

ORDINANCE NO. 52-21

**AN ORDINANCE AMENDING CHAPTER 1197  
OF THE CODIFIED ORDINANCES OF THE  
CITY OF UHRICHSVILLE  
REGARDING SEXUALLY ORIENTED BUSINESSES**

WHEREAS, members of Council of the City of Uhrichsville have discussed the current version of the City Codified Ordinances regarding sexually oriented businesses and adult entertainment businesses; and

WHEREAS, members of Council of the City of Uhrichsville have determined that some modifications and/or amendments to the current Codified Ordinances regarding sexually oriented businesses and adult entertainment businesses are needed.

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF UHRICHSVILLE, OHIO as follows:

1. Chapter 1197 of the Codified Ordinances of the City of Uhrichsville, regarding sexually oriented businesses, shall be amended in accordance with attached Exhibit "A".
2. This Ordinance shall become effective at the first time permitted by Ohio law.

First Reading: May 27, 2021

Second Reading: June 10, 2021

Third Reading: \_\_\_\_\_

Passed this 10<sup>th</sup> day of June, 2021.

**ROBERT "BUCK" COTTRELL  
PRESIDENT OF COUNCIL**

**ATTEST:**

**TRISHA ADDISON  
COUNCIL CLERK**

**APPROVED:**

**MARK HANEY  
MAYOR**



## CHAPTER 1197

### Sexually Oriented Businesses

- 1197.01 Purpose and findings.
- 1197.02 Definitions.
- 1197.03 Classification.
- 1197.04 License required.
- 1197.05 Issuance of license.
- 1197.06 Fees.
- 1197.07 Inspection.
- 1197.08 Expiration of license.
- 1197.09 Suspension.
- 1197.10 Revocation.
- 1197.11 Hearing; license denial, suspension, revocation; appeal.
- 1197.12 Transfer of license.
- 1197.13 Location of sexually oriented businesses.
- 1197.14 Regulations pertaining to exhibition of sexually explicit films, videos or live entertainment in viewing rooms.
- 1197.15 Additional regulations for escort agencies.
- 1197.16 Additional regulations concerning public nudity.
- 1197.17 Prohibition against children in sexually oriented business.
- 1197.18 Hours of operation.
- 1197.19 Exemptions.
- 1197.20 Injunction.
- 1197.21 Severability.
- 1197.22 Adult Entertainment Businesses

### CROSS REFERENCES

Obscenity and sex offenses - see GEN. OFF. Ch. 533

#### 1197.01 PURPOSE AND FINDINGS.

(a) Purpose. It is the purpose of this chapter to regulate sexually oriented businesses in order to promote the health, safety, 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 chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative material, including sexually oriented materials. Similarly, it is not the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the first Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material.

(b) Findings. Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the Council, and on findings incorporated in the cases of *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theaters*, 426 U.S. 50 (1976), *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *Barnes v. Glen Theater, Inc.*, 501 U.S. 560 (1991), *City of Erie v. Papis AmM.*, 120 S. Ct. 1382 (2000), and on studies in other communities including, but not limited to, Phoenix, Arizona; Minneapolis, Minnesota; St. Paul, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California, Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; Beaumont, Texas; Dallas, Texas; Newport News, Virginia; Bellevue, Washington; New Your, New York; and St. Croix county, Wisconsin; and also on findings from the report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the Council finds:

(1) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.

(2) Certain employees of sexually oriented businesses defined in this ordinance as adult theaters and cabarets engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.

(3) 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.

(4) Offering and providing such space encourages such activities, which creates unhealthy conditions.

(5) Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.

(6) At least 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-AID's), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections.

(7) Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States. 600 in 1982, 2,200 in 1983, 4,600 in 1984, 8,555 in 1985, and 253,448 through December 31, 1992.

(8) As of 1999, there have been 44 deaths and 16,252 reported cases of AIDS/HIV in the State of Ohio.

(9) Since 1981 and to the present, there have been an increasing cumulative number of persons testing positive for the HIV antibody test in Ohio.



(10) The number of cases of early (less than one year) syphilis in the United States reported annually has risen, with 33,613 cases reported in 1982 and 45,200 through November of 1990.

(11) The number of cases of gonorrhea in the United States reported annually remains at a high level, with over one-half million cases being reported in 1990.

(12) The surgeon general of the United States in his report of October 22, 1986 has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.

(13) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.

