspicuous place and manner on the adult business premises.

2. Every person holding a server, manager or entertainer license shall post his or her license in his or her work area on the adult business premises so it shall be readily available for inspection by City authorities responsible for enforcement of this ordinance.

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Section 24.170 Manager on premises.

1. A manager shall be on duty at all adult businesses at all times the premises are open for business. The name of the manager on duty shall be prominently posted during business hours.

2. It shall be the responsibility of the manager to verify that any person who provides adult entertainment or works as a server within the premises possesses a current and valid entertainer or server's license and that such licenses are prominently posted. It shall also be the responsibility of the manager to insure minors do not enter upon the premises of an adult entertainment business.

Section 24.180 Inspectors and inspections.

All adult businesses shall permit representatives of the City or any other law enforcement agency acting in their official capacity to inspect the premises as necessary to insure the business is complying with all applicable regulations and laws.

Section 24.190 Suspension, revocation, or non-renewal -- license.

Whenever the City Clerk has information that:

1. The owner or operator of an adult business or a holder of a manager, server or entertainer license has violated, or knowingly allowed or permitted the violation of, any of the provisions of this ordinance; or

2. There have been recurrent violations of provisions of this ordinance that have occurred under such circumstances that the owner or operator of an adult business knew or should have known that such violations were committed; or

3. The adult business licensee or the manager, server or entertainer license was knowingly obtained through false statements in the application for such license, or renewal thereof; or

4. The adult business licensee or the manager, server or entertainer licensee knowingly failed to make a complete disclosure of all information in the application for such license, or renewal thereof; or

5. The owner or operator, or any partner, or any corporate officer or director holding an adult business license has become disqualified from having a license by a conviction as provided herein; or

6. If the owner or operator of an adult business or the holder of a manager, server or entertainer license has become disqualified from having a license by a conviction as provided herein, then the City Clerk shall make this information known to the governing body, which shall conduct a public hearing, in accordance with the Notice and Hearing Procedure set forth in Section 13, to determine whether the license should be suspended or revoked. Based on the evidence produced at the hearing, the governing body may take any of the following actions:

a. Suspend the license for up to ninety (90) days;

b. Revoke the license for the remainder of the license year; or

c. Place the license holder on administrative probation for a period of up to one (1) year, on the condition that no further violations of the ordinance occur during the period of probation. If a violation does occur and after a hearing the violation is determined to have actually occurred, the license will be revoked for the remainder of the license year.

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Section 24.200 Notice and hearing procedure.

1. In any instance in this article wherein a hearing is required, the governing body shall, after no less than ten (10) days written notice to the applicant or licensee, hold such hearing to ascertain all facts in the matter.

2. Notice of such hearing shall be in writing and shall set forth the reason for the hearing or the complaint against the licensee and shall be served upon the licensee in person or by registered or certified mail to the licensee's last-known address. In the event that the governing body is unable to serve the adult entertainment business licensee in person, and any notice sent by mail is returned by the postal service, the governing body shall cause such notice to be posted at the principal entrance of the adult entertainment business and such posting shall be a valid means of service.

3. At such hearing, an applicant or licensee shall have full right to be represented by counsel, to produce witnesses and other evidence, and to cross-examine all witnesses who appear against him or her. Oral evidence shall be taken only upon oath or affirmation. All proceedings in such hearing shall be recorded and transcribed as required by law. The governing body may receive evidence relevant to the issues from the applicant or licensee. Witnesses may be subpoenaed, and upon request of any party, the governing body shall issue subpoenas, and in a proper case, subpoenas duces tecum, which shall be served and returned as in civil actions in circuit court.

4. The governing body shall issue findings of fact and conclusions of law, and an order wherein it dismisses the complaint, or suspends or revokes the license previously issued. The governing body's order shall be served upon the applicant or licensee in person or by registered or certified mail to the applicant's or licensee's last-known address. In the event that the governing body is not able to serve such order upon the licensee or applicant for renewal license in the manner stated above, such order may be served by posting such order at the principal entrance of the adult entertainment business and such posting shall be a valid means of service.

Section 24.210 Renewal.