(14) 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 the operators of the facilities to self-regulate those activities and maintain those facilities.

(15) Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view "adult" oriented films.

(16) The findings noted in paragraphs (1) through (15) raise substantial governmental concerns.

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

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

(19) Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theaters.

(20) Requiring licensees of sexually oriented businesses to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.

(21) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant

governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.

(22) It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct which this chapter is designed to prevent or who are likely to be witnesses to such activity.

(23) The fact that an applicant for an adult use license has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in the conduct in contravention of this chapter.

(24) The barring of such individuals from the management of adult uses for a period of years serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases.

(25) The general welfare, health, morals and safety of the citizens for the City will be promoted by the enactment of this chapter.

(Ord. 4-02. Passed 3-14-02.)

#### 1197.02 DEFINITIONS.

(a) "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, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by their emphasis upon matter exhibiting "specified sexual activities" or "specified anatomical areas".

(b) "Adult Bookstore, Adult Novelty Store or Adult Video Store" means a commercial establishment which has as a significant or substantial portion of its stock-in-trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising, or maintains fifteen percent (15%) of its sales or display space for the sale or rental, for any form of consideration, of any one or more of the following:

(1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, slides, or other visual representations which are characterized by their emphasis upon the exhibition or display of "specified sexual activities" or "specified anatomical areas".

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

(c) "Adult Cabaret" means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:

(1) Persons who appear semi-nude; or

(2) Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or



(3) Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the exhibition or display of "specified sexual activities" or "specified anatomical areas".

(d) "Adult Motel" means a hotel, motel or similar commercial establishment which:

(1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the exhibition or display of "specified sexual activities" or "specified anatomical areas"; and has sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions; and either

(2) Offers a sleeping room for rent for a period of time that is less than ten hours, or

(3) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten hours.

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

(f) "Adult Theater" means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities".

(g) "Distinguished or Characterized by an Emphasis Upon" means the dominant or principal theme of the object referenced. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon the exhibition or display of Specified Sexual Activities or Specified Anatomical Areas," the films so described are those whose dominant or principal character and theme are the exhibition or display of "Specified Anatomical Areas" or "Specified Sexual Activities".

(h) "Employee, Employ and Employment" describe and pertain to any person who performs any service on the premises of a sexually oriented business, on a full time, part time, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, or other status. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

(i) "Enforcement Officer" shall mean such person as may be designated by the Mayor.

(j) "Escort" means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

(k) "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.

(l) "Establish or Establishment" means and includes any of the following:

(1) The opening or commencement of any sexually oriented business as a new business;

(2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;

(3) The additions of any sexually oriented business to any other existing sexually oriented business; or

(4) The relocation of any sexually oriented business.

(m) "Licensee" means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license.

(n) "Nudity or a State of Nudity" means the showing of the human male or female genitals, pubic area, vulva, anus, or anal cleft with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

(o) "Operate or Cause to Be Operated" means to cause to function or to put or keep in a state of doing business. "Operator" means any persons on the premises of a sexually oriented business who is authorized to exercise operational control of the business or who causes to function or who puts or keeps in operation the business. A person may be found to be operating or causing to be operated a sexually oriented business regardless of whether that person is an owner, part owner, or licensee of the business.

(p) "Person" means an individual, proprietorship, partnership, corporation, association, or other legal entity.

(q) "Semi-nude or in a Semi-nude Condition" means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

(r) "Semi-nude Model Studio" means any place where a person appears semi-nude and is provided to be observed, sketched, drawn, painted, sculptured, or photographed by other persons who pay money or any form of consideration. Nude Model Studio shall not include a proprietary school licensed by the State of Ohio; or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation, or in a structure:



(1) That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and

(2) Where in order to participate in a class a student must enroll at least three days in advance of the class; and

(3) Where no more than one nude or semi-nude model is on the premises at any one time.

(s) "Sexual Encounter Center" means a business or commercial establishment, that as one of its principal business purposes, offers for any form of consideration, a place where two or more persons may congregate, associate, or consort for the purpose of "specified sexual activities". The definition of sexual encounter establishment or any sexually oriented businesses shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

(t) "Sexually Oriented Business" means an adult arcade, adult bookstore adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

(u) "Specified Anatomical Areas" means:

(1) The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or

(2) Less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola.

(v) "Specified Criminal Activity" means any of the following offenses:

(1) Prostitution or promotion of prostitution, dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity relating to a sexually oriented business; sexual assault; molestation of a child; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries;

(2) For which:

A. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

B. Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

C. Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

(3) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

(w) "Specified Sexual Activities" means any of the following:

(1) The fondling of another person's genitals, pubic region, anus, or female breasts;

(2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or

(3) Excretory functions as part of or in connection with any of the activities set forth in (1) through (2) above.

(x) "Substantial Enlargement" of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five percent (25%), as the floor areas exist on the date this chapter takes effect.

(y) "Transfer of Ownership or Control" of a sexually oriented business 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; or

(3) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

(Ord. 4-02. Passed 3-14-02.)

#### 1197.03 CLASSIFICATION.

Sexually oriented businesses are classified as follows:

(a) Adult arcades;

(b) Adult bookstores, adult novelty stores, or adult video stores;

(c) Adult cabarets;

(d) Adult motels;

(e) Adult motion picture theaters;

(f) Adult theaters;

(g) Escort agencies;

(h) Semi-nude model studios; and

(i) Sexual encounter centers.

(Ord. 4-02. Passed 3-14-02.)

#### 1197.04 LICENSE REQUIRED.

(a) It is unlawful:

(1) For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the City pursuant to this chapter.

(2) For any person who operates a sexually oriented business to employ a person under the age eighteen (18) to work for the sexually oriented business.

(b) An application for a license must be made on a form provided by the City. All applicants must be qualified according to the provisions of this chapter.

(c) An applicant for a sexually oriented business license shall file with the Enforcement Officer a completed application made on a form prescribed and provided by the City Service Director. An application shall be considered complete if it includes the information required in this section. The applicant shall be qualified according to the provisions of this chapter. The application shall be notarized. The application shall include the information called for in paragraphs (1) through (7) as follows:

- (1) The full true name and any other names used in the preceding five years.
  - (2) Current Business Address.
  - (3) Either a set of fingerprints suitable for conducting necessary background checks pursuant to this chapter or the applicant's Social Security Number to be used for the same purpose.
  - (4) If the application is for a sexually oriented business license, the name, business location, legal description, business mailing address and phone number of the proposed sexually oriented business.
  - (5) Written proof of age, in the form of either:
    - A. A copy of a birth certificate and current photo,
    - B. Current driver's license with picture, or
    - C. Other picture identification document issued by a governmental agency.
  - (6) The issuing jurisdiction and the effective dates of any license or permit held by the applicant relating to a sexually oriented business, whether any such license or permit has been denied, revoked or suspended and, if so, the reason or reasons therefor.
  - (7) If the application is for a sexually oriented business license, the name and address of the statutory agent or other agent authorized to receive service of process. The information provided pursuant to paragraphs (1) through (7) of this subsection shall be supplemented in writing by certified mail, return receipt requested, to the Enforcement Officer within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.
- (d) The application for sexually oriented business license shall be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.
- (e) If a person who wishes to operate a sexually oriented business is an individual, he shall sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, such as a corporation, each officer, director, general partner or other person who will participate directly in decisions relating to management of the business shall sign the application for a license as applicant. Each applicant must be qualified under Section 1197.05 and each applicant shall be considered a licensee if a license is granted.



(f) The information provided by an applicant in connection with the application for a license under this chapter shall be maintained by the Enforcement Officer on a confidential basis, and may be disclosed only:

(1) To other governmental agencies in connection with a law enforcement or public safety function, or

(2) As may otherwise be required by law or court order.

(Ord. 4-02. Passed 3-14-02.)

#### 1197.05 ISSUANCE OF LICENSE.

(a) Upon the filing of a completed application for a sexually oriented business license, the Enforcement Officer shall issue a Temporary License to the applicant, which

Temporary License shall expire upon the final decision of the Enforcement Officer to deny or grant the license. Within 20 days after the receipt of a completed application, the Enforcement Officer shall either issue a license or issue a written notice of intent to deny a license to the applicant. The Enforcement Officer shall approve the issuance of a license unless one or more of the following is found to be true:

(1) An applicant is less than eighteen (18) years of age.

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

(3) An applicant has failed to provide information as required by Section 1197.04 for issuance of the license.

(4) An applicant is a business entity for which the applicant had, at the time of an offense leading to a criminal conviction described herein, a management responsibility or a controlling interest, has been convicted of a specified criminal activity as defined in this chapter. The fact that a conviction is being appealed shall have no effect.