1. A license may be renewed by making application to the City Clerk on application forms provided for that purpose. Licenses shall expire on December 31 of each calendar year, and renewal applications for such licenses shall be submitted between December 16 and December 31.

2. Upon timely application and review as provided for a new license, a license issued under the provisions of this ordinance shall be renewed by issuance of a new license in the manner provided herein.

3. If the application for renewal of a license is not made during the time provided herein, the expiration of such license shall not be affected, and a new application shall be required.

Section 24.220 Judicial review - stay of enforcement of orders.

Following the entry of an order by the City Clerk suspending or revoking a license issued pursuant to this ordinance, or disapproving the renewal application for a license, such licensee or applicant may seek judicial review in a manner provided by law. The City Clerk shall stay enforcement of such order for a period of time not to exceed forty-five (45) days pending the filing and/or final disposition of proceedings for judicial review.

Section 24.230 Penalty.

It shall be unlawful for any person to violate any of the provisions of this ordinance. Upon conviction thereof, such person shall be fined(For current rates see Chapter 25 - Deposits, Fees & Charges, Section 25.660), or be punished by incarceration for up to ninety (90) days, or by both such fine and incarceration. Each day's violation of, or failure, refusal or neglect to comply with, any provision of this ordinance shall constitute a separate and distinct offense.

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Section 24.240 Regulations.

The City Clerk shall have the power to promulgate regulations as may be necessary and feasible for the carrying out of the duties of his/her office and which are not inconsistent with the provisions of this ordinance.

All adult businesses operating with the City shall comply with all Federal record keeping regulations that may be applicable to any such business, and shall permit the City inspector to examine the same. The City inspector is authorized to undertake such examination of these records to determine that they are complete and accurate as to the inspector may seem reasonable.

Failure to comply with such Federal record keeping regulations may be grounds for the revocation of the license of the adult business, as well as the revocation of the license of the employee or employees of such business who are required to maintain such records.

Section 24.250 Savings Clause.

Neither the adoption of this ordinance nor the repeal or amendment of any ordinance or part or portion thereof shall in any manner affect the prosecution or civil enforcement for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license, fee or penalty at said effective date due and unpaid under such ordinances, nor be construed as affecting any of the provisions of such ordinances relating to the collection of any such license, fee or penalty, or the penal provisions applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof required to be posted, filed or deposited pursuant to any ordinance, and all rights and obligations there under appertaining shall continue in full force and effect.

Section 24.260 Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance, or the application thereof to any circumstances, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision **shall not affect** the validity or effectiveness of the remaining portions of this ordinance.

Section 24.270 Application to Existing Businesses.

1. The provisions of this ordinance shall apply to all adult businesses existing on the effective date of this ordinance, as well as to all adult businesses established after the effective date of this ordinance.
2. Any adult business lawfully operating on the effective date of this ordinance that is ineligible for licensing solely as a result of the locational restrictions set forth in Section 7 herein shall be deemed a lawful nonconforming business.
3. Each of the following adult businesses, as defined in this ordinance, shall be considered a unique and separate adult business: adult media outlet; adult news rack; adult retail establishment; adult Motion Picture Theater; adult theater; adult entertainment cabaret; adult entertainment studio; adult encounter parlor; body painting studio; bath house; adult motel. The classification of each adult business shall be determined at the time a license is issued for the business. Where an adult business is considered a lawful nonconforming business under this section, the right to continue such nonconforming business shall be limited to that specific business, as defined herein, and shall not include other adult businesses listed herein.
4. The extension of a lawful nonconforming business to any portion of a building, which portion was constructed expressly for such nonconforming business prior to the effective date of this ordinance, shall be permitted, provided that no structural alterations shall be made thereafter.

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5. An adult business lawfully operating as a conforming business is not rendered nonconforming by the location, subsequent to grant or renewal of the adult business license, of a school, church, licensed child care center or child care center that has been inspected by the City or Fire District, public park or properties owned or used for residential purposes located within the City limits and within the respective locational requirement of the adult business. This provision applies only to the renewal of a valid license and does not apply when an application for a license is submitted after a license has expired or has been revoked.

Section 24.280 Conflicting ordinances repealed.

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.