(5) The license application fee required by this section has not been paid.

(6) An applicant has falsely answered a question or request for information on the application form.

(7) The proposed sexually oriented business is located in a zoning district other than an industrial district in which sexually oriented businesses are allowed to operate under the Zoning Ordinance or is not in compliance with the location restrictions established for sexually oriented businesses in the appropriate zoning district(s).

(b) An applicant ineligible for a license due to subsection (a)(4) hereof may qualify for a sexually oriented business license only when the time period required by the applicable paragraph has elapsed.

(c) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to that applicant, the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall be



posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

(Ord. 4-02. Passed 3-14-02.)

#### 1197.06 FEES.

The nonrefundable initial license fee is \$5,000.00 ; and annual renewal fee is \$500.00 for a sexually oriented business license.

(Ord. 4-02. Passed 3-14-02.)

#### 1197.07 INSPECTION.

(a) An applicant, operator or licensee shall permit law enforcement officers, and any other federal, state, county or city agency in the performance of any function connected with the enforcement of this chapter, normally and regularly conducted by such agencies, to inspect those portions of the premises of a sexually oriented business where patrons or customers are permitted to occupy for the purpose of ensuring compliance with this chapter, at any time the business is occupied or open for business.

(b) The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

(Ord. 4-02. Passed 3-14-02.)

#### 1197.08 EXPIRATION OF LICENSE.

(a) Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 1197.04. Application for renewal shall be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the expiration of the license will not be affected.

(b) When the City denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the City finds that the basis for denial of the renewal license has been corrected or abated, the applicant shall be granted a license if at least ninety (90) days have elapsed since the date denial became final.

(Ord. 4-02. Passed 3-14-02.)

#### 1197.09 SUSPENSION.

(a) The City shall issue a written intent to suspend a license for a period not to exceed thirty (30) days if it determines that a license or an employee of a license has:

- (1) Violated or is not in compliance with any section of this chapter;
- (2) Refused to allow an inspection of the sexually oriented business premises as authorized by this chapter.

(Ord. 4-02. Passed 3-14-02.)

#### 1197.10 REVOCATION.

(a) The Enforcement Officer shall issue a written statement of intent to revoke a sexually oriented business license if a cause of suspension in Section 1197.09 occurs and the license has been suspended within the preceding twelve (12) months.

(b) The Enforcement Officer shall issue a written statement of intent to revoke a sexually oriented business license if the Officer determines that:

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

(2) A licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;

(3) A licensee has knowingly allowed prostitution on the premises;

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

(5) A licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises. This subsection will not apply to an adult motel, unless the licensee knowingly allowed sexual activities to occur either (i) in exchange for money, or (ii) in a public place or within public view.

(c) The fact that a conviction is being appealed shall have no effect on the revocation of the license.

(d) When, after the notice and hearing procedure described in Section 1197.11, the Enforcement Officer revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license for one (1) year from the date revocation becomes effective, provided that, if the conditions of Section 1197.11(b) are met, a Provisional License will be granted pursuant to that section. If, subsequent to revocation the Enforcement Officer finds that the basis for the revocation found in subsection (b)(1) and (b)(4) of this section has been corrected or abated, the applicant shall be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective.

(Ord. 4-02. Passed 3-14-02.)

#### 1197.11 HEARING; LICENSE DENIAL, SUSPENSION, REVOCATION; APPEAL.

(a) If the Enforcement Officer determines that facts exist for denial, suspension, or revocation of a license under this chapter, the Enforcement Officer shall notify the applicant or licensee (respondent) in writing of the intent to deny, suspend or revoke the license, including the grounds therefor, by personal delivery, or by certified mail. The notification shall be directed to the most current business address on file with the Enforcement Officer. Within five (5) working days of receipt of such notice, the respondent may provide to the Mayor in writing a response that shall include a statement of reasons why the license or permit should not be denied, suspended, or revoked. Within three (3) days of the receipt of respondent's written response, the Mayor shall

notify respondent in writing of the hearing date on respondent's denial, suspension, or revocation proceeding.

(1) Within ten (10) working days of the receipt of respondent's written response, the Mayor shall conduct a hearing at which respondent shall have the opportunity to be represented by counsel and present evidence and witnesses on his or her behalf. If a response is not received by the Mayor in the time stated or, if after the hearing the Mayor finds that grounds as specified in this resolution exist for denial, suspension, or revocation, then such denial, suspension, or revocation shall become final five (5) days after the Mayor sends, by certified mail, written notice that the license has been denied, suspended, or revoked. Such notice shall include a statement advising the applicant or licensee of the right to appeal such decision to a court of competent jurisdiction.

(2) If the Mayor finds that no grounds exist for denial, suspension, or revocation of a license, then within five (5) days after the hearing, the Mayor shall withdraw the intent to deny, suspend, or revoke the license and shall so notify the respondent in writing by certified mail of such action and shall contemporaneously therewith issue the license.

(b) When a decision to deny, suspend or revoke a license becomes final, the applicant or licensee (aggrieved party) whose application for a license has been denied or whose license has been suspended or revoked shall have the right to appeal such action to a court of competent jurisdiction. Upon the filing of any court action to appeal, challenge, restrain or otherwise enjoin the City's enforcement of the denial, suspension, or revocation, the City shall immediately issue the aggrieved party a Provisional License. The Provisional License shall allow the aggrieved party to continue operation of the sexually oriented business and will expire upon the court's entry of a judgement on the aggrieved party's action to appeal, challenge, restrain or otherwise enjoin the City's enforcement.

(Ord. 4-02. Passed 3-14-02.)

#### 1197.12 TRANSFER OF LICENSE.

A licensee shall not transfer his/her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the

address designated in the application.

(Ord. 4-02. Passed 3-14-02.)

#### 1197.13 LOCATION OF SEXUALLY ORIENTED BUSINESSES.

(a) A person commits a first degree misdemeanor if that person operates or causes to be operated a sexually oriented business in any zoning district other than an industrial zone, as defined and described in the Zoning Code.

(b) A person commits a first degree misdemeanor if the person operates or causes to be operated a sexually oriented business within 2000 feet of:

(1) A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;



(2) A public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities; school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;

(3) A boundary of a residential district as defined in the Zoning Code;

(4) A public park or recreational area which has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas, or other similar public land within the City which is under the control, operation, or management of the City park and recreation authorities;

(5) The property line of a lot devoted to a residential use as defined in the Zoning Code;

(6) An entertainment business which is oriented primarily towards children or family entertainment; or

(7) A licensed premises, licensed pursuant to the alcoholic beverage control regulations of the State.

(c) A person commits a first degree misdemeanor if the person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within 1000 feet of another sexually oriented business.

(d) A person commits a first degree misdemeanor if that person causes or permits the operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

(e) For the purpose of subsection (b) hereof, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in subsection (b). Presence of a city, county or other political subdivision boundary shall be irrelevant for purposes of calculation and applying the distance requirements of this section.

(f) For purposes of subsection (c) hereof the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each business is located.

(g) Any sexually oriented business lawfully operating before the passage of this chapter, that is in violation of subsection (a) through (f) hereof shall be deemed a nonconforming use.



(h) A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, of a use listed in subsection (b) hereof within 1000 feet of the sexually oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application is made for a license after the applicant's previous license has expired or been revoked.  
(Ord. 4-02. Passed 3-14-02.)

#### 1197.14 REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS, VIDEOS OR LIVE ENTERTAINMENT IN VIEWING ROOMS.

(a) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, live entertainment, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(1) Upon application for a sexually oriented license, 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 and designation any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor areas. 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 to an accuracy of plus or minus six (6") inches. The City may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

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

(3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the City.

(4) It is the duty of the licensee 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.

(5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station 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 subsection must be by direct line of sight from the manager's station.

(6) It shall be the duty of the licensee to ensure that the view area specified in subsection (a)(5) remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and, at all times, 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 subsection (a)(1) hereof.

(7) No viewing room may be occupied by more than one person at any time.

(8) 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 five (5.0) foot- candles as measured at the floor level.

(9) It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(10) No licensee shall allow openings of any kind to exist between viewing rooms or booths.

(11) No person shall make or attempt to make an opening of any kind between viewing booths or rooms.

(12) The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.

(13) The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

(14) The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty eight (48") inches of the floor.

(b) A person having a duty under subsection (a)(1) through (14) above commits a misdemeanor if he knowingly fails to fulfill that duty.

(Ord. 4-02. Passed 3-14-02.)

#### 1197.15 ADDITIONAL REGULATIONS FOR ESCORT AGENCIES.

(a) An escort agency shall not employ any person under the age of 18 years.

(b) A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of 18 years.

(Ord. 4-02. Passed 3-14-02.)

#### 1197.16 ADDITIONAL REGULATIONS CONCERNING PUBLIC NUDITY.

(a) It shall be a first degree misdemeanor for a person who knowingly and intentionally, in a sexually oriented business, appears in a state of nudity or engages in specified sexual activities.

(b) It shall be a first degree misdemeanor for an employee, while semi-nude, to knowingly and intentionally touch a customer or the clothing of a customer.

(Ord. 4-02. Passed 3-14-02.)



1197.17 PROHIBITION AGAINST CHILDREN IN A SEXUALLY ORIENTED BUSINESS.

A person commits a first degree misdemeanor if the person knowingly allows a person under the age of 18 years on the premises of a sexually oriented business.  
(Ord. 4-02. Passed 3-14-02.)

1197.18 HOURS OF OPERATION.

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of midnight and 8:00 a.m.  
(Ord. 4-02. Passed 3-14-02.)

1197.19 EXEMPTIONS.

It is a defense to prosecution under Section 1197.17 that a person appearing in a state of nudity did so in a modeling class operated:

- (a) By a proprietary school, licensed by the State; a college, junior college, or university supported entirely or partly by taxation;
  - (b) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
  - (c) In a structure:
    - (1) Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
    - (2) Where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and
    - (3) Where no more than one nude model is on the premises at any one time.
- (Ord. 4-02. Passed 3-14-02.)

1197.20 INJUNCTION.

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of Section 1197.12 is subject to a suit for injunction as well as prosecution for criminal violations. Such violations shall be punishable by a fine of no more than one thousand dollars (\$1,000) and/or six months imprisonment. Each day a sexually oriented business so operates is a separate offense or violation.  
(Ord. 4-02. Passed 3-14-02.)

1197.21 SEVERABILITY.

Each section and provision of this chapter are hereby declared to be independent division and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said chapter, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it

is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid.

(Ord. 4-02. Passed 3-14-02.)

CODIFIED ORDINANCES OF UHRICHSVILLE



## CHAPTER 1197.22

### Adult Entertainment Businesses

- 1197.23 - Definitions.
- 1197.24 - Zoning of adult entertainment business.
- 1197.25 - Conditional use permit required.
- 1197.26 - Signs and exterior display.
- 1197.27 - Certain restrictions.

### CROSS REFERENCES

Obscenity and sex offenses - see GEN. OFF. Ch. 533

Sexually oriented businesses - see P. & Z. Ch. 1197

### 1197.23 DEFINITIONS.

The following definitions shall apply to this chapter:

- (a) "Adult entertainment business" means an adult book/video store, adult motion picture theater, adult drive-in motion picture theater, or an adult only entertainment establishment as further defined in this section.
- (b) "Adult book/video store" means an establishment which utilizes fifteen percent (15%) or more of its retail selling area for the purpose of retail sale or rental, or for the purpose of display by coin or slug-operated, electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image producing devices, books, magazines, or other periodicals, films, tapes, and cassettes which are distinguished by their emphasis on adult materials as defined in this section.
- (c) "Adult motion picture theater" means an enclosed motion picture theater which is regularly used or utilizes fifteen percent (15%) or more of its total viewing time for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to adult material as defined in this section.
- (d) "Adult motion picture drive-in theater" means an open air drive-in theater which is regularly used or utilizes fifteen percent (15%) or more of its total viewing time for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to adult material as defined in this section.
- (e) "Adult only entertainment establishment" means an establishment where the patron directly or indirectly is charged a fee, and where the establishment features entertainment or services which constitute adult material as defined in this section, or which features exhibitions, dance routines, or gyrational choreography of persons totally nude, topless or bottomless, or which features strippers or similar entertainment or services which constitute adult material defined in this section.
- (f) "Adult material" means any book, magazine, newspaper, pamphlet, poster, picture, slide, transparency, figure, image, description, motion picture film, video tape, photographic record or tape, other tangible thing, or any service capable of arousing interest through sight, sound or touch, and:

(1) Which material is distinguished or characterized by an emphasis on matter displaying, describing, or representing sexual activity, masturbation, sexual excitement, or nudity; or

(2) Which service is distinguished or characterized by an emphasis on sexual activity, masturbation, sexual excitement or nudity.

(g) "Bottomless" means less than full opaque covering of male or female genitals, pubic area or buttocks.

(h) "Sexual activity" means sexual conduct or sexual contact, or both.

(i) "Sexual contact" means any touching of an erogenous zone of another, including without limitations, the thigh, genitals, buttock, pubic region, or breast for the purpose of sexually arousing or gratifying either person.

(j) "Topless" means less than full opaque covering of any portion of a female breast below the top of the nipple.

(k) "Church" means any structure used primarily as a church as defined in Federal Tax Regulations, paragraph (g)(5) of 26 C.F.R. 1.6033-2(1995).

(l) "School" means any public or chartered nonpublic school.

(m) "Park" means any property and/or structure owned or maintained by the State of Ohio, Tuscarawas County, or City of Uhrichsville whose primary purpose and function is to serve as a recreational facility available and open to the general public.

(n) "Playground" means any recreational area owned or maintained by any school as defined herein.

(Ord. 3-02. Passed 1-24-02.)

#### 1197.24 ZONING OF ADULT ENTERTAINMENT BUSINESS.

Adult entertainment businesses shall not be permitted in the downtown business district, or in McCauley Drive business district, including The Claymont Center, Commerce Drive, Kilpatrick Road, Roanoke Avenue, North Water Street, including North Water Street Extension, Trenton Avenue, and Fourth Street, inclusive but not limited to.

(Ord. 3-02. Passed 1-24-02.)

#### 1197.25 CONDITIONAL USE PERMIT REQUIRED.

(a) No building shall be erected, constructed, or developed, and no building or premises shall be reconstructed, remodeled, arranged for use, or used for any adult entertainment business unless authorized by the issuance of a conditional use permit. In addition, any adult entertainment business shall comply with the following conditional use criteria:

(1) Adult entertainment businesses shall comply with the district regulations applicable to all properties in any district in which they are located;

(2) No adult entertainment business shall be permitted in a location which is within 2000 feet of another adult entertainment business;

(3) No adult entertainment business shall be permitted in a location which is within 2000 feet of any church, public or private school, park or playground;

(4) No adult entertainment business shall be permitted in a location which is within 2000 feet of any boundary of any residential district.

(b) In determining the minimum distance as set forth in subsection (a)(2) above, said distance shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of each such business. The distance between any adult entertainment business and any church, school, park or playground, as set forth in subsection (a)(3) above, shall be measured in a straight line, without regard to intervening structures, from the closest exterior wall of the adult entertainment business to the closest property line of said church, school, park or playground. The distance between any adult entertainment business and any residential district as established in subsection (a)(4) above, shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of the adult entertainment business to the closest residential zoning boundary as designated by the City of Uhrichsville Zoning Map.

(Ord. 3-02. Passed 1-24-02.)

#### 1197.26 SIGNS AND EXTERIOR DISPLAY.

No adult entertainment business shall erect signage or publicly displayed advertising in any manner that permits the observation of any material depicting, describing, or relating to sexual activities, by display, decorations, signs, show windows, or other openings from any public view. Further, any advertisements, signs, or other exhibits depicting adult entertainment activities placed within the interior of buildings or premises shall be arranged or screened to prevent public viewing from outside the building or premises.

(Ord. 3-02. Passed 1-24-02.)

#### 1197.27 CERTAIN RESTRICTIONS.

No person shall operate or cause to be operated an adult entertainment business, and knowingly or with reasonable cause to know, suffer, permit or allow:

(a) Admittance of a person under eighteen years of age to the business premises.

(b) If the interior of the premises is visible from the outside of the premises so that depiction of adult material as defined herein is visible outside the premises, the owner or manager of the premises shall install an opaque covering over all the windows through which minors could view any such adult material and install a privacy curtain at all entrances of the premises through which minors could view such adult material.

(Ord. 3-02. Passed 1-24-02.)





#### 1197.28 ZONING OF ADULT ENTERTAINMENT BUSINESS.

Adult entertainment businesses shall not be permitted in the downtown business district, or in McCauley Drive business district, including The Claymont Center, Commerce Drive, Kilpatrick Road, Roanoke Avenue, North Water Street, including North Water Street Extension, Trenton Avenue, Fourth Street, and Spanson Drive, inclusive but not limited to.

(Ordinance 3-02. Passed 1-24-02.)